

VERMONT SUPREME COURT
Advisory Committee on Rules for Family Proceedings

2010 Annual Report
June 4, 2011

The Committee submits this report to the Supreme Court pursuant to Administrative Order No. 29, § 3. This report covers the Committee's activities since its last annual report submitted to the Court on December 7, 2009. Since that report, the Committee has met nine times—on January 29, March 5, May 25, June 18, September 17, and November 5, 2010, and January 21, March 4, and April 22, 2011—to consider proposals to amend the Vermont Rules for Family Proceedings, the Vermont Rules of Appellate Procedure, and related administrative orders. During the year, Rhonda F. Sheffield, Windsor County Deputy State's Attorney, was appointed to replace Erica Marthage, Bennington County State's Attorney, and Mary Frost, Bennington Superior Court Clerk, was appointed to replace Sharon Annis, Court Manager, Windham County Family Court, both of whom had resigned from the Committee. Michele Olvera replaced Lane Dunn as Vermont Network Liaison.

Amendments to V.R.F.P. 4(b)(2)(B), 9(a)(3), 15, and 17, as recommended by the Committee, were promulgated December 10, 2009, effective February 12, 2010. See <http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRF4b2B4g19131517dec09.pdf>. The Legislative Committee on Judicial Rules formally objected to the amendment of Rule 9(a)(3) in a letter of February 12, 2010, to the Chief Justice. Chairwoman Racht's letter of March 10, 2010, to the LCJR Chair explaining the Committee's position was transmitted to the LCJR. In the absence of any further legislative objection, the amendment of Rule 9(a)(3) remains in effect.

Emergency amendments to V.R.F.P. 1-3, 6, 12, transmitted to the Supreme Court on November 7, 2008, and promulgated on December 17, 2008, effective January 1, 2009, and emergency amendments to V.R.A.P. 3(d), 8(c)(2), 10(b)(7), and 26(b) and (d) and A.O. 4, § 4(c)(1), promulgated on June 17, 2009, effective May 28, 2009, to implement 33 V.S.A. chs. 51-53 as enacted by Act 185 of 2007 (Adj. Sess.), effective January 1, 2009, were recommended to the Court for permanent promulgation and were promulgated on February 24, 2010, effective April 26, 2010. See <http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDPERMANENTVRF1-3612VRAP3d8c210b726banddAO4c1PERMANENTFebruary10.pdf>.

Emergency amendments to A.O. 38, allowing video conferencing on a case-by-case basis as well as a county-by-county basis, in order to reduce the cost of transporting lodged defendants in the face of economic exigencies, promulgated by the Court on December 17, 2008, effective January 1, 2009, with a direction to the Advisory Committee to report on any comments received by September 30, 2009, were

recommended to the Court for permanent promulgation. The Court decided that these amendments should continue as emergency rules.

A second emergency amendment to A.O. 38, adding Section IV to allow testimony of a child pursuant to Vermont Rule of Evidence 807(e) to be televised in Bennington District and Family courts, subject to prescribed safeguards, was promulgated by the Court and made effective on January 14, 2010, with a direction to the Advisory Committee to report on any comments received by September 30, 2010. See <http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDAmendmentToAO38onvideotestimony.pdf>. No comments have been received. The Court has asked the Committee to defer action, pending consideration of videoconferencing issues by the Special Advisory Committee on Electronic Filing.

The Court Administrator's memorandum of June 24, 2010, contained new standard headings for forms in the Civil, Criminal, Environmental, and Family Divisions of the Superior Court as approved by the Court Administrator and Administrative Judge for Trial Courts to accommodate Act 154 of 2009 (Adj. Sess.), § 7, enacting 4 V.S.A. § 30 to establish a single statewide Superior Court with those divisions, effective July 1, 2010. *See* http://www.vermontjudiciary.org/LC/Shared%20Documents/MEMOtoBAR_Act154_H470CHANGES_SurchargesandCourtForms.pdf.

An emergency amendment of V.R.F.P. 13 to implement Act 154 of 2009, §7 (Adj. Sess.), An Act Relating to Restructuring of the Judiciary, effective July 1, 2010, which enacted 4 V.S.A. § 30 establishing a single Superior Court of statewide jurisdiction with Civil, Criminal, Family, and Environmental divisions to replace the former Superior, District, Family and Environmental courts, was promulgated on July 1, 2010, effective on that date. *See* http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDEMERGENCY_VT--restructuring%20rules-070110.pdf.

The remainder of this report summarizes the Committee's activities under three headings: I. Proposed rules recommended for circulation to the bar. II. Matters not to be considered further at this time. III. Matters remaining on the Committee's agenda.

I. PROPOSED AMENDMENTS RECOMMENDED FOR CIRCULATION TO THE BAR

The Committee recommends that the following amendments to the Vermont Rules for Family Proceedings be circulated to the bar for comment (a proposed promulgation order is attached):

1. An amendment to V.R.F.P. 7 and a new V.R.F.P. 7.1 to incorporate recommendations of the Family Division Oversight Committee and the Advisory Committee concerning representation by attorneys and guardians ad litem in proceedings under Rules 4 and 9, including those in which a child may be a witness.

2. An amendment adding V.R.F.P. 9(l) to implement 33 V.S.A. §§ 6931 *et seq.*, providing that a petition for relief of a vulnerable adult as defined in 33 V.S.A. § 6902(14) from abuse, neglect, or exploitation may be filed either by the vulnerable adult or by “an interested person” on the vulnerable adult’s behalf.

II. MATTERS NOT TO BE CONSIDERED FURTHER AT THIS TIME

The following items have been dropped from the Committee’s agenda and will not be considered further unless consideration is requested by the Court or another committee:

1. The Committee had referred to the Civil Rules Committee the question whether V.R.C.P. 5(g) should be amended to address the effect on Qualified Domestic Relations Orders (QDRO) of redaction of social security numbers under that rule. On being advised that the Civil Rules Committee has recommended an appropriate amendment, the Committee agreed that no further action was necessary on this question.

2. On being advised that the Family Court Oversight Committee no longer wished to pursue the question whether a nominal filing fee should be required for post-judgment motions in parentage and divorce proceedings and other situations, the Committee agreed to remove this item from its agenda.

3. On being advised that the Family Court Oversight Committee had sent to the Court Administrator a proposed two-part form revising Form 813 and that no Rule amendment appeared to be necessary, the Committee agreed to remove this item from its agenda.

4. At Judge Davenport’s request, the Committee reviewed a draft of Court Administrator’s Form 228, Application to Waive Filing Fees and Service Costs, prepared at her request by the Civil Rules Committee. Committee members sent comments to Judge Davenport. In the absence of any further request for comments, the Committee agreed to remove this item from the agenda.

III. MATTERS REMAINING ON THE COMMITTEE'S AGENDA

The following matters remain on the Committee's agenda for further consideration:

1. Required Mediation in Family Court. The Committee will continue to consider the question whether mediation may be or should be required in Family Court.

2. Electronic Filing. The Committee will develop proposed revisions of the Family Rules necessary to accommodate the roll-out of electronic filing in the Family Division in 2011.

3. V.R.C.P. 4(l). The Committee will consider how best to adapt V.R.C.P. 4(l) providing for waiver of service to the Family Rules.

4. “Restyling” the Family Rules. The Committee is considering draft amendments “restyling” the Family Rules that have been prepared by Professor Wroth’s Advanced Civil Procedure class.

5. The Committee is reviewing V.R.F.P. 4(b)(1)(A) in light of *Samis v. Samis*, 2011 VT 21, par. 10-11 (2/18/11).

In closing, the Committee and the Reporter wish to thank all the members of the Vermont bench and bar, the members of the Legislative Committee on Judicial Rules, and members of the public who have participated in the rule-making process through their thoughtful suggestions and comments; Sharon Annis and Erica Mathage, Esquires, as members, and Lane Dunn as Vermont Network Liaison, for their long service to the Committee; and Court Administrator Robert Greemore, Deb Laferriere, Larry Abbott, and other court administrative personnel for their continuing assistance.

Respectfully submitted,

Jody Racht, Chair

For the Committee:

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