

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

**Minutes of Meeting
November 26, 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., Register Bee Hesselbach, 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 on August 8, 2024 - The draft minutes of the meeting of August 8, 2024 were approved unanimously.

2. Continuing Matters

- a. V.R.P.P. 13 - Mr. Gawne has prepared an amendment to Rule 13 that addresses the rights of minors. However, the Reporter only became aware at the meeting that his proposal landed in the Reporter's junk mail. Consequently, no one had the opportunity to review the proposal, and it was tabled until the next meeting.
- b. V.R.P.P. 4 - The committee discussed and decided that service by publication can only take place pursuant to court order. Whether the return of service should take the form of a certificate of service or an affidavit resulted in discussion regarding the differences. The current general affidavit form does not require an attestation. Ms. Menard indicated that in her experience courts are moving away from the requirement of attestations. Mr. Sheng directed the committee's attention to 4 V.S.A. § 24(b) which addresses self-attestation in lieu of notarization. Ms. Fogarty believes that the certificate of service form provides more direction for self-represented litigants. Judge Kennedy suggested that the certificate of service form might be amended by the Probate Oversight Committee to include self-attestation.

Ms. Fogarty recommended that service by publication be included in subsection (d) and the committee agreed. Discussion then ensued over the extent of service by publication. The current draft proposes publication in the probate unit where the petition was filed and in a newspaper in the county where the interested person was last known to reside. Mr. Getty thought that it could be burdensome and pointless to require publication in two newspapers. Mr. Langan pointed to a New Hampshire case that required publication in the location where the interested person was last known to reside within the state if known. Ms. Fogarty suggested leaving the specifics of publication general in the rule and letting the court order the specifics. In light of the comments made, the Reporter will modify this aspect of the rule and send the draft proposal to a subcommittee consisting of Ms. Fogarty, Mr. Getty and Judge Kennedy.

Register Hesselbach suggested that Rule 4(b) should also be amended to reflect actual court practice. Judge Kennedy will question the Orange Register about the practice and draft a proposed revision for consideration at the next meeting.

Mr. Getty queried whether the title of Rule 4 could be clarified and possibly include “commencement.”

- c. V.R.P.P. 54 - A couple of typos were identified. Mr. Gawne wondered whether adult voluntary guardianships should be included in the list of appealable orders. The committee decided that it wasn't necessary because these proceedings are not usually denied. If a petitioner does not appear to meet the criteria for a voluntary guardianship, typically the court issues an order of evaluation and the court may treat the proceeding as an involuntary guardianship. Ms. Menard moved to send the rule out for comment. The motion was seconded by Mr. Getty and the committee voted unanimously to recommend to the Supreme Court that the rule be sent out for comment to the Vermont Bar Association.
- d. V.R.P.P. 3 - Mr. Getty suggested re-ordering the first sentence and a minor change and combining the second and third sentences. The committee agreed to the changes. Mr. Getty moved to send the revised rule out for comment. The motion was seconded by Mr. Gawne and the committee voted unanimously to recommend to the Supreme Court that the rule be sent out for comment to the Vermont Bar Association.

3. New Matters

- a. Wills for Safekeeping - Judge Kennedy spoke to the Chair of the Probate Oversight Committee, Megan Hubbard, about the genesis of the form cover letter for wills for safekeeping. She indicated that it was not the committee's intent for the form to be a prerequisite for filing a will for safekeeping. There appear to be inconsistencies among the courts about acceptance of a will for safekeeping. Rather, the intent was to provide the court with needed information. It appears that lawyers don't use the form letter and that others may not understand the technical terminology in the form. It is believed that the requirements of Odyssey necessitated the form. Rule 80.4 addresses wills for safekeeping but does not address the procedure for filing a will. The rule does address the disclosure of the existence of a will and modification of this provision, and any other modifications will be discussed at the next meeting.
- b. V.R.P.P. 80.1 - The committee did not reach this item, and it will be added to the agenda for the next meeting.

4. Other business

The committee noted that Dan Kimbell is retiring and has suggested Christopher D'Elia, who is chair of the Vermont Bankers Association, as his replacement. Judge Kennedy reported that his replacement needs to be a Trustee and that the Vermont Supreme Court would like three recommendations for a replacement. The Committee will entertain committee member suggestions for a replacement at the next meeting.

It was also noted that the terms of Judge Kilgore and Register Hesselbach will expire at the end of January 2025. They have both termed out and will have to be replaced.

5. Next meeting

The committee would like to hold a meeting in January before the terms of Judge Kilgore and Register Hesselbach expire. The Reporter will send out suggested dates.

The meeting adjourned at 4:27 p.m.

Respectfully submitted,

Hon. Joanne M. Ertel (ret.),
Reporter