

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS**

**Minutes of Meeting on TEAMS
October 28, 2022**

The meeting was called to order by Judge Tom Carlson. Present were Committee members: Judge Michael Kainen, Judge Kerry McDonald-Cady, Judge Gregory Glennon, Susan Ellwood, Laura Bierley, Margaret Villeneuve, Alycia Sanders, Jody Racht, Kristin Gozzi, and Marshall Pahl. Also present was ex-officio member: Eddie Poff from the Vermont Network Against Domestic Violence and the Committee liaison to the Supreme Court, Justice Nancy Waples. Judge Amy Davenport (ret.) was present as the Reporter.

1. Approval of draft minutes of the meeting of July 22, 2022: the draft minutes were unanimously approved.
2. Welcome to New Member: Judge Carlson welcomed Kristin Gozzi who was recently appointed to replace Dickson Corbett as the representative from the Department of State's Attorneys and Sheriffs. Kristin is a deputy state's attorney from Washington County.
3. Status of proposed amendments:
 - a. Amendment to V.R.F.P. 9(b) and 9(g)(1) and V.R.F.P. 4.3(a)(7) to provide email addresses in RFA proceedings and define period during which proceedings are confidential. Judge Davenport reported that the Supreme Court promulgated the amendment on September 13 to become effective November 14, 2022. The LCJR will review the amendment at its meeting on November 1.
 - b. V.R.F.P. 1.1 Procedure for Youthful Offender Proceedings in the Family Division. Judge Davenport reported that the Supreme Court promulgated the amendment on September 13 to become effective November 14, 2022. The LCJR will review the amendment at its meeting on November 1.
4. Amendment to V.R.F.P. 4.3(a)(3) to allow for automatic consolidation when divorce filing precedes an RFA proceeding. The Committee reviewed a redraft of an amendment to Rule 4.3(a) based on the Committee's discussion in July. The rule was redrafted to clarify that when an RFA is filed after a proceeding subject to Rule 4.0, consolidation should only occur if a temporary RFA order is issued or, in the case of a denial, if the plaintiff requests a hearing. The Committee discussed the logistics of consolidation and concluded that this may be a matter for Family Oversight to review once the amendment to the rule is promulgated. The Committee voted unanimously to send the amendment to the Supreme Court to be sent out for comment.
5. Amendment to V.R.F.P.(1)(b)(1) to provide enforcement of the requirement to in the rule to provide race and ethnicity data at the time of filing a petition. Marshall Pahl provided an update. The Juvenile Subcommittee had hoped that the problem of missing race/ethnicity data could be solved through an adjustment to the case management software used by the State's Attorneys as previously proposed by Dixson Corbett. Unfortunately, this is not technically possible. In the alternative, Mr. Pahl has proposed that Rule (1)(b) be amended to allow the Court to dismiss a case without prejudice if the filing does not include the required race/ethnicity data. This proposal needs to be discussed by the Juvenile Subcommittee once it has been reconstituted. Judge Carlson reconstituted the Juvenile Subcommittee naming the following members, all of whom agreed to be on it: Marshal Pahl, Jody Racht, Kristin Gozzi and Judge Kerry MacDonald-Cady. Judge Carlson indicated his intent to form a

Domestic/RFA subcommittee. The Domestic/RFA subcommittee would continue to work on issues related to public access to family court records along with other rules related to Domestic and RFA proceedings.

6. Request by Probate Rules Committee for joint subcommittee to consider whether legislation giving family and probate divisions jurisdiction to make findings related to Special Immigration Status for Vulnerable Noncitizen Youth requires rules. See 4 V.S.A. § 33(18), 4 V.S.A. § 35, 14 V.S.A. § 3098. Legislation which substantially revises the statute on vulnerable non-citizen youth was enacted by the Legislature in 2022. Judge Davenport reported that she has contacted Judge Kilgore about a joint subcommittee to consider whether new rules are required and is waiting to hear back from him. Members of the Joint Subcommittee from the Family Rules Committee are: Judge Carlson, Marshall Pahl, Jody Racht and J. Davenport.
7. Draft amendments to V.R.F.P. 17 related to remote participation in family proceedings proposed to the Supreme Court's Special Advisory Committee on Remote Access. The Committee reviewed the proposal to the Special Advisory Committee regarding amendments to V.R.F.P. 17 that was agreed upon at the Committee's meeting on October 14. Emily Wetherell joined the Committee for the discussion. Committee members discussed whether permanency planning hearings in the juvenile docket should be subject to V.R.C.P. 43.1 in addition to status conferences and pre-trial conferences. Different views were expressed regarding the pros and cons of having permanency planning hearings held remotely. The Juvenile Subcommittee will continue this discussion, but for now the Committee agreed not to amend its proposal to the Special Advisory Committee. Emily Wetherell discussed the draft changes that the Civil Rules Committee plans to make in its proposal to the Special Advisory Committee regarding V.R.C.P. 43.1. In response to concerns raised by this Committee in its meeting on October 14, the subcommittee of the Civil Rules Committee that is working on V.R.C.P. 43.1 are recommending the following changes: (1) notices of court hearings will no longer state whether the judge will participate in person or remotely; (2) notice that the judge will participate remotely will only be required for hearings scheduled to be in-person; (3) the notice of remote participation by the judge must be sent reasonably in advance of the hearing unless waived; and (4) the notice requirement can be waived based on a finding of unanticipated and unintended events. There were no objections to the redraft of V.R.C.P. 43.1 related to the issue of remote participation by a judge.
8. New Business: Two items of new business were discussed:
 - a. V.R.F.P. 1(i)(2)(B) and (i)(7) Determination of Competence to Be Subject to Delinquency Proceedings. Attorney Gozzi proposed that the term "mental retardation" be replaced and suggested that "intellectual disability" is a more appropriate term. Attorney Pahl suggested that the Committee might want to review all of the Family Rules for outdated terms. This is a project that the Legislature has tackled over the last few years with respect to outdated terms in the Vermont statutes. Judge Davenport will contact Erik Fitzpatrick at Legislative Council to see if there is a list of terms that have recently been replaced in statute.
 - b. V.R.F.P. 4.1(e) Waiver of Final Divorce Hearing. Judge Carlson pointed out that under the current rule, parties who have children, but are not represented by counsel cannot waive their final divorce hearing. He proposed that the Committee review this provision to determine whether it still makes sense.

9. Future Meetings: The Committee agreed that four meetings per year was an appropriate schedule. Judge Carlson would like to schedule all four meetings at once. Judge Carlson and Judge Davenport will work on a proposed schedule and send dates out to the Committee.
10. The meeting was adjourned at 3 p.m.