

APPROVED

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE
Minutes of Meeting
January 22, 2016**

The meeting was called to order at 1:45 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Hon. Ernest T. Balivet, Hon. Jeffrey P. Kilgore, Mark Langan (by telephone), Hon. John Monette, Katherine Mosenthal, David Otterman, and Norman Smith. Also present was Professor L. Kinvin Wroth, Reporter (by telephone).

1. Approval of draft minutes of the meeting of November 5, 2015. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of November 5, 2015, as previously distributed.

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

A. The Committee's recommended amendments to V.R.P.P. 47 concerning recording of proceedings and V.R.P.P. 77 to conform to a statutory amendment concerning the registrar's duties were promulgated November 23, 2015, effective January 25, 2016.

B. The Committee's proposed amendments to V.R.P.P. 3(b) and 17(a) and proposed new V.R.P.P. 16.1 were sent out for comment on October 22, with comments due by December 21, 2015. No comments were received. On motion duly made and seconded, it was voted unanimously to recommend the amendments for promulgation as circulated.

3. 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. He agreed to monitor the Pratt bill, which appeared unlikely to pass, and the "lightening the load" bill.

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 had no report.

5. Proposed Amendment of V.R.P.P. 43(e)—Appointment of Interpreters—to Conform to Current Policy. Professor Wroth reported that comments were due on January 25 and that no comments had as yet been received..

6. Effect of proposed and promulgated Civil Rules amendments on Probate Rules. Professor Wroth reported that the Civil Rules Committee's Civil and Appellate rules day is a day amendments had been recommended to the Court on January 1, with a July 1 recommended promulgation date. A bill to conform legislation to the rules amendments was being prepared by Legislative Counsel.

The Committee considered Professor Wroth's January 20 draft of amendments to conform the Probate Rules to recent Civil Rules amendments of V.R.C.P. 4 and 5. On motion duly made and seconded, it was voted unanimously to adopt the proposed amendments to Rule 4(a), substituting "notice" for "summons," not to adopt proposed Rule 4(i) as unnecessary in probate practice, and to adapt proposed Rule 5(i) as a replacement for present Rule 5(e). Professor Wroth agreed to prepare a new draft order for the next meeting.

7. 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 January 20 draft of amendments addressing the issue concerning the requirement of V.R.P.P. 80.2(a)(1)(ii) that a petition to open an ancillary estate in Vermont should include a description of any Vermont real and personal property involved. In discussion, it was agreed to delete the requirements of subparagraph (a)(1) that a Vermont administrator or executor be appointed and that all Vermont real and personal property be described, as well as the reference to the entry fee. Professor Wroth agreed to prepare a new draft for the next meeting, drawing on appropriate provisions of Rule 3.

8. Joint committee on video appearance and cameras in the court. Mr. Langan reported that he had advised the joint committee that telephone testimony was quite common in probate court without a specific rule. It is not clear when full video capacity will be available in probate courtrooms but there will be an opportunity for probate courts to share video-equipped courtrooms with other divisions.

9. General amendments to V.R.P. 47. After Judge Ertel reported concerns, it was agreed to consider at the next meeting an amendment of Rule 47 (d) to be drafted by Professor Wroth providing that recording equipment was to be operated by the judge or a person appointed by the judge pursuant to law. It was agreed to review Rule 47(e) concerning custody and transcription at the next meeting.

10. Minor guardianships: birth certificates and background checks. Judge Ertel reported that there was no existing authority for background checks of proposed guardians. After discussion of past efforts to address the problem and the use of background checks in other contexts, it was agreed that Judge Kilgore and Mr. Smith should present the problem to the Oversight Committee.

11. Suggested amendment of V.R.P.P. 77(e)(2) concerning confidentiality of index of wills. Ms. Joly noted that Rule 77(e)(2), making the index of wills for safekeeping confidential, created practical problems for parties or lawyers with legitimate reasons to learn whether there is a will on file. 14 V.S.A. § 2(e) contains the same requirement. In discussion, it was noted that the Pratt bill limited confidentiality to the life of the testator. It was agreed to defer consideration until the action on the bill was complete.

Date of next meeting. Professor Wroth agreed to circulate April dates for the next meeting.

There being no other business, the meeting was adjourned at 3:30 p.m.

Respectfully submitted,
L. Kinvin Wroth, Reporter