

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE
Minutes of Meeting
June 12, 2014

The meeting was called to order at 1:45 p.m. in Room 216 Debevoise Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Molly Bucci, Judith Joly, Mark Langan, Hon. James Mahoney (by phone), Hon. John Monette (by phone), John Newman, and Dianne Pallmerine. Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of draft minutes of the meeting of April 7, 2014. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of April 7, 2014.

2. Status of proposed and recommended amendments. Professor Wroth reported that the Committee's proposed amendment of V.R.P.P. 17(a)(3), sent out for comment on December 4, 2013, with comments due on February 3, 2014, 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, having been considered by the Legislative Committee on Judicial Rules without comment December 13, 2013, were promulgated by the Supreme Court on June 11, 2014, effective August 11, 2014, as previously circulated.

3. Consideration of comments on proposed amendments to V.R.P.P. 67. The Committee continued its consideration of the proposed amendments to V.R.P.P. 67. Judge Ertel reported that her survey of Probate judges indicated that the major problem continued to be minor financial guardianships. Mr. Langan reported that opposition to the proposed amendments had been expressed at a recent meeting of the VBA Probate and Trust Law Section and that he understood that New Hampshire lawyers were having increasing problems in obtaining surety bonds. After discussion, it was agreed that at the next meeting, the following three questions would be considered:

1. Should the amendment of V.R.P.P. 67 be recommended in the form in which it had been circulated?
2. Were there possible revisions to amended Rule 67(a)-(e) that would make it acceptable.
3. Should proposed Rule 67(f) be adopted as proposed, or with revisions?

4. Expanded provisions for motions and contested cases. The Committee considered recently proposed V.R.C.P. 80.11 providing for expedited actions in Civil Division cases. The Committee also reviewed Mr. Newman's October 8, 2013, draft amendment incorporating provisions similar to those of V.R.C.P. 7 and 78 as proposed V.R.P.P. 7(b)(3)-(5), which the Committee had previously voted to send out for comment, and his January 19, 2012, draft of a proposed V.R.P.P. 2.1 providing special provisions for contested cases. In discussion, Mr. Newman noted that New Hampshire had a separate docket for contested cases. Discussion followed of the possibilities of immediate appeals to the Civil Division for trial de novo on the expedited track or on the record review in the Civil Division of contested case tried in the Probate Division and whether such procedures could be adopted in the absence of statute. Professor Wroth agreed to determine whether there was data showing the frequency of Probate appeals. After discussion, Professor Wroth agreed to prepare and circulate before the next meeting a draft rule that would provide two tracks for contested cases: (1) An expedited hearing in the Probate Division resulting in a judgment that could be appealed to the Civil

Division. (2) An expedited trial rule for the Probate Division including provisions for discovery, motions, and perhaps ADR, judgment in which could be appealed to the Civil Division on the record.

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. The Committee considered Professor Wroth’s drafts of what should have been numbered proposed V.R.P.P. 80.10 and 80.11 intended to provide Probate rules to address the matter of Probate jurisdiction now covered by V.R.F.P. 6 and 6.1. He noted that the drafts merely carried forward the present provisions of the Family Rules applicable to Probate proceedings, eliminating references to matters in the Family Division’s jurisdiction. After discussion, Judge Ertel agreed to prepare a draft for review by the Committee, considering also possible incorporation of recently adopted V.R.F.P. 7, 7.1, and questions raised by H.581, recently enacted as Act 170 of 2013 (Adj. Sess.).

6. Clarification of procedure for opening an estate. The Committee considered Professor Wroth’s June 8 further revised draft of amendments to V.R.P.P. 3, 4, and 5. In discussion, it was agreed that references to “ward” should be corrected in accord with Act 170 of 2013 (Adj. Sess.) and that the references to declaratory judgment in Rule 3(b) should be clarified in the Reporter’s Notes to Rule 3(a) by a reference to the two-track approach to declaratory judgment under V.R.P.P. 57. On motion duly made and seconded, it was voted unanimously to recommend that the proposed amendments be sent out for comment with those revisions.

7. Proposed Amendment of V.R.P.P. 43(e)—Appointment of Interpreters—to Conform to Current Policy. The Committee considered proposed V.R.C.P. 43(f), which the Court had agreed to send out for comment at its June 11 meeting. On motion duly made and seconded, it was voted unanimously to recommend that a similar amendment to V.R.R.P.P. 43(e), substituting “probate proceedings” for “civil actions,” be sent out for comment if V.R.C.P. 43(f) was adopted as proposed.

8. Interaction of 14A V.S.A. § 201(b) and V.R.P.P. 60.1. It was agreed that this item should remain tabled pending Judge Ertel’s report from the probate judges on whether a trust proceeding should remain open as provided in V.R.P.P. 60.1(b) even though no supervision had been ordered by the court pursuant to 14A V.S.A. § 201(b).

9. Appointment of executor in estate with no assets. The Committee considered Professor Wroth’s June 8 further revised draft of proposed V.R.P.P. 80.9 based on Mr. Newman’s draft of proposed V.R.P.P. 80.4 concerning asset-less estates and possession of a will by the court. After discussion, Professor Wroth agreed to prepare for the next meeting a draft of a proposed V.R.P.P. 80.4 that would incorporate the June 8 draft of V.R.P.P. 80.9 with any changes made by Mr. Pratt’s Title 14 committee as well as language describing how the sender of the will would explain to the Register the reason for sending it and would incorporate the April 3 draft of V.R.P.P. 80.9. The draft would have an appropriate new title and would retain the Reporter’s Notes explaining the abrogation of former Rule 80.4.

10. Require death certificate with petition to open estate and birth certificate with petition for minor guardianship—V.R.P.P. 3. See item 6 above.

11. Status of children as parties under V.R.P.P. 17(a)(1) in light of 14 V.S.A. § 311.

Professor Wroth agreed to prepare a draft for the next meeting to address the question raised in Judge Ertel's April 16 e-mail..

12. Date of next meeting. Professor Wroth agreed to circulate dates in early August for a September meeting to be held at 1:30 p.m. at Vermont Law School.

There being no other business, the meeting was adjourned at 4:30 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter