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Rep. Sandy Haas, Vice-Chair
Rep. Thomas Burditt
Rep. Martin LaLonde
Rep. Betty A. Nuovo



Sen. Richard Sears, Chair
Sen. Becca Balint
Sen. Joe Benning
Sen. John Campbell

STATE OF VERMONT

Legislative Committee on Judicial Rules

JUDICIAL RULES

MINUTES

December 17, 2015

The Legislative Committee on Judicial Rules met on Thursday, December 17, 2015, beginning at 10:30 a.m. in Room 11 of the State House in Montpelier, Vermont.

The following members were present:

Sen. Becca Balint
Sen. Joe Benning
Sen. Richard Sears

Rep. Thomas Burditt
Rep. Sandy Haas
Rep. Martin LaLonde
Rep. Betty Nuovo

Staff present:

Erik FitzPatrick
Agatha Kessler

Legislative Counsel
Committee Assistant

The Committee unanimously approved the minutes of the September 24, 2015 meeting.

L. Kinvin Wroth, Reporter for Civil, Criminal, Probate, and Family Procedures, Vermont Supreme Court

V.R.C.P. Form 1 (emergency amendment promulgated October 20, 2015; effective immediately).

The emergency amendment is purely technical and corrects an editorial error in the promulgated rule. The Committee had no comments.

Vermont Public Access to Court Records Rule 3(c)(1) (proposed June 9, 2015; reviewed by LCJR 9/17/15; promulgated October 20, 2015; effective December 1, 2015).

The rule proposes to eliminate driver's license numbers from the list of personal identifiers that must be redacted from court records. Mr. Wroth explained that eliminating the redaction

requirement will significantly assist the workload burdens of court staff, and that doing so should not raise privacy concerns because the numbers are readily available elsewhere. The Committee had no comments on the amendment.

Vermont Rule for Electronic Filing 1(a) (proposed August 6, 2015; reviewed by LCJR 9/17/15; promulgated October 20, 2015; effective December 1, 2015).

The proposal extends the application of electronic filing rules to small claims actions in Addison, Orange, Rutland, and Windsor Units. Representative Nuovo asked whether all small claims would have to be filed electronically, even if the person did not have access to a computer. Mr. Wroth responded that there are exceptions that permit a pro se party to file nonelectronically. Senator Sears asked if the rule would eventually be implemented statewide and Mr. Wroth responded that it will depend on the success of the pilot project. The Committee otherwise had no comments on the amendment.

V.R.C.P. 5 (proposed October 20, 2015; comments due December 21, 2015).

The proposal describes the procedures for filing court documents by electronic means. Representative Nuovo asked whether the rules applied to a person who did not have access to a computer. Mr. Wroth responded that there are exceptions that permit a pro se party to file nonelectronically, but that if an attorney practices law in Vermont then he or she is required to have an email address and be able to file certain documents electronically.

V.R.C.P. 51(b) (proposed November 23, 2015; comments due January 25, 2015).

The proposal attempts to eliminate what may judges and attorneys viewed as confusing and repetitive requirements for filing objections to jury instructions. Under the proposed rule, an objection is preserved for appeal as long as it is made at the charge conference and no separate filing is required. Senator Benning and Representative Haas applauded the proposed rule change and expressed the hope that it would be extended to the criminal rules. Supreme Court staff attorney Emily Wetherall searched the Court's website and said that a criminal rule doing the same thing had been proposed. The Committee otherwise had no comments on the proposal.

V.R.P.P. 47 (proposed June 9, 2015; reviewed by LCJR 9/24/25; promulgated November 23, 2015; effective January 26, 2016).

The proposal is intended to establish uniformity as to which probate proceedings need to be recorded. The Court Administrator is hearing from registers that consistency is needed but does not always occur in less formal probate proceedings. The proposal attempts to adopt best practices by requiring recording as a general practice with some listed exceptions, a departure from the current rule which requires recording only for certain specified proceedings. Representative Nuovo asked if this meant there would be no record of uncontested name changes, and Mr. Wroth responded that those proceedings would be documented even if they were not recorded. The Committee otherwise had no comments on the amendment.

V.R.P.P. 77 (proposed June 9, 2015; reviewed by LCJR 9/24/25; promulgated November 23, 2015; effective January 26, 2016).

The proposal removes the register's authority to perform the duties of a probate judge since the law no longer authorizes the register to do so. The Committee had no comments on the amendment.

V.R.P.P. 3(a), (b)(3); V.R.P.P. 17(a)(1), (b)(1) (proposed October 20, 2015; comments due December 21, 2015).

The proposal makes the notice provision consistent with the less burdensome statutory requirements. The current rule requires notice to all interested parties when the petition is filed, while the proposal requires notice to interested persons only if the surviving spouse and heirs at law do not consent to the allowance of the will. The Committee had no comments on the proposal.

V.R.P.P. 16.1 (proposed October 20, 2015; comments due December 21, 2015).

The proposal, similar to a rule adopted for the Family Division, permits mediation to be ordered in the Probate Division and provides standards and procedures for the process. Senator Sears questioned the sanctions provision, and Mr. Wroth responded that it allows the court discretion if the mistakes were inadvertent. The Committee otherwise had no comments on the proposal.

V.R.P.P. 43(e) (proposed November 23, 2015; comments due January 25, 2016).

The proposal ensures that the rules regarding interpreters conform to Department of Justice requirements for providing court access to persons with limited English proficiency (LEP) or hearing impairments. Other committees are considering similar proposals, and the Court is holding all of them so that they can be promulgated simultaneously. The Committee had no comments on the proposal.

The Committee adjourned at approximately 11:00 a.m.

Respectfully submitted,

Erik FitzPatrick
Legislative Counsel