

**APPROVED**

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

**Minutes of Meeting  
November 5, 2015**

The meeting was called to order at 1:35 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, Mark Langan, Hon. John Monette (by telephone), Katherine Mosenthal, David Otterman, and Norman Smith. Also present was Professor L. Kinvin Wroth, Reporter.

**1. Approval of draft minutes of the meeting of August 19, 2015.** On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of August 19, 2015, as circulated.

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

A. The Committee's proposed 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 have been recommended to the Court for promulgation.

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.

**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.

**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 will continue to review the question of decoupling probate GAL jurisdiction from V.R.F.P. 6.

The Committee reviewed a draft prepared by Christine Speidel, chair of the subcommittee, of a proposed amendment to V.R.F.P. 4 requiring a uniform affidavit to be filed with the complaint in any action involving child custody, including visitation, that disclosed any past or pending proceedings in any division of the superior court involving the same child. If this amendment were to be adopted, similar amendments to V.R.F.P. 1 and 2 and to applicable provisions of the Probate Rules would be necessary. See, *e.g.*, current form PMG70C, <https://www.vermontjudiciary.org/eforms/PMG70C.pdf>. In discussion, it was suggested that the last sentence of the draft should be revised to read, "If the affidavit discloses a pending proceeding before ~~the Vermont Superior Court~~ any other court, the family division clerk will notify the clerk of the court where the proceeding is pending." The Reporter's

Notes would make clear that the language meant a court anywhere in the world. It was agreed that the question where to place such a provision in the Probate Rules should be deferred until action was taken by the Family Rules Committee at a meeting scheduled for December 18.

**5. Proposed Amendment of V.R.P.P. 43(e)—Appointment of Interpreters—to Conform to Current Policy.** The Committee considered Professor Wroth’s November 3 memorandum reporting that the proposed amendment to V.R.C.P. 43(f) concerning appointment of interpreters had been recommended for promulgation as circulated. On motion duly made and seconded, there being no discussion, it was voted unanimously to recommend that, if the Supreme Court promulgated the Civil Rule, it should be adopted as V.R.P.P. 43(e) with any necessary verbal changes. Professor Wroth agreed to send the Court a proposed V.R.P.P. 43(e) to be considered with the Civil Rule for promulgation or to be sent out for comment.

**6. Effect of proposed and promulgated Civil Rules amendments on Probate Rules.** The Committee considered Professor Wroth’s November 3 memorandum reporting that comments on the proposed “day is a day” amendments to V.R.C.P. 6 and other Civil Rules sent out for comment on August 6, with comments due on October 5, 2015, had been reviewed by the Civil Rules Committee and would be recommended for promulgation with some changes and a July 1, 2016 effective date. It was agreed that if the “day is a day” rules were promulgated by the Supreme Court, they should be adopted in the Probate Rules, subject to appropriate standards and necessary amendments to specific rules. Judge Ertel and Mr. Langan agreed to review all time provisions of the Probate Rules to determine how they should be amended.

In regard to the amendments to V.R.C.P. 4(b), (l) and 5(d), (h), promulgated July 20, effective September 21, 2015, also discussed in his November 3 memorandum, Professor Wroth agreed to provide appropriate drafts incorporating them in the Probate Rules 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 the issue raised in Joseph Cook’s October 22 e-mail 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. Committee members agreed that a property description was unnecessary but that, as suggested in Robert Pratt’s November 4 e-mail, an allegation that the property is located in the unit where the petition is filed might be necessary for purposes of venue and jurisdiction. On motion duly made and seconded, there being no further discussion, it was voted unanimously to propose that an amendment to Rule 80.2(a)(1)(ii) providing that the petition must include an allegation that some or all of the personal property is located in the unit be proposed. Professor Wroth agreed to provide a draft for the next meeting.

**8. Joint committee on video appearance and cameras in the court.** Judge Ertel reported that she had been asked to designate two members of the Committee to the joint special ad hoc committee on video/audio appearances and cameras in the court being established by Justice Dooley. Mr. Langan agreed to serve. Judge Ertel agreed to find and appoint another member of the Committee for the assignment.

**9. Date of next meeting.** Professor Wroth agreed to circulate January 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