

**STATE OF VERMONT  
VERMONT SUPREME COURT  
NOVEMBER TERM, 2011**

**Order Promulgating Amendments to the  
Vermont Rules of Probate Procedure and Forms**

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 17(a) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 17. PARTIES GENERALLY**

**(a) Parties at commencement.** At the commencement of a probate proceeding, all interested persons shall be considered parties and shall be served with notice pursuant to Rule 4.

(1) *Decedent's estates.* At the commencement of a probate proceeding involving a decedent's estate, the term "interested person" includes heirs, devisees, legatees, children, spouses, and such other persons as the court directs. The term "interested person" also includes the trustees of any trusts to which assets of the decedent's estate may be distributed. Notice to a trustee shall be sufficient to notify the trust's beneficiaries. It also includes persons having priority for appointment as executor or administrator, and other fiduciaries representing interested persons.

(2) *Trusts estates.* At the commencement of a probate proceeding ~~opening a trust estate~~ involving a trust to which the Vermont Trust Code, 14A V.S.A. §§ 101-1204, applies, the term "interested person" includes ~~beneficiaries and remaindermen.~~ It also includes persons having priority for appointment as trustee, and other fiduciaries representing interested persons the following persons, unless on motion of the petitioner the court finds that, under applicable provisions of the Vermont Trust Code or the trust agreement, particular individuals or classes of individuals are not persons to whom notice must be given:

(i) all beneficiaries, as defined in 14A V.S.A. § 103(3), provided that a beneficiary represented by another person pursuant to 14A V.S.A. §§ 301-305 is not an interested person unless otherwise ordered by the court;

(ii) any fiduciary currently acting for the trust, or proposed to be appointed or approved by the court, including a trustee, a trust protector or trust advisor as defined in 14A V.S.A. § 1101, a prior fiduciary whose

action or inaction is in issue, and any other party found by the court to be acting in a fiduciary capacity;

(iii) any settlor of the trust if living, provided that a settlor represented by another person pursuant to 14A V.S.A. §§ 301-305 is not an interested person unless otherwise ordered by the court; and

(iv) any person who represents another person as provided in 14 V.S.A. §§ 301-305.

(3) *Involuntary guardianships for adults.* At the commencement of a probate proceeding seeking involuntary appointment of a guardian for an adult, the term "interested person" shall include:

~~(i) the proposed ward;~~

~~(ii) the spouse of the ward;~~

~~(iii) the parents of the ward;~~

~~(iv) the adult children of the ward;~~

~~(v) if a durable power of attorney for health care or an advance directive has been executed by the ward, the person named therein as the agent;~~

includes those persons listed in 14 V.S.A. § 3061(5) and (vi) such other persons as the court directs.

(4) *Guardianships of minors.* At the commencement of a probate proceeding seeking to appoint a guardian, or modify or terminate a guardianship, for a minor, the term "interested person" shall include, as appropriate, the proposed ward, or the child, if over 14 years of age; the permanent guardian or any person alleged to have had the principal care and custody of the ward during the 30 days preceding the filing of the petition; the commissioner for children and families; and any living parent.

(5) *Voluntary guardianships of adults.* At the commencement of a probate proceeding seeking voluntary appointment of a guardian for an adult, the term "interested person" includes such persons as the court directs.

(6) *Generally.* In any proceeding, it the term "interested person" also includes any person who is required by law or by the court to be notified of the commencement of a proceeding. It does not include a creditor of the proposed ward, or of the person alleged to be in need of guardianship and does not include a creditor of the decedent, or decedent's estate unless the creditor is the petitioner.

## Reporter's Notes—2012 Amendment

Rule 17(a)(2) is amended for consistency with the provisions of the Vermont Trust Code, 14A V.S.A. §§ 101-1204, enacted by Act 20 of 2009. A conforming amendment of Form 111 has been recommended to the Probate Division Oversight Committee for posting with the probate forms on the Judiciary website.

Rule 17(a)(2) defines “interested persons” entitled to notice as individuals in four categories drawn from the Trust Code unless on petitioner’s motion the court finds that under the Code or the trust agreement particular individuals or classes are not entitled to notice. Thus, notice under provisions requiring notice only to “qualified beneficiaries” as defined in 14A V.S.A. § 103(13)(A) will not be required if the court so finds on petitioner’s motion. See, e.g., 14A V.S.A. §§ 108(d), 417, 705(a)(1). In the absence of such a finding, paragraph (a)(2)(i)-(iv) requires notice to be given to beneficiaries as defined in the Code and to settlors unless they are represented by other parties and notice is not required by the court; to fiduciaries and parties found by the court to be fiduciaries; and to representative parties as provided in the Code.

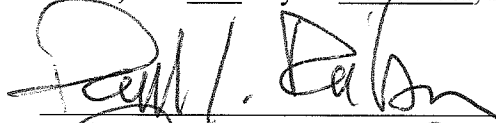
Good practice and, presumably, due process, should guide the parties and the court in determining the need for notice. The method of notice required is only that “reasonably calculated in all the circumstances” to inform the recipient of the proceeding, which for those with remote interests or of unknown whereabouts, may be notice by publication. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). The exclusion of represented parties in (a)(2)(i), (iii), reflects the assumption of the statute that notice to the representative is adequate to bind the represented person unless the court finds that the representation is inadequate because of a conflict or because the person should get notice for some other reason. The addition of “by the court” in paragraph (a)(6) makes clear the power of the court to provide for adequate notice in any circumstances that require it.

Paragraphs (a)(3)-(5) concerning notice of guardianship proceedings are amended for consistency with recent statutory changes (e.g., 14 V.S.A. §§ 2666, 3061(5)). The amendment also clarifies the language of paragraph (a)(6).

2. That these rules, as amended and added, are prescribed and promulgated effective January 23, 2012. The Reporter's Notes are advisory.

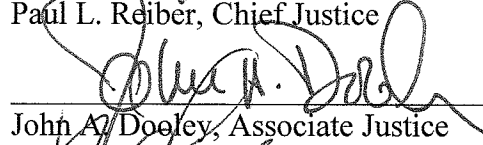
3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 22<sup>nd</sup> day of November, 2011.



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Paul L. Reiber, Chief Justice



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John A. Dooley, Associate Justice



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Marilyn S. Stoglund, Associate Justice



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Brian L. Burgess, Associate Justice