

APPROVED

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

**Minutes of Meeting
September 27, 2017**

The meeting was called to order at 1:40 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Jeffrey Kilgore, chair. Present were Committee members Hon. Ernest T. Balivet, Brian Hesselbach, Mark Langan, Katherine Mosenthal, David Otterman, Diane Pallmerine, Hon. Justine Scanlon, and Justin Sheng (by telephone). 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 June 20, 2017, as previously distributed.

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

A. The Committee's revised draft of V.R.P.P. 5(e), recommended for promulgation on February 28 and June 24, was promulgated on July 14, effective September 18, 2017, simultaneously with a parallel amendment to V.R.C.P. 5(h).

B. The Committee's proposed amendment of V.R.P.P. 47(d) was sent out for comment on February 9, with comments due on April 10, 2017. No comments had been made by the Legislative Committee on Judicial Rules at its June 8 meeting. Chairman Kilgore reported that no comments had been received from the bar. On motion duly made and seconded, it was voted unanimously to recommend to the Supreme Court that the amendment be promulgated as circulated for comment.

C. The recommended amendments of V.R.P.P. 6(a) and other Probate Rules to adopt the "day is a day" rule were promulgated on September 20, 2017, effective January 1, 2018. On consideration of the amendments to V.R.P.P. 52(b) and 60(c), it was noted that the time period for filing a motion under those rules had been extended from 10 to 28 days for consistency with comparable provisions of the Civil Rules that were based in turn on provisions of the Federal Rules of Civil Procedure. Committee members were concerned that matters in probate court generally involve important personal concerns that could be adversely affected by the additional extension of the time for appeal resulting from the longer period and that there is less need in probate practice for uniformity with the Federal Rules. On motion duly made and seconded, it was voted unanimously to recommend to the Supreme Court that those provisions be amended to provide for 14-day time periods.

D. Proposed new V.R.C.P. 79.2, had been sent out for comment on July 18 by the Special Committee on Video and Cameras in the Court, with comments due on

September 18, 2017. After any revision of the proposed rule by the Special Committee based on the comments, a parallel new V.R.P.P. 79.2 would be proposed. Committee members discussed the question of how the presence of a smartphone or other personal electronic device would be determined and noted that provisions in the Civil Rule concerning the jury would not be appropriate in an equivalent probate rule, it was agreed to defer further consideration of the rule pending action by the Special Committee.

3. Expanded provisions for motions and contested cases. The subcommittee (Ms. Pallmerine and Judge Balivet) will report at the next meeting.

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 the report of the joint Family-Probate rules subcommittee on inter-division communication in minor guardianship matters. After discussion, on motion duly made and seconded, it was voted unanimously that the Committee endorses the recommendations of the report, including the proposal for a legislative study committee. Professor Wroth agreed to draft a letter for Chairman Kilgore conveying the Committee's endorsement to the Supreme Court.

After further consideration of Professor Wroth's June 15 drafts of proposed V.R.P.P. 80.9-80.12, providing minor guardianship provisions in the Probate Rules, Chairman Kilgore agreed to draft a revision of the final sentence of draft Rule 80.10(c)(1), which provides that "No hearing is required when the respondent consents to the appointment and the court in its discretion finds that the affidavit provides sufficient support for the motion," in light of 14 V.S.A § 3066. Professor Wroth noted that the draft of Rule 80.9 had been found acceptable at the last meeting. Further consideration of draft Rules 80.11 and 80.12 was deferred 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, this item should remain on the agenda pending action on the Pratt probate and decedents' estates reform bill (S.29) in the next legislative session.

6. V.R.P.P. 45. The Committee agreed to defer consideration of Professor Wroth's September 22, 2017, revised draft of a proposed new V.R.P.P. 45 with Reporter's Notes pending consideration by the Civil Rules Committee of a proposed amendment to V.R.C.P. 45.

7. V.R.A.P. 4(f)—"prisoners' mailbox" rule. It was agreed to continue 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. V.R.P.P. 17(a). Need for service on interested persons in light of *In re Holbrook's Estate*, 2016 VT 13, 2017 VT 15. It was agreed to defer action on this item until the next meeting.

9. Other business. Professor Wroth will report on the status and effect of statutory amendments proposed by Trial Court Operations staff at the next meeting.

10. Date of next meeting. Professor Wroth agreed to circulate possible dates for a meeting to be held in November.

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

Respectfully submitted,

L. Kinvin Wroth, Reporter