

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

Order Promulgating Amendments to the Vermont Rules of Probate Procedure

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

1. That Rule 80.3 of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 80.3. SMALL ESTATES

(a) **Commencement.** A small estate may be commenced by filing:

- (1) A petition to open the estate;
- (2) The entry fee;
- (3) A death certificate;
- (4) An inventory sworn to by the petitioner;

(5) ~~A copy of a paid and receipted bill for funeral expenses or, in the alternative, a bond without surety in the sum of \$300 conditioned on payment of funeral expenses of the deceased from the assets of the estate within one year from the date of death~~ A receipt showing that the funeral expenses of the deceased have been paid, or a personal bond in an amount determined by the judge of probate to be reasonable, conditioned for the payment of the funeral expenses of the deceased, within one year from the date of death; and

- (6) The will, if any.

~~The court may require that the bond have one or more sureties, based on a specific finding that a surety is necessary, and may require that a bond in an amount larger than \$300 be filed.~~

(b) **Allowance of the will.** The court may, in its discretion, waive the notice requirement of this paragraph. If notice is not waived, a copy of the will and notice of the right to object shall be sent by first class mail to each interested person or to a representative of the person as described in Rule 4(d)(2) and (3). If the address or present whereabouts of an interested person is unknown and cannot be ascertained by the petitioner with due diligence, the petitioner shall publish a notice, pursuant to Rule 4(e), specifying

the name of the deceased and the date by which any objection must be filed. The notice shall also state that a copy of the will is available from the court. No notice and hearing is required if the surviving spouse, if any, and all the heirs at law and next of kin of the deceased consent to the allowance of the will. The notice to beneficiaries of the probate of a will pursuant to 14 V.S.A. § 111 is not necessary in a small estate.

(c) **Objections to allowance of a will; waiver of will.** An interested person may object to the allowance of the will by filing a written objection within 21 days after the notice was mailed or last published, whichever is later. A copy of the objection shall be served on the petitioner by first class mail. If an objection is filed the court shall hold a hearing on the allowance of the will as in estates other than small estates. If no objection is filed, the will shall be allowed without hearing. Waiver of the provisions of the will must be filed within the time allowed for a written objection.

(d) **Order.** If the court finds that the requirements for a small estate are met, the court shall issue an order:

(1) that the estate will be considered a small estate;

(2) that the will, if any, has been allowed and that there was no objection to the allowance or, after hearing, the court overruled any objection;

(3) that the person specified in the order is appointed administrator or executor; and

(4) that ~~no further bond is required at this time. The order shall also specify the duties and responsibilities of the executor or administrator~~ are as specified.

(e) **Creditors' claims; payment of creditors.** The executor or administrator may, but is not required to, give notice to creditors pursuant to law. Whether or not notice is given to creditors, the executor or administrator shall pay known debts of the deceased and the funeral and burial expenses of the deceased from the assets of the estate.

(f) **Distribution; accounting; discharge.** The executor or administrator shall pay over the balance of the estate in accordance with the terms of the will or in accordance with law if there is no will. Within 30 days thereafter, the executor or administrator shall file a report together with such receipts as are required by the court. The reports shall state what debts of the deceased have been paid. On the filing of the report, the court may discharge the executor or administrator without notice or hearing.

(g) **Closure.** A small estate is deemed closed when the executor or administrator is discharged. Unless the court otherwise directs, no tax clearance is required to close a small estate.

(h) **Affidavit procedure.** When an estate consists of one or more assets that, in the court's discretion, may pass in accordance with the terms of the will, if any, or the law of

descent and survivor's rights, without administration, the court may accept such factual proffers as are determined to the satisfaction of the court by affidavit. The court may then order the asset or assets distributed in accordance with the terms of the will, if any, or the laws of descent and survivor's rights without administration.

Reporter's Notes—2011 Amendment

Rules 80.3(a), (d) are amended for consistency with amendments to 14 V.S.A. §§ 1901-1903 enacted by Act No. 75 of 2009 (Adj. Sess.). That legislation simplified the requirements of inventory, eliminated the requirement of sureties and gave the court discretion as to the amount of the bond for the payment of funeral expenses, and added a finding of a surviving parent or parents but no spouse or child to the circumstances in which the court may grant administration and issue letters without further notice or bond.

Subdivision (h) is added to formalize and make uniform the affidavit procedure that is used in many probate courts.

2. That this rule, as amended, is prescribed and promulgated effective _____. 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 ____ day of _____, 2011.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice