

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE
PROCEDURE

Minutes of Meeting

January 12, 2023 2:30 PM

The Meeting was called to order on Teams by Hon. Jeffrey Kilgore, Chair. Present virtually were members Hon. Justice William Cohen, Michael Gawne, Esq., Matthew Getty, Esq., Register Brian Hesselbach, Hon. Kathryn Kennedy, Amy Menard, Esq., Justin Sheng, Esq., and Mark Langan, Esq., Daniel Kimbell, CTFA., Hon. Joanne Ertel (retired), Reporter

Chair Kilgore introduced the Committee's new reporter, Joanne Ertel, who served as Chair of this committee and was a Probate Judge for 18 years in Windsor County.

1. Approval of draft minutes of the meeting of November 3, 2022. The minutes of the meeting of November 3, 2022, passed with one minor change: the substitution of the word "to" Professor Wroth for "the" Professor Wroth in paragraph 3h. There was one abstention with the vote.

2.a. Review of revisions to proposed V.R.E.F. rules, new V.R.P.P. 78 See email of 1/8/23, 2:07PM. Motion to forward to VSC for comment with changes made. The Motion passed with one abstention.

2.b Subcommittee Report, amendment to Rule 13. Right to Homestead: Mr. Gawne reported that the subcommittee considering proposed changes to the homestead provision in Rule 13 has not met but that he had communicated with the group by email recently. He is proposing that the right to the homestead can be filed at any time, including as a Motion to Re-open an Estate. Mr. Langan reported that his research suggests that a homestead can be abandoned. He also reported that Professor Stephanie Willbanks is not sure that a homestead vests without any action being taken. Ms. Menard suggested that homestead interests should be referenced in estate inventories and licenses to sell. Mr. Langan indicated that the homestead must be the primary residence of the surviving spouse. Hon. Kennedy opined that historically the purpose of the homestead was to enable a wife to stay in the homestead as women were unable to own property. Mr. Gawne will continue to explore the issue with the subcommittee.

2.c. The subcommittee of Judges Kennedy and Kilgore to consider an amendment to Rule 89.9 had nothing to report. Matter continued until the next meeting.

2.d. Subcommittee Report, new rules for 14 V.S.A. ch.111, subch 14, vulnerable non-citizen children): next meeting as the subcommittee is scheduled to meet on 12/13/23. Judges Kennedy and Kilgore are serving on the sub-committee.

2.e. Amendment to Rule 16.1. Consideration of the amendment was tabled.

2.f. Amendment to Rule 79.1 (Pro Hac Vice). Proposed rule was developed by the Civil Rules Committee. Motion to forward proposal to VSC for comment. The Motion passed with one abstention.

3.a. Amendment to Rule 79. 2. Proposed rule adopted the civil rule pertaining to recording devices in the courts. The civil rule was abrogated and replaced in 2019. It was then adopted as a temporary rule by the probate courts. It is now proposed that V.R.P.P. 79.2 be adopted as a permanent rule. Judge Kennedy and Ms. Menard expressed support for the rule.

3.b. Proposed change to V.R.P.P. 80.10(c) to be sent to members for email consideration.

Motion to forward proposal to VSC for comment. The Motion passed with one abstention.

4. Rule 43.1 Remote Hearings. Scott Griffith, Emily Wetherell, and Terri Corsones joined the meeting. Differences were identified in the Probate docket as compared to other divisions also dealing with the remote hearings question, particularly civil: 1. Language difference on “trials” and “non-evidentiary hearings” vs. “evidentiary” and “non-evidentiary” in probate. 2. Civil has different timeline deadlines. 3. Terminology of clerk/register. Probate rules counterparts of civil and family have drafted and sent out for comment, which in summary, allows judges to have a standing order for hybrid/remote. Directions in the Notice to parties. Civil rules decided how judges preside as well, if parties in person then judge in person.

Discussion within the committee to have the default rule in Probate to be hybrid hearing model. Subcommittee created with Jeff Kilgore, Brian Hesselbach, and Mark Langan.

5. Additional business:

Judge Kilgore noted that Judge Fred Glover will be replacing Judge Scanlon who is retiring.

Mr. Langan wanted the Committee to be aware that the Vermont Bar Association may be considering a rule that would require attorneys who ghost write for pro se litigants must be disclosed.

Date of next meeting to be scheduled at the end of March 2023 on TEAMS.

Respectfully submitted,

Kathryn Kennedy, Acting Recorder
Joanne M. Ertel, Reporter