

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

**Minutes of Meeting
September 30, 2020**

The meeting was called to order at 1:35 p.m. on Teams by Hon. Jeffrey Kilgore, chair. Present virtually were Committee members Matthew Getty, Brian Hesselbach, Daniel Kimbell, Mark Langan, Laurie Rowell, and Norman Smith. Also present virtually were Hon. William D. Cohen, Supreme Court liaison, and Professor Emeritus L. Kinvin Wroth, Reporter.

The Committee welcomed newly appointed members Matthew Getty of Rutland and Laurie Rowell of Brattleboro to the Committee.

1. Approval of draft minutes of the meeting of June 17, 2020. The minutes of the meeting of June 17, 2020, were approved as previously circulated, with the insertion of “Wroth” at the end of item 2.A and correction of the promulgation date of the rules listed in item 2.D to read “August 18, 2020.”

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, on September 22, 2020, he and Professor Wroth had met with Justice Dooley, chair of the Electronic Filing Rules Committee, and Judge Morris, Reporter to that Committee, at Justice Dooley’s request to discuss cooperation and coordination regarding electronic filing in the Probate courts. It was agreed at the meeting that the Electronic Filing Rules would be the norm in such cases, but it would be necessary to reflect their applicability in specific procedural rules and to consider whether the E-filing Rules needed to be amended to address particular Probate issues, such as the filing and retention or destruction of wills. Judge Kilgore agreed to serve as a subcommittee with Ms. Rowell’s paralegal, Melissa Ferris, both to address current issues that might arise as the e-filing process evolves and to identify areas in the Probate Rules where amendments or new provisions may be required to accommodate e-filing.

B. Issues concerning AO 49 as amended through August 20, 2020. Judge Kilgore asked Committee members to describe any problems that they had had with the evolving provisions of A.O. 49 as amended through August 20, 2020. Several indicated that they had had few contacts with the system. Problems mentioned included awkwardness with guardianship proceedings and video hearings, slow electronic responses from judges, loss of personal touch, a significant increase in questions to the Registrar from attorneys and paralegals, and fewer personal appearances at hearings. To the last point, Judge Kilgore reported that he had held only two in-person hearings since March, and that Webex was being used for almost all hearings, and its use may be the future. It was noted that a designated operator, either from the group of operational assistants (OAs) funded by emergency funding, or a designated host in the Registrar’s office, significantly improved the use of Webex.

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 continued to remain 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. Judge Kilgore reported that there were a few questions but no objections to these amendments at a meeting of the Legislative Committee on Judicial Rules on August 3, 2020, had a few comments but made no objection to any of the amendments or rules.

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 Kilgore reported that he and Judge Kennedy were still considering statutory issues involving the list of interested persons in V.R.P.P. 17(a)(1)(A). They will have a report 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). This item was deferred to the next meeting in the necessary absence of Mr. Gawne.

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. Professor Wroth reported that the Civil Rules Committee at its meeting of June 26, 2020, decided that there was no need for a companion Civil Rule. It was agreed 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 the next meeting.

6. Review and comment on policy regarding destruction of paper filings under Odyssey. Judge Kilgore reported that he had conveyed the Committee's list of concerns about destruction of document to the Probate Division Oversight Committee. The Rules Committee considered the lists of Probate documents either not to be destroyed or to be retained until the end of the appeal that he had sent to Justice Dooley after the September 22 meeting described in item 2.A above. The subcommittee established under that item will monitor the status of the list in conjunction with its work with the E-filing Committee.

7. V.R.P.P. 66. Accountings. Judge Kilgore presented his draft of a new Rule 66.1, Inventories and Accounts, dated September 30, 2020, and intended to provide standards to assist in preventing defalcations by executors. In discussion of the draft and current N.H. Prob. Div. R. 108-108B, Committee members noted that the New Hampshire rules required very detailed accountings under strict standards. Committee members agreed to send their comments on the draft to Judge Kilgore and Professor Wroth. A draft proposed promulgation order will be presented at the next meeting.

8. Applicability of V.R.P.AC.R. 7(a)(1)(B) in Probate Division. This item was deferred to the next meeting in the necessary absence of Mr. Gawne.

9. Change of venue in guardianship cases. The Committee considered Judge Kilgore's e-mail of July 2, 2020, concerning change of venue in guardianship cases under Odyssey when the ward may move between counties. He reported as a matter of information that the Probate judges have agreed informally that there will be no transfer of venue to follow the ward in Odyssey cases until Odyssey standards are developed. This decision is consistent with V.R.P.P. 38 concerning change of venue.

10. Other business. Judge Kilgore reported that S.234, sec.15, that would modify 14 V.S.A. § 107 to add a section left out in the original enactment, had passed as part of a catch-all bill not yet signed by the Governor. The amendment would permit a will, in the absence of timely objection, to be allowed on the testimony of a single witness who testifies that the will was properly executed. Judge Kilgore also noted that S. 234, sec. 28, would add 4 V.S.A. § 35(27) giving the Probate Division, concurrent with the Family Division, jurisdiction to make "special immigration judicial determinations regarding the custody and care of children within the meaning of the federal Immigration and Nationality Act (8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11) issued pursuant to 14 V.S.A. chapter 111, subchapter 14."

11. Date of next meeting. It was agreed that the next meeting would be held virtually on Teams at 1:30 p.m. on November 18, 2020.

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

Respectfully submitted,

L. Kinvin Wroth, Reporter