

STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2015

**Order Promulgating Amendments and Additions to Rules 3, 7, and 80.4 of the Vermont
Rules of Probate Procedure**

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3(b) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

(b) Commencement and duration: decedents' estates.

(1) For purposes of these rules, a probate proceeding involving a decedent's estate shall begin with:

(A) a petition to open an estate, or

(B) a petition to begin a proceeding authorized by law with respect to a decedent's estate, including a declaratory judgment petition, if the decedent's estate is not already the subject of a probate proceeding under this subdivision,

and shall continue until the proceeding is closed pursuant to Rule 60.1. The petition shall be accompanied by a death certificate or other proof of death satisfactory to the court and the original will, if any, and any codicils thereto.

(2) If a petition to open a decedent's estate alleges that the estate contains no assets that will pass by will or under the laws of descent and distribution and is accompanied by an affidavit of the petitioner attesting to the lack of any such assets and setting forth facts demonstrating the need of an executor or administrator to perform administrative acts for the estate, the court will issue letters testamentary or grant administration to enable performance of such other acts as may be necessary to administer the estate.

(23) If the petitioner reasonably believes that all interested persons identified at the commencement of the proceeding pursuant to Rule 17(a)(1) will consent to the allowance of the will, or to the intestate proceeding, as provided in Rule 16, the petitioner may file the petition without serving them and may seek their consents. If all interested persons file consents, the court may proceed with the petition without further notice; provided that if any interested person does not file a consent within a reasonable time, the court will set a hearing date, and the petitioner will serve notice of the hearing on all interested persons.

Reporter's Notes—2015 Amendment

Rule 3(b)(2) is adopted to provide an expedited procedure for dealing with an estate with no assets. Former Rule 3(b)(2) is renumbered as paragraph (3). The petition in an asset-less estate that requires some acts of administration is to be filed as provided in Rule 3(b)(1), with payment of the entry fee required by 32 V.S.A. § 1434(a)(1) for an estate of \$10,000 or less, which has been increased from \$30 to \$50 by Act 57 of 2015, § 32, effective July 1, 2015. The petitioner's affidavit is to state the acts to be performed that require administration. The court is to issue appropriate letters authorizing the actions that the petitioner is to take. The provisions of V.R.P.P. 80.3 governing administration of small estates will provide a guide to the actions that the court will authorize.

2. That Rule 7 of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 7. PLEADINGS AND MOTIONS

(a) Pleadings. A proceeding shall be commenced by a petition. No other pleadings shall be required unless the court orders that there shall be an answer to a petition. Any party may file an answer to a petition without court order.

(b) Motions.

(1) An application to the court for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the order sought

(2) The rules applicable to caption, signature, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(4) Unless a different time is fixed by the court, any party opposing the motion may file a memorandum in opposition within 10 days after service of the motion.

(c) Failure to Timely File. Unless the court decides otherwise, a pleading, motion, or memorandum filed less than five days before a hearing will not be considered at the hearing.

(e d) Argument on Motions. Unless otherwise required by these rules, oral argument on a motion shall be deemed waived unless requested by an interested party or required by the court. The court may dispose of the motion without argument whether or not the parties have waived oral argument. The court may hear motions at any time and place upon reasonable notice to the parties.

Reporter's Notes—2015 Amendment

Rule 7 is amended by the addition of paragraphs (b)(3) and (4), the insertion of a new subdivision (c), and the redesignation of former (c) as (d). The amendment is intended to provide a clear and uniform practice for making and hearing motions for all units of the Probate Division. It incorporates V.R.C.P. 7(b)(3) and the essence of V.R.C.P. 78(b)(1) in a simpler form appropriate for probate practice. The provisions of V.R.C.P. 7(b)(4) and 78(b)(2) concerning evidentiary hearings, oral argument, and costs on motions are not adopted in these amendments. Probate court motion practice is very limited and does not require the formality appropriate to civil actions. The court can deal with a last-minute offer of evidence on a motion by granting a continuance and has inherent discretion concerning oral argument and costs on motions. See V.R.P.P. 54(b).

3. That Rule 80.4 of the Vermont Rules of Probate Procedure be added to read as follows:

RULE 80.4. DELIVERY OF WILL BY CUSTODIAN; COPY OF WILL FILED FOR SAFEKEEPING

(a) Duties of Custodian of Will. A person who has the custody of the will of a decedent must deliver the will, together with a death certificate or other credible proof of death, to the Probate Division of the Superior Court in a district where venue lies, or to the executor named in the will, within 30 days after learning of the death of the testator, with a statement that the will is being delivered as required by 14 V.S.A. § 103. Thereafter, the person will be discharged from further responsibility under Title 14 of the Vermont Statutes Annotated unless the individual is the executor named in the will. If the person who has custody of a will is the executor, the court may issue further orders to that person as appropriate.

(b) Disclosure of Existence of a Will Held in Safekeeping. When a will has been filed with the Probate Division of the Superior Court in any district for safekeeping pursuant to 14 V.S.A. § 2, the register for that district, upon inquiry and presentation of a death certificate of the testator, will reveal the existence of the will.

Reporter's Notes—2015 Amendment

Rule 80.4 as originally promulgated to cover relinquishment proceedings was repealed effective October 1, 2004, in light of the enactment of the comprehensive provisions of the Uniform Adoption Act, 15A V.S.A. §§ 1-101 to 8-101. See Reporter's Notes to 2004 repeal.

New Rule 80.4(a) is adopted to provide a uniform procedure for carrying out the responsibilities imposed by 14 V.S.A. § 103 on the

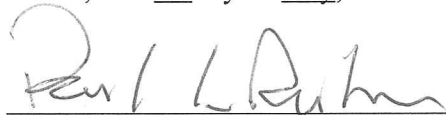
custodian of a will who learns of the death of the testator. A death certificate or other credible proof of death is required for consistency with the basic provision of Rule 3(b)(1) for opening a decedent's estate. The requirement of "credible proof of death" in the absence of a death certificate could, in the court's discretion, be met by evidence such as an affidavit or testimony of a witness to the fact of death, or an authenticated obituary or other notice of death.

New Rule 80.4(b) provides that, when the Probate Division has custody of a will for safekeeping in accordance with 14 V.S.A. § 2, the register may reveal the existence of the will upon inquiry and presentation of a death certificate. This provision, though applicable to anyone who can produce a death certificate, is intended to allow the survivor of a deceased, or the representative of a survivor, to determine, through a search of probate districts where the deceased had connections, whether a will exists. For actual delivery of a will or copy, the more substantial showing of the testator's intentions or the needs of the estate required by 14 V.S.A. § 2 must be made.

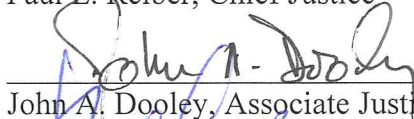
4. That these rules, as amended or added, are prescribed and promulgated effective **September 1, 2015**. The Reporter's Notes are advisory.

5. That the Chief Justice is authorized to report these amendments and this rule to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 1st day of July, 2015.



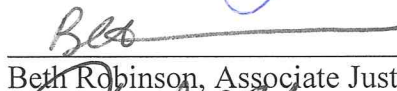
Paul L. Reiber, Chief Justice



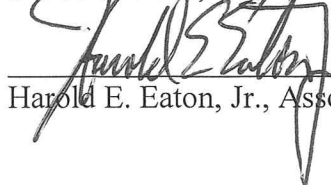
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice