

**APPROVED**

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

**Minutes of Meeting  
October 3, 2018**

The meeting was called to order at 1:35 p.m. in the Environmental Law Center conference room, 216 Debevoise Hall, Vermont Law School, by Hon. Jeffrey Kilgore, chair. Present were Committee members Hon. Ernest T, Balivet, Michael Gawne, Brian Hesselbach, Mark Langan, Katherine Mosenthal, David Otterman, Diane Pallmerine, and Norman Smith. Also present was Professor L. Kinvin Wroth, Reporter.

1. **Approval of draft minutes of the meeting of June 28, 2018.** The minutes of the meeting of June 28, 2018, were approved as previously distributed, with the deletion in item 5 of “to add ‘during the life of the testator’ ” following “Act 195” as confusing and the correction of typographical errors in items 5 and 6..

**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 noted that proposed V.R.C.P. 79.2 was intended to modernize present V.R.C.P. 79.2, which had been incorporated verbatim in present V.R.P.P. 79.2 when adopted in 1988. Proposed V.R.P.P. 79.2 would simply incorporate proposed V.R.C.P.79.2 by reference.

In discussion, differences were noted between civil and probate practice, such as the absence of juries in probate proceedings. On motion duly made and seconded, there being no further discussion, it was voted unanimously to present to the Court only the comment that the phrase “so far as applicable”.be added to proposed V.R.P.P. 79.2, with Reporter’s Notes identifying provisions of the Civil Rule that would be inapplicable to probate proceedings.

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. After discussion of Professor Wroth’s October 1 proposed draft of an amendment to V.R.P.P. 43(b), he agreed to prepare a full draft of a proposed V.R.P.P.43.1 adapting proposed V.R.C.P. 43.1 to probate practice for consideration by the Committee at the next meeting.

C. Proposed order conforming V.R.P.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 reported that this order, circulated on behalf of the Court, was intended only to update a cross-reference to A.O. 41. It had been promulgated September 5, effective November 5, 2018.

D. 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. Chairman Kilgore reported that no comments had been received. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend to the Supreme Court that the proposed amendments be promulgated as circulated.

3. **Expanded provisions for motions and contested cases.** The Committee considered Professor Wroth’s September 17 draft order proposing a new V.R.P.P. 39, Expedited Hearings, as originally proposed by Judge Balivet. In discussion, it was agreed that “as to the adjudicative facts” should be deleted from the first sentence, and that the first bulleted phrase should read, “the parties’ factual representations are not in conflict with one another.” After discussion of the scope and operation of the proposed rule, Professor Wroth and Judge Balivet agreed to consider Committee members’ comments and report 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.** After brief discussion of the provisions of proposed V.R.P.P. 80.10-80.12 in light of statutory provisions for adult guardianship, including 14 V.S.A. §§ 3065 (counsel) and 3066 (guardians ad litem), Chairman Kilgore and Professor Wroth agreed to review and revise the present drafts and report at the next meeting.

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).** The Committee considered Professor Wroth’s September 27 draft of an amendment to incorporate the language of 14 V.S.A. §2(e) as amended by Act 195 in V.R.P.P. 77(e)(1) and (2). On motion duly made and seconded, after brief discussion, it was voted unanimously to recommend that the amendments be sent out for comment as drafted.

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.** It was agreed to defer consideration of Professor Wroth’s September 28, 2018, summary of differences between the Probate and Civil rules until 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 Mr. Smith’s clarification of

the relationship between the rule and 14 V.S.A. § 107 as amended by Act 195 and 14 V.S.A. § 204 until the next meeting.

**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. In light of Judge Scanlon's necessary absence, consideration of Oversight Committee and Court Administration action on 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, was deferred until the next meeting.

B. After brief discussion of Professor Wroth's September 17 proposed draft of an amendment changing three months to four months in Rule 13(b) for conformity with amended 14 V.S.A. §319(e)(2), he agreed to prepare a new draft for consideration at the next meeting, clarifying the provision of Rule 13(a)(3) for household goods and addressing the extension of the right to elect under Rule 13(b) if an amended or supplemental inventory is filed.

C. Consideration of Mr. Gawne's correspondence with Robert Pratt concerning proposed provisions in the bill that became Act 195 for any additional necessary Rules changes was deferred until the next meeting. Mr. Gawne agreed to distribute relevant correspondence to the Committee. .

**9. Forms Issues.** In Judge Scanlon's necessary absence, her report on Oversight Committee efforts to develop more consistent procedures for form changes was deferred until the next meeting.

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

**11. Dates of next meetings.** Professor Wroth will distribute possible dates for a meeting in December or January.

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

Respectfully submitted,

L. Kinvin Wroth, Reporter