

APPROVED

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

**Minutes of Meeting
December 12, 2018**

The meeting was called to order at 1:35 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Jeffrey Kilgore, chair. Present were Committee members Hon. Ernest T. Balivet, Michael Gawne, Brian Hesselbach, Katherine Mosenthal, David Otterman, Diane Pallmerine (by telephone), Hon. Justine Scanlon (by telephone), and Justin Sheng (by telephone). Also present was Professor Emeritus L. Kinvin Wroth, Reporter.

1. **Approval of draft minutes of the meeting of October 3, 2018.** The minutes of the meeting of October 3, 2018, were approved as corrected.

2. **Status of proposed and recommended amendments.**

A. Review of proposed V.R.P.P. 79.2 incorporating revised proposed V.R.C.P. 79.2, Possession and Use of Recording and Transmitting Devices, sent out for comment by the Supreme Court on September 6, with comments due November 5, 2018. Professor Wroth reported that the comment period had been extended to January 14, 2019. The Committee considered the comments on the proposed rule sent to the Supreme Court on November 1, 2018, by Hon. Mary Teachout on behalf of the Washington County judges, clerk, and court operations manager, and the comments specifically on Probate Court issues sent to the Court on November 5, 2018 by Judge Kilgore on his own behalf. On motion duly made and seconded, after discussion, it was voted unanimously to advise the Court that the Committee endorses and adopts the concerns and recommendations contained in Judge Teachout's and Judge Kilgore's comments.

B. Consideration of proposed V.R.C.P. 43(a), et al. (including V.R.P.P. 43(b)), video and audio appearance, and proposed AO 47, Technical Standards, proposed by Special Committee on Video and Cameras in the Court, sent out for comment on January 24, with comments due on March 23, 2018. Professor Wroth reported that the Special Committee had not yet taken action on the proposed rules. The Committee considered Professor Wroth's December 12 proposed draft of amendments to V.R.P.P. 43(a) and (b) and a new V.R.P.P.43.1 adapting proposed V.R.C.P. 43.1 to probate practice. On motion duly made and seconded, after discussion, it was voted unanimously to recommend that the proposed amendments and rule be sent out for comment.

C. Proposed order adding V.R.P.P. 3(e) and amending V.R.P.P. 5(f) to provide a "prisoners' mailbox" rule, sent out for comment on July 10, with comments due on September 10, 2018. Professor Wroth reported that the Committee's recommended order

adding V.R.P.P. 3(e) and amending V.R.P.P. 5(f) to provide a “prisoners’ mailbox” rule had been promulgated on November 5, 2018, effective January 7, 2019.

3. **Expanded provisions for motions and contested cases.** The Committee considered Professor Wroth’s December 11 revised draft order proposing a new V.R.P.P. 39, Expedited Hearings, as originally proposed by Judge Balivet to incorporate current practice in the Rules. On motion duly made and seconded, after discussion, it was voted unanimously to recommend that the proposed order be sent out for comment, substituting letters or numbers for the bullets now designating the separate clauses of the rule.

After further discussion, Judge Balivet and Professor Wroth agreed to consider and report at the next meeting on the questions whether there should be a summary judgment motion rule in the Probate Rules to standardize practice followed by some judges under V.R.P. 7 and 43(a), and whether there should be a rule to implement newly enacted 14 V.S.A. § 118 providing for direct reference to the Civil Division of Probate matters involving wills. Similarities to transfer of guardianship proceedings to the Family Division—*e.g.*, 14 V.S.A. § 2624—were discussed. Committee members were invited to offer comments to Judge Balivet and Professor Wroth on these issues

4. **Effect of recommended amendment of V.R.F.P. 7 and addition of V.R.F.P. 7.1 on probate jurisdiction under V.R.F.P. 6, 6.1.** Chairman Kilgore and Professor Wroth agreed to review and revise the present drafts of proposed V.R.P.P. 80.10-80.12 and report at the next meeting.

5. **Suggested amendments to V.R.P.P. 77(e) concerning confidentiality of index of wills in light of Act 195 of 2018 (S. 29 as enacted).** Professor Wroth reported that the Committee’s proposed amendment to V.R.P.P. 77(e)(2) was sent out for comment on November 8, 2018, with comments due on January 7, 2019. Judge Kilgore reported that one comment had been received.

6. **V.R.P.P. 45(b)—document subpoena. Consideration of effect on V.R.P.P. 45 of the several amendments to V.R.C.P. 45 promulgated since the original promulgation of the Probate Rule effective July 1, 1985.** The Committee considered Professor Wroth’s September 28, 2018, summary of differences between Probate and Civil Rule 45. Chairman Kilgore noted the benefits of the simplicity of the present Probate Rule. He agreed to look at the original question raised about conformity with the amendments of V.R.C.P. 45 promulgated on June 13, effective August 13, 2018, and report at the next meeting.

7. **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.** It was agreed to defer consideration of this item in view of the necessary absence of Mr. Smith.

8. **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).**

A. Judge Scanlon reported that a correction of the error in Form 49 regarding intestate estates had been made.

B. It was agreed to defer consideration of Professor Wroth's December 11 revised draft of amendments to V.R.P.P. 13(a) and (b) until the next meeting.

C. After brief consideration of Mr. Gawne's correspondence with Robert Pratt concerning proposed provisions in the bill that became Act 195, it was agreed to remove this item from the agenda with thanks to Mr. Gawne.

9. **Forms Issues.** Judge Scanlon reported that the Oversight Committee's efforts to develop more consistent procedures and formatting for Probate forms would become more active after the Odyssey e-File system was implemented. Meanwhile, the process of correcting obvious errors in the forms was ongoing, and suggestions from Committee members would be welcome.

10. **Other business.** There was no other business.

11. **Date of next meeting.** Professor Wroth will distribute possible dates for a meeting in April.

There being no further business, the meeting was adjourned at 4:30 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter