

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE
Minutes of Meeting
September 23, 2014

The meeting was called to order at 1:40 p.m. in Room 216 Debevoise Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Katherine Mosenthal, Mark Langan (by phone), Hon. John Monette, John Newman (by phone), David Otterman, and Catherine Richmond. Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of draft minutes of the meeting of June 12, 2014. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of June 12, 2014.

2. Status of proposed and recommended amendments. Professor Wroth reported that the Committee's proposed amendments of V.R.P.P. 3, 4, and 5, were sent out for comment on July 19, with comments due on September 19, 2014. No comments had been received from the bar on the substance of the amendments. The Legislative Committee on Judicial Rules has not yet reviewed the proposal. On motion duly made and seconded, there being no discussion, it was voted unanimously to recommend that the Court promulgate the amendments, subject to any comments received from the Legislative Committee.

3. Further discussion of comments on proposed amendments to V.R.P.P. 67. The Committee continued its discussion of comments on the proposed amendments to V.R.P.P. 67 and the following three questions posed at the last meeting:

1. Should the amendment of V.R.P.P. 67 be recommended in the form in which it had been circulated?
2. Were there possible revisions to amended Rule 67(a)-(e) that would make it acceptable.
3. Should proposed Rule 67(f) be adopted as proposed, or with revisions?

In discussion, Committee members noted that the VBA Title 14 committee was not recommending changes in the bonding provisions of 14 V.S.A. §§ 2101-2108; that probate judges currently may be asking for bonds more often but could be more aggressive in requiring them under present law; that, while limiting bonding requirements to guardianships would address an area where defalcations were often seen, it might be unrealistic given the problems that many parents would face in getting bonds; that the application process in New Hampshire was more detailed but that the difficulty of getting bonded had not increased; that there appeared to be no reduction in the number of defalcations; and that it was difficult but not impossible to sue on bonds under present law. On motion duly made and seconded, there being no further discussion, it was voted, six in favor, one opposed, to remove this item from the agenda for the time being.

4. Expanded provisions for motions and contested cases. The Committee considered Professor Wroth's draft of a proposed V.R.P.P. 39 based on the recently proposed V.R.C.P. 80.11 providing for expedited actions in Civil Division cases. The Committee also reviewed Mr. Newman's

October 8, 2013, draft amendment incorporating provisions similar to those of V.R.C.P. 7 and 78 as proposed V.R.P.P. 7(b)(3)-(5), which the Committee had previously voted to send out for comment. In discussion, it was noted that big cases could drag on for a significant number of years particularly where there was an appeal, but that the number of such was quite small. The times would improve if appeals were not de novo. It would be desirable to develop rules on procedural details like discovery that would be uniform among the probate courts. On motion duly made and seconded, it was voted, six in favor, one abstaining, to defer further consideration until the outcome of discussions on proposed V.R.C.P. 80.11 was known. Professor Wroth agreed to prepare a new draft of the proposed amendment to V.R.P.P. 7 and a separate draft of proposed V.R.P.P. 39(b) for the next meeting. On motion duly made and seconded, it was voted unanimously that the new draft of Rule 7 should be sent out for comment when ready without waiting for final action on various aspects of proposed V.R.P.P. 39.

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. The Committee agreed with Professor Wroth's proposal for a joint subcommittee with the Family Rules Committee to address Act 170 of 2013 (Adj. Sess.) and common issues pertaining to V.R.F.P. 6, 6.1, 7, and 7.1. He agreed to present the proposal at a forthcoming meeting of that committee.

6. Proposed Amendment of V.R.P.P. 43(e)—Appointment of Interpreters—to Conform to Current Policy. It was agreed to defer action on this proposal until the Civil Rules Committee had acted on any comments received on the proposed amendment to V.R.C. P. 43(e).

7. Interaction of 14A V.S.A. § 201(b) and V.R.P.P. 60.1. Judge Ertel reported that most probate judges under the Vermont Trust Code don't require a separate proceeding to open a trust so V.R.P.P. 60.1(b) is not applicable. It was agreed that no rule change was necessary.

8. Appointment of executor in estate with no assets. The Committee considered Professor Wroth's September 20 draft of proposed V.R.P.P. 80.4 with two alternative approaches. After discussion, he agreed to prepare a new draft of Alternative II, including the previous draft of a new V.R.P.P. 3(b)(2) and incorporating drafting changes in the provisions of a restored V.R.P.P. 80.4.

9. Status of children as parties under V.R.P.P. 17(a)(1) in light of 14 V.S.A. § 311. After discussion of Professor Wroth's draft of an amendment to V.R.P.P. 17(a)(1), it was agreed that a rule change was unnecessary and that the question of the party status of children could be addressed through revision of the forms. Judge Ertel will follow up.

10. Probate Rules amendment to conform to Act 96 of 2013, "Respectful Language Act." It was agreed to defer this item until statutory revisions required by Act 96 had been completed. At that time, Professor Wroth would find a Vermont Law School student to review the Rules in light of the statutory changes.

11. Notification to Vermont Medicaid of opening of estate. Mr. Newman raised the question whether there should be a uniform procedure for notification of Vermont Medicaid on the opening of an estate. The judges present noted that there was no requirement for such notification and that the

state Tax Department was notified. No action was taken.

12. Date of next meeting. Professor Wroth agreed to circulate dates for a meeting to be held in the first week of December.

There being no other business, the meeting was adjourned at 3:50 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter