

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE
Minutes of Meeting
January 28, 2014

The meeting was called to order at 1:35 p.m. in Room 216 Debevoise Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Molly Bucci, Chris Chapman (by phone), Judith Joly, Mark Langan (by phone), Hon. John Monette, John Newman, David Otterman, Dianne Pallmerine, and Catherine Richmond. Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of draft minutes of the meeting of October 10, 2013. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of October 10, 2013.

2. Status of proposed and recommended amendments. Professor Wroth reported that the Committee's proposed amendment of V.R.P.P. 17(a)(3) had been sent out for comment on December 4, 2013, with comments due on February 3, 2014. On December 13, 2013, the Legislative Committee on Judicial Rules had considered that proposed amendment and the proposed amendment of V.R.P.P. 80.1 sent out for comment on October 14, with comments due by December 13, 2013, and had no comments on either one. That committee's comments on the proposed amendments of V.R.P.P. 67, sent out for comment on October 14, with comments due by December 13, 2013, are considered in item 3 below. Professor Wroth also reported that he had submitted the Committee's 2013 Annual Report to the Supreme Court on November 13, 2013.

3. Consideration of comments on proposed amendments to V.R.P.P. 67. Professor Wroth reported that 30 written comments had been received from 23 members of the bar on the proposed amendments to V.R.P.P. 67. Eight probate judges had also commented. Roughly categorizing the comments, he noted that sixteen comments from lawyers and one from a judge had focused on the bond requirement, questioning the need and expressing concerns for the added cost. Six comments from lawyers and two from judges had ranged from neutral to favorable about the approach of the amendments. Eight comments from lawyers and six from judges had offered drafting suggestions or raised questions about the language of the proposals. In addition, members of the Legislative Committee on Judicial Rules had offered brief drafting suggestions and had indicated their expectation that they would see a revised draft after the Probate Rules Committee had addressed the comments received from bench and bar.

In discussion, concerns were expressed about putting undue burdens on practitioners. Various suggestions were made for revisions to the proposed amendments, including having separate provisions for guardianships, relieving lawyer fiduciaries from the bond requirement, substituting lack of objection for consent as a basis for waiver of the bond requirement, and shifting the burden of raising the need for a bond or other security from the proposed fiduciary to interested persons. It was agreed that more information was needed before proceeding to draft revisions to the proposed amendments. Accordingly, it was agreed that no further steps would be taken until reports were received on the following initiatives:

- Judge Ertel and Professor Wroth will develop and circulate a questionnaire to obtain information from the probate judges and registers about their experience with the issues involved in the proposed amendments.
- Judge Monette will obtain detailed information from Andy Mikell of Vermont Attorneys Title Corporation about the availability and costs of bonding in different situations and locations.
- Professor Wroth will arrange for law students to do research about the practice in other states.

4. Expanded provisions for motions and contested cases. Mr. Newman reported that the subcommittee (Mr. Newman, Ms. Pallmerine, and Judge Mahoney) was continuing to work on drafts that would address procedure for contested motions and other matters such as the availability and use of attachment and trustee process and would report at the next meeting.

5. 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. Professor Wroth reported that the Supreme Court on January 22, 2014, had promulgated V.R.F.P. 7, 7.1, concerning guardians and attorneys for minors in Family Division proceedings. It was agreed to consider the applicability of V.R.F.P. 6 and 6.1 in probate court in light of the Family Rules amendments at the next meeting.

6. Clarification of procedure for opening an estate. The Committee considered Professor Wroth's January 27 revised draft of amendments to V.R.P.P. 3 and 4. It was agreed that the list of excepted proceedings in Rule 3(a) was accurate and that Rule 3(b)(2) should be clarified to provide that if all interested parties filed consents, the action could proceed without service and that if all did not file consents within a reasonable time, the court would set a hearing and the petitioner would then serve notice. With regard to Rule 3(d)(2), it was noted that clarification of it should await possible legislation on the use of "ward." It was agreed that language should be added to Rule 4(b) similar to that in V.R.C.P. 5(b) concerning methods of delivery. Professor Wroth will prepare a further revised draft for the next meeting.

7. Proposed Amendment of V.R.P.P. 43(e)—Appointment of Interpreters—to Conform to Current Policy. Professor Wroth reported that the Civil Rules Committee will review a further draft of a proposed amendment of V.R.C.P. 43(e). It was agreed to await the outcome of that Committee's deliberations.

8. Interaction of 14A V.S.A. § 201(b) and V.R.P.P. 60.1. Judge Ertel will present a proposal at the next meeting.

9. Appointment of executor in estate with no assets. Professor Wroth will prepare a draft rule based on Mr. Newman's draft of a new V.R.P.P. 80.4 for consideration at the next meeting.

10. Require verified petitions in V.R.P.P. 3 and 11. After discussion, it was agreed to take no action on this matter. Specific provisions for verification in particular rules are sufficient.

11. Require death certificate with petition to open estate and birth certificate with petition for minor guardianship—V.R.P.P. 3. Professor Wroth agreed to draft an amendment for the next meeting that would add “birth certificate or other proof of parentage” to V.R.P.P. 3(d)(2).

12. Other business: There was no other business.

13. Date of next meeting. It was agreed that Professor Wroth would circulate available dates for an afternoon meeting at Vermont Law School in the week of April 7.

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

Respectfully submitted,

L. Kinvin Wroth, Reporter