

APPROVED

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

**Minutes of Meeting
June 20, 2017**

The meeting was called to order at 1:45 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by David Otterman, acting as chair in the necessary absence of Hon. Jeffrey Kilgore. Present were Committee members Hon. Ernest T. Balivet (by phone), Katherine Mosenthal, Justin Sheng, and Norman Smith. Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of minutes. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of February 28, 2017, as previously distributed.

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

A. The Committee's recommended amendment of V.R.P.P. 43(e) concerning interpreters, promulgated with parallel amendments of V.R.C.P. 43(f) and V.R.Cr.P. 28 on January 9, effective March 13, 2017, was reviewed on June 8, 2017, by the Legislative Committee on Judicial Rules (LCJR). Questions raised concerning accommodation of mental or cognitive disabilities were agreed to be an administrative issue, and no objections were raised.

B. The Committee's recommended amendments of V.R.P.P. 4(a) and 80.2(a) promulgated March 13, effective May 15, 2017, and revised V.R.P.P. 5(e) recommended for promulgation on February 28, contingent on promulgation of a parallel amendment to V.R.C.P. 5(h), were reviewed on June 8, 2017, by LCJR. There were no comments. Professor Wroth will advise the Court that the Committee now recommends V.R.P.P. 5(e) for promulgation.

C. The Committee's proposed amendment of V.R.P.P. 47(d) sent out for comment on February 9, with comments due on April 10, 2017, was reviewed on June 8, 2017, by LCJR. There were no comments. On motion duly made and seconded, it was voted unanimously to recommend the amendment for promulgation as circulated, subject to consideration of any comments received by Chairman Kilgore.

D. The proposed revised draft amendment of V.R.P.P. 6(a) and other Probate Rules to adopt the "day is a day" rule, sent out for comment on May 11, with comments due July 10, 2017, was reviewed on June 8, 2017, by LCJR. Any comments made that affect the Probate Rules amendments will be considered at the next meeting of the Committee with other comments made during the still-open comment period.

3. Expanded provisions for motions and contested cases. The subcommittee (Ms. Pallermine and Judge Balivet) will report at the next meeting. It was noted that the charge includes V.R.C.P. 72. Judge Balivet agreed that the subcommittee's work should include clarification of the procedure for interlocutory appeals and examination of the rules governing direct appeals from probate proceedings under Act 170.

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. The Committee considered Professor Wroth's June 15, 2017, drafts of V.R.P.P. 80.9-80.12 intended to establish separate Probate Rules for the appointment of guardians ad litem now covered in V.R.F.P. 6-7.1. In discussion of the potential for delay caused by hearings on appointment of a GAL in simple cases, Judge Balivet noted that hearings were now rarely held. He suggested that adding "If the minor requests a hearing" in the second paragraph of Rule 80.9(b)(1) would address the concern. He also noted that the probate court could appoint GALs for minors from the Family Division pool if the GAL consented. There was a separate, though partially overlapping pool for adult GALs.

It was agreed that draft Rule 80.9 was acceptable. After discussion of the variation between Rule 80.10 and current practice, it was agreed to defer discussion of the rule until the next meeting. After discussion of the need for Rules 80.11 and 80.12 covering appointment of a GAL for a minor who was a subject of the proceeding or who was to be called as a witness, whether or not a subject of the proceeding, it was agreed to defer consideration of these rules until the next meeting.

5. Suggested amendment of V.R.P.P. 77(e)(2) concerning confidentiality of index of wills. It was agreed that in the absence of legislative action on the Pratt probate and decedents' estates reform bill (S.29), which carried forward the requirement of confidentiality for the index in 14 V.S.A. § 2, this item should remain on the agenda pending action on the bill in the next legislative session.

6. V.R.P.P. 45. The Committee considered Professor Wroth June 14, 2017, draft of a proposed new V.R.P.P. 45. It was agreed to add "To the extent that discovery is ordered" at the beginning of Rule 45(f). Professor Wroth agreed to prepare a new draft with Reporter's Notes for the next meeting.

7. V.R.A.P. 4(f)—"prisoners' mailbox" rule. It was agreed to defer consideration of a prisoners' mailbox rule until the Civil Rules Committee had acted on a proposal for such a rule pending before it.

8. Date of next meeting. Professor Wroth agreed to circulate possible dates for a meeting to be held after September 20.

There being no further business, the meeting was adjourned at 3:10 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter