

APPROVED

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE
Minutes of Meeting
April 30, 2015**

The meeting was called to order at 1:35 p.m. in Room 216 Debevoise Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Hon. Ernest T. Balivet, Mark Langan, Hon. John Monette (by phone), Katherine Mosenthal, David Otterman, Catherine Richmond, and Norman C. Smith. Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of draft minutes of the meeting of February 19, 2015. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of February 19, 2015, with two editorial corrections.

2. Status of proposed and promulgated amendments.

A. The Committee considered the proposed amendments to V.R.P.P. 3(b) and 7 and proposed new V.R.P.P. 80.4 sent out for comment on December 15, 2014, with comments due on February 17, 2015. See [https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRRPP3 7 80.4.pdf](https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRRPP3%207%2080.4.pdf). The Committee considered the comment of Hon. George E. Spear, II, that proposed V.R.P.P. 7(b)(4) should be revised to give the court discretion to allow evidence to be presented on a motion without a written request. Professor Wroth noted that proposed V.R.P.P. 7(b)(3)-(5) were based on V.R.C.P. 7(b)(3)-(4) and 78(b)(1).

In discussion, it was noted that motion practice in probate courts was very limited and did not required the formality appropriate to civil actions. The court could deal with a last-minute offer of evidence on a motion by granting a continuance. On motion duly made and seconded, there being no further discussion, it was voted unanimously to delete paragraph (4) and the final sentence of paragraph (5) from the proposed amendments to V.R.P.P. 7(b). On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend to the Supreme Court the promulgation as circulated of the amendment adding new V.R.P.P. 3(b)(2) concerning estates without assets and of new V.R.P.P. 80.4 concerning delivery and safe-keeping of wills, and the promulgation of the proposed amendments to V./R.P.P. 7(b) as revised by the preceding motion.

B. The Committee considered the point raised by Robert Pratt, Esq., that V.R.P.P. 3(b)(2) as promulgated effective February 13, 2015, made the process of opening an estate by consent more complicated than that provided in 14 V.S.A. § 108 by requiring notice to all interested persons. See [https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRRPP%20](https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRRPP%203%207%2080.4.pdf)

[3 4 5.pdf](#). (The provision would become Rule 3(b)(3) if the Committee’s recommendation under item 2.A above is adopted by the Supreme Court.)

Mr. Smith presented a draft amendment dated April 29, 2015, intended to address Mr. Pratt’s concerns by revising Rule 3(b)(2) as promulgated to require consent only of the surviving spouse and heirs at law instead of all interested persons and to require the petitioner to serve a copy of the will on all interested persons after its allowance by consent. In discussion, the question was raised whether the proposed amendment adding to V.R.P.P. 3(a) a requirement that notice of the filing of the petition should be given to all interested persons should also be eliminated. Ms. Richmond noted that New Hampshire’s notice requirements were simpler and agreed to send copies of the New Hampshire provisions to all Committee members. In the absence of consensus on these points, Mr. Smith agreed to prepare a new draft of proposed amendments to V.R.P.P. 3 and to address any conflicts between the new draft and Rules 4 and 17(a)(1), (b), and (c).

3. Expanded provisions for motions and contested cases. Judge Balivet reported that the subcommittee, consisting of Ms. Pallermine and himself, was considering possibilities such as the New Hampshire offer of proof procedure and expedited appeal options such as direct appeal to the Supreme Court by agreement and 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—joint subcommittee. Judge Ertel reported that the joint subcommittee with members of the Family Rules Committee was holding its first meeting on May 1.

5. Proposed Amendment of V.R.P.P. 43(e)—Appointment of Interpreters—to Conform to Current Policy. Professor Wroth reported that there had been no activity on the Civil Rules Committee’s proposed amendment of V.R.C.P. 43(f) since his report at the February 19 meeting. The Civil Rules Committee hopes to have a proposal to consider at its next meeting on June 12.

6. Status of children as parties under V.R.P.P. 17(a)(1) in light of 14 V.S.A. § 311. Mr. Smith agreed to consider this issue and the relevant forms as part of his continuing review of V.R.P.P. 17(a)(1) under item 2.B above.

7. Probate Rules amendment to conform to Act 96 of 2013, “Respectful Language Act.” Professor Wroth reported that he had been advised by Legislative Counsel that no statutory revisions were made pursuant to Act 96 in the current year. It was agreed to drop this item from the agenda pending further legislative action but to continue to observe respectful guidelines in considering Probate Rules amendments.

8. VR.P.P. 77(c). Proposed amendment to conform to statutory change concerning duties of register. Professor Wroth reported that he had deferred sending this amendment proposed at the Committee’s February 19 meeting pending Committee action on other proposals but would now send it forward.

9. V.R.P.P. 47. Proposal to require recording of all probate proceedings. The Committee

considered Professor Wroth's draft of an amendment to V.R.P.P. 47 to require every proceeding to be recorded except adoption finalizations, uncontested name changes, and uncontested vital records cases, provided that the court could require recording of any proceeding on request of a party or the court's own initiative. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that the amendment be sent out for comment as drafted.

10. Other Business. At Mr. Langans' request, the Committee considered proposed V.R.F.P. 18 that would establish a mediation procedure for Family Court. It was agreed that a subcommittee consisting of Judge Balivet, Mr. Langan, and Mr. Otterman would look at ways of adapting the proposed Family Rule and Administrative Order 39 to Probate practice. Emily Gould, a Vermont resolution consultant, would be invited to assist the subcommittee, which would also consider the practice under Title 14 V.S.A. and V.R.C.P. 53 for appointing commissioners to undertake partition of real estate.

12. Date of next meeting. Professor Wroth agreed to circulate dates from July 15 to July 30 for a meeting to be held at 1:30 p.m. at Vermont Law School.

There being no other business, the meeting was adjourned at 3:55 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter