

VERMONT SUPREME COURT
Advisory Committee on Rules of Probate Procedure

2013 Annual Report
November 11, 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 2012 Annual Report submitted on January 25, 2013. Since that date the Committee has met four times, on April 5, June 19, July 17, and October 10, 2013.

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 by the Court Administrator on October 12, 2012, with comments due on November 13, 2012. No comments were received from the bar. The Legislative Committee on Judicial Rules reviewed the proposed amendments on November 13, 2012, and had no comments. On March 12, 2013, effective May 13, 2013, on the recommendation of the Advisory Committee, the Court promulgated the amended and new rules as circulated, with a slight change in the Reporter's Notes to V.R.P.P. 72. See

https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRP64_68_72.pdf.

The Committee's proposed amendments to V.R.P.P. 67 and 80.1 were sent out for comment in separate proposed orders by the Court Administrator on October 14, with comments due by December 13, 2013. See

<https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRPP67.pdf>;

<https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRPP80.1.pdf>. The Committee will review and report on comments received after the closing date of the comment period.

The remainder of this report summarizes the Committee's activities under three headings: I. A proposed amendment recommended for circulation to the bar 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 AMENDMENT RECOMMENDED FOR CIRCULATION TO THE BAR

The Committee recommends that a proposed amendment to Rule 17(a)(3) of the Vermont Rules of Probate Procedure intended to clarify the definition of who should be served at the outset of a guardianship proceeding be circulated to the bar for comment. A proposed promulgation order is being transmitted to the Court separately from this report.

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

1. The Committee removed consideration of the application of electronic filing in the Probate Division from the agenda, because the roll-out of electronic filing in the Civil Division, and hence in the Probate Division, continues to be delayed.

2. The Committee decided not to propose a rule addressing inconsistency of application of 14 V.S.A § 201 and V.R.P.P. 60.1 in various courts, because the inconsistency is a matter of inconsistent supervision that can be better addressed through training rather than by an amendment. A memorandum to that effect will be sent to the judges.

3. It was proposed that language of V.R.C.P. 17 concerning real party in interest be incorporated in V.R.P.P. 18. The Committee decided not to propose such an amendment, because adoption of the Civil Rule provisions would lead to an undesirable increase in the number of potential parties in probate proceedings.

III. MATTERS REMAINING ON THE COMMITTEE'S AGENDA

The Committee will continue to consider the following matters:

1. 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.

2. Effect on probate jurisdiction under V.R.F.P. 6, 6.1, of a recommended amendment of V.R.F.P. 7 and addition of V.R.F.P. 7.1, if adopted.

3. Clarification of procedure for opening an estate.

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

5. Appointment of executor in estate with no assets.

6. Consideration of an amendment to V.R.P.P. 66 that would strengthen the process and requirements for inventory and accounting by a court-appointed fiduciary.

7. A proposal to amend V.R.P.P. 3 and 11 to require that all petitions be verified.

8. A proposal to require that a death certificate accompany a petition to open an estate and that a birth certificate accompany a petition for a minor guardianship.

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. John A. Dooley of the Supreme Court for his guidance as judicial liaison; and Court Administrator Robert Greemore; Patricia Gabel, his successor in that office; and Larry Abbott and Debra Laferriere of the Court staff for their continued and essential administrative support.

Respectfully submitted,

The Honorable Joanne M. Ertel, Chair

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