

VERMONT SUPREME COURT
Advisory Committee on Rules of Probate Procedure

2009 Annual Report
July 22, 2010

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 2008 Annual Report dated October 9, 2008. Since that date the Committee has met four times, on October 24, 2008; June 8, and September 15, 2009, and March 30, and April 28, 2010. In March 2010, Hon. Joanne M. Ertel, was designated Chair of the Committee, succeeding Hon. Edward Goutas, who did not seek reappointment. Hon. Eleanor W. Smith was appointed to the Committee to replace Judge Goutas, and Judith Joly was appointed to replace Debbie Briggs.

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, were transmitted to the Supreme Court on December 9, 2008, and promulgated on December 17, 2008, effective January 1, 2009, with a direction that the Advisory Committee report on any comments received by September 30, 2009. *See* <http://www.vermontjudiciary.org/rules/Promulgated/vrppforms72and80.PROMULGATED.pdf>. These amendments were reviewed by the Legislative Committee on Judicial Rules on January 14, 2009, without comment. One comment was received from a member of the bench. These amendments, and a conforming technical amendment to V.R.P.P. Form 74, have been recommended to the Court for permanent promulgation with changes reflecting that comment.

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, was promulgated by the Court on December 17, 2008, effective January 1, 2009, with a direction that the Advisory Committee report on any comments received by September 30, 2009. *See* [http://www.vermontjudiciary.org/rules/Promulgated/vrcp77\(d\)_vrcrp56\(d\)_vrpp77\(d\)_vr45\(c\)noticebyclerk.PROMULGATED.pdf](http://www.vermontjudiciary.org/rules/Promulgated/vrcp77(d)_vrcrp56(d)_vrpp77(d)_vr45(c)noticebyclerk.PROMULGATED.pdf). This amendment was reviewed by the Legislative Committee on Judicial Rules on January 14, 2009, without comment. No other comments were received. This amendment has been recommended to the Court for permanent promulgation

An emergency amendment to Administrative Order 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 was promulgated by the Court on January 13, 2009, effective on that date, with a direction that the Advisory Committee report on any comments received by September 30, 2009. *See* http://www.vermontjudiciary.org/rules/Promulgated/PROMULGATED_AmendmentAO18.final.pdf. No comments have been received to date. This amendment has been recommended to the Court for permanent promulgation

Proposed new 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 circulated to the bar for comment on March 19, with comments due by May 16, 2008. See <http://www.vermontjudiciary.org/rules/proposed/proposedVRPP80.8.pdf>. No comments were received from the bar. At a meeting on December 8, 2008, the Legislative Committee on Judicial Rules raised questions concerning possible conflicts with guardianship law, whether the rule should require the agent to act after the principal becomes incapacitated, and whether the rule would require the accounting to proceed in a timely fashion. The Advisory Committee concluded that there was no conflict with recent changes in guardianship law and that requiring the agent to act would be inconsistent with the purpose of the statute and rule to allow the agent to protect himself or herself against claims concerning management of the principal's property when the principal was unable to ask for an accounting. Involuntary guardianship is the remedy when the agent fails to act. The rule has been recommended to the Court for promulgation as circulated, with the addition of language incorporating other provisions of the Rules to address the concerns for timeliness.

The Committee continues to monitor the work of the Vermont Bar Association Probate and Trust Committee's Probate Reform Project and the Supreme Court's Special Advisory Committee on Rules Governing an Electronic Case File and Electronic filing.

The remainder of this report summarizes the Committee's activities under three 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 the circulation to the bar for comment of the following proposed amendments (a proposed promulgation order is appended to this report):

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. Amendment of V.R.P.P. Forms 2 and 5 to incorporate references to forms to be attached to them.

5. Amendment of V.R.P.P. Form 3 to eliminate language concerning authentication of foreign administrator.

6. Amendment of V.R.P.P. Forms 57, 57A, to restore language to the Forms for clarity.

7. Addition of 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.

II. PROPOSED AMENDMENT NOT RECOMMENDED

It was proposed that a rule be adopted to cover petitions for review of advance directives pursuant to 18 V.S.A. §9718. The Committee has decided not to pursue such a rule at this time in view of the infrequent use of such a procedure.

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. Overall review of the present Appendix of Forms for simplification and clarification.
3. Review and revision of the Rules of Probate Procedure necessitated by the forthcoming designation of the probate courts as the Probate Division of the Superior Court and inclusion of the Probate Division in the electronic case filing and case management system currently under development.

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. Edward Goutas for his effective service as chair of the Committee and Debbie Briggs for her long service as a member; Hon. John A. Dooley of the Supreme Court for his guidance as judicial liaison;

and to former Court Administrator Lee Suskin, 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:

Jonathan Bump
Christopher Chapman
Joseph F. Cook
William E. Drislane
Judith Joly
Hon. James Mahoney
John Newman
David Otterman
Robert Pratt
Hon. Eleanor W. Smith

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