

APPROVED

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

**Minutes of Meeting
November 29, 2017**

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, Brian Hesselbach, Mark Langan, Katherine Mosenthal, David Otterman, Diane Pallmerine, and Norman Smith. Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of minutes. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of September 27, 2017, as previously distributed.

2. Status of proposed and recommended amendments. Professor Wroth reported that

A. The Committee's recommended amendment of V.R.P.P. 47(d) was promulgated October 17, effective December 18, 2017.

B. The Committee's recommended emergency amendments to further amend V.R.P.P. 52(b) and 60(c), as amended September 20, 2017, effective January 1, 2018 ("day is a day" rules), were promulgated October 17, 2017, effective January 1, 2018.

C. Proposed new V.R.C.P. 79.2 was sent out for comment on July 18 by the Special Committee on Video and Cameras in the Court, with comments due on September 18, 2017. Professor Wroth reported that, on October 25, the Special Committee had reviewed comments received and made recommendations for revisions, but that a new draft had not yet been presented. It was agreed to defer action on any necessary amendments to V.R.P.P. 79.2 pending a new draft by the Special Committee.

3. Expanded provisions for motions and contested cases. Judge Balivet reported for himself and Ms. Pallmerine that they understood their mandate to be to rework the December 5, 2014, draft of a new V.R.P.P. 39, with a focus on an expedited process under subdivision (b). They will report at the next meeting. Professor Wroth agreed to send the December 2014 draft to the full committee with a request that members send comments to Judge Balivet and Ms. Pallmerine.

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. Further consideration of Professor Wroth's June 15 drafts of proposed V.R.P.P. 80.9-80.12. The Committee received Chairman Kilgore's letter of October 4, 2017, to the Supreme Court conveying the Committee's endorsement of the joint minor guardianship subcommittee's recommendation.

The Committee considered Chairman Kilgore's revision of the final sentence of draft Rule 80.10(c)(1) in light of 14 V.S.A § 3066. He noted that the effect was to shift the burden:

There is no hearing if the respondent does not object. On motion duly made and seconded, after discussion, it was voted unanimously that the rule should not contain a time period in which the motion must be filed. Professor Wroth agreed to send revised drafts of proposed Rules 80.9 and 80.10, and to resend the drafts of proposed Rule 80.11 and 80.12, for the next meeting.

5. Suggested amendment of V.R.P.P. 77(e)(2) concerning confidentiality of index of wills. Status of “Pratt bill” (S.29). This item was deferred pending action on S.29 in the 2018 legislative session..

6. V.R.P.P. 45(b)—document subpoena. It was agreed to defer action on this item pending review by the Civil Rules Committee of comments received on the proposed rule which had been sent out for comment on October 18, with comments due on December 18, 2017, as well as the results of discussion between the Civil and Criminal Rules committees on harmonizing their respective subpoena rules.

7. V.R.A.P. 4(f)—“prisoners’ mailbox” rule. Need for comparable provision in Probate Rules? This item was deferred pending action by the Civil Rules Committee on proposed amendments to V.R.C.P. 3 and 5.

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. This item was deferred pending action on S.29 in the 2018 legislative session. In discussion it was noted that there were two approaches presently followed by the judges: Notice before hearing and notice of allowance. Committee members noted the difficulty of fashioning a rule in cases such as the effect on a step-child of the change of a will by a step-parent after decease of the step-child’s natural parent—see, *e.g.*, *Shaka v. Shaka*, 170 N.H. 180, 424 A.2d 802 (1980).

9. Status and effect of statutory amendments proposed by Trial Court Operations staff. Professor Wroth noted that proposed amendments concerning the office of register had been enacted in Act No. 28 of 2017, effective May 10, 2017. In discussion, some members noted continuing problems in getting knowledgeable and willing help from personnel in other divisions, particularly when activities were not in the same location. The consensus was that the changes were beginning to be effective in some courts but were not yet working well in others.

10. Other business. There was no other business.

11. Date of next meeting. Professor Wroth agreed to circulate dates for meetings in February and May.

There being no further business, the meeting was adjourned at 3:40 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter