

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

**Minutes of Meeting**

**April 3, 2023**

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

1. Minutes of the meeting of January 12, 2023 - The draft minutes of the meeting of January 12, 2023, were approved with one abstention and with corrections to the spelling of Daniel Kimbell's name and credentials and with the addition of "the" second sentence in item 2.c.

1A. Probate Judge Recusal V.R.P.P. 40 (d)(3) - At the request of Chief Superior Judge Zonay, the committee considered an amendment to Rule 40 (d)(3) to make the procedure for disqualification of a judge in the probate division consistent with the civil and criminal divisions. The committee voted unanimously to replace V.R.P.P. 40 (d)(3) with the language of V.R.C.P. 40 (e)(3) with one correction: the replacement of the term Chief Administrative Judge for Trial Courts" with "Chief Superior Judge."

2. Continuing Matters

- a. V.R.P.P. 5.1 - The committee considered the proposed replacement of the term "ward" with "person under guardianship" and clarified the proposed changes to section (d)(2) of the definitions section. After motion made and duly seconded, it was voted to approve the rule and to send it out for comment.
- b. V.R.P.P. 7(e) - After the addition of two commas and amending the year of the Reporter's Notes, the committee voted unanimously to send the proposed rule to the Supreme Court.
- c. V.R.P.P. 5 & 78, V.R.E.F. 3 & 12 After motion made and duly seconded, the committee voted unanimously to approve the latest revisions and to send the proposed rules back to the Committee on the Vermont Rules for Electronic Filing for submission to the Supreme Court.
- d. V.S.A. 3098 (Special immigration status for minors) - The sub-committee met and decided that they didn't know enough about the immigration process to develop a rule. The subcommittee believes that it is the statute's purpose to provide special immigration status to minors and the probate division will rely on the statute as appropriate.

3. New Rules Discussion

- a. Rule 16.1(d)(2) Discussion centered on why the default rule for mediation was in-person rather than remote and who should be required to attend mediation. Proposed new language. The Reporter will draft a revised amendment to sections (b) and (d)(2)
- b. Rule 80.10 After motion made and duly seconded, the committee voted unanimously to recommend amend the revision to Rule 80.10 for emergency promulgation.

4. Rule 43.1 Remote and hybrid proceedings with participation or testimony by video or audio conference.

After discussion and general support for the effectiveness of remote hearings among the various constituencies on the committee, the committee voted unanimously to approve Rule 43.1 and the accompanying Reporters Notes, as drafted by Emily Wetherell.

5. Standardizing effective dates

Allan Keyes, chair of the civil rules committee is seeking feedback from the other advisory committees on their position with regard to the standardization of standardizing dates for new rule promulgation. The committee generally expressed support for Mr. Keyes' proposal and Judge Kilgore will notify Allan Keyes of the committee's support.

6. V.R.P.P. 13

Mr. Gawne reported that the subcommittee has not met and that he is still waiting for information from Stephanie Willbanks.

7. V.R.P.P. 80.9

The subcommittee has not met so there is no report.

8. Housekeeping amendments

Consideration of the housekeeping amendments, in part, to consider the necessity of relinquishment hearings and to make other housekeeping suggestions.

9. Other business

Judge Kilgore asked if the committee wanted to revisit amendments to Rules 3, 4 and 17. Professor Wroth was working on drafts to these rules. Judge Kilgore will attempt to contact Professor Wroth to get copies of the proposed amendments.

Mr. Gawne raised the issue of a revision to Rule 54 to provide clarity. Mr. Gawne will circulate a memo on the issue.

10. Next meeting - The committee agreed that Thursday afternoons are a good time for future meetings and agreed that the next meeting would be in June.

The meeting was adjourned at 4:21 p.m.

Respectfully submitted,

Joanne M. Ertel,  
Reporter