

**APPROVED**

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE  
Minutes of Meeting  
August 19, 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, Molly Bucci, Judith Joly, Mark Langan, Katherine Mosenthal, David Otterman, Dianne Pallmerine (by telephone), Catherine Richmond, and Norman C. Smith. Also present was Professor L. Kinvin Wroth, Reporter.

**1. Approval of draft minutes of the meeting of April 30, 2015.** On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of April 30, 2015, as circulated.

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

A. The amendments to V.R.P.P. 3(b) and 7 and proposed new V.R.P.P. 80.4, as recommended by the Committee were promulgated on July 1, effective September 1, 2015.

B. The Committee's proposed amendments to V.R.P.P. 47 concerning recording of proceedings and 77 to conform to statutory amendment concerning registrar's duties were sent out for comment on June 9, with comments due on August 7, 2015. No comments had been received. On motion duly made and seconded, there being no discussion, it was voted unanimously to recommend the amendments to the Supreme Court for promulgation as circulated.

**3. V.R.P.P. 3(b)(2)—to be renumbered V.R.P.P. 3(b)(3) effective September 1, 2015, by amendment reported in item 2.A—conflict with 14 V.S.A. § 108.** The Committee considered Mr. Smith's revised draft dated July 7, 2015, deleting the requirement of Rule 3(a) that notice of the petition be sent to all interested persons; dividing former paragraph (2) into separate paragraphs (3) and (4); deleting "interested persons" in paragraph (3); and making clear in paragraphs (3) and (4) that "the surviving spouse, if any," as well as "heirs at law," must consent. The Committee also reviewed New Hampshire's notice requirements, provided by Ms. Richmond, and concluded that differences in practice meant that they did not provide an appropriate model. On motion duly made and seconded, after discussion, it was voted unanimously to recommend that the proposed amendments be sent out for comment with minor changes suggested during discussion.

**4. Status of children as parties under V.R.P.P. 17(a)(1) in light of 14 V.S.A. § 311.** The Committee considered Mr. Smith's proposed draft dated July 17, 2015, of amendments to V.R.P.P. 17(a)(1)(A), deleting "spouses" and inserting "the surviving spouse if any" in the definition of "interested person" and to V.R.P.P. 17(b)(1) inserting "and have rights under the will, if any" after

“interested persons who have entered an appearance.” In discussion, it was agreed to delete “if any” and add “or, if there is no will, under the laws of intestate succession.” On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that the proposed amendments be sent out for comment with this change.

**5. Expanded provisions for motions and contested cases.** Judge Balivet reported that the subcommittee, consisting of Ms. Pallmerine and himself, will report at the next meeting.

**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—joint subcommittee.** Judge Ertel reported that the joint subcommittee with members of the Family Rules Committee was reviewing the jurisdictional overlap between minor guardianship and CHINS proceedings and would report at the next meeting.

**7. Proposed Amendment of V.R.P.P. 43(e)—Appointment of Interpreters—to Conform to Current Policy.** Professor Wroth reported that the proposed amendment to V.R.C.P. 43(f) concerning appointment of interpreters had been sent out for comment on August 6, with comments due on October 5, 2015. It was agreed to address the effect on the Probate Rule after comments had been received on the proposed Civil Rule.

**8. Proposed V.R.P.P. 16.1 providing mediation in the probate courts.** The Committee considered draft V.R.P.P. 16.1 prepared by Messrs. Langan and Otterman to provide for mediation in the probate courts. Mr. Langan noted that the draft was generally based on V.R.F.P. 18, promulgated July 20, effective September 21, 2015. He reviewed the draft, pointing out variations from the Family Rule that reflected the circumstances of probate litigation. It was agreed to delete “allegations of abuse” in paragraph (c)(3), and to delete all after “designate another mediator” in paragraph (d)(1). The Reporter’s Notes will be reviewed for consistency with these and other variations from the Family Rule. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that the proposed amendments be sent out for comment with the indicated changes.

**9. Effect of proposed and promulgated Civil Rules amendments on Probate Rules.** Professor Wroth noted that, in addition to the proposed amendment to V.R.C.P. 43(f) discussed under item 7, the proposed “day is a day” amendments to V.R.C.P. 6 and other Civil Rules had been sent out for comment on August 6, with comments due on October 5, 2015, and that amendments to V.R.C.P. 4(b), (l) and 5(d), (h) had been promulgated July 20, effective September 21, 2015. He stated that he would place on a future agenda the question of the effect of these amendments on the Probate Rules.

**10. Further consideration of proposed amendments to V.R.C.P. 67 concerning fiduciary bonds.** The question whether further consideration of the proposed amendments to V.R.P.P. 67 concerning fiduciary bonds, which had been removed from the agenda in September 2014, should be undertaken. It was agreed to take no further action at this time.

**11. Date of next meeting.** Professor Wroth agreed to circulate November dates for the next meeting.

There being no other business, the meeting was adjourned at 4:15 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter