

VERMONT SUPREME COURT
Advisory Committee on Rules of Probate Procedure

2014 Annual Report
December 9, 2014

The Committee submits this report to the Supreme Court pursuant to Administrative Order No. 24, §4. This report covers the Committee's activities since its 2013 Annual Report submitted on November 11, 2013. Since that date the Committee has met five times, on January 28, April 7, June 12, September 23, and December 8, 2014.

During the year, Katherine Mosenthal was appointed to the Committee to replace Christopher Chapman who had completed the maximum of three terms allowed for a member of the Committee.

The Committee's proposed amendment of V.R.P.P. 17(a)(3) was sent out for comment on December 4, 2013, with comments due on February 3, 2014. The Committee's proposed amendment of V.R.P.P. 80.1 was sent out for comment on October 14, with comments due by December 13, 2013. No comments were received from the bar on either proposal. The Legislative Committee on Judicial Rules at a meeting on December 13, 2013, also had no comments on either. Both amendments were promulgated by the Supreme Court on June 11, effective August 11, 2014, as previously circulated.

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 were received from the bar on the substance of the amendments. The Legislative Committee on Judicial Rules, at a meeting on December 2, 2014, in comments suggested modifications in the proposed rules and Reporter's Notes. A recommended promulgation order for the amendments of V.R.P.P. 3, 4, and 5, with modifications responding to those comments is being transmitted separately to the Court.

The remainder of this report summarizes the Committee's activities under three headings: I. Proposed amendments to be sent out for comment. II. Proposed amendments considered by the Committee and not recommended for circulation or promulgation at this time. III. Matters remaining on the Committee's agenda.

I. PROPOSED AMENDMENTS TO BE SENT OUT FOR COMMENT

The Committee recommends that the following proposed amendments to the Vermont Rules of Probate Procedure be circulated to the bar for comment. A proposed promulgation order will be transmitted to the Court separately from this report.

1. An amendment adding V.R.P.P. 3(b)(2) to provide a procedure for dealing with an estate with no assets.

2. An amendment to V.R.P.P. 7 to provide a clear and uniform practice for making and hearing motions in all probate courts.
3. An amendment adding V.R.P.P. 80.4(a) to provide for delivery of a will to the probate court or the executor by its custodian upon learning of the death of the testator and V.R.P.P. 80.4(b) to provide that, when the Probate Division has custody of a will for safekeeping, the register may reveal its existence upon inquiry and presentation of a death certificate.

II. PROPOSED AMENDMENTS NOT RECOMMENDED FOR CIRCULATION OR PROMULGATION AT THIS TIME

1. It was proposed that verified petitions be required by V.R.P.P. 3 and 11. The Committee decided to take no action on this proposal, concluding that specific provisions for verification in particular rules are sufficient.
2. It was proposed that V.R.P.P. 17(a)(1) should be amended to address the status of children as parties in light of 14 V.S.A. § 311. The Committee decided to take no action on this proposal, concluding that the question of the party status of children could be addressed through revision of the forms.
3. A question was raised concerning the interaction of 14A V.S.A. § 201(b) and V.R.P.P. 60.1. The Committee decided to take no action on this proposal, concluding that most probate judges acting under the Vermont Trust Code do not require a separate proceeding to open a trust, so V.R.P.P. 60.1(b) is not applicable.
4. It was proposed that VRFP 67 should be substantially amended to strengthen provisions for required bonding at the commencement of a probate proceeding and for other purposes. The Committee's proposed amendments of V.R.P.P. 67 were sent out for comment with comments due by December 13, 2013. A significant number of comments on the proposal were received from members of the bench bar, mostly negative. The Committee reviewed those comments and discussed the proposal at four meetings and decided to take no further action on the proposal for the time being.
5. A question was raised whether Vermont Medicaid should be notified of the opening of an estate. The Committee decided to take no action on this question, concluding that there was no requirement for such notification and that the state Tax Department was routinely notified of the opening.
6. A question was raised whether Probate Rules amendments were necessary to conform to Act 96 of 2013, the "Respectful Language Act." The Committee decided to take no action on this matter until statutory revisions required by Act 96 had been completed.

III. MATTERS REMAINING ON THE COMMITTEE'S AGENDA

The Committee will continue to consider the following matters:

1. Adoption of rules to simplify appeals from the Probate Division in contested cases.

2. Effect on probate jurisdiction under V.R.F.P. 6, 6.1, of recent amendments to rules and statutes concerning minor guardianships, jointly with the Advisory Committee on rules for Family Proceedings..

3. Proposed amendment of V.R.P.P. 43(e)—Appointment of Interpreters—to conform to current policy.

In closing, the Committee and the Reporter wish to thank all the members of the Vermont bench and bar, the members of the Legislative Committee on Judicial Rules, and others who have participated in the rule-making process through their thoughtful suggestions and comments. In particular, thanks are due to Christopher Chapman for his long and effective service on the Committee; Hon. John A. Dooley of the Supreme Court for his guidance as judicial liaison; State Court Administrator Patricia Gabel; Supreme Court staff attorney Emily Wetherell; and Larry Abbott and Deb Laferriere of the Court staff for their continued and essential administrative support.

Respectfully submitted,

The Honorable Joanne M. Ertel, Chair

For the Committee:

Molly Bucci

Judith Joly

Mark Langan

Hon. James Mahoney

Hon. John Monette

Katherine Mosenthal

John Newman

David Otterman

Dianne Palmerine

Catherine Richmond

Hon. John A. Dooley, Supreme Court Liaison

L. Kinvin Wroth, Reporter