

APPROVED

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE
Minutes of Meeting
May 12, 2016**

The meeting was called to order at 1:40 p.m. in Room 216, Debevoise Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Hon. Ernest T. Balivet, Kathy Gray, Hon. Jeffrey P. Kilgore, Mark Langan, Katherine Mosenthal, Diane Pallmerine, Catherine Richmond (by telephone), and Norman Smith. Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of draft minutes of the meeting of January 22, 2016. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of January 22, 2016, as previously distributed.

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

A. The Committee's recommended new V.R.P.P. 16.1 was promulgated March 7, effective May 9, 2016.

B. The Committee's proposed amendments to V.R.P.P. 3(b) and 17(a), sent out for comment on October 22, with comments due by December 21, 2015, were withdrawn from the Court's consideration by Professor Wroth in light of *In re Estate of Holbrook*, 2016 VT 13. In that case, the Court stated at ¶¶ 18-20 that the combined effect of 14 V.S.A. §§ 107(a) and V.R.P.P. 17(a) was that the court should schedule a hearing with notice to all interested persons when a petition to open an estate and allow the will was filed and that, although under 14 V.S.A. § 108 written consent of all the heirs at law and next of kin dispensed with the need for testimony, the hearing should still be held to allow other interested persons to appear and object to allowance. In discussion, Committee members agreed that this was contrary to the current practice and that setting a hearing for each petition would impose a very serious burden on the courts. Mr. Smith agreed to draft proposed rule amendments and forms addressing these concerns and send them to the Committee for comment before the next meeting.

C. The Committee's proposed V.R.P.P. 43(e), concerning interpreters, was sent out for comment, with comments due January 25, 2016. No comments were received. The Civil Rules Committee has recommended a virtually identical amendment to V.R.C.P. 43(f). The Criminal Rules Committee is considering comments made on a similar proposed amendment to V.R.Cr.P. 28. It was agreed to defer further consideration pending any further action by the Criminal Rules Committee.

3. Expanded provisions for motions and contested cases. Judge Balivet and Ms. Pallmerine will report at the next meeting. Professor Wroth will prepare a summary of prior consideration of this item for them.

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—joint subcommittee. Judge Ertel reported that the subcommittee will meet and will have a report at the Committee's next meeting.

5. Effect of proposed and promulgated Civil Rules amendments on Probate Rules. Judge Ertel and Mr. Langan will report on possible "day as a day" amendments at the next meeting

The Committee considered Professor Wroth's May 11 revised drafts of proposed amendments to V.R.P.P. 4(a) and 5(e) intended to incorporate recent amendments of V.R.C.P. 4 and 5 in the Probate Rules. On motion duly made and seconded, after discussion, it was voted unanimously to recommend that the proposed amendments be sent out for comment as drafted.

6. Suggested amendment of V.R.P.P. 80.2 regarding need to file property description in opening ancillary estate. The Committee considered Professor Wroth's May 11 revised draft of proposed amendments to V.R.P.P. 80.2. On motion duly made and seconded, after discussion, it was voted unanimously to recommend that the proposed amendments be sent out for comment, with restoration of subparagraph (a)(1)(i) that had been deleted in the draft.

7. Special committee on video appearance and cameras in the court. Mr. Langan reported that the Special Committee was reviewing a draft of a proposed V.R.C.P. 43.1, covering both video and telephone appearance, that would apply in the Probate Division also. After final approval of the current draft by the Special Committee, that draft will be sent to each of the procedural rules committees for review and comment. It was agreed to defer discussion of problems with V.R.P.P. 79.2 until the Special Committee has begun consideration of cameras and electronic devices in the court room.

8. General amendments to V.R.P.P. 47. The Committee considered Professor Wroth's draft of proposed amendments to V.R.P.P. 47(d) and (e) addressing the method of recording and custody of electronically recorded proceedings. On motion duly made and seconded, after discussion, it was voted unanimously that the amendment to Rule 47(d) should be proposed with the additional deletion of the second sentence and that the amendment to Rule 47(e) should be proposed as drafted. Professor Wroth agreed to prepare a proposed promulgation order with Reporter's Notes for the next meeting,

9. Suggested amendment of V.R.P.P. 77(e)(2) concerning confidentiality of index of wills. Professor Wroth reported that S.193, "the Pratt bill," would not be enacted in the current legislative session. Professor Wroth agreed to prepare a draft rule concerning confidentiality of the index of wills for the next meeting.

10. V.R.P.P. 45(b)—document subpoena. The Committee considered William B. Towle's May 5 letter to Judge Ertel raising questions concerning the document subpoena provisions of V.R.P.P. 45(b). Noting that the letter had also been sent to the Civil Rules Committee and that V.R.P.P. 45 had not been amended to conform to significant amendments to V.R.C.P. 45, Professor Wroth agreed to prepare a draft of V.R.P.P. 45 for the next meeting, adapting the Civil Rule and incorporating any change that the Civil Rules Committee might propose in response to Mr. Towle's concerns.

11. Date of next meeting. It was agreed that Professor Wroth would send to the Committee suggested dates for an August meeting on or about July 1.

There being no further business, the meeting was adjourned at 3:40 p.m.

Respectfully submitted,
L. Kinvin Wroth, Reporter