

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE**

Minutes of Meeting

June 22, 2023

The meeting was called to order at 1:34 p.m. on Teams by Hon. Jeffrey Kilgore, Chair. Present virtually were Hon. Justice William Cohen, Therese Corsones, Matthew Getty, Esq., Hon. Frederick Glover, Register Brian Hesselbach, Hon. Kathryn Kennedy, Mark Langan, Esq., Amy Menard, Esq., Justin Sheng, Esq. and Hon. Joanne Ertel (retired), Reporter.

Judge Kilgore welcomed Hon. Frederick Glover, the probate judge for Windsor County, as a new member of the committee.

1. Minutes of the meeting of April 3, 2023 - The draft minutes of the meeting of April 3, 2023 were approved with the request that future minutes contain both start and end times.

2. Continuing Matters

a. Rule 43.1 - The comments of Judge McClintock and Judge Glennon were considered by the Committee. Ms. Corsones represented that there would be ongoing assistance and training to facilitate remote hearings to address Judge Glennon's concerns. Judge Kilgore addressed the due process concerns raised by Judge McClintock. Judge Kilgore noted that both Massachusetts and New Hampshire courts have held that telephonic hearings do not violate due process. The issue is the opportunity to have meaningful participation. Emily Wetherell joined the meeting to address the status of the V.R.C.P. 43.1 in light of the Legislative Committee on Judicial Rules (LCJR) hearing held on June 19, 2023. Some members of the LCJR had expressed concern that advance notice be given as to whether a party or a judge was going to participate in a hearing remotely. The Committee declined to require advance notice to give the parties maximum flexibility but will require advance notice of the judge's remote participation. V.R.C.P. 43.1 will be recommended for promulgation. After hearing from Ms. Wetherell, it was moved, seconded and unanimously approved to recommend V.R.P.P. 43.1 for promulgation. Justice Cohen abstained.

b. Rule 5(e) and Rule 78 - The comment period ended on June 12, 2023, and no comments were received. The LCJR reviewed the rule at its meeting on June 19, 2023, and had no comments. The committee moved, seconded and voted unanimously to recommend the rules for promulgation. Justice Cohen abstained.

c. Rule 5.1 - To date, no comments have been received. The LCJR reviewed the rule at its meeting on June 19, 2023, and had no comments. The comment period ends on July 12, 2023.

d. Rule 40(d)(3) - No comments have been received. The LCJR reviewed the rule at its meeting on June 19, 2023, and had no comments. The comment period ends on July 12, 2023.

e. Rule 7 - After discussion the Committee agreed that Rule 7 should be written in order to clarify and simplify it. The Reporter will redraft the rule with the assistance of Ms. Menard.

3. New Rules Discussion

a. Rule 16.1 - After discussion concerning who could participate in mediation, the Committee asked the reporter to re-draft the rule and refer to those who participate in mediation as participants.

b. Rule 54 - Discussion of an amendment to this rule was tabled because the proponent of an amendment, Michael Gawne, was not present.

c. Rule 47 - The Committee considered the proposed amendment submitted by Mr. Hesselbach. It was moved, seconded and unanimously voted to send Mr. Hesselbach's draft out for comment. Justice Cohen abstained. The Reporter will draft a Reporter's Note.

d. V.R.P.A.C.R. 6(b) - The Committee discussed the need for confidentiality of name change records of abuse and stalking victims, name change records of persons who are changing gender identity, and inventories and accounts in estates and guardianships. The Committee agreed that there is a need for standards to address such exceptions. Judge Kilgore will draft proposed exceptions in these areas.

4. Subcommittee Reports

a. Rule 13 - Discussion was deferred because Michael Gawne was not present.

b. Rule 80.9 - Judges Kilgore and Kennedy need to spend more time reviewing Davis v. Davis, 22-AP-090 (Apr. 14, 2023) before drafting a proposed rule amendment.

5. Housekeeping amendments

a. Rule 12 - It was decided to remove the reference to 15 V.S.A. 432 because it was abrogated several years ago and under the current statute pertaining to relinquishments, 15A V.S.A. 2-405, there is no requirement of a hearing.

b. Rule 83 - The Committee agreed that the term "Superior Judge" will be added to the definitions to reflect new terminology for the Chief Administrative Judge. The Reporter will present a draft at the next meeting.

c. Rule 84 - The Committee agreed that Rule 84 needs revision to reflect the fact that the Court Administrator now approves forms. The Reporter will present a draft at the next meeting.

6. Other business

Certified mail notice - Mr. Getty raised the issue of the current ineffectiveness of certified mail notice. The committee generally agreed. Mr. Langan indicated that he frequently uses Federal Express when notice is required. Mr. Langan also represented that New Hampshire eliminated certified mail notice during the pandemic, and he offered to take a look at New Hampshire's current rule. Judge Kilgore noted that he has relied upon V.R.P.P. 4(d)(4) to authorize notice through facebook messenger, text and email social with appropriate proof of service. The Reporter offered to research the practices of other jurisdictions and report back to the Committee at the next meeting.

7. Next meeting

The next meeting will be scheduled in early September 2023.

The meeting was adjourned at 3:55 pm.

Respectfully submitted,

Joanne M. Ertel,
Reporter