

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

**Minutes of Meeting
June 17, 2020**

The meeting was called to order at 1:35 p.m. on Teams by Hon. Jeffrey Kilgore, chair. Present virtually were Committee members Michael Gawne, Brian Hesselbach (by telephone), Hon. Kathryn Kennedy, Daniel Kimbell, Mark Langan, and Justin Sheng. Also present virtually were Hon. William D. Cohen, Supreme Court liaison, and Professor Emeritus L. Kinvin Wroth, Reporter.

The Committee welcomed Daniel Kimbell, Executive Vice President, Passumpsic Savings Bank, and Managing Director, Passumpsic Financial Advisors, newly appointed to the Committee's trust officer position.

Judge Kilgore announced that he had just been advised that Matthew Getty of Rutland and Laurie Rowell of Brattleboro had been appointed to the Committee.

1. Approval of draft minutes of the meeting of February 12, 2020. The minutes of the meeting of February 12, 2020, were approved as previously circulated.

2. Status of proposed and recommended amendments.

A. Amendments made necessary to conform Probate Rules to the 2020 Vermont Rules on Electronic Filing, Judge Kilgore reported that the subcommittee (himself, Judge Kennedy, Mr. Langan, and Judge Scanlan) had not met. Justice Dooley, chair of the Electronic Filing Rules Committee intends to meet with Judge Morris, Reporter to that Committee; Judge Kilgore, and Professor Wroth, but that meeting has not yet been scheduled.

B. Issues concerning AO 49 as amended through May 13, 2020, <https://www.vermontjudiciary.org/news/information-regarding-coronavirus-disease-2019-covid-19-and-court-operations>. Judge Kilgore reported that the use of WebEx for conferences under V.R.P.43.1 was evolving and noted the extensive use of Teams in the Probate Division for telephone conferences. The goal is to limit the number individuals who need to be physically present in court.

C. Effect of Court's Long Term Planning Committee: Ramp-up Report, May 13, 2020, <https://www.vermontjudiciary.org/about-vermont-judiciary/blueprint-expansion-court-operations>. Judge Kilgore reported that consideration of this report remained a work in progress.

D. Status of amendments to V.R.P.P. 3.1; V.R.P.P. 64, 80.3; 77(e), and new V.R.P.P. 74, 80.9-80.11, recommended to the Court on May 22, 2020, for promulgation. Professor Wroth reported that the Court had promulgated these amendments and new rules on June 12, effective August 18, 2020.

3. V.R.P.P. 17(a). Need for service on interested persons in light of *In re Holbrook's Estate I*, 2016 VT 13 and *Id. II*, 2017 VT 15. Judge Kennedy reported for the subcommittee (Judge Kilgore, Judge Scanlon, and herself) that because the list of interested persons in V.R.P.P. 17(a)(1)(A) was broader than the list in 14 V.S.A. § 107(a) of those whose consents would permit allowance of a will without hearing, the list in the rule should be narrowed. She agreed to prepare a draft amendment to discuss with Judge Kilgore before sending it to Professor Wroth to prepare a draft proposed promulgation order for consideration at the next meeting.

4. **V.R.P.P. 13, Form 49, and 14 V.S.A. § 305 and 27 V.S.A. § 105 in light of Act 195 (S.29).** The Committee considered Mr. Gawne's revised draft of V.R.P.P. 13 and report dated February 12, 2020, which had been deferred at the last meeting in view of his unavoidable absence. After brief discussion, Mr. Gawne agreed to send a redlined draft of his proposed amendment of Rule 13 to Professor Wroth, who will put it in the form of a proposed promulgation order for consideration at the next meeting.

5. **Need for rule to implement newly enacted 14 V.S.A. § 118 providing for direct reference to the Civil Division of matters involving wills.** It was agreed to continue to defer consideration of Professor Wroth's revised draft dated November 30, 2019, of proposed V.R.P.P.73 intended to implement 14 V.S.A. §118 until consideration of the need for a companion Civil Rule by the Civil Rule Committee at its meeting, scheduled for June 26, 2020.

6. **Review and comment on policy regarding destruction of paper filings under Odyssey.** The Committee considered the Court Administrator's Odyssey document destruction policy memorandum of April 7, 2020, a notice of it, and Judge Kilgore's June 7 e-mail; commenting on the policy. He noted that he had discussed similar concerns with Judge Frederick Glover, chair of the Probate Division Oversight Committee.

After extensive discussion of Committee members' concerns with the operation and effect of the new policy in probate cases, it was the consensus that the policy did not require an amendment to the Probate Rules, but that Judge Kilgore should convey to the Probate Division Oversight Committee the following suggestions for its consideration as administrative directives to be proposed for adoption by the Court Administrator:

- "Original" or "wet-signed" wills are required to be filed with and must be accepted by the court.
- "Original" or "wet-signed" wills should be marked or stamped as "original" or "wet-signed" before scanning so that a person reviewing an Odyssey file knows that the "original" of a "wet-signed" document was scanned.
- After scanning, the "original" or "wet-signed" will should be retained by the court for such period of time as is determined by statute (currently there is no such statute; the document must be held indefinitely).
- Raised-seal "originals" of vital records documents should be marked or stamped as "original" before scanning. After scanning, the original of the document should be returned to the filer. The filer of the document must retain the original until the proceeding for which it is used is closed or the appeal period for any decision involving the document has expired.

7. **Other business.** Judge Kilgore announced that at the next meeting he intended to propose either an amendment of Rule 66 or a new rule to deal with accountings, with the current New Hampshire rule as a model.

8. **Date of next meeting.** Professor Wroth agreed to ask Committee members for their availability on September.9, 16, 23, or 30.

There being no further business, the meeting was adjourned at 3:00 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter