

SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR

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TO: Members of the Vermont Bar

FROM: Patricia Gabel, Esq., State Court Administrator

RE: Promulgated, Proposed Rules and Miscellaneous Information

DATE: March 10, 2020

For your information, please find the following information:

- [Order Promulgating Administrative Order No. 48](#)
- [Proposed Order amending V.R.P.P. 77\(e\)](#)
- [Proposed Order amending V.R.P.P. 66 and 80.3 and Adding V.R.P.P. 74](#)
- [Proposed Order adding V.R.P.P. 80.9, 80.10, and 80.11](#)
- [Proposed Order amending V.R.C.P. 3.1 and V.R.A.P. 24](#)
- [Proposed Order amending V.R.P.P. 3.1](#)
- *Updated Court Forms*
- *Obligations Under A.O. 41*
- *eCabinet Registration*

I. PROMULGATED RULE AMENDMENTS

[Order Promulgating Administrative Order No. 48](#)

This Order was promulgated on March 9, 2020; effective immediately.

Consistent with the Court's administrative responsibilities under the Vermont Constitution, Administrative Order 48 effectuates the Court's ongoing emergency planning. When there is an emergency, the judiciary may be required to implement measures to ensure that litigants, staff, and judiciary personnel can access and participate in judicial proceedings. This may include modifying or suspending existing rules regarding time deadlines or the use of video, audio, or other technologies.

This order was sent out for comment on February 11, 2020. The comment period remains open. Comments on this order should be sent by **April 13, 2020**, to Emily Wetherell, Deputy Clerk of the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
emily.wetherell@vermont.gov

II. PROPOSED RULE AMENDMENTS

(NOTE: THE FOLLOWING AMENDMENTS HAVE BEEN PROPOSED AND HAVE NOT BEEN APPROVED BY THE SUPREME COURT.)

a. [Proposed Order amending V.R.P.P. 77\(e\)](#)

The proposed amendment to Rule 77(e) deletes paragraphs (1)-(5) and instead incorporates the amended Vermont Rules for Public Access to Court Records, promulgated effective July 1, 2019, as the source of exceptions to the general rule of public access to probate division records. The Public Access Rules support the implementation of the electronic case management system in all dockets in all courts. The proposed amendment is intended to eliminate the possibility of inconsistencies that might otherwise arise between different sets of rules in the context of electronic filing.

Comments on this proposed amendment should be sent by **May 11, 2020**, to Hon. Jeffrey Kilgore, Chair of the Advisory Committee on the Rules of Probate Procedure, at the following address:

Hon. Jeffrey Kilgore
Washington Probate Division
65 State Street
Montpelier, VT 05602
Jeffrey.Kilgore@vermont.gov

b. [Proposed Order amending V.R.P.P. 66 and 80.3 and Adding V.R.P.P. 74](#)

The proposed amendment to Rule 66 clarifies its provisions in light of the Vermont Trust Code, 14A V.S.A. §§ 101-1204, and adds more explicit provisions concerning duties under the Rule. The proposed amendment to Rule 66 clarifies that its requirements do not apply to a trustee, given the provision of 14A V.S.A. § 201. The proposal adds a requirement to file a supplemental inventory for omitted or newly discovered assets or information in Rule 66(a)(2) to implement 14 V.S.A. § 1053(a) as added by 2017, No. 195 (Adj. Sess.), § 6, effective July 1, 2018. The proposal also adds Rule 66(c)(4), requiring a sworn statement by the fiduciary that there are no outstanding expenses or unpaid debts or other claims against the estate, to provide assurance that the estate will not be reopened after compliance with Rules 66(c)(3) (final inventory) and 60.1(a)(2),(3) (closure of estate upon submission and court approval of fiduciary's report).

Proposed Rule 74 implements the provisions of 14 V.S.A. §§ 1851-1854, enacted by 2017, No. 195 (Adj. Sess.), § 12. The statute provides a process for all estates other than small estates opened under 14 V.S.A. §§ 1901-1903, under which the court may waive further administration. The provisions of the rule track the statute with some variations in language and a few additional features noted below.

The proposed amendment to Rule 80.3 makes it consistent with the statutory provisions governing small estates, 14 V.S.A. §§ 1901-1903, as amended by 2019, No. 36, § 1, effective July 1, 2019.

Comments on these proposed amendments should be sent by **May 11, 2020**, to Hon. Jeffrey Kilgore, Chair of the Advisory Committee on the Rules of Probate Procedure, at the following address:

Hon. Jeffrey Kilgore
Washington Probate Division
65 State Street
Montpelier, VT 05602
Jeffrey.Kilgore@vermont.gov

c. [Proposed Order adding V.R.P.P. 80.9, 80.10, and 80.11](#)

Proposed new Rules 80.9-80.11 incorporate, with appropriate modifications, provisions of Rules 6, 6.1, 7, and 7.1 of the Rules for Family Proceedings regarding appointment of a guardian ad litem or an attorney.

Proposed Rule 80.9(a) makes the procedure for appointment of a guardian applicable to nearly all matters affecting minors under 14 V.S.A. Chapter 111 and gives the rule a broad scope to include the appointment of a financial guardian, modifications of permanent guardianships, and minor custodial guardianships. Throughout Rule 80.9, “minor” is substituted for “ward,” “proposed ward,” “person under guardianship,” or “child” for uniformity and simplicity of usage.

Comments on these proposed amendments should be sent by **May 11, 2020**, to Hon. Jeffrey Kilgore, Chair of the Advisory Committee on the Rules of Probate Procedure, at the following address:

Hon. Jeffrey Kilgore
Washington Probate Division
65 State Street
Montpelier, VT 05602
Jeffrey.Kilgore@vermont.gov

d. [Proposed Order amending V.R.C.P. 3.1 and V.R.A.P. 24](#)

The proposed amendment to Rule 3.1 eliminates ambiguous, inconsistent, or obsolete language, including the time-honored but unspecific label “in forma pauperis,” and simplifies the process. Simultaneous conforming amendments are made to V.R.A.P. 24 and V.R.P.P. 3.1.

The proposal eliminates consideration of the income of “the applicant’s cohabiting family members” in determining the applicant’s income as ambiguous and overbroad. To the extent that paragraph (b)(2), covering an applicant who is not an aid recipient, requires consideration of more than the applicant’s resources, the proposal uses “household income” instead. The proposal eliminates language in paragraph (b)(1), which limited qualifying public assistance to that constituting “a major portion of subsistence” because of its breadth and ambiguity and the burden of calculation that it imposes on the clerk or designee.

Proposed Rule 24 is amended for consistency with the proposed simultaneous amendments to V.R.C.P. 3.1 and V.R.P.P. 3.1.

Comments on these proposed amendments should be sent by **May 11, 2020**, to Allan Keyes, Esq., Chair of the Advisory Committee on the Rules of Civil Procedure, at the following address:

Allan Keyes, Esq., Chair
Civil Rules Committee
Ryan Smith & Carbine, Ltd.
P.O. Box 310
Rutland, VT 05702 0310
ark@rsclaw.com

e. [Proposed Order amending V.R.P.P. 3.1](#)

The proposed amendment to Rule 3.1 eliminates ambiguous, inconsistent, or obsolete language, including the time-honored but unspecific label “in forma pauperis.” The proposal simplifies the process, consistent with the simultaneous proposed amendments to V.R.C.P. 3.1 and V.R.A.P. 24.

Comments on this proposed amendment should be sent by **May 11, 2020**, to Hon. Jeffrey Kilgore, Chair of the Advisory Committee on the Rules of Probate Procedure, at the following address:

Hon. Jeffrey Kilgore
Washington Probate Division
65 State Street
Montpelier, VT 05602
Jeffrey.Kilgore@vermont.gov

III. MISCELLANEOUS

a. *Court Forms*

Court forms are constantly being updated. Please refer to the judiciary website for the most up-to-date forms, <https://www.vermontjudiciary.org/court-forms>.

Please use the link below to report any form question, concern or issue <http://www.vermontjudiciary.org/website-feedback-form> or you can access our Website Feedback program at the bottom of each web page.

b. *Obligation under A.O. 41*

Attorneys are reminded that an “attorney must report to the State Court Administrator within thirty days any change of the office mailing or electronic mail address” and that “[n]otice sent to a reported address is sufficient even if not received by the attorney because of failure to report the proper address or failure of delivery not caused by the court.” A.O. 41, § 4(c); see A.O. 44, § 1.

Please email those changes to JUD.AttyLicensing@vermont.gov. Your cooperation is very much appreciated.

To ensure you continue to receive these emails, please add JUD.AttyLicensing@vermont.gov to your Safe Senders list.

c. *eCabinet Registration*

Administrative Order No. 44 requires attorneys in active status to register up to three email addresses in **eCabinet** for purposes of receiving notices of hearing and other documents. *You may*

*include staff email addresses in the three email addresses that you specify. **eCabinet** registration is required whether you practice in court or not.*

If you have already registered in **eCabinet**, the email address(es) you provided as part of that process will be used.

If you have not already registered in **eCabinet**, please go to <https://efiling.eservices.crt.state.vt.us/>, click **Register Now**, and follow the simple prompts. Attorneys will need their attorney license numbers to register. Helpful information about the Attorney Email Registration process is also available on the *Electronic Filing* page of the judiciary website at <https://www.vermontjudiciary.org/about-vermont-judiciary/electronic-access/electronic-filing>. Please contact jud.helpdesk@vermont.gov or call the Helpdesk at 802-828-4357 with any questions in the meantime.

You are also reminded that you are required to update the email address(es) and other contact information you have registered as soon as there are any changes, including changes to staff email addresses you may have included with your registration. To revise the information, please go to <https://efiling.eservices.crt.state.vt.us/>, log into **eCabinet**, click “**Account**,” choose “**My Profile**,” and make the necessary changes to your contact information.

Notification to JUD.AttyLicensing@vermont.gov or in **eCabinet** of a change to your contact information does not automatically notify the other. It is your responsibility to notify both. If you are a member of the Vermont Bar Association, you will also need to separately notify the VBA.