

APPROVED

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

**Minutes of Meeting
May 16, 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, Mark Langan, Diane Pallmerine, Hon. Justine Scanlon, Justin Sheng, and Norman Smith. Also present was Professor L. Kinvin Wroth, Reporter.

1. **Approval of draft minutes of the meeting of February 21, 2018.** The minutes of the meeting of February 21, 2018, were approved as previously distributed, with the correction that Mr. Gawne had abstained from the vote approving the minutes of November 29, 2017.

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. 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. Chairman Kilgore's comments sent to the Special Committee were considered. It was agreed that in the probate rule all proceedings should be called "hearings" and that the times proposed by Chairman Kilgore should be used. Chairman Kilgore will send a revised draft of his comments to Professor Wroth, who will prepare a proposed order for transmission to the Special Committee.

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. After discussion, on motion duly made and seconded, it was voted unanimously to defer consideration until final legislative action on S.29.

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.** The Committee considered Professor Wroth's

proposed promulgation order for V.R.P.P. 80.9-80.12 as previously approved. The following changes were agreed upon:

Rule 80.9. Delete “and attorneys” from the title of the rule.

Rule 80.9(a). Substitute “on its own motion or the motion of a party considers the appointment of a guardian ad litem” for the language following “probate court.”

Rule 80.9(b). Revise to read as follows, in light of *Morissette v. Morissette*, 143 Vt. 52, 463 A.2d 1384 (1983):

(1) *On the court’s own motion.* The court, on its own motion, may appoint a guardian ad litem for a minor. Upon objection by any party within seven days, the court may hold a hearing on the appointment.

(2) *On motion of a party.* Any party may move as provided in Rule 7(b) of these Rules for appointment of a guardian ad litem for a minor.

(3) *Selection, Replacement, Discharge.* The court in its discretion may select, replace, or discharge a guardian ad litem.

Rule 80.9(c)(4). Substitute “fourteen” for “thirteen” in the second sentence.

Rule 80.9(d)(1). Delete “parental” in the first line.

Rule 80.9(d)(4). After discussion, it was agreed not to delete this paragraph.

Rule 80.9(e). Delete this subdivision.

Rule 80.10(c)(3). Delete the first sentence. Use revised Rule 80.9(b)(3) above in Rule 80.10(c)(3).

It was agreed to defer 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. Status of “Pratt bill” (S.29). It was agreed to defer consideration until final legislative action on S.29.

6. V.R.P.P. 45(b)—document subpoena. Consideration of effect on V.R.P.P. 45 of Civil Rules Committee’s recommendation of V.R.C.P. 45 sent to Supreme Court on February 5, 2018. It was agreed to defer consideration until consideration of the recommended Civil Rule by the Legislative Committee on Judicial Rules and the Supreme Court.

7. V.R.A.P. 4(f)—“prisoners’ mailbox” rule. Need for comparable provision in Probate Rules? Consideration of effect on V.R.P.P.3 and 5 of Civil Rules Committee’s proposed amendments of VR.C.P. 3 and 5, sent to Supreme Court on February 5, 2018. Professor Wroth will report on the actions of the Legislative Committee on Judicial Rules and the Supreme Court on the Civil Rules recommendation and will draft an appropriate Probate Rules amendment for the next meeting.

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. Status of "Pratt bill" (S.29). It was agreed to defer consideration until final legislative action on S.29.

9. **V.R.P.P. 13 and Form 49.** Consideration of Mark Langan's e-mail of January 31, 2018, to the Committee. Judge Scanlon reported that the Oversight Committee had the matter under consideration.

10. **Form 49 and 14 V.S.A. § 305 and 27 V.S.A. § 105 in light of S.29.** It was agreed to defer consideration until final legislative action on S.29.

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

12. **Dates of next meetings.** Professor Wroth agreed to circulate dates for a meeting to be held after June 10.

There being no further business, the meeting was adjourned at 4:25 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter