

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE
Minutes of Meeting
November 9, 2012**

The meeting was called to order at 1:35 p.m. in the Windsor County Probate Division court room, Woodstock, by Hon. Joanne M. Ertel, Chair. Present were Committee members Molly Bucci, Mark Langan, Hon. James Mahoney, Hon. John Monette, John Newman, David Otterman, Dianne Pallmerine, and Catherine Richmond. Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of minutes of the meeting of July 13, 2012.

On motion duly made and seconded, there being no discussion, it was voted unanimously to approve the draft minutes of the meeting of July 13, 2012, as previously distributed, with the correction of the date in the caption of item 1 to read “April 27, 2012.” .

2. Status of proposed, recommended, and adopted amendments.

The Committee’s recommended amendments to V.R.P.P. 80.3 intended to conform the rule to 14 V.S.A. §§ 1901-1903, covering small estates, as amended by Act No. 75 of 2009 (Adj. Sess.), were promulgated by the Supreme Court on August 28, effective October 29, 2012.

The Committee’s proposed order amending V.R.P.P. 64(a) to conform that rule to the recent amendment of V.R.P.P. 4(e), amending V.R.P.P. 68 to make a technical correction, and adding V.R.P.P. 72 to provide a procedure for civil contempt proceedings was sent out for comment on October 12, 2012, with comments due on November 13, 2012. No comments had been received to date. On motion duly made and seconded, it was voted unanimously to recommend the proposed amendments and rule to the Supreme Court for promulgation as circulated, subject to further consideration of any comments that might be received by November 13.

3. Status of Electronic Case Filing and Case Management Systems.

Mr. Newman and Professor Wroth reported that the roll-out of electronic filing in the Civil Division, and hence to the Probate Division, continued to be delayed by difficulties with the vendor and other problems.

4. Expanded Provisions for Motions.

Mr. Newman reported that the subcommittee would present a revised draft of proposed Rule 2.1 addressing procedures for contested cases at the next meeting. The subcommittee was also working on development of proposed language for a statute and rule providing bond provisions to cover defalcations.

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 that Judge Ertel and Professor Wroth would develop proposed amendments for the next meeting that would decouple probate proceedings from V.R.F.P. 6 and 6.1 and would provide the equivalent of the currently recommended amendments of V.R.F.P. 7 and 7.1 for probate courts.

6. Legislative Efforts to Develop New Remedies for Thefts from Estates.

Mr. Newman reported that the subcommittee's efforts on bonding legislation (item 4 above) and a revision of the power of attorney statute on which he was working would address these issues.

7. Clarification of Procedure for Opening an Estate.

After discussion of Mr. Newman's draft adding provisions to V.R.P.P. 3 intended to provide a uniform procedure for the petition and notice for opening an estate, Judge Ertel agreed to survey the judges to determine current practice. A uniform rule would then be drafted embodying best practices and including a provision for waiver of service like recently adopted amendments to V.R.F.P. 4(b)(2).

8. Proposal to Eliminate V.R.P.P. 80.1—Notice of Appointment of Guardian.

After discussion, Professor Wroth agreed to prepare a draft for the next meeting that would eliminate the requirement of a second publication and update and clarify the Reporter's Notes in light of recent statutory changes.

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 defer action pending consideration of the matter at the next meeting of the Civil Rule Committee,

10. Other Business.

There was no other business.

11. Next meeting.

Professor Wroth agreed to survey the members to determine availability for a meeting to set for a Friday in March.

The meeting was adjourned at 4:30 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter