

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

2011 Annual Report  
November 15, 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 2010 Annual Report submitted on June 14, 2011. Since that date the Committee has met twice, on July 12, and October 12, 2011. In March 2011, Hon. John Monette was appointed to replace Hon. Eleanor Smith, Esquire, who had resigned.

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. At a meeting on June 17, 2011, the Civil Rules Committee agreed to ask the Court for guidance as to whether it wished the amendment to be made permanent. The Probate Rules Committee has no comments on this request.

On the recommendation of the Committee in letter of June 14, 2011, the Supreme Court on June 21, effective August 22, 2011, promulgated the following rules amendments that had been proposed in the Committee's 2009 Annual Report dated July 22, 2010, and circulated for comment on August 18, 2010: (1) Amendments of V.R.P.P. 3, 60.1, 66, and 67 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 to conform the rule 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) 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. See [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRPP3\\_13\\_60.1\\_66\\_67\\_80.6.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRPP3_13_60.1_66_67_80.6.pdf).

In its 2010 annual report, dated June 14, 2011, the Committee recommended that 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.), and 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 be circulated to the bar for comment. The proposed amendments to V.R.P.P. 80.3 were circulated for comment on June 27, 2011, with comments due on August 26, 2011. See <http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDAmendmentstoVRPP80.3.pdf>. Comments received remain on the Committee's agenda for review.

The proposed amendments to V.R.P.P. 5(g) and 84 and the amendment abrogating the Appendix of Forms were promulgated by the Supreme Court as emergency amendments on June 21, 2011, effective July 15, 2011, with comments due on August 26, 2011, and a report from the Committee on any comments received to be submitted by September 23, 2011. *See*

[http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDAmendmentstoVRPP5\(g\)\\_84\\_abrogatingforms.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDAmendmentstoVRPP5(g)_84_abrogatingforms.pdf). Comments received are being transmitted to the Court by separate letter.

At the request of the Committee, the following amended or new probate forms that had been proposed in the Committee's 2009 Annual Report dated July 22, 2010, circulated for comment on August 18, 2010, and recommended by the Committee in letter of June 14, 2011, for promulgation were added by the Chief Administrative Judge to the Judiciary website, which will contain all the forms in the former Appendix of Forms until further revision: (1) Amendments to Forms 110 and 112 and 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 to Forms 46, 47, and 48 to conform them 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 to 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) 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. *See* <http://www.vermontjudiciary.org/MasterPages/Court-Forms-Probate-All.aspx>.

Pursuant to the emergency amendments to V.R.P.P. 5(g) and 84 and the abrogation of the Appendix of Forms, the Probate Division Oversight Committee is developing revisions to all forms presently on the Judiciary website. The Committee's June 14 recommendation of amendments to Forms 2, 3, 5, 19, 57, and 57A are still under review by the Oversight Committee. The Chief Administrative Judge has agreed that all further revisions or additions to the forms developed by the Oversight Committee for the website will be sent to the Rules Committee for review and that the Rules Committee may recommend new forms or forms amendments to the Oversight Committee at any time.

In its letter of June 14, 2011, cited above, recommending to the Court the promulgation of rules and forms amendments, the Committee had withdrawn its proposed amendments to V.R.P.P. 17 and Form 111 in order to give further consideration to comments that had been made on the proposals. After consideration of the comments, the Committee by separate letters has recommended to the Court promulgation of a revised amendment of V.R.P.P. 17 and will recommend to the Probate Division Oversight Committee a conforming amendment of Form 111 if the amendment or V.R.P.P. 17 is promulgated.

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. 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 VR.P.P. 79.1 to permit a lawyer acting pursuant to a limited representation agreement with a *pro se* client to enter a limited appearance in the Probate Division in certain specific situations. The provision is adapted from V.R.C.P. 79.1(h) and V.R.F.P. 15. A proposed promulgation order is submitted with this report.

2. Amendment adding V.R.C.P. 72(f) to permit interlocutory appeals to the Civil Division of the Superior Court from a probate court by permission as provided in 14A V.S.A. § 201(d). A proposed promulgation order will be conveyed by separate letter to the Civil Rules Committee with the recommendation that it be circulated to the bar for comment.

## **II. MATTERS REMAINING ON THE COMMITTEE'S AGENDA**

The following matters remain on the Committee's agenda:

1. 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.

2. Addition of a new V.R.P.P. 72 to provide a procedure for civil contempt proceedings in the Probate Division.

3. Review of comments on proposed 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.) and amendments to Form 7A for consistency with the proposed rule.

4. Consideration of rules for handling original wills submitted to the register for safe-keeping.

5. Consideration of rules to adapt or incorporate in the Probate Rules provisions of the Rules of Civil Procedure for motions and other matters.

6. Consideration of any report of the legislative study committee on notice in probate proceedings established under Act 56 of 2011, § 13.

7. Consideration of an ADR Rule for Probate Proceedings.
8. Consideration of issues concerning notice to a surviving spouse under V.R.P.P. 13(a).
9. Consideration of potential probate court issues concerning the proposed Uniform Principal and Income Act now being considered by the House Judiciary Committee.

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 for her service as a member; 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:

Jonathan Bump  
Christopher Chapman  
Joseph F. Cook  
Judith Joly  
Hon. James Mahoney  
Hon. John Monette  
John Newman  
David Otterman  
Robert Pratt  
Catherine Richmond

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