

APPROVED

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

**Minutes of Meeting
February 12, 2020**

The meeting was called to order at 1:45 p.m. in the Hoff Lounge Hall, Oakes Hall, Vermont Law School, by Hon. Jeffrey Kilgore, chair. Present were Committee members Brian Hesselbach (by telephone), Hon. Kathryn Kennedy, Katherine Mosenthal, and Norman Smith. Justin Sheng appeared briefly by telephone but was unable to participate in the meeting. Also present were Hon. William D. Cohen, Supreme Court liaison, and Professor Emeritus L. Kinvin Wroth, Reporter.

It was agreed that in the absence of a quorum, those present should consider the agenda and that Professor Wroth would circulate the minutes and seek the approval of a majority of the Committee of actions taken.

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1. **Approval of draft minutes of the meeting of December 4, 2019.** The minutes of the meeting of December 4, 2019, were approved as previously circulated.

2. Status of proposed and recommended amendments.

A. Amendments made necessary to conform Probate Rules to new Rules on Electronic Filing. Chairman Kilgore reported that the subcommittee (himself, Judge Kennedy, Mr. Langan, and Judge Scanlan) had not met. He had attended a meeting of the Vermont Bankers Association at which a number of comments on the E-filing Rules were made that he would send to Judge Grearson, Tari Scott, and Chasity Stoots-Fonberg. Chairman Kilgore recommended that at the next meeting the Committee consider an amendment to V.R.P.P. 11(a) concerning acceptability of electronic signatures under the E-filing Rules and asked that Committee members send other issues concerning those Rules to Professor Wroth and him for consideration at that meeting.

B. Consideration of V.R.C.P. 43(a), et al. (including V.R.P.P. 43(b)), video and audio appearance, and AO 47, Technical Standards, promulgated May 1, effective August 3, 2019. Professor Wroth had previously reported that the amendments, which were held for further consideration by the Legislative Committee on Judicial Rules (LCJR) on June 6, 2019, would be considered at a meeting of that Committee to be held on December 6, 2019. Professor Wroth now reported that this issue was not on the LCJR's December 6 agenda. It was agreed to remove the item from the agenda pending development of any specific concerns under those Rules.

C. Proposed amendments of V.R.P.P. 77(e)(1), (2), concerning confidentiality of index of wills, recommended on April 26, 2019, for promulgation. After brief discussion of Professor Wroth's December 1, 2019, revised draft of recommended amendments to V.R.P.P. 77(e) in light of the revised Public Access Rules, it was agreed that Chairman Kilgore and Professor Wroth should communicate with Justice Dooley and Judge Morris, Reporter of the Public Access Committee, regarding the issue. It was further agreed, pending their comments, to propose the December 1 amendment for circulation to the bar.

D. New V.R.P.P. 39, expedited hearings. Promulgated June 13, effective August 15, 2019. Chairman Kilgore reported that the Rule was considered by LCJR on December 6, 2019, without objection.

E. Amendment of V.R.P.P. 40(d)(4). Professor Wroth reported that, after consultation with Emily Wetherell and himself, the Supreme Court on February 10, 2020, had promulgated an amendment updating V.R.P.P. 40(d)(4), effective April 13, 2020, to refer to the appropriate provision of the Vermont Code of Judicial Conduct 2019.

3. **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**. The Committee reviewed the new draft of proposed V.R.P.P. 80.9-80.11, prepared by Chairman Kilgore and Professor Wroth to incorporate revisions made at the December 4 meeting. After discussion of the question whether Rules 80.9(c)(4) and 80.10(d)(2) should refer to admission or consent, it was agreed to leave both provisions as drafted, to delete the last sentence of Rule 80.9(c)(4), to correct an error in the first sentence of the Reporter's Notes to Rule 80.9, and to recommend that the proposed Rules be sent out for comment.

4. **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**. After discussion, it was agreed that the subcommittee (Chairman Kilgore and Judges Kennedy and Scanlon) should consider the relationship of V.R.P.P. 3 and 17, 14 V.S.A. § 107(a) as amended, and the question of appeal, and report at the next meeting.

5. **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 thanked Mr. Gawne for his report dated February 12, 2020, and agreed to defer the item until the next meeting in view of his unavoidable absence.

6. **V.R.P.P. 3.1, In Forma Pauperis**. The Committee considered Professor Wroth's revised draft with Reporter's Notes, dated February 11, 2020, and agreed to recommend that it be sent out for comment. .

7. **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 he had concluded that the Civil Rules Committee should consider the question raised at the last meeting whether his revised draft dated November 30, 2019, of proposed V.R.P.P.73 intended to implement 14 V.S.A. § 118, required a companion Civil Rule. He will see that the issue is on that Committee's agenda for its next meeting, scheduled for April 17, 2020.

8. **Rules to implement 14 V.S.A. § 1852 (motion to waive administration of final accounting)**. The Committee considered Professor Wroth's February 10, 2020, draft of proposed V.R.P.P. 74 with Reporter's Notes. It was agreed to recommend that the proposed Rule be sent out for comment with the correction of an error in Rule 74(a)(1)(A).

9. **Proposed amendment of V.R.P. 66**. The Committee considered Professor Wroth's February 10, 2020, draft of Chairman Kilgore's proposed amendments to V.R.P.P. 66 with Reporter's Notes. In discussion it was agreed that the Reporter's Notes should clarify that the amendment to Rule 66(a) was for compliance with 14 V.S.A. § 1053 as added by Act 195 of 2017 (Adj. Sess.), § 6, effective July 1, 2018, and that new Rule 66(c)(4) was added to add assurance that the estate will not be reopened after compliance with Rules 66(c)(3) and

60.1(a)(2),(3). It was agreed to recommend that the proposed amendments be sent out for comment with those clarifications.

10. Proposed amendments to V.R.P.P. 80.3. The Committee considered Chairman Kilgore's draft of proposed amendments to V.R.P.P. 80.3 intended to bring the Rule into compliance with 2019 amendments to 14 V.S.A. §§ 1901-1903, enacted by Act 36 of 2019, § 1, effective July 1, 2019. The amendments increased the cap on value for a small estate from \$10,000 to \$45,000 and makes changes in filing requirements and process. In view of the immediate need for the amendment, Professor Wroth agreed to prepare a draft in the form of a proposed order and send it out for Committee approval with the minutes.

11. Other business. In brief discussion of the problem of coordinating the process of approval of probate forms on the Judiciary website between the Court Administrator's office and the Committee, Professor Wroth noted that the Civil Rules Committee had started a discussion of this issue with the Court Administrator's office that should lead to better coordination with all the rules committees.

12. Date of next meeting. Professor Wroth agreed to ask Committee members for their availability on Wednesday, April 29, or Wednesday, May 6.

There being no further business, the meeting was adjourned at 3:45 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter