

Paralegal Focus

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Paralegal Focus is the quarterly newsletter of Vermont Paralegal Organization, Inc.

Vermont Paralegal Organization, Inc. is a Member of the National Federation of Paralegal Associations (NFPA).

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*Newsletter Design By
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President's Message

By Laurie S. Noyes, MBA, PHR®

First off, I want to thank the members for re-electing me to serve as the President of the VPO for another two-year term. I look forward to what the next few years might bring, and I felt rejuvenated by the attendance at our recent Annual Meeting, and the lively discussions that were held.

On that note, I want to again thank Louise Reese and Carie Tarte, RP, for putting together another fantastic day of diverse CLEs and organizing a stellar annual meeting. I also want to thank all my fellow board members for volunteering their time, and for manning the table and handling speaker needs. Finally, I want to give a shout out to Heather Rylant for again being our nominations coordinator for elections, and also Corinne Deering, RP for agreeing to serve as a proxy voter again this year. It takes a village to do what we do, and we are lucky to have such dedicated individuals both as VPO members and board members.

And that leads me to yet another pitch! We need you all to jump in! We have open board and committee positions, including NFPA Secondary, Finance Chair, and Website Committee. We would love to have some "fresh blood" in these roles to spark new ideas and help shape the profession for the next few years. We also need interested individuals to consider joining our committee on the paralegal licensure program in Vermont. We are in a unique position to have a new court administrator who is interested in our ideas, and wants us to be involved in the planning and possible implementation of such a program. Now is the time to get involved and move this initiative. Please get involved in the development of a new licensure track in Vermont that would open up additional possibilities for paralegals in the future.

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Next, the VPO will be running a second round of the Pathways to the Paralegal Profession course in real estate that was offered this past year with Jim Knapp, Esq. We anticipate starting the course again in August, and are working out the dates for this next session. If you are interested in this program, or know anyone that might be, please pass on the information and tell them to either reach out directly to a Board member or visit the VPO website for additional information.

Finally, the VPO is always looking for new members, including student members, associate members, or voting members. If you work with other paralegals who aren't members, encourage them to try us out! Also, if you know of high school students or college students that might be interested in working in the legal field, encourage them to join the VPO for networking and other opportunities. We all know that sometimes all it takes is to get your "foot in the door" and one of the great benefits of being a member is the opportunity to make that happen for yourself or someone you know.

Be well and I look forward to hearing from everyone throughout the next two years.

Editor's Message

By Louise Reese

Time to breathe! Before completion of a busy time of development and coordination of the annual meeting, I decided to make a big life change in my career, and accepted a new position at the law firm of Downs Rachlin Martin. I will be using my personal email for all VPO duties until further notice, so please reach out to louisereese@comcast.net if you have any ideas for future CLE's and speakers, or submissions for the newsletter.

We had a wonderful annual meeting this year, and these events cannot happen without the many helping hands of our members. But just because the annual meeting is in the past doesn't mean that we don't still need some lending hands. We still have positions on the Board or committees that need your help, and some of our "filled" committees still have only one person. Please consider helping out with CLE's, the newsletter, membership, or other committees.

We have some Real Estate News from Krista Cadieux, RP and also Holly Mendez of CATIC, and there is a lot of movement with the Vermont rules, so please check out the Did You Know column.

Have a great summer!

Membership News

As of May 2023, we have 68 active members: 46 voting; 21 associate; and 1 sustaining corporate.

Please welcome our newest members: Emily Fitzgerald of the VT Agency of Transportation, Mindy Gagne of Hurlbut, Glitman & Associates PC, and Brett Lindemuth and Sarah Mitchell of Dinse PC.!

ANNOUNCEMENT: OPEN COMMITTEE POSITIONS

The VPO needs your help! We have open committee positions and one Director position on the VPO Board, and we are hoping that one of you has the will, the talent, and the drive to serve the paralegal community by becoming a committee chair or Director.

First, we have an opening for the **Finance Committee Chair**. The Finance Committee Chair assists the VPO treasurer in tracking and identifying expenses, preparing reports, and updating the VPO Board with respect to the financial position of the Organization. The Finance Committee Chair is open to any voting member of the VPO and is a standing committee with a right to vote on the Board. Anyone interested in this position should reach out to the VPO's Treasurer, Elsie Goodrich, at egoodrich@srhlaw.com to learn more about the role and its requirements.

Second, we need someone to take over the role of **Website Committee Chair**. The Website Committee Chair can be any member of the VPO who has an interest in social media and website maintenance. Duties include maintaining the Organization's website to ensure that current and accurate information is available to its members, such as Board of Directors current contact information, membership information, employment opportunities announcements, newsletters, meeting and seminar announcements, NFPA affiliation and Paralegal Certification announcements, news and information; and to periodically verify links and forms provided for informational purposes on the Organization's website to ensure correct functionality and accuracy. If you would like to learn more about the position, please reach out to the VPO's Vice President, Melinda Devoid-Siel, at mdevoidsiel@srhlaw.com.

Finally, we need someone to take on the role of **NFPA Secondary**. The NFPA Secondary position is open to any voting member of the VPO and is a Direction position with a right to vote on the Board. The NFPA Secondary assists the NFPA Primary as the VPO's representative to the national organization NFPA, become familiar with NFPA philosophies and publications as well as current national issues, and attend and act as the VPO's voice at NFPA national convention and regional meetings, as well as regularly held NFPA Board meetings. If you would like to learn more about the position, please reach out to the VPO's NFPA Primary Robyn Sweet at vponfpa2@gmail.com.

2023 Annual Meeting and Conference

By Louise Reese

VPO CLE Co-Chair

My sincerest gratitude to all the attendees and presenters who make our annual meetings successful events. I know that our members who live further away are not always able to make our in person meetings, and for this reason, we are still proceeding with every other year as virtual. But even with virtual sessions, we still need to hear from our members on topics and suggested presenters, especially for the areas of law that are less familiar to me. Please reach out with suggestions to louisereese@comcast.net.

For 2023, I was especially pleased. The Hampton by Hilton was easy to work with, coordinated any changes with efficiency and professionalism, and provided delicious food at a reasonable cost.

Out of the six CLE presenters at this event, three were first-timers. We even had one that was outside of the legal community and I am very pleased to have had the opportunity to be an “off campus student” for Dr. Onalapo from the University of Vermont. We were also pleased to welcome back Jill Spinelli, who presented in Middlebury in 2019 at a record high event (based on my memory), Jim Knapp, who has supported the VPO for decades, and of course, Michael Kennedy, who developed a Then and Now Ethics presentation that exceeded my best ideas.

We are also grateful that Fritz Langrock decided to spend his birthday with us, and lead a discussion on the changes to the legal services landscape. Laurie Noyes, Carie Tarte, and Lucia White then led a roundtable discussion on the status of and process for bringing limited legal licensure to Vermont.

Thank you to everyone who makes these events possible!

P.S. If you attended and did not receive the notification to share the session materials that was sent the following week, please contact me directly at louisereese@comcast.net.

Real Estate News

By Krista L. Cadieux, RP®

Lead-Based Paint State Rule Change



Real estate transactional paralegals know that the Vermont Department of Health regulates lead-based paint hazards in the homes within our state. When housing that was built before 1978 (target housing) is sold the seller is required to provide certain information to the buyer regarding the existence of lead-based paint. Additional requirements apply for rental housing and childcare facilities. Some of us may not be aware that the rules have recently changed. The Essential Maintenance Practices (EMPs) have been replaced with the Inspection, Repair and Cleaning Practices (IRC Practices) as of October 1, 2022.

As always, for **owner-occupied** target housing the seller must provide the following materials to the buyer:

- Protect Your Family from Lead in Your Home
- Lead Hazards in Housing
- Don't Spread Lead

For **rental** target housing the seller must also now provide the following materials to the buyer:

- Vermont Lead Law: What Landlords and Child Care Providers Need to Do
- Vermont Lead Law Disclosure and IRC Practices Verification Form

The Verification Form must be provided before the purchase and sale agreement is signed and then submitted to the Health Department.

If the buyer agrees to purchase a property that is not IRC-compliant they will only have 60 days after the closing to make it compliant. They must countersign the Verification Form to acknowledge that they are aware of that requirement and the penalty for failure to comply.

Annual inspections of rental target housing, by a person who has received IRC-certification from the Health Department, are required. A compliance statement must then be filed with the Department.

A currently EMP-certified person may perform the IRC Practices for 5 years from their last EMP training, except that any repairs covering more than 1 square foot must now be made by a person who has a Vermont Lead-Safe Renovation, Repair, Painting and Maintenance (RRPM) license or an Uncompensated Child Care Operator (UCCO) certificate.

The Health Department's website

(<https://www.healthvermont.gov/environment/asbestos-lead/asbestos-and-lead-information-property-owners>) is very informative and includes the following helpful resources, among others:

- the rules for selling or buying target housing;
- what the IRC Practices entail, including a link to the Regulations for Lead Control (Chapter 6, Subchapter 3 of the Environmental Health Rules);
- finding licensed lead contractors;
- disclosures and educational materials (both for sellers and for landlords);
- a link for tenants to lodge a complaint about their landlords' failure to comply; and
- FAQs for Renters includes a search tool to confirm whether a specific property is IRC-compliant.

Finally, remember to comply with the federal EPA lead-based paint disclosure rules (e.g., the Disclosure and the Protect Your Family from Lead in Your Home booklet), and be aware that some larger Vermont municipalities (e.g., Burlington) have their own lead-based paint rules as well.

Fraudulent Funds and Ransomware Power the Way to Cyber Loss

As we start a new year, it is critical to reiterate that cyberattacks are expected to continue their dominating reign in targeting the front forces of every company – its employees. Q4 of 2022 showed cybersecurity researchers that approximately 51% of claims that came through the door displayed two specific attack elements – fraudulent fund transfers and ransomware – with costly impacts on companies. In particular, FFTs (fraudulent fund transfers) represented 27.5% of claims, with threat actors able to manipulate employees via various social engineering techniques. Within this trickery, threat actors were able to successfully divert funds, unnoticed at first, to bank accounts that were under their control. On average, cyber insurers are seeing \$90,000 per claim from these unfortunate diversions.

Making another negative and lasting impression, ransomware's merciless conquering of companies' systems contributed to 24% of claims. On average, insurers noted that reported ransoms cost around \$256,000. While both of these types of attacks are costly should one transpire, the recovery period for these events is not necessarily alike. Specifically, insurers are advising companies that FFT claims do not incur the same response efforts. Since ransomware attacks can cause a downtime of 22 days, on average, they are simply more detrimental to a company's wallet and resources. However, if FFTs continue to trend upwards, these previous assumptions may change.

In any case, in order to potentially avoid the headaches of claims from one of these damaging attacks, it is best to take into consideration these deterrent and preparation tips:

- TRAIN employees on ransomware, its features, and the destruction it can cause. The same statement can be said for phishing, as employees “in the know” are better at determining threats.
- Ensure your AV software is up to date.
 - Yes, it is true that some forms of ransomware can go undetected by AV, but this should not deter one from using this software, as it is often updated with the latest heuristics and behavioral patterns to protect your devices.
- Do NOT shy away from MFA and its beneficial security defenses. MFA usage is a great practice for all corporate environments.
- Have spam filters in place. Most spam filters are able to detect malware-like attachments, malicious URLs, phony senders, etc. All of these preventative measures can protect your employees from making a critical mistake.
- Be wary of every email you receive. Good email hygiene can include hovering over URLs, examining senders’ display names, questioning odd attachments, analyzing initial email addresses, etc.
- Patch ALL your systems and their devices.
- Implement a disaster recovery plan that you can follow should your organization’s data become inaccessible due to an attack. The set of tools and guidelines in one of these plans can aid in the recovery period for a company.
- **VERIFY, VERIFY, VERIFY ALL WIRING INSTRUCTIONS!**

Information was derived from knowbe4.com

Holly Mendez, IT Security Analyst, CATIC

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DID YOU KNOW?

a. Promulgation Order Amending V.R.P.P. 66

<https://www.vermontjudiciary.org/PROMULGATEDVRPP66--STAMPED.pdf>

This Order was promulgated on April 10, 2023, effective July 3, 2023

The amendments to Rule 66 reflect and clarify current practice regarding inventories and accounts.

Rule 66(b) is new. Rule 66(b)(1) contains a general requirement that, unless waived by the court for good cause, an estate inventory must contain a description and value of the decedent's assets. The rule sets forth specific requirements for the content of inventories in the areas of real property, mobile homes, motor vehicles, high value items, and financial institution accounts. Former Rules 66(b) and (c) are redesignated (c) and (d) without change. New Rule 66(e) provides accounting standards consistent with 14 V.S.A. §§ 1055, 1057. Former Rules 66(d)-(f) are redesignated (f)-(h) without change.

Rule 66(i) is new. It spells out a process that enables a judge to deal with an inadequately prepared or presented inventory or account or other failure to comply with the provisions of Rule 66(a)-(h) by providing for their preparation "by a licensed professional with experience in fiduciary accounting."

II. PROPOSED RULE AMENDMENTS

(NOTE: THE FOLLOWING AMENDMENTS HAVE BEEN PROPOSED AND HAVE NOT BEEN APPROVED BY THE SUPREME COURT.)

a. Proposed Order Amending Rule 43.1 of the Vermont Rules of Probate Procedure

<https://www.vermontjudiciary.org/PROPOSED--VRPP43.1--FORCOMMENT.pdf>

The proposed amendments to Rule 43.1 incorporate lessons learned regarding remote and hybrid proceedings based on the experience of the bar, judges, court staff, and the public.

Proposed amendments to Rule 43.1(a) provide a default of remote proceedings with hybrid and in-person proceedings permissible with court permission. Most probate proceedings are conducted with relaxed evidentiary rules. Probate proceedings also often involve self-represented parties and individuals from a wide geographic area, including outside Vermont. The experience during the pandemic demonstrated that remote participation provides a good balance between the cost and convenience for the participants and the overall effectiveness of the proceeding, which is consistent with the scope of the Rules, set out in V.R.P.P. 1.

The proposed amendment to Rule 43.1(b) contains new definitions for hybrid and remote proceedings. Under 43.1(c)(1), the court has discretion to issue standing orders or case-specific orders for hybrid or in-person participation based on a consideration of any relevant factors provided in (g). The parties may also move or stipulate to hybrid or in-person participation under (c)(2). In assessing whether to grant or deny a motion or stipulation, the court is guided by a consideration of the factors in subdivision (g). Because a hybrid or in-person hearing requires the availability of a courtroom and additional court staff, when a motion is granted, the court may need to reschedule the proceeding. The proposed amendments to Rule 43.1(d) address the judge to preside remotely. The proposed amendments to Rule 43.1(e) address the required notice to the parties in advance of the hearing. The notice must specify whether the proceeding is in person, remote, or hybrid and describe the process for requesting an alternate means of participation. Subdivision (f) allows exceptions to the notice and timing requirements of the rule. Rule 43.1(g) incorporates the factors from former (c)(6) and (d)(3) and (4) for the court to consider in evaluating whether to have hybrid or in-person proceedings. New 43.1(h) addresses the conduct of the proceedings and allows the court to impose conditions to ensure the fairness of the proceeding, ensure reliability of the evidence, or to protect public health. Finally, former 43.1(e), regarding technical standards, is relabeled (i).

Comments on this proposed amendment should be sent by June 12, 2023, to Hon. Jeffrey Kilgore, Chair of the Advisory Committee on the Rules of Probate Procedure, at the following address:

Hon. Jeffrey Kilgore
Jeffrey.Kilgore@vermont.gov

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b. Proposed Order Amending Rule 5 of the 2020 Vermont Rules for Electronic Filing

<https://www.vermontjudiciary.org/PROPOSED--VREF-5--FORCOMMENT.pdf>

The proposed amendments to Rule 5(d) and (e) clarify the provisions regarding accepting and rejecting filings. The amended language provides that a filing may be accepted or rejected and that a rejection will provide the reason for the rejection. Rule 5(b) requires efilers to comply with the instructions in the e filing system. Some errors by efilers cannot be corrected by court staff after acceptance and therefore must be rejected. This includes errors such as filing into the wrong case, filing an initial filing as a subsequent filing or vice versa, or filing a criminal case with the wrong date or incorrect charge. The rule indicates that the Court Administrator will provide a list of permissible reasons for rejecting filings and make it available on the Judiciary website. Proposed new paragraph 5(d)(3) addresses failed submissions. In limited situations, efilings that do not comply with the e filing instructions or the system's formatting requirements may result in a submission failure.

Proposed new paragraph (d)(7) is added to provide a process for appealing a rejected e filing. The new provision indicates that the Court Administrator will provide an administrative process for reviewing the basis for a rejected e filing and delineate that process on the Judiciary website.

Rule 5(e), regarding court staff processing in the Supreme Court, is revised similarly to 5(d).

The proposed amendment to Rule 5(g)(1) deletes former subparagraphs (g)(1)(A) and (B), which allowed motions requesting alternative forms of relief to be filed in a single document but required motions requesting independent forms of relief to be filed separately. This rule has been difficult to implement in practice because the distinction between alternative and independent forms of relief was not easily ascertainable by court staff reviewing filings. To achieve more clarity, new (g)(1)(A) requires that all motions be filed as separate lead documents. Rule 5(g) is amended regarding supporting material for motions. New 5(g)(2)(A) allows a memorandum of law in support of a motion to be filed as part of the motion document itself or as a separate document. One memorandum may be filed in support of multiple motions or responses as long as the memorandum identifies the motions or response to which it relates. Under proposed revised (g)(2) efilers must file supporting material, including affidavits or exhibits, separately from the motion or memorandum.

Comments on these proposed amendments should be sent by June 12, 2023, to Hon. John A. Dooley (Ret.), Chair of the Special Advisory Committee on the Rules for Electronic Filing, at the following address:

Honorable John A. Dooley, (Ret.), Chair
John.Dooley@vermont.gov

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c. Proposed Order Amending Rules 3(c) and 12 of the 2020 Vermont Rules for Electronic Filing, Amending Rule 5(e) of the Vermont Rules of Probate Procedure, and Adding Rule 78 of the Vermont Rules of Probate Procedure
[https://www.vermontjudiciary.org/PROPOSED--VREF3\(c\)12_VRPP5\(e\)\(8\)78--FORCOMMENT.pdf](https://www.vermontjudiciary.org/PROPOSED--VREF3(c)12_VRPP5(e)(8)78--FORCOMMENT.pdf)

These amendments address the need in some probate proceedings for the court to inspect paper documents during consideration of the case. The proposed amendment to 2020 V.R.E.F. 3(c) mandates retention of a paper document by the court when required by statute or other provision of law. The proposed amendment to 2020 V.R.E.F. 12 directs that the court must retain a paper document even after it has been converted to electronic form if otherwise required by law. Contemporaneous amendment of V.R.P.P 5(e) and addition of V.R.P.P 78 delineate testamentary documents and vital records that must be provided on paper subject to retention and ultimate disposition in the Probate Division.

Comments on these proposed amendments should be sent by June 12, 2023, to Hon. Jeffrey Kilgore, Chair of the Advisory Committee on the Rules of Probate Procedure, at the following address:

Hon. Jeffrey Kilgore
Jeffrey.Kilgore@vermont.gov

1. PROMULGATED RULE AMENDMENTS

Emergency Promulgation Order Amending V.R.P.P. 80.10(c)(3)

[https://www.vermontjudiciary.org/EMERGENCYPROMULGATED--VRPP80.10\(c\)\(3\)--STAMPED](https://www.vermontjudiciary.org/EMERGENCYPROMULGATED--VRPP80.10(c)(3)--STAMPED)

This Order was promulgated on May 8, 2023, effective immediately.

Rule 80.10(c), regarding appointment of a guardian ad litem in specified proceedings, was adopted in 2020. As adopted, it allows a written objection to appointment of a guardian ad litem to be filed “no less than 7 days after appointment.” The word “more” is substituted for the word “less” to reflect the original intent of the 2020 amendment, which was to limit the time for objection.

b. Proposed Order Amending Rule 5.1 of the Vermont Rules of Probate Procedure

<https://www.vermontjudiciary.org/PROPOSED-VRPP5.1--FORCOMMENT>

The proposed order amends the service and notice requirements for beneficiaries of a decedent’s estate or trust even if they have not entered an appearance in the proceeding. The proposed addition of Rule 5.1(b)(1)(iv) and 5.1(b)(4)(vi) make clear that the fiduciary in an estate or guardianship proceeding must provide the beneficiaries of the estate and the stated interested parties of the guardianship with the details of license to sell as set forth in the Report on License. The proposed amendment also replaces language in the rule referring to “ward” with “person under guardianship.”

Comments on this proposed amendment should be sent by July 10, 2023, to Hon. Jeffrey Kilgore, Chair of the Advisory Committee on the Rules of Probate Procedure, at the following address:

Hon. Jeffrey Kilgore
Jeffrey.Kilgore@vermont.gov

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