

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE
Minutes of Meeting
April 5, 2013

The meeting was called to order at 9:10 a.m. in Room 101 Debevoise Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Molly Bucci (by phone), Chris Chapman (by phone), Mark Langan (by phone), John Newman, Dianne Pallmerine, and Catherine Richmond. Also present was Professor L. Kinvin Wroth, Reporter.

1. **Approval of minutes of the meeting of November 9, 2012.** On motion duly made and seconded, there being no discussion, it was voted unanimously to approve the draft minutes of the meeting of November 9, 2012, as previously distributed.

2. **Status of proposed, recommended, and adopted amendments.** Professor Wroth reported that the Committee's recommended amendments to V.R.P.P. 64(a) and 68 and its recommendation to add V.R.P.P. 72 were promulgated on March 12, effective May 13, 2013, with a slight change in the Reporter's Notes to Rule 72.

3. **Status of Electronic Case Filing and Case Management Systems.** Because the roll-out of electronic filing in the Civil Division, and hence in the Probate Division, continue to be delayed, on motion duly made and seconded, it was voted unanimously to remove this item from the agenda.

4. **Expanded Provisions for Motions.** Mr. Newman reported that the subcommittee was working with Legislative Counsel on legislation providing for enforcement of judgments through attachment and bonds to cover defalcations. He will prepare a revised draft of proposed V.R.P.P. 2.1 incorporating Civil Rules provisions in contested cases on other points for the next meeting.

5. **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.** It was agreed to defer this item pending action by the Family Rules Committee and Family Division Oversight Committee on V.R.F.P. 7 and 7.1.

6. **Legislative Efforts to Develop New Remedies for Thefts from Estates.** Mr. Newman reported that, in connection with the legislation discussed in Item 4, he was preparing an article on recent defalcation cases for the *VBA Journal*. On motion duly made and seconded, it was voted unanimously to remove this item from the agenda pending adoption of appropriate legislation.

7. **Clarification of Procedure for Opening an Estate.** The Committee considered Mr. Newman's draft of amendments to V.R.P.P. 3 providing a uniform procedure for the petition and notice to open an estate. Judge Ertel reported that her survey of most counties indicated that the present rules were generally being followed. It was agreed that draft V.R.P.P. 3(f) should be incorporated in V.R.P.P. 4 and that draft V.R.P.P. 3(g), the preferred procedure, should be incorporated in V.R.P.P. 3(b). Professor Wroth agreed to prepare drafts of these amendments for the next meeting.

8. **Proposal to Eliminate V.R.P.P. 80.1—Notice of Appointment of Guardian.** The Committee considered Professor Wroth's April 2 draft of amendments to V.R.P. P. 80.1 concerning

notice provisions for guardians. On motion duly made and seconded, after discussion, it was voted unanimously to send the proposed amendments out for comment, substituting “person under guardianship” for “ward” in the rule and Reporter’s Notes.

9. Proposed Amendment of V.R.P.P. 43(e)—Appointment of Interpreters—to Conform to Current Policy. After discussion of Robert Hubbard’s letter of October 23, 2012, it was agreed to continue to defer action pending consideration of similar issues by the Civil Rules Committee.

10. Proposed Further Amendment of V.R.P.P. 17(a). The Committee considered Judge Ertel’s concern that the recent amendment of V.R.P.P. 17(a)(3) conforms the rule to 14 V.S.A. § 3061(5), which defines “interested person” broadly for purposes of identifying who may file a petition a guardianship petition. The purpose of V.R.P.P. 17(a)(3) is to define those persons who should be considered parties and served at the commencement of the action pursuant to the first sentence of V.R.P.P. 17(a). It was agreed that Professor Wroth should prepare an amendment that would include those named in prior Rule 17(a)(3)(i)-(vi) as modified for consistency with 14 V.S.A. § 3063(a)(1). In particular, clause (v) should include an agent as defined in 14 V.S.A. § 3501(2) under a durable power of attorney as defined in 14 V.S.A. § 3508 or under an advance directive for health care or similar authorization.

11. Other Business.

A. Mr. Chapman raised a concern with interpretations of the interaction of 14A V.S.A. § 201(b) providing that a trust is not subject to continuing judicial supervision unless ordered by the court and V.R.P.P. 60.1 concerning the closing of probate proceedings. Judge Ertel agreed to raise the concern with the Probate judges and propose any appropriate amendments to the Probate Rules. Ms. Pallmerine agreed to raise the concern on the probate list serv.

B. Professor Wroth agreed to draft an amendment for the next meeting that would incorporate appropriate language of F.R.C.P./V.R.C.P. 17 in the Probate Rules.

C. Mr. Newman will prepare an amendment for the next meeting to provide for appointment of an executor in an estate without assets.

12. Date of Next Meeting. Professor Wroth agreed to survey the members to determine availability for a meeting in June.

The meeting was adjourned at 11:30 a.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter