

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

**Minutes of Meeting
January 25, 2024**

The meeting was called to order at 1:40 p.m. on Teams by Hon. Jeffrey Kilgore, Chair. Present virtually were Hon. William Cohen, Therese Corsones, Michael Gawne, Esq., Matthew Getty, Esq., Hon. Frederick Glover, Register Bee Hesselbach, Hon. Kathryn Kennedy, Mark Langan, Esq., Amy Menard, Esq., Justin Sheng, Esq., Norman Smith, Esq. and Hon. Joanne Ertel (retired), Reporter.

1. Minutes of the meeting of October 12, 2023 - The draft minutes of the meeting of June 22, 2023 were approved unanimously.

2. Continuing Matters

a. Judge Kilgore reported on the promulgation of revisions to V.R.P.P. 47(e), V.R.P.P. 40(d), V.R.P.P. 12(a), V.R.P.P. 5.1, V.R.P.P. 43.1, 2020 V.R.E.F. 3(c) and 12; V.R.P.P. 5(c); V.R.P.P. 78.

b. V.R.P.P. 16.1 - The comment period ended on January 8, 2024, and Judge Kilgore received no comments. The committee moved, seconded and voted unanimously to recommend promulgation.

c. V.R.P.P. 7(d) and (e) - The comment period ended on January 8, 2024. Judge Kilgore reported that he had received no comments. The committee moved, seconded and voted unanimously to recommend promulgation.

d. V.R.P.P. 80.2 - Mr. Smith had nothing to report from the probate oversight committee on a proposed amendment to 14 V.S.A. § 114.

e. V.R.P.P. 54 - The proposed amendment generated much discussion on the definition of an appealable order. Members questioned whether an interlocutory appeal is possible in the probate division. It was pointed out that an interlocutory appeal is authorized under 14A V.S.A. § 201(d). It was also noted that under 12 V.S.A. § 2555 any order can be appealed. There was much discussion regarding appeals of licenses to sell. Mr. Getty explained that he had a matter wherein a license to sell was issued and the property sold below market value in “a sweetheart deal.” The beneficiaries who were unhappy with the sale had no recourse. Some questioned the notion that a Report of Sale could be appealed, and it was generally agreed that a Report of Sale is not an order. Requiring a fiduciary to file a Report of Sale is at the discretion of the probate judge. However, V.R.P.P. 5.1 requires that a report be served on all parties if one is filed. The Chair noted that on occasion real estate brokers have asked the court to approve a purchase and sale agreement even though a license had been issued. Mr. Langan noted that there are basically two grounds for an objection to a sale: 1) a beneficiary does not want the property sold because of its unique nature; or 2) a beneficiary is dissatisfied with sale price even though the fiduciary has a fiduciary duty to obtain a satisfactory price. Ms. Menard noted that if her client were dissatisfied with an order, she would file an appeal no matter what the rule stated. She believes that a rule amendment will provide guidance but will not be dispositive. Mr. Sheng noted that the rule amendment enables appeals.

The Reporter will perform additional research on the nature of appealable orders in the probate division and consider further revisions, including contacting Alan Keyes.

f. V.R.P.P. 4 - The committee's discussion centered on the revision to V.R.P.P. 4(d)(2)(C) which allows for complete service if the certified mail is unclaimed but the first-class mail is not returned. Mr. Getty and Ms. Menard thought that could constitute adequate service. Register Hesselbach and Judge Kilgore disagreed. Judge Kilgore noted that mail may just sit in a post office box and not get picked up for a variety of reasons. Mr. Langan believes that commercial service and first-class mail are adequate. The committee opined that a waiver of service such as that found in V.R.C.P. 4(l) should be added to V.R.P.P. 4. Judge Kilgore, Mr. Glover and the Reporter will work on further revisions.

g. V.R.P.A.C.R. 6 - Judge Kilgore discovered that a name change undertaken as part of a gender identity change is already included in the list of exemptions to public access

3. Other business

a. New Member - As Norm Smith has termed out as an attorney member of the committee, the Vermont Supreme Court has asked for suggestions for his replacement. The committee considered a list of attorneys who have expressed an interest, and Judge Kilgore will submit three names as potential replacements.

b. New Chair - It was noted that Judge Kathryn Kennedy has been appointed to replace Judge Kilgore as chair, effective February 1, 2024. Even though he has retired as chair, Judge Kilgore will remain on the committee for another year.

c. Reinstatement of 3-day rule - It was noted that the Civil Rules Committee has decided not to extend this rule. This committee will not take any action.

d. LCJR - Judge Kilgore appeared before the Legislative Committee on Judicial Rules on November 13, 2023 as the committee was considering V.R.P.P. 43.1, V.R.P.P. 78, and V.R.P.P. 47. There were no questions about either Rule 43.1 or Rule 78. With respect to Rule 78, Senator Sears wanted to know what the cost of a transcript was, and Rep. Richardson wondered whether the transcript fee could be waived.

e. Mr. Gawne would like to resurrect the sub-committee considering an amendment to V.R.P.P. 13. He is planning to schedule a meeting with the sub-committee members, Ms. Menard and Mr. Langan and will report back at the next meeting.

f. Mr. Sheng noted that the Office of Vital Records office is moving to Waterbury. You can easily obtain non-certified copies of vital records from them.

4. Next meeting

The next meeting will be scheduled in early April 2024.

The meeting was adjourned at 3:55 pm.

Respectfully submitted,

Joanne M. Ertel,
Reporter