

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

Minutes of Meeting

April 24, 2025

The meeting was called to order at 1:33 p.m. on Teams by Hon. Kathryn Kennedy, Chair. Present virtually were Livia DeMarchis, Esq., Register Terri Deuso, Danielle Fogarty, Esq., Michael Gawne, Esq., Matthew Getty, Esq., Mark Langan, Esq., Hon. Pamela Marsh, Amy Menard, Esq., Justin Sheng, Esq., Chasity Stoots-Fonberg, Esq. Also present were Hon. William Cohen, Vermont Supreme Court liaison, Teri Corsones, Court Administrator, and Hon. Joanne M. Ertel (ret.), Reporter.

The new members of the committee, Livia DeMarchis, Esq., Register Terri Deuso, Judge Pamela Marsh, Chasity Stoots-Fonberg, Esq., were introduced.

Judge Kennedy reiterated the need for a new chair of the committee and asked for volunteers. Historically, probate judges have served as chair, but Judge Kennedy does not believe that is necessary. Judge Marsh disclosed that Judge Zonay has asked her to serve as chair.

1. Minutes of the meeting on January 30, 2025 - The draft minutes of the meeting were approved unanimously after two minor corrections were made.

2. Continuing Matters

a. V.R.P.P. 13 - Michael Gawne will hold a meeting of a subcommittee composed of Amy Menard, Matt Getty, Danielle Fogarty and Mark Langan to discuss how to lay out the homestead rights in the rule. Mr. Gawne believes that homestead rights need to be further delineated in the rule. As Mr. Gawne's term expires at the end of June, he would like to present a final draft before then.

b. V.R.P.P. 4 - The members discussed what proof of service is required when consents are obtained. The Probate Oversight Committee recently modified the certificate of service form so that it now contains a provision for in-hand delivery. Mr. Getty believes that service by consent falls under personal service.

The committee next discussed the parameters of a signed receipt given the variations. Judge Marsh noted that some services use electronic signatures. Mr. Langan indicated that a signature requirement is an option with federal express; he has obtained statements from FedEx drivers that service was made. Judge Marsh has accepted a doorman's signature. The committee voted unanimously to include language suggested by Ms. Fogarty and Ms. DeMarche that added the word "receipt" to 4(d)(1).

At the suggestion of Ms. DeMarchis, the committee voted unanimously to include the complete and incomplete service provisions as subsections of section (1).

At the suggestion of Ms. Fogarty, the committee voted to place the provisions regarding service upon a minor and an incompetent at the end of section (d).

c. V.R.P.P. 54 - Judge Marsh believes that delineation of appealable orders will be a disaster because it will delay proceedings until the appeal is heard. Mr. Gawne believes that the delineation provides clarity. Mr.

Getty suggested that a Motion to Stay could be an alternative to an appeal. Judge Kennedy indicated that the issue of whether appeals should be de novo or on the record is currently being discussed by the Probate Oversight Committee. Ms. DeMarchis queried whether there should be a section that identifies orders that are not appealable. Mr. Sheng asked whether the appeals should be treated as interlocutory appeals; Judge Marsh endorsed this idea. Ms. Fogarty believes that delineating appealable orders would narrow issues as a proceeding moves forward. Mr. Sheng indicated that some of the appealable orders identified are based upon case law. It was decided not to proceed further until the probate judges have had the opportunity to discuss the proposed changes to Rule 54 at their next meeting.

d. V.R.P.P. 3 (a) and (b) - There were no comments made to the proposed revisions to V.R.P.P. 3(b) during the comment period which closed on February 17, 2025. The committee voted unanimously to recommend the revision to V.R.P.P. 3(b) to the Vermont Supreme Court for promulgation, together with the minor change to V.R.P.P. 3(a).

3. New Matters

a. V.R.P.P. 80.4 - The committee decided that a subcommittee should be formed to address the issues surrounding wills for safekeeping. The subcommittee is composed of Judge Marsh, Ms. Deuso, Ms. Stoots-Fonberg, and Judge Kennedy. Judge Kennedy will also ask Register Bee Hesselbach to serve on the committee as they identified the need for clarification.

b. V.R.P.P. 80.1 - This rule pertains to spendthrift guardianships which are no longer used. Some of the statutory provisions regarding spendthrift guardianships have been repealed but not all. See 14 V.S.A. §§ 2681-2694. It was agreed that spendthrift guardianships are no longer necessary. Ms. Corsones suggested that repeal of the statutory provisions could be included in S.109, a miscellaneous judiciary bill that she is working to complete with Judge Zonay and she will raise the issue with him. Judge Kennedy will also write to Judge Zonay about the repeal.

c. V.R.P.P. 80.3 - Judge Marsh agreed to look into the issues raised by Judge McClintock.

4. Other Business

Judge Kennedy reported that there was miscommunication with the Legislative Committee on Judicial Rules as they had already adjourned when she tried to join the meeting on April 4, 2025. In any event, the committee apparently had no questions.

5. Next meeting

The Committee tentatively scheduled the next meetings for June 26, 2025, and September 25, 2025.

The meeting adjourned at 3:41 p.m.

Respectfully submitted,

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