

**VERMONT SUPREME COURT**  
**Advisory Committee on Rules of Probate Procedure**

2010 Annual Report  
June 14, 2011

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 2009 Annual Report dated July 22, 2010. Since that date the Committee has met twice, on October 20, 2010, and March 21, 2011. In September 2010, Catherine Richmond, Esquire, was appointed to replace William E. Drislane, Esquire, who had resigned.

Emergency amendments to V.R.P.P. Forms 72 and 80 to implement recent amendments of 14 V.S.A., ch. 111, enacted by Act 186 of 2007 (Adj. Sess.), which took effect on July 1, 2008, promulgated on December 17, 2008, effective January 1, 2009, were recommended to the Court in Professor Wroth's letter of July 16, and promulgated as permanent amendments by the Supreme Court, with a conforming technical amendment to V.R.P.P. Form 74, on August 17, effective October 18, 2010. *See* <http://www.vermontjudiciary.org/LC/Statutes and Rules/PROMULGATEDV.R.P.P.77 d 80.8 Forms72 74 80 AO18.pdf>.

An emergency amendment of V.R.P.P. 77(d) allowing the Supreme Court to provide for methods of notice by the clerk that would reduce the cost of service, promulgated on December 17, 2008, effective January 1, 2009, was recommended to the Court in Professor Wroth's letter of July 16, and promulgated as a permanent amendment on August 17, effective October 18, 2010. *See* <http://www.vermontjudiciary.org/LC/Statutes and Rules/PROMULGATEDV.R.P.P.77 d 80.8 Forms72 74 80 AO18.pdf>.

An emergency amendment to AO No. 18 to establish a mechanism for the Administrative Judge to designate which probate judge will be assigned to perform the duties of an incapacitated probate judge, promulgated by the Court on January 13, 2009, effective on that date, was recommended to the Court in Professor Wroth's letter of July 16, and promulgated as a permanent amendment on August 17, effective October 18, 2010. *See* <http://www.vermontjudiciary.org/LC/Statutes and Rules/PROMULGATEDV.R.P.P.77 d 80.8 Forms72 74 80 AO18.pdf>.

V.R.P.P. 80.8, intended to accommodate a 2001 amendment of 4 V.S.A. § 311 giving the probate courts jurisdiction over accountings of attorneys in fact when there is no guardian and there is reason to believe that the principal is incompetent, was recommended to the Court in Professor Wroth's letter of July 16, and promulgated on August 17, effective October 18, 2010. *See* <http://www.vermontjudiciary.org/LC/Statutes and Rules/PROMULGATEDV.R.P.P.77 d 80.8 Forms72 74 80 AO18.pdf>

On January 31, 2011, effective on that date, the Supreme Court promulgated an interim emergency amendment to Application Section B of the Vermont Code of Judicial

Conduct (Administrative order No. 10), clarifying the application of the section to probate judges in light of the Court Restructuring Act, Act 154 of 2009 (Adj. Sess.). See [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDEmergencyAmendmentA%20O10B\(2\)\(3\).pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDEmergencyAmendmentA%20O10B(2)(3).pdf). The Probate Rules Committee had no comments on this amendment.

On February 24, 2011, effective on that date, the Supreme Court promulgated emergency amendments to the Vermont Rules of Probate Procedure to implement the Court Restructuring Act, Act 154 of 2009, §7a (Adj. Sess.), which enacted 4 V.S.A. § 30(a)(1)(E), adding the Probate Division to the single Superior Court of statewide jurisdiction, effective February 1, 2011. See [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDEmergencyVRPP-restructuringAmendmentsFeb24\\_2011.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDEmergencyVRPP-restructuringAmendmentsFeb24_2011.pdf). The Probate Rules Committee has approved these amendments and has received no comments on them.

The following amendments were proposed in the Committee's 2009 Annual Report dated July 22, 2010, and circulated for comment on August 18, 2010, with comments to be submitted by October 18, 2010. See [http://www.vermontjudiciary.org/LC/Statutes and Rules/PROPOSEDVRPPandforms\\_final.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRPPandforms_final.pdf):

(1) Amendments of V.R.P.P. 3, 17, 60.1, 66, and 67, and Forms 110-112 (including new Forms 110A and 110B) to conform to the Vermont Trust Code, 14A V.S.A. §§ 101-1204, enacted by Act 20 of 2009 §1.

(2) Amendments of V.R.P.P. 13 and Forms 19, 46, 47, and 48 to conform the rule and forms to 14 V.S.A. ch. 42, enacted by Act 55 of 2009, §5, to replace 14 V.S.A., chs. 41-45.

(3) Amendments of V.R.P.P. 80.6(a) and Form 122 to implement the requirement of 15 V.S.A. § 817, enacted by Act 58 of 2009, § 12, that the probate court request information from the department of public safety as to whether a petitioner for name change is listed on the sex offender registry and allow appearance by the department if the petitioner is listed.

(4) Amendments of V.R.P.P. Forms 2 and 5 to incorporate references to forms to be attached to them.

(5) Amendments of V.R.P.P. Form 3 to eliminate language concerning authentication of foreign administrator.

(6) Amendments of V.R.P.P. Forms 57, 57A, to restore language to the Forms for clarity; and a new Form 115 to implement 2004 and 2006 legislation that added 14 V.S.A. § 2314(c) and (e) providing for removal of a trustee on petition of a co-trustee or a majority of the beneficiaries, now repealed and incorporated in 14A V.S.A. § 706.

The Committee has recommended promulgation of these proposed amendments to the Court by separate letter with a few changes in response to comments received and the caveat that the proposed amendments have not yet been reviewed by the Legislative Committee on Judicial Rules.

The remainder of this report summarizes the Committee's activities under two headings: I. Proposed amendments recommended for circulation to the bar for comment. II. A proposed amendment 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 RECOMMENDED FOR CIRCULATION TO THE BAR.**

The Committee recommends circulation of the following proposed amendments to the bar for comment:

1. Amendments to V.R.P.P. 80.3 intended to conform the Rule to 14 V.S.A. §§ 1901-1903, covering small estates, as amended by Act No. 75 of 2009 (Adj. Sess.).

2. Amendments to V.R.P.P. 5(g) and 84 and an amendment abrogating the Appendix of Forms to the Vermont Rules of Probate Procedure intended to facilitate adoption of consolidated and revised forms under the authority of the Chief Administrative Judge.

## **II. PROPOSED AMENDMENT NOT RECOMMENDED**

1. It was proposed that a rule be adopted to provide a procedure for complex cases similar to V.R.C.P. 16.1, because the forthcoming development of electronic filing rules for the Probate Division will provide a more appropriate opportunity to consider the issues.

2. It was proposed to amend Form 7A consistent with the proposed amendment of V.R.P.P. 80.3 conforming the small estates procedure to recent statutory changes. The Committee agreed that revision of the form should be referred to the Probate Forms Revision project.

## **III. MATTERS ON THE COMMITTEE'S AGENDA**

The following matters remain on the Committee's agenda:

1. Interlocutory Appeals under the Vermont Trust Code, 14A V.S.A. § 201(d).
2. Review and revision of the Rules of Probate Procedure necessitated by the inclusion of the Probate Division in the electronic case filing and case management system currently under development.
3. Continuing review of the procedural ramifications of the Vermont Trust Code, 14A V.S.A. §§ 101-1204, and the work of the Vermont Bar Association Probate and Trust Committee's Probate Reform Project.

4. Amendments of V.R.P.P. 17(a) and Form 111 to conform to the interested persons provisions of the Vermont Trust Code.
5. Amendment of V.R.P.P. 79.1 to allow limited appearances.
6. Amendment of Rule 67 to clarify sanctions for defaulting fiduciary.
7. Development of rules for handling original wills submitted to the register for safe-keeping.

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 Hon. Eleanor Smith and William E. Drislane, Esquire, for their service as members; Hon. John A. Dooley of the Supreme Court for his guidance as judicial liaison; and Court Administrator Robert Greemore, 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

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