

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE**

**Minutes of Meeting
August 8, 2024**

The meeting was called to order at 1:34 p.m. on Teams by Hon. Kathryn Kennedy, Chair. Present virtually were Danielle Fogarty, Esq., Michael Gawne, Esq., Matthew Getty, Esq., Hon. Frederick Glover, Register Bee Hasselbach, Hon. Jeffrey Kilgore, Mark Langan, Esq., Amy Menard, Esq., and Justin Sheng, Esq. Also present were Hon. William Cohen, Vermont Supreme Court liaison, and Hon. Joanne Ertel (retired), Reporter.

1. Minutes of the meeting of May 2, 2024 - The draft minutes of the meeting of May 2, 2024 were approved unanimously.

2. Continuing Matters
 - a. V.R.P.P. 13 - Mr. Gawne will make a change to Rule 13 (c) specifying when rights on behalf of minors can be asserted and will send the revision to the Reporter who will then forward the proposed revisions to Deb Laferriere for formatting.

 - b. V.R.P.P. 4 - The chair will contact Allan Keyes, chair of the advisory committee on civil rules, to see if that committee is considering changes to language regarding service upon an incompetent person. Mr. Getty finds 4(d)(2) and (3) confusing as to whether unclaimed mail constitutes sufficient service. Members expressed frustration with the inconsistent return of the green cards by the USPS. Judge Kilgore indicated that the postal service is moving away from green cards to internet tracking. It was suggested that internet tracking could provide proof of service and could be verified easily by the court. Judge Kennedy believes that notice should still be sent by first class mail in all cases. Judge Kilgore thinks that post office boxes present an additional quandary as service is subject to a 2-step process. The owner of the box is first presented with a yellow card notifying them that they need to go to the counter to retrieve certified mail. At the counter the box holder is then presented with the green card. Mr. Gawne offered to submit suggestions for changes to 4(d)(2) to the Chair and to the Reporter.

 - c. V.R.P.P. 54 - The committee decided to remove all references to other statutes and rules from the various provisions. Ms. Fogarty, Judge Kennedy and Judge Glover made minor stylistic and grammatical suggestions which the Reporter will make. Mr. Langan requested that a provision be added to allow an appeal on jurisdictional grounds. While the committee agreed that an appeal on jurisdictional grounds is automatic, the committee agreed that it would be helpful to add this provision to eliminate any possible confusion. Judge Kilgore raised the issue of whether an appeal should be allowed from a report on a license to sell. Mr. Getty suggested that an objection to a sale of property would give rise to a complaint for breach of fiduciary duty rather than an appeal. Judge Kilgore withdrew his suggestion.

 - d. V.R.P.P. 3(b) - The committee would like to add “the petition” added to the notice requirement and “pursuant to V.R.P.P. 17” added to the last sentence to make it clear that all interested persons receive notice. The committee considered a draft amendment that will make V.R.P.P. 3(b) consistent with 14 V.S.A. § 107. Mr. Langan noted an extra “will” in the draft. The question

arose as to whether it needs to be made clear that the heirs at law are provided with a copy of the will when their consent is sought. While members of the committee are aware of instances where heirs have signed consents without reading wills, the committee believed that the burden rests on the heir to either read the will or to request a copy of it.

3. New Matters

- a. Rule for Wills for Safekeeping- The Probate Oversight Committee has generated a form to accompany wills for safekeeping that requires specific information. This information is not addressed by statute or rule. Register Hasselbach reported that courts have inconsistent practices for acceptance of a will for safekeeping. Some courts will not accept wills if they are not accompanied by the forms. Register Hesselbach indicated that courts are reluctant to release original wills unless the will is to be probated in another state. If a will for safekeeping is to be probated in a different Vermont division, the court will forward the will to that division. The committee agreed generally that it would be helpful to have a rule that defines the parameters of wills for safekeeping. Judge Kennedy will contact either Megan Hubbard or Judge French who serve on Probate Oversight about the genesis for the form. The specifics of a rule will be discussed at the next meeting.
- b. V.R.P.P. 80.1 - Register Hasselbach queried whether this rule which pertains to newspaper notice of spendthrift guardianships and other guardianships needs to be repealed. The operative provisions of the spendthrift guardianship statute have been repealed but inexplicably the public notice provisions remains. No one on the committee was aware of an instance where public notice of a guardianship was ordered. The Reporter will ask Emily Wetherell about how to appeal the rule and report back at the next meeting.

4. Other business

LCJR - Judge Kennedy attended the meeting of the Legislative Committee on Judicial Rules on June 24, 2024. No one had any questions.

Subcommittee on Artificial Intelligence - Judge Kennedy is looking for a volunteer to serve on a subcommittee to address AI in the various divisions and whether new rules need to be drafted to take AI into account.

5. Next meeting

The Reporter will solicit availability for a meeting on October 31, 2024 or November 7, 2024.

The meeting was adjourned at 4:22 pm.

Respectfully submitted,

Joanne M. Ertel,
Reporter