

APPROVED

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

**Minutes of Meeting
September 20, 2016**

The meeting was called to order at 1:40 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Hon. Ernest T. Balivet, Molly Bucci, Kathy Gray, Hon. Jeffrey P. Kilgore, Mark Langan, Diane Pallmerine, and Norman Smith. Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of draft minutes of the meeting of May 12, 2016. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of May 12, 2016, as previously distributed.

2. Status of proposed and recommended amendments. Professor Wroth reported that

A. The Committee's proposed amendment of V.R.P.P. 43(e) was sent out for comment on January 25. No comments were received. The Committee on May 12 deferred action pending action on parallel amendments to V.R.C.P. 43(f) and V.R.Cr.P. 28. The Civil Rules Committee at its meeting on September 23 will consider adding the language "or other disabilities which result in the need for interpreter's services" to the otherwise identical pending amendment of V.R.C.P. 43(f) at the request of the VLS Disabilities Law Project. On motion duly made and seconded, after discussion, it was voted unanimously that if the Civil Rules Committee recommends addition of the disabilities language to V.R.C.P.43(f), the Committee will recommend addition of the same language to V.R.P.P. 43(e).

B. The Committee's proposed amendments of V.R.P.P. 4(a), 5(e), and 80.2(a) were sent out for comment on June 15, with comments due on August 15, 2016. No comments were received. It was agreed that if the Civil Rules Committee at its meeting on September 23 adopted amendments to V.R.C.P. 5(h), Professor Wroth would send them to the Committee for review and possible incorporation in V.R.P.P. 5(e).

3. Joint committee on video appearance and cameras in the court.

A. Review and comments on Draft 4.A of proposed V.R.C.P. 43.1 and proposed amendment of V.R.P.P. 43(e). Justice Dooley joined the meeting by telephone to discuss the scope and purpose of proposed V.R.C.P. 43.1, providing a uniform rule for video and telephone appearance in the Civil, Family, and Probate divisions. The Supreme Court hopes that video and telephone appearance will be available for all dockets in all courts as the technology becomes available. Vermont has drawn on the rules of a variety of states to develop a uniform rule that will be ready to apply as the technology becomes available. V.R.F.P. 17 has also been a model. Technical standards are being developed

and will be adopted by administrative order.

In discussion, Justice Dooley noted that advances in technology permitted the Court to move beyond the requirement of appearance in open court affirmed by *Simpson v. Rood* and that the Court is seeking ways of assuring security in closed proceedings, ultimately to be defined in the technical standards order. Committee members noted that there was no equivalent in the list of factors to be considered in allowing video appearance under paragraph (c)(6) to the provisions in subparagraphs (d)(1)(C) and (D) requiring that all participants by telephone could hear the proceedings and that statements made by telephone should be made part of the record.

On motion duly made and seconded, there being no further discussion, it was voted unanimously to report to the Special Committee that the Probate Rules Committee was in favor of proposed V.R.C.P. 43.1 and suggested that the Special Committee consider adding provisions to Rule 43.1(c)(6) applicable to video appearance comparable to the provisions of Rule 431(d)(1)(C) and (D) for assurance that all participants in telephone hearings could hear the proceedings and for making statements made by telephone part of the record.

B. Proposed amendments of V.R.P.P. 79.2. Justice Dooley advised the Committee that the Special Committee was now considering revisions of V.R.C.P. 79.2 covering camera in the court room, and identical rules applicable in other divisions, that would address the issues presented by technological advances that make video and sound recording available to anyone possessing a hand-held device with that capability.

4. Probate Rules amendments to incorporate “day is a day” rule. The Committee considered the September 15 draft of a proposed promulgation order that would amend the Probate Rules to conform V.R.P.P. 6 and various time periods to the day is a day provisions already recommended for the Civil and other procedural rules. In discussion, it was agreed that providing seven days for the present shorter time periods was useful in allowing registers more flexibility in scheduling hearings. It was also agreed that extension of the time for filing a motion under V.R.P.P. 52(b) or 60(c) from ten to 28 days was unnecessary in the Probate context and would unduly delay proceedings.

On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that the time periods of V.R.P.P. 52(b) and 60(c) be changed from ten to 14, rather than 28, days, provided that the Civil Rules Committee made a similar change in the comparable Civil Rules.

5. Expanded provisions for motions and contested cases. The subcommittee (Judge Balivet and Ms. Pallmerine) will report at the next meeting after receiving a memorandum on the history of this agenda item from Professor Wroth.

6. 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. Judge Ertel reported that the joint subcommittee was continuing to consider the question of how to protect confidentiality in closed proceedings

(e.g., juvenile proceeds under V.R.F.P. 1) if court-to-court transfer were allowed. She further reported that at the next meeting the subcommittee would present a proposal for a new probate rule that would eliminate the applicability of VR.F.P. 6 to probate proceedings.

7. General amendments to V.R.P.P. 47. The Committee considered Professor Wroth's draft promulgation order for a proposed amendment of V.R.P.P. 47(d) clarifying the responsibility for operating recording equipment in probate proceedings and eliminating the requirement that the operator be under oath. On motion duly made and seconded, there being no further discussion, it was voted unanimously to propose that the amended rule be sent out for comment as drafted, with appropriate Reporter's Notes.

In view of the time, the remainder of the agenda was deferred until the next meeting

Date of next meeting. Professor Wroth agreed to circulate possible dates for a meeting in the week of November 7.

There being no further business, the meeting was adjourned at 4:05 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter