

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

**Minutes of Meeting
October 12, 2023**

The meeting was called to order at 1:35 p.m. on Teams by Hon. Jeffrey Kilgore, Chair. Present virtually were Daniel Kimbell, Michael Gawne, Esq., Matthew Getty, Esq., Hon. Frederick Glover, Hon. Kathryn Kennedy, Norman Smith, Esq. and Hon. Joanne Ertel (retired), Reporter.

1. Minutes of the meeting of June 22, 2023 - The draft minutes of the meeting of June 22, 2023 were approved unanimously.

2. Continuing Matters
 - a. Judge Kilgore reported on the promulgation of V.R.P.P. 43.1, 2020 V.R.E.F. 3(c) and 12; V.R.P.P. 5(c); V.R.P.P. 78.
 - b. V.R.P.P. 5.1 - The committee moved, seconded and voted unanimously to recommend promulgation.
 - c. V.R.P.P. 40(d)(3) - The committee moved, seconded and voted unanimously to recommend promulgation.
 - d. V.R.P.P. 47(e) - The committee moved, seconded and voted unanimously to recommend promulgation.
 - e. V.R.P.P. 7 - The committee moved, seconded and voted unanimously, with the change in language suggested by Norm Smith, to recommend that the proposed rule amendment be sent out for comment.
 - f. V.R.P.P. 16.1 - The committee moved, seconded and voted unanimously to recommend that the proposed rule change be sent out for comment.
 - g. V.R.P.P. 54 - The committee discussed the merits of identifying specifically what constitutes final orders for purposes of appeal and agreed that such an amendment to Rule 54 would be very helpful. The Reporter will draft a proposed rule amendment for circulation to members.

3. New Rules Discussion
 - a. V.R.P.P. 80.2 - The committee agreed that 14 V.S.A. § 114 needs to be amended to eliminate the hearing requirement before Rule 80.2 can be amended. Norm Smith will draft an amendment to 14 V.S.A. § 114 for presentation to the Probate Oversight Committee.
 - b. V.R.P.P. 4 - The committee discussed re-defining the methods of service and what constitutes both complete and incomplete service. Judge Kilgore liked the Pennsylvania

rule's definition of what constitutes incomplete and would like to model Vermont's rule on that definition. Judge Kilgore and the Reporter will work on a revised draft before the next meeting.

- c. V.R.P.A.C.R.6 - Judge Kilgore reported that a name change incident to a sex change is confidential under 18 V.S.A. § 5112 and will recommend on behalf of the committee that the reference be included in the exceptions to public access to records. Judge Kilgore will raise the issue of confidentiality of inventories and accounts with the Probate Oversight Committee. This committee did not take a position on the issue.

4. Subcommittee Reports

- a. Family/Probate Subcommittee on Rules to Implement 14 V.S.A. § 3098 - Judge Kennedy reported that it is still premature to consider any rule changes to implement the rules regarding special immigration status. Statutory changes have to come first. Immigration attorneys have reported that the probate rules regarding notice are easier to carry out than the family rules.
- b. V.R.P.P. 13 - Michael Gawne reported that there is a difference of opinion on whether a spouse has an unqualified right to the homestead which is the position he takes. He has been informed that Prof. Stephanie Willbanks believes that the homestead right can be lost if it isn't claimed. Mr. Gawne will contact Professor Willbanks to flush out her opinion.

5. Housekeeping amendments

- a. V.R.P.P. 12(a), V.R.P.P. 83 and V.R.P.P. 84 - The committee moved, seconded, and voted unanimously to recommend the three housekeeping amendments be sent out for comment or promulgated as the Vermont Supreme Court sees fit.

6. Other business - Judge Kilgore indicated that he does not want to serve another term as chair of the committee and asked anyone who may be interested to let him know.

7. Next meeting

The next meeting will be scheduled in January 2024.

The meeting was adjourned at 3:24 pm.

Respectfully submitted,

Joanne M. Ertel,
Reporter