

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE
Minutes of Meeting
June 26, 2025

The meeting was called to order at 1:34 p.m. on Teams by Hon. Kathryn Kennedy, Chair. Present virtually were Register Terri Deuso, Danielle Fogarty, Esq., Michael Gawne, Esq., Matthew Getty, Esq., Mark Langan, Esq., Hon. Pamela Marsh, Chasity Stoots-Fonberg, Esq., Also present was Hon. Joanne M. Ertel (ret.), Reporter. Hon. Fred Glover joined the meeting at 1:51 p.m. and Justin Sheng, Esq. joined the meeting at 2:10 p.m.

1. Minutes of the meeting on April 24, 2025 - The draft minutes of the meeting were approved unanimously after two typos were corrected.

2. Continuing Matters

a. V.R.P.P. 13 - Michael Gawne summarized the changes that were made to the draft at the meeting of the subcommittee. The discussion centered on the homestead right. The committee considered how to place a time frame for the spouse to claim the homestead right. The first option requires the spouse to elect to have the homestead set out prior to the issuance of a final decree. The second option requires the spouse to request that the homestead be set out within four months following the later of the date of service of the notice or the date of the service of the inventory. The third option requires the court to set out the homestead if the surviving spouse does not disclaim or waive the right within four months of the service of the notice or the service of the inventory. Mr. Langan believes that requiring the court to set out the homestead in every estate would place an undue burden on the courts. For that reason, Mr. Langan is opposed to the third option. Mr. Getty believes that the parties need finality by the time the final decree is issued so that there is no cloud upon the title. Judge Marsh indicated that she has never been asked to set out a homestead. In Judge Glover's experience, setting out the homestead is merely a mathematical equation that is made when the property is sold or the homestead interest is bought out. Ms. Deuso suggested that unrepresented individuals have absolutely no understanding of the spousal rights form or the protections that the homestead right may provide the surviving spouse. Mr. Gawne queried if there is a mortgage on a homestead property who pays it? Some members believe that option 1 is most consistent with the current law.

All members agreed that the law is antiquated and needs revision by the legislature. The Vermont Supreme Court has not addressed the issue of whether the homestead can be waived. It is the hope that the dilemma faced by the courts over the homestead right will catch the interest of the legislative rules committee and the Vermont Supreme Court.

Ultimately the committee voted unanimously to adopt a four-month deadline in the rule and to explain the reasoning and the dilemma in the Reporter's Notes. The Reporter will circulate proposed Reporter's Notes to the committee members for comment.

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 the purview of personal service.

Ms. Stoots-Fonberg is concerned that requiring a Register to sign an affidavit of service is too limiting given that other court personnel may assist in the process. Ms. Stoots-Fonberg and Ms. Deuso indicated the court's docket entry will identify the court personnel who sent the mail eliminating the need for an affidavit. The committee voted unanimously to adopt language that eliminates the need for an affidavit from court personnel, to adopt minor language suggestions of Ms. Fogarty, and to send the revisions to the Supreme Court.

c. V.R.P.P. 54 - The probate judges did not have sufficient time at Judicial College to discuss the proposed revisions to Rule 54. It was agreed to table the rule until the next meeting.

d. V.R.P.P. 80.4 - The subcommittee has not met so consideration of an amendment to this rule was tabled until the next meeting.

e. V.R.P.P. 80.1 - At the last meeting, Ms. Corsones suggested that the Supreme Court might be able to recommend abrogation of the spendthrift statute in a miscellaneous judicial bill. However, Judge Kennedy reported that Judge Zonay's report on the legislative term makes no mention of the statute so she assumes it was not addressed.

f. V.R.P.P. 80.3 - The committee voted unanimously in favor of a technical correction to this rule which only involves re-numbering. The Reporter will ask if the correction can be treated as an emergency amendment and avoid the comment process because of the nature of the amendment.

3. Other business

a. Consent forms - Mr. Getty identified a needed change in the Motion for License to sell personal property. The consent form identifies "heirs" as individuals who need to consent when in fact heirs may not be interested parties. The issue will be referred to Probate Oversight.

b. New Member - Mr. Gawne's term is expiring and he has recommended Jesse Bugbee to replace him. Judge Kennedy believes that she needs to submit the names of three attorneys to replace Mr. Gawne who is from the northern part of the state. She will check on the parameters and asked members to submit names of any others who they think might be interested.

c. Stand-by guardianships - The legislature passed a new guardianship law directed to protect children whose parents might be at risk for detention or deportation. At the next meeting, the committee will consider whether the new statute will necessitate any rule changes.

5. Next meeting

The Committee's next meeting is scheduled for September 25, 2025.

The meeting adjourned at 3:44 p.m.

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