

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES OF  
PROBATE PROCEDURE  
Minutes of Meeting  
September 25, 2025**

The meeting was called to order at 1:35 p.m. on Teams by Hon. Kathryn Kennedy, Chair. Present virtually were Livia DeMarchis, Esq., Register Terri Deuso, Danielle Fogarty, Esq., Matthew Getty, Esq., Mark Langan, Esq., Hon. Pamela Marsh, Amy Menard, Esq., Chasity Stoots-Fonberg, Esq., Also present were Hon. William Cohen, Vermont Supreme Court liaison, and Hon. Joanne M. Ertel (ret.), Reporter. Judge Cohen left the meeting at 2:30 p.m. Justin Sheng, Esq. joined the meeting at 2:52 p.m.

1. Minutes of the meeting on June 26, 2025 - The draft minutes of the meeting were approved unanimously by the voting members.

2. Continuing Matters

a. V.R.P.P. 13 - Ms. Fogarty recommended a couple of grammatical changes which were made. The committee reviewed Judge McClintock's comments and after discussion, decided not to adopt his suggestions. Mr. Langan made a minor suggestion to clarify section (a)(4). Ms. Deuso identified a problem in waiting to send the notice of election and rights until after the inventory. If the surviving spouse is not a beneficiary under a will, once the will is allowed, the surviving spouse will no longer be an interested party. Consequently, the surviving spouse will not receive a copy of the inventory. Ms. Deuso sends the notice to the surviving spouse when the appointment of the Executor is made. The statute requires the notice to be sent out after the inventory is filed. It was suggested that the inventory form be changed to require service upon surviving spouse. Judge Marsh and Ms. Stoots-Fonberg are on the Oversight Committee and can make the suggested form change. The Notice of Election and Rights Form will need to be changed after the rule is amended. The voting members of the committee voted unanimously to send the proposed draft of Rule 13 to the Supreme Court and ask that it be sent out for comment.

b. V.R.P.P. 4 - The committee discussed the comment made by Attorney Heather Devine who was unclear about the meaning of "court record" in Rule 4(d)(1)(A)(ii) and (iii). The committee decided that additional verbiage defining "court record" was not necessary. Ms. Devine also suggested a simplification of the language in Rule 4(e) to read as follows: "The person responsible for service shall file a certificate of service . . . ." The possible methods of service do not need to be included in Rule 4(e). The committee adopted Ms. Devine's suggestion. The comment period for Rule 4 does not end until November 1, 2025, so the committee took no further action.

c. V.R.P.P. 54 - Judge Kennedy solicited the opinion of the probate judges on the proposed revisions to Rule 54 and received no feedback. Judge Marsh continues to have concerns that the proposed revision will delay proceedings by inviting multiple appeals. The voting members of the committee voted to recommend promulgation, with Judge Marsh dissenting.

d. V.R.P.P. 80.4 - A new form has been adopted regarding wills for safekeeping which Judge Kennedy believes is clearer than the prior form. The committee identified a conflict between 14 V.S.A. § 103 and 14 V.S.A. § 106 regarding the duty of the custodian of a will after the death of the testator. At their meeting the subcommittee spent time issue spotting, including the pros and cons of keeping wills

for safekeeping at a central office. There is no uniform practice regarding retrieval of wills. In some courts, if a named executor appears and shows both identification and also the death certificate, the court will give the named executor the original will. In other courts, the named executor will be provided only with a copy of the will. The court will send the original will to another court or to an attorney. The committee also discussed how long the courts are required to keep wills as there are space concerns. The fees for wills for safekeeping go to the county. Judge Marsh suggested a statutory change to allow courts to destroy wills after a certain period of time. According to Mr. Langan, no other states have rules for outgoing wills, only for incoming wills. Mr. Getty noted that the will for safekeeping form seeks more information than is required by statute. Ms. Menard commented that the VBA does not think that attorneys should store wills. Judge Marsh indicated that it can be challenging for some to retrieve their wills in person because they are infirm and do not have transportation. The majority of Mr. Getty's clients choose to keep their original wills. Judge Marsh wondered if it makes sense to digitize wills when the court receives them. Mr. Langan noted that many towns have digitized their deeds and that there are companies that specialize in this work. According to Mr. Langan, Suzanne Brown Walsh is chair of the committee on the Uniform Commission for Electronic Wills that adopted the Uniform Electronic Wills Act, but so far, few states have an interest in adopting the Act.

### 3. New Business

a. Standby guardianships - The committee is considering whether a new rule is necessary in light of the passage of 14 VSA § 2622. Neither judge on the committee are aware of any filings under the new statute. Judge Kennedy will survey the other probate judges to see if any probate divisions have been faced with standby guardianships. Ms. Menard, Judge Marsh and Ms. Deuso agreed to serve on a subcommittee to look at the issue and determine whether a rule is necessary.

b. Confirmatory adoptions - The courts of both probate judges present and the register have been faced with confirmatory adoptions. Judge Marsh has adopted her own form for which she consulted with Attorney Kurt Huges, an adoption expert. No one sees the need for a new rule to implement this statute which is very clear about the process.

### 4. Other business

The committee has recommended Harry Parker, Jr., Esq. and Jesse Bugbee, Esq. to replace Michael Gawne, Esq. who retired. The Supreme Court maintains a list of attorneys who are interested in serving on the rules committee. Judge Kennedy will ask Monica Bombard for a copy of the list and will circulate it.

### 5. Next meeting

The Committee's next meeting will occur the week of November 10, 2025. The reporter will survey the members of the committee regarding their availability. There will also be a meeting scheduled in late January or early February

The meeting adjourned at 3:57 p.m.

Respectfully submitted,

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