

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

2012 Annual Report  
January 25, 2013

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 2011 Annual Report submitted on November 15, 2011. Since that date the Committee has met four times, on January 20, April 27, July 13, and November 9, 2012. In February 2012, Molly Bucci and Dianne Pallmerine, Esquires, were appointed to the Committee to succeed Jonathan Bump and Joseph Cook, Esquires, whose terms had expired.

By order of November 21, 2011, effective January 23, 2012, the Supreme Court promulgated amendments to V.R.P.P. 17(a)(2) for consistency with the Vermont Trust Code, 14 V.S.A. §§ 101-1204, and other recent legislation. See <http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRPP17.pdf>. An amendment conforming Probate Form 111 to the amended rule was sent to the Probate Division Oversight Committee on December 13, 2011, for inclusion on the Judiciary website.

By order of December 21, 2011, effective February 20, 2012, the Supreme Court, on the recommendation of the Civil Rules Committee, promulgated an amendment to Section 5A(3) of the Vermont Code of Judicial Conduct (Administrative order No. 10) for consistency with 4 V.S.A. § 278(a) concerning simultaneous office-holding of assistant and probate judges. The order also made permanent an emergency amendment to Application Section B of the Code of Judicial Conduct 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/PROMULGATEDVRJC anon5\\_SectionBApplicationofCodeofJudicialConductandMakingPermanent.EmergencySectionBAO10.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRJC anon5_SectionBApplicationofCodeofJudicialConductandMakingPermanent.EmergencySectionBAO10.pdf). The Probate Rules Committee had no comment on these amendments.

By order of December 21, 2011, effective February 20, 2012, the Supreme Court made permanent the emergency amendments to V.R.P.P. 5(g) and 84 and an amendment abrogating the Appendix of Forms to the Probate Rules of intended to facilitate adoption of consolidated and revised forms by the Chief Administrative Judge. See [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRPP5%28g%29\\_84\\_abrogatingforms\\_emergencymadepermanent.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRPP5%28g%29_84_abrogatingforms_emergencymadepermanent.pdf). At its July 13 meeting, the Committee reviewed and commented on draft estate forms prepared by the Probate Oversight Committee that included amended forms previously recommended by the Committee. Those forms are now posted on the Judiciary website. See <http://www.vermontjudiciary.org/MasterPages/Court-Forms-Probate.aspx>.

By order of July 10, 2012, the Supreme Court promulgated amendments to V.R.P.P. 4(e) and 17(a), effective on that date, to conform them to recent legislation, and

to V.R.P.P. 79.1, effective September 10, 2012, to permit a lawyer to enter a limited appearance in the Probate Division for a self-represented client. See [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRPP4%28e%29\\_17%28a%29%20and%2079.1.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRPP4%28e%29_17%28a%29%20and%2079.1.pdf).

By order of July 10, 2012, the Supreme Court promulgated amendments to V.R.C.P. 72, recommended by the Civil Rules Committee at the request of the Probate Rules Committee, to implement a provision of the Vermont Trust Code, 14 V.S.A. §201(d), for interlocutory appeals by permission from the probate division to the civil division of the superior court. See <http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRC P28and72.pdf>.

By order of August 28, 2012, effective October 29, 2012, the Supreme Court promulgated amendments to V.R.P.P. 80.3 intended to conform the rule to 14 V.S.A. §§ 1901-1903, covering small estates, and to current practice. See <http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRPP80.3.pdf>.

The Committee's proposed order amending V.R.P.P. 64(a) to conform that rule to the recent amendment of V.R.P.P. 4(e), amending V.R.P.P. 68 to make a technical correction, and adding V.R.P.P. 72 to provide a procedure for civil contempt proceedings in the probate division was sent out for comment on October 12, 2012, with comments due on November 13, 2012. See [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRPP64\\_68and72.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRPP64_68and72.pdf). No comments were received. By separate letter to the Supreme Court, the Committee will recommend promulgation of the amendments and rule as circulated.

The remainder of this report summarizes matters on which the committee decided to take no action and matters remaining on the Committee's agenda.

### **I. Matters on Which No Action Is to Be Taken.**

1. The Committee considered issues concerning notice to a surviving spouse under V.R.P.P. 13(a). No action was taken in view of the absence of evidence that lack of notice was a significant problem.

2. A question was raised as to the need for rules for handling original wills submitted to the register for safe-keeping. The item was withdrawn from the agenda because the question was being considered by the Probate Oversight Committee, and the issues may become the subject of legislative consideration.

3. The Committee considered whether a rule to make available and clarify the use of ADR in probate proceedings should be considered. It was decided to take no action pending outcome of deliberations by the Family Rules Committee on a similar proposal.

### **II. Matters Remaining on the Committee's Agenda.**

The Committee will continue to consider the following matters:

1. Review and revision of the Rules of Probate Procedure as necessitated by the inclusion of the Probate Division in the electronic case filing and case management systems currently under development.
2. Consideration of rules to adapt or incorporate in the Probate Rules provisions of the Rules of Civil Procedure for motions and other matters in contested cases.
3. 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.
4. Rules to implement legislative efforts to develop new remedies for thefts from estates.
5. Clarification of procedure for opening an estate.
6. Amendment of V.R.P.P. 80.1—Notice of Appointment of Guardian.
7. Proposed amendment of V.R.P.P. 43(e)—Appointment of Interpreters—to conform to current policy.
8. Amendment to clarify V.R.P.P. 17(a)(3) concerning interested persons in guardianship proceedings.

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 Jonathan Bump and Joseph Cook, Esquires, for their long service on the Committee; 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  
For the Committee:

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Hon. James Mahoney  
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Hon. John A. Dooley, Supreme Court Liaison  
L. Kinvin Wroth, Reporter