

**APPROVED**

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

**Minutes of Meeting  
June 28, 2018**

The meeting was called to order at 1:45 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by David Otterman, acting as chair in the necessary absence of Hon. Jeffrey Kilgore, chair. Present were Committee members Hon. Ernest T. Balivet, Michael Gawne (by telephone), Brian Hesselbach, Mark Langan, Diane Pallmerine, Hon. Justine Scanlon, and Norman Smith. Also present was Professor L. Kinvin Wroth, Reporter.

**1. Approval of draft minutes of the meeting of May 16, 2018.** The corrected minutes of the meeting of May 16, 2018, were approved as previously distributed.

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

A. Consideration of the effect on V.R.P.P. 79.2 of revised V.R.C.P. 79.2, recommended by the Special Committee on Video and Cameras in the Court on January 2, 2018, for promulgation. Professor Wroth reported that the Supreme Court intended to send out a revised draft for further comment but had not yet done so. It was agreed to defer consideration of this item until the new proposed draft was available.

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. This item was deferred in the absence of Judge Kilgore.

C. Proposed order conforming V.R.P. P. 79.1(d) to revisions of A.O. 41, circulated for comment on June 14, with comments due on August 13, 2018. Professor Wroth noted that this order, circulated on behalf of the Court, was intended only to update a cross-reference to A.O. 41. There were no comments.

**3. Expanded provisions for motions and contested cases.** The Committee considered Judge Balivet's draft of a proposed V.R.P.P. 39, Expedited Hearings. It was agreed that the proposal rule would not be affected by any provision of Act 195 of 2017 (Adj. Sess.).

It was noted that, in cases that could be appealed de novo to the Civil Division, the rule would expedite proceedings. If both parties had appeared the judge could make a determination on the merits without swearing the parties if the facts as represented by them on the record were

undisputed and no party objected. The procedure was not mandatory, so the judge had discretion to take sworn testimony even in cases where the rule would not require it. The effect would be to reduce the number of Civil Division appeals in which de novo testimony would be required.

On motion duly made and seconded, it was voted unanimously to propose that the rule be sent out for comment. Judge Balivet and Professor Wroth agreed to work together to prepare a proposed order and Reporter's Notes for consideration at the next meeting.

**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.** On motion duly made and seconded, it was voted unanimously to table consideration of the remaining provisions of Rules 80.10-80.12 to the next meeting for full discussion in light of 14 V.S.A. §§ 3065, 3066.

**5. Suggested amendment of V.R.P.P. 77(e)(2) concerning confidentiality of index of wills in light of Act 195 of 2018 (S. 29 as enacted).** After discussion of 14 V.S.A. §2(e) as amended by Act 195, it was agreed to add “during the life of the testator” at the end of Rule 77(e)(1) and to add “during the life of the testator, and thereafter only as provided in Rule 80.4(b)” to Rule 77(e)(2). Professor Wroth agreed to prepare a draft promulgation order for consideration at the next meeting.

**6. V.R.P.P. 45(b)—document subpoena.** Consideration of effect on V.R.P.P. 45 of amendment of V.R.C.P. 45 promulgated June 12, effective August 13, 2018. It was agreed to consider all aspects of V.R.P.P. 45 in light of the several amendments to V.R.C.P. 45 promulgated since the original promulgation of the Probate Rule effective July 1, 1985.

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**7. V.R.A.P. 4(f)—“prisoners’ mailbox” rule.** The Committee considered the amendments of VR.C.P. 3 and 5, promulgated June 12, effective August 13, 2018, providing a “prisoners’ mailbox” rule for civil actions and Professor Wroth’s June 26, 2018, draft of comparable amendments to V.R.P.P. 3(c) and 5(f). On motion duly made and seconded, it was voted unanimously to ask the Court to send Professor Wroth’s draft out for comment.

**8. V.R.P.P. 17(a). Need for service on interested persons in light of *In re Holbrook’s Estate I*, 2016 VT 13.** See also *Id. II*, 2017 VT 15. Mr. Smith agreed to prepare a memorandum for the next meeting clarifying the relationship between the rule and 14 V.S.A. § 107 as amended by Act 195 and 14 V.S.A. § 204.

**9. and 10. V.R.P.P. 13, Form 49, 14 V.S.A. § 319, and 27 V.S.A. § 105 in light of Act 195.** Judge Scanlon will call the attention of the Oversight Committee and Court Administration staff to the need for appropriate revisions of Form 49, including issues arising under 14 V.S.A. § 313 and 27 V.S.A. § 105, not amended in Act 195. It was agreed that Professor Wroth would draft a promulgation order changing three months to four months in Rule 13(b) for conformity with amended 14 V.S.A. 319(e)(2). Mr. Gawne will send the Committee a copy of his correspondence with Robert Pratt concerning proposed provisions in the bill that became Act 195. Members agreed to review the Act for any additional necessary Rules changes.

**11. Other business.** After a discussion of Forms issues, Justice Scanlon noted that she was working with the Oversight Committee to develop more consistent procedures for form changes.

**12. Dates of next meetings.** Professor Wroth agreed to circulate dates for a meeting to be held in September or October..

There being no further business, the meeting was adjourned at 4:20 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter