

**VERMONT SUPREME COURT**  
**ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE**  
**Minutes of Meeting**  
**October 10, 2013**

The meeting was called to order at 9:35 p.m. in Room 101 Debevoise Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Molly Bucci, Chris Chapman (by phone), Mark Langan, Hon. James Mahoney, Hon. James Monette (by phone), John Newman, David Otterman, and Dianne Pallmerine. Also present was Professor L. Kinvin Wroth, Reporter.

1. **Approval of draft minutes of the meeting of July 17, 2013.** On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of July 17, 2013.
2. **Status of proposed and recommended amendments.** Professor Wroth reported that the Committee's proposed amendments of V.R.P.P. 67 and 80.1 had been sent out for comment in separate proposed orders by the Court Administrator on October 14, with comments due by December 13, 2013.
3. **Expanded provisions for motions and contested cases.** Mr. Newman presented a draft amendment of V.R.P.P. 7 intended to avoid trial by ambush by incorporating provisions of V.R.C.P. 7 as proposed paragraphs (b)(3)-(5). The additions would provide time periods and require a responsive pleading. In discussion, Committee members raised questions about the applicability of those provisions in uncontested or partially contested cases and cases involving pro se, the desirability of eliminating the existing and inexpensive practice of allowing motions during hearings, whether the time periods of the Civil Rule should all be adopted, and whether the Probate Rules should include motions such as summary judgment and those involved in attachment and trustee process. It was agreed that the subcommittee (Mr. Newman, Ms. Pallmerine, and Judge Mahoney) should consider these provisions and issues in the context of their continuing review of Mr. Newman's prior draft of proposed V.R.P.P. 2.1 covering contested cases.
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.** Professor Wroth reported that a further revision of proposed V.R.F.P. 7, 7.1, was still under consideration by the Civil Rules Committee. It was agreed to continue to defer action on the applicability V.R.F.P. 6 and 6.1 in probate court pending resolution of issues about V.R.F.P. 7, 7.1.
5. **Clarification of procedure for opening an estate.** The Committee considered Professor Wroth's June 17 draft of amendments to V.R.P.P. 3 and 4. After discussion, he agreed to prepare a new draft which would indicate specifically per Mr. Newman's earlier draft when a procedure was "otherwise provided" in amended Rule 3(a), that the use of "ward" should be reviewed in light of relevant statutory provisions, and that the effect of consent under V.R.P.P. 16 should be considered.

**6. 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 had reviewed 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.

**7. Proposed further amendment of V.R.P.P. 17(a).** The Committee reviewed Professor Wroth's June 17 draft amendment of V.R.P.P. 17(a)(3) intended to clarify the definition of who should be served at the outset of a guardianship proceeding. It was agreed that the proposed amendment should be sent out for comment with the addition of a specific provision including an agent named under a general power of attorney.

**8. Interaction of 14 V.S.A. § 201(b) and V.R.P.P. 60.1.** Judge Ertel and Ms. Pallermine reported that the inconsistency between the statute and the rule is a matter of inconsistent supervision that can be better addressed through training rather than by an amendment. Judge Ertel will send a memorandum to the judges to that effect.

**9. Incorporation of language of F.R.C.P./V.R.C.P. 17 in Probate Rules.** The Committee considered Professor Wroth's June 18 draft amendment of V.R.P.P. 18 incorporating language from V.R.C.P. 17. After discussion suggesting that adoption of the Civil Rule provisions would lead to an undesirable increase in the number of potential parties, it was agreed to drop this item from the agenda.

**10. Appointment of executor in estate with no assets.** After discussion of the effect of the requirement of 14 V.S.A. § 103 that the custodian of a will deliver it to the probate court or executor after learning of the death of the testator, Mr. Newman agreed to prepare a draft of a new V.R.P.P. 80.4 to deal with the matter.

**11. Other business: Proposed amendments to V.R.P.P. 66.** It was agreed to return to consideration of possible amendments to V.R.P.P. 66 that would strengthen the process and requirements for inventory and accounting (See Professor Wroth's June 16 draft amendments) at a subsequent meeting after comments on the presently proposed amendments of V.R.P. 67 had been considered.

**12. Date of next meeting.** It was agreed that Professor Wroth would circulate available dates for a meeting on a Tuesday or Wednesday (other than the third Tuesday) in January.

There being no other business, the meeting was adjourned at 12:05 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter