

VERMONT SUPREME COURT
Advisory Committee on Rules of Probate Procedure

2015 Annual Report
May 27, 2016

The Committee submits this report to the Supreme Court pursuant to Administrative Order No. 24, §4. This report covers the Committee's activities in 2015. The Committee met four times, on February 19, April 30, August 19, and November 5, 2015.

During the year, Hon. Ernest T. Balivet and Norman C. Smith were appointed to the Committee to replace Hon. James Mahoney and John Newman.

The Committee's proposed amendments to V.R.P.P. 3(b), concerning estates without assets, and V.R.P.P. 7, concerning motion practice, and proposed new V.R.P.P. 80.4, concerning delivery and safe-keeping of wills, were sent out for comment on December 15, 2014, with comments due on February 17, 2015. After consideration of a comment from a member of the bar, the Committee agreed to recommend that the Supreme Court promulgate the proposed amendments to V.R.P.P. 3(b) and new V.R.P.P. 80.4 as circulated and the proposed amendments to VRPP 7 in simplified form more reflective of probate practice. The amended and new rules were promulgated on July 1, effective September 1, 2015. At a meeting on September 24, 2015, the Legislative Committee on Judicial Rules had no substantive comment on the promulgated rules.

The Committee's proposed amendments to V.R.P.P. 47 concerning recording of proceedings and V.R.P.P. 77 to conform to statutory amendment concerning registrar's duties were sent out for comment on June 9, with comments due on August 7, 2015. No comments had been received. At a meeting on September 24, 2015, the Legislative Committee on Judicial Rules had no substantive comment on the proposed amendments. The proposed amendments were recommended to the Court for promulgation on October 30, 2015.

The Committee's proposed amendments to V.R.P.P. 3(b) and 17(a), modifying the requirement of notice of a petition to all interested persons, and proposed new V.R.P.P. 16.1, providing for mediation in the Probate Division, were sent out for comment on October 22, with comments due by December 21, 2015.

The Committee's proposed amendments to V.R.P.P. 43(e) to conform it to the recommended amendments to V.R.C.P. 43(f), concerning appointment of interpreters, were sent to the Supreme Court on November 11, 2015, with a request that the amendments be sent out for comment.

The remainder of this report summarizes the Committee's additional activities under two headings: I. Proposed amendments considered by the Committee and not

recommended for circulation or promulgation at this time, and II. Matters remaining on the Committee's agenda.

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

1. Probate Rules amendment to conform to Act 96 of 2013, “Respectful Language Act.” No statutory revisions were made pursuant to Act 96 in the current year. Accordingly, this item was removed from the agenda pending further legislative action. The Committee will continue to observe respectful guidelines in considering Probate Rules amendments.

2. Proposed amendments to V.R.C.P. 67 concerning fiduciary bonds. Further consideration of proposed amendments to V.R.P.P. 67 to strengthen provisions for required bonding at the commencement of a probate proceeding and for other purposes concerning fiduciary bonds was removed from the agenda.

II. MATTERS REMAINING ON THE COMMITTEE’S AGENDA

The following matters remain on the Committee’s agenda:

1. Adoption of rules to simplify appeals from the Probate Division in contested cases.

2. Effect on probate jurisdiction under V.R.F.P. 6, 6.1, of recent amendments to rules and statutes concerning minor guardianships, jointly with the Advisory Committee on rules for Family Proceedings.

3. Effect of proposed and promulgated Civil Rules amendments on Probate Rules: proposed “day is a day” amendments to V.R.C.P. 6 and other Civil Rules; promulgated amendments to V.R.C.P. 4(b), (l) and 5(d), (h).

4. Suggested amendment of V.R.P.P. 80.2 regarding need to file property description in opening ancillary estate.

5. Proposed standards for video appearance and related issues, to be considered by a special joint committee representing this and other Supreme Court rules committees.

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. James Mahoney and John Newman for their long and effective service on the Committee; Hon. John A. Dooley of the Supreme Court for his guidance as judicial liaison; Court Administrator Patricia Gabel; Supreme Court staff attorney Emily Wetherell; 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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