

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

**Minutes of Meeting**

**May 7, 2026**

The meeting was called to order at 2:03 p.m. on Teams by Hon. Pamela Marsh whom the Hon. Kathryn Kennedy designated to chair the meeting. Present virtually were Therese Corsones, Esq., Livia DeMarchis, Esq., Register Terri Deuso, Danielle Fogarty, Esq., Matthew Getty, Esq., Hon. Kathryn Kennedy, Mark Langan, Esq., Hon. Annette Lorraine, Hon. Pamela Marsh, Mark Melendy, Esq., Amy Menard, Esq., Harry Parker, Esq., Chasity Stoots-Fonberg, Esq. Also present were Justice Michael Drescher, Vermont Supreme Court liaison and Hon. Joanne M. Ertel (ret.), Reporter.

1. Minutes of the meeting on February 5, 2026 - The draft minutes of the meeting of February 5, 2026, were approved unanimously after one minor correction was made.

2. Continuing Matters

a. V.R.P.P. 13 - The amendment to Rule 13 was promulgated by the Vermont Supreme Court on March 2, 2026, to become effective on July 1, 2026.

b. V.R.P.P. 60(c) - The amendment to Rule 60(c) was promulgated by the Vermont Supreme Court on March 2, 2026, to become effective on July 1, 2026.

c. V.R.P.P. 80.4 - The report of the subcommittee was tabled until the next meeting. Ms. DeMarchis raised the issue of whether wills should be filed with the court if there is no estate to be probated. She indicated that Chittenden Probate does not want wills filed if there is no estate.

Ms. Deuso reported that Franklin Probate accepts wills where there is no estate, and opined that otherwise, the custodian might dispose of the will and then later discover an asset requiring probate. In Franklin Probate, when a no asset will is filed, the will is filed in a separate section of their vault and entered in a card index. Ms. Deuso believes that other divisions may proceed differently. However, a will is not scanned into the system unless an estate is opened.

Mr. Langan noted that wills often need to be filed merely to allow an executor to exercise a power of appointment or to enable an executor to open an ancillary estate. Mr. Langan believes that is too much of a burden on the probate courts to keep no asset wills.

Judge Marsh added that there was no need to incur a filing fee if there is no estate to probate. She suggested that the fee could be eliminated, the will scanned into Odyssey and then

returned. Ms. Stoots-Fonberg who was involved in implementation of the fee for filing wills by the Probate Oversight Committee, is a proponent of keeping the fee.

Mr. Getty suggested that there may be a need for statutory clarification as 14 V.S.A. § 103 requires the custodian of a will to deliver it either to the court or to the executor. Mr. Langan indicated that the VBA could introduce a statutory change by setting up a subcommittee of the Probate and Trust section of the VBA. The probate and trust section is the second largest section of the VBA with 329 members. If a statutory change is introduced by the VBA, then the VBA lobbyist can promote it.

Alternatively, any such change can be part of the miscellaneous judiciary bill. Judge Kennedy is keeping a list of possible statutory changes which will be discussed at Judicial College, and she will add this statute to the list. Judge Kennedy will report back at the next meeting.

f. Standby guardianships - Ms. Menard reported for the subcommittee which also includes Judge Marsh and Ms. Deuso. She distinguished between Special Immigrant Juvenile Status which can apply to a person under the age of twenty-one and standby guardianships which apply to minors only. Ms. Menard is still not aware of any court filings under 14 V.S.A. § 2626(a). The subcommittee spoke to a legal aid attorney who believes that it is too early to know if a rule amendment will be needed. Judge Marsh reported that Legal Aid attorneys have met with approximately 100 families where standby guardianships have been addressed and have come close to filing petitions in two cases.

Legal Aid has developed its own forms. The minor guardianship forms have also been amended to reflect the new statute.

The subcommittee has concluded that there is no need for a rule amendment at this time. When the use of standby guardianships gains more traction, the need for change may need to be re-addressed.

g. Spendthrift statute - Ms. Corsones reported that abrogation of the spendthrift statute was part of H. 937, the miscellaneous judiciary bill. The bill is on target to pass the Senate.

h. 15 V.S.A. § 658(e) - Ms. Corsones recognizes that the timing of the filing of a consent to adoption needs to be clarified. The requirement of the need to notify the Office of Child Support of a consent to adoption needs to be removed from the statute as part of the miscellaneous judiciary bill.

### 3. New Matters

a. Minor financial guardianships - Justice Dooley has raised two issues with respect to minor financial guardianships that have arisen from his own experience as a financial guardian. First, he does not think that financial guardians should be subject to e-filing. Judge

Marsh reported that financial guardians never e-file. Judge Kennedy believes that an attorney serving as a financial guardian can ask not to be subject to e-filing. Second, Justice Dooley thinks that financial guardians should have access to other dockets involving the minor. Again, Judge Kennedy does not think a rule change is necessary. Rather, a financial guardian could seek party status in any other litigation. Judge Kennedy offered to reach out to Emily Wetherell and Justice Dooley about these proposed solutions. She does not see the need to appoint a member to a subcommittee at this time and the Committee agreed.

#### 4. Other Business

Ancillary Administration -Mr. Getty raised two issues with respect to ancillary administration. First, he is questioning whether out-of-state assets should be listed on the inventory of a primary Vermont estate. He believes that creditors would be interested in the identification of ancillary assets but does not believe that the identification of these assets should increase the filing fee.

Second, Mr. Getty questions whether a primary estate in Vermont can be closed while an ancillary estate is pending. Mr. Langan indicated that there are two systems of ancillary administration. In one system, the ancillary administration works independently of the primary administration and the assets are distributed directly to the beneficiary. In the other system, the ancillary assets are distributed to the primary administration for distribution requiring the primary administration to remain open. Both Judge Lorriane and Judge Marsh reported that there is pressure on the probate courts to close cases as soon as possible. Mr. Getty then cited 14 V.S.A. § 1216 which provides for distribution of the estate of a non-resident. In that statute, the default rule is to distribute assets to the primary estate.

The issue of ancillary estates will be added to the judicial college discussion, and the probate judges will report back at the next meeting.

#### 6. Next meeting

The next meeting is scheduled for August 13, 2026, at 2:00 p.m..

The reporter will schedule a subsequent meeting in October after polling the members.

The meeting adjourned at 3:34 p.m.

Respectfully submitted,

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