

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

Minutes of Meeting

January 30, 2025

The meeting was called to order at 1:35 p.m. on Teams by Hon. Kathryn Kennedy, Chair. Present virtually were Danielle Fogarty, Esq., Michael Gawne, Esq., Matthew Getty, Esq., Hon. Fred Glover, Register Bee Hesselbach, Hon. Jeffrey Kilgore, Mark Langan, Esq., Amy Menard, Esq., and Justin Sheng, Esq. Also present was Hon. Joanne Ertel (retired), Reporter.

1. Minutes of the meeting on November 26, 2024 - The draft minutes of the meeting of November 26, 2024 were approved unanimously.

2. Continuing Matters
 - a. V.R.P.P. 13 - The Committee reviewed Mr. Gawne's latest draft of an amendment to Rule 13. Register Hesselbach objected to the requirement that the court send out a second notice of spousal rights if a supplemental or amended inventory is filed. They indicated that it would place a huge burden on court staff and require a new form. They later noted that the issue of a supplemental inventory is addressed in the initial notice. The Committee generally agreed that a supplemental notice was unnecessary.

Extensive discussion regarding the distinction between homestead rights and elections ensued. Unlike the elections, a homestead right vests at death. Consideration was given to whether the homestead right should be addressed independently of the elections. Ms. Fogarty indicated that under 27 V.S.A. § 141(d), a spouse can divest the other spouse of the homestead right prior to death. In her practice, divestment is often a part of Medicaid planning. Judge Glover believes that § 141 (d) was added in response to a bankruptcy opinion that concluded that a spouse could not convey an interest that had not vested. The Committee generally agreed that the existence of the homestead right should remain in the notice so that the issue is not forgotten.

Consideration was given to whether the rule can place a deadline upon exercise of the homestead right. The members generally agreed that a deadline was necessary to the ability to convey good title to the homestead property. The Committee agreed that it was the responsibility of the surviving spouse to notify the court that a homestead right needed to be addressed. Mr. Langan believes that the right to ask the court to set aside the homestead is waived in the rule if the surviving spouse does not make the request.

Ms. Menard suggested that the language regarding the homestead right in Rule 13(a)(2) could be simplified and clarified.

Mr. Gawne will re-draft the amendment to Rule 13 and then circulate his draft to Mr. Langan, Ms. Menard, Ms. Fogarty, Mr. Getty and the Reporter.

V.R.P.P. 4 - The Committee discussed whether it was necessary to require notice by first class mail in addition to restricted mail. The members decided that first class mail was unnecessary and that including it might result in the petitioner only sending notice by first class mail. Ms. Menard suggested using the terminology “restricted delivery” rather than “restricted mail” given the fact that mail includes commercial carriers.

Discussion then ensued about the meaning of restricted delivery and whether self-represented petitioners will understand the meaning. According to Mr. Langan, the USPS describes “certified mail, restricted delivery” as mail that requires a signature. Register Hesselbach pointed out that the downside of using USPS terms would be the possibility of USPS changing its terminology.

The Committee next discussed whether the rule should permit a signature by a member of the addressee’s household. Ms. Menard opined that there isn’t a sufficient nexus between a household member and the person to be served. She questioned how household member is defined. Judge Kennedy sees including a member of the household as practical.

Ms. Fogarty left the meeting at 3:32 p.m.

Rule 4(d)(4) refers to the civil rules for the method of personal service. Register Hesselbach thought that the Committee wanted to move away from references to the rules of other divisions. The Committee decided to keep the reference because of the length of V.R.C.P. 4(d).

Register Hesselbach suggested using the language in the opening sentence of V.R.P.P. 4(d)(8) in V.R.P.P. 4(d)(7), and the Committee agreed with their suggestion.

Finally, the Committee discussed whether to require a certificate of service or an affidavit to be filed as proof of service. The Committee likes the general certificate of service form but for the fact that it does not include use of certified mail. Judge Kilgore has mentioned the need to change the form to the chair of Probate Oversight and Judge Kennedy will renew the request. In the meantime, it was decided to use the certificate of service.

V.R.P.P. 54 - The Reporter presented the concerns and suggestions of Emily Wetherell to the proposed amendment. The Committee voted unanimously to use active verbs to replace nouns in the various provisions. The Committee also voted unanimously to eliminate provisions (12), (13) and (14) and to refer the rule to the Supreme Court for subsequent comment by the Vermont Bar Association.

V.R.P.P. 3(b) -The proposed amendment has been sent out for comment, with comments due by February 17, 2025. Judge Kennedy has received one comment which pertained to the attorney’s frustration with Rule 4 but did not address Rule 3.

Rule 80.4 Wills for safekeeping - The Committee believes that there should be uniform requirements for wills for safekeeping which will be addressed at the next meeting and will necessitate an amendment to Rule 80.4. Rule 80.4 also needs revision to address who can view a will during the life of the testator.

V.R.P.P. 3 (a) - The Committee discussed the minor change to Rule 3(a) in light of the proposed modification to Rule 3(b). Given the minor nature of the amendment, the Reporter will ask Emily Wetherell if the change can bypass the notice process.

Other Business

Judge Kilgore and Register Hesselbach - This is the last meeting of Judge Kilgore and Register Hesselbach as their terms expire on January 31, 2025. Judge Kennedy thanked them both for their dedicated service which was echoed by the other members of the Committee.

New Members - Judge Kennedy announced that Judge Pamela Marsh, the Addison County Probate Judge and Terri Deuso, the Franklin County Probate Register, have been appointed to the Committee by the Vermont Supreme Court.

Trust Officer Member - Judge Kennedy will recommend Craig Arsenault, Livia DeMarchis, and Lisa Counsell as possible new members to replace Dan Kimbell.

3. Next meeting

The Committee will hold its next meeting in April 2025. The Reporter will send out suggested dates.

The meeting adjourned at 4:21 p.m.

Respectfully submitted,

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