

APPROVED

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

**Minutes of Meeting
February 28, 2017**

The meeting was called to order at 1:35 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Jeffrey Kilgore, Chair. Present were Committee members Hon. Ernest T. Balivet, Hon. Joanne Ertel, Kathy Gray, Mark Langan (by telephone), Katherine Mosenthal, David Otterman, Diane Pallmerine, Justin Sheng, and Norman Smith. Also present was Professor L. Kinvin Wroth, Reporter.

The Committee welcomed Judge Kilgore as chair and gave Judge Ertel a round of applause for her years of service as chair and committee member. The Committee also welcomed Justin Sheng, appointed to replace Catherine Richmond, who had completed two terms.

1. Approval of minutes. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of November 15, 2016, as distributed.

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

A. The Committee's recommended amendment of V.R.P.P. 43(e) concerning interpreters was promulgated with parallel amendments of V.R.C.P. 43(f) and V.R.Cr.P. 28 on January 9, effective March 13, 2017.

B. There had been no comments on the Committee's proposed amendments of V.R.P.P. 4(a), 5(e), and 80.2(a) sent out for comment on June 15, with comments due on August 15, 2016. At its November meeting, the Committee had voted to send out for comment a revised version of the proposed amendment to V.R.P.P. 5(e) that would conform that amendment to a proposed parallel amendment of V.R.C.P. 5(h) that had been sent out for comment and would be considered at the March 24 meeting of the Civil Rule Committee. The revised Probate Rules amendment had not yet been sent out for comment. On motion duly made and seconded, it was voted unanimously to recommend the amendment of V.R.P.P. 5(e) for promulgation as revised if the amendment of V.R.C.P. 5(h) were promulgated. No action had been taken on the amendments of V.R.P.P. 4(a) and 80.2(a). Committee members noted that, although Rule 80.2(a) would no longer require a real estate description, the inventory form did require a description. On motion duly made and seconded, it was voted unanimously to recommend V.R.P.P. 4(a) and 80.2(a) for promulgation as circulated.

C. The proposed amendment of V.R.P.P. 47(d) sent out for comment on February 9, with comments due on April 10, 2017, did not specify who would make the recording of a proceeding. The question was to be addressed at a meeting of Justice Dooley, Judge Kilgore, and the Trial Court Administrator. It was agreed to defer action pending that meeting.

D. The proposed amendments of V.R.P.P. 6(a) and other Probate Rules to adopt the "day is a day" rule were sent out for comment on December 7, 2017, with comments due on February 6, 2017. Anne Damone's comments concerning inaccessibility and actions by other clerks were

deferred pending resolution of the question discussed in C above. Committee members noted the apparent inconsistency between V.R.C.P. 77(a) and (d). As to Barry Kade's comments, it was agreed that Eastern time was implicit in the rule and that time stamps were not used in any of the probate courts. It was further agreed that the addition of V.R.P.P. 6(a)(6) defining "business day" as proposed for V.R.C.P. 6(a) should be deferred pending legislative action on H.4, which would make that phrase applicable to certain time limits.

3. Expanded provisions for motions and contested cases. The subcommittee (Ms. Pallermine and Judge Balivet) had met and 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. Judge Ertel reported that the joint subcommittee had not yet been able to develop a proposal on how to protect confidentiality in closed proceedings if transfer were allowed between Family and Probate court, but that it would report at the next meeting. The subcommittee had not addressed the more general question of decoupling the Family and Probate guardianship rules. After discussion, Professor Wroth agreed to prepare draft rules for both courts that would establish the procedure in each court for both minor and involuntary guardianships.

5. Suggested amendment of V.R.P.P. 77(e)(2) concerning confidentiality of index of wills. At the last meeting the question had been deferred pending legislative action on the Pratt probate and decedents' estates reform bill (S.29). Chairman Kilgore reported that he had been advised that there would be a hearing on the bill. Mr. Langan agreed to approach the sponsor to see if the bill could be amended to eliminate the requirement of confidentiality for the index in 14 V.S.A. § 2. Committee members noted that the underlying issue was whether the court should store wills at all, a practice not found in most states.

6. V.R.P.P. 45. Professor Wroth agreed to prepare a clean draft amendment adapting V.R.C.P. 45 as V.R.P.P. 45 for the next meeting.

7. V.R.A.P. 4(f)—"prisoners' mailbox" rule. The Committee considered Justice Dooley's letter of January 10, 2017, noting the promulgation of V.R.A.P. 4(f), the "prisoners' mailbox" rule, and asking whether there was a need for a comparable provision in the Probate Rules. In discussion, it was noted that appeals from the Probate Court, were covered in V.R.C.P. 72, but that if the concept were to be extended to initial filings, questions such as the effect on deadlines for subsequent filings and on other parties would have to be considered. It was agreed to defer further consideration until the Civil Rules Committee had considered a similar request.

8. Date of next meeting. Professor Wroth agreed to circulate possible dates for a meeting in mid-June.

There being no further business, the meeting was adjourned at 4:20 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter