

**APPROVED**

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

**Minutes of Meeting  
December 4, 2019**

The meeting was called to order at 1:35 p.m. in the Moot Court Room, Oakes Hall, Vermont Law School, by Hon. Jeffrey Kilgore, chair. Present were Committee members Brian Hesselbach, Hon. Kathryn Kennedy, Katherine Mosenthal (by telephone), David Otterman, and Norman Smith. Also present was Professor Emeritus L. Kinvin Wroth, Reporter.

1. **Approval of draft minutes of the meeting of October 9, 2019.** The minutes of the meeting of October 9, 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. The subcommittee (Chairman Kilgore, Judge Kennedy, Mr. Langan, and Judge Scanlan) had no report. It was agreed to defer this item until the next 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 reported that the amendments, which were held for further consideration by the Legislative Committee on Judicial Rules on June 6, 2019, would be considered at a meeting of that Committee to be held on December 6, 2019.

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 to consider the December 1 draft at the next meeting.

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 Judge Kilgore's December 1, 2019, revised draft of proposed new V.R.P.P. 80.9-80.12 and took the following actions:

**Rule 80.9(a).** The Committee agreed to add name change proceedings under 15 V.S.A., ch. 13, and adoption proceedings under 15A V.S.A., in light of the elimination of Rule 80.11 as originally proposed.

**Rule 80.9(d)(4).** The Committee agreed with the proposal to omit the final sentence regarding a new GAL.

**Rule 80.9(e).** The Committee agreed with the proposed deletion of the subdivision in light of the 2016 amendment of V.R.P.P. 47(a) requiring all proceedings to be recorded with exceptions that did not include guardianship proceedings.

**Rule 80.10(a).** The Committee agreed to consider further whether proceedings under 18 V.S.A. ch, 231 (advance directives) should be included in the rule.

**Rule 80.10(c).** The Committee agreed with the addition of a time limit on a respondent's objection to appointment of a GAL in order to bring closure to the question whether a hearing should be set.

**Rule 80.10(e)(3).** The Committee recommended that "statement" be substituted for "testimony."

**Rule 80.10(e)(4).** The Committee recommended that "respondent" should be substituted for "minor" and agreed with the omission of the final sentence regarding a new GAL, consistent with proposed Rule 80.9(d)(4).

**Rule 80.10(e)(5).** The Committee recommended that the paragraph be revised to read as follows:

(5) If the guardian ad litem prepares a written report, it shall be submitted to the court only by agreement of the parties or pursuant to Rule 43(a) and other provisions of these Rules.

In discussion, a question was raised as to the source of the last sentence of V.R.P.P. 43(a).

**Rule 80.10(f).** The Committee agreed with the proposed deletion of the subdivision. See Rule 80.9(e) above.

**Rule 80.11.** The Committee agreed to eliminate Rule 80.11 as not needed in view of the greater breadth of revised Rule 80.9(a) above.

**Rule 80.12.** The Committee agreed to renumbering this rule as Rule 80.11 and recommended deleting "WHO ARE NOT SUBJECTS OF PROCEEDINGS UNDER THESE RULES" from the title of the rule as superfluous.

**Rule 80.12(a).** The Committee recommended substituting "that minor child" for "a minor child" at the end of the subdivision.

**Rule 80.12(d)(2).** The Committee recommended deleting "The court may appoint a replacement for a guardian ad litem who is called as a witness" for consistency with revised proposed Rules 89(b)(3), 80.10(c)(3), and 80.10(e)(4).

Judge Kilgore and Professor Wroth will prepare a revised proposed order with updated Reporter's Notes for approval by the Committee before submission to the Supreme Court.

**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.** Judges Kilgore and Kennedy reported that the issue was not discussed at the November Probate judges meeting. It will be considered at the Committee's next meeting with a flow chart to be presented by Judge Scanlon.

**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).** This item was deferred until the next meeting in view of Mr. Gawne's unavoidable absence.

**6. V.R.P.P. 3.1, In Forma Pauperis.** Professor Wroth agreed to present a revised version of his January 22, 2019, draft, with Reporter's Notes, for the next meeting.

**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.** The Committee considered Professor Wroth's revised draft of proposed V.R.P.P.73 intended to implement 14 V.S.A. §118. In discussion, the question was raised whether a companion Civil Rule would be necessary to require a response from the Civil Division judge. Professor Wroth agreed to prepare a revised draft with Reporter's Notes for the next meeting.

**8. Rules to implement 14 V.S.A. § 1852 (motion to waive administration of final accounting).** The Committee considered Professor Wroth's December 1, 2019, draft of a proposed new V.R.P.P. 74. He agreed to present a draft correcting a typo in subdivision (e), with Reporter's Notes for the next meeting.

**9. Need for parent coordination rule.** After discussion of Judge Kilgore's report on the current state of the practice, it was agreed to drop the item from the agenda.

**10. Proposed amendment of V.R.P. 66.** After review of Judge Kilgore's December 4, 2019, revised draft of proposed amendments to V.R.P.P. 66, Professor Wroth agreed to provide a draft order with Reporter's Notes for the next meeting.

**11. Other business.** Judge Kilgore reported that he would present proposed amendments of V.R.P.P. 80.3 at the next meeting

**12. Date of next meeting.** The next meeting will be at 1:30 p.m., Wednesday, February 12, 2020, at Vermont Law School.

There being no further business, the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter