

VERMONT SUPREME COURT
Advisory Committee on Rules for Family Proceedings

2011 Annual Report
December 13, 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 2010 annual report submitted to the Court on June 4, 2011. Since that report, the Committee has met twice—on July 8, and December 2, 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, Hon. D. Justine Scanlon, Probate Judge for the Bennington Unit, was appointed to replace Hon. Ernest T. Balivet, as probate judge member of the Committee.

Proposed amendments to V.R.C.P. 5(g) and V.R.A.P. 25(a)(2) permitting inclusion of social security numbers when required by law—as recommended by the Family Rules Committee to address issues that could arise concerning QDROs—were sent out for comment on July 19, 2010, with comments due on September 20, 2010, reviewed by the Legislative Committee on Judicial Rules on June 29, 2011, transmitted to the Supreme Court on August 23, 2011, and promulgated on August 31, effective October 31, 2011. *See* [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRC P5\(g\)45\(f\)80.5VRAP25.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRC%20P5(g)45(f)80.5VRAP25.pdf). These promulgated amendments were reviewed by the Legislative Committee on Judicial Rules on September 20, 2011, without comment.

The Committee's proposal amending V.R.F.P. 7 and adding V.R.F.P. 7.1 to revise provisions concerning representation by attorneys and guardians ad litem in proceedings under Rules 4 and 9, and adding V.R.F.P. 9(l) to implement 33 V.S.A. §§ 6931 *et seq.*, concerning petitions for relief of a vulnerable adult as defined in 33 V.S.A. § 6902(14) from abuse, neglect, or exploitation, were transmitted to the Court for circulation to the bar in the Committee's 2010 Annual Report, dated June 4, 2011. The proposed amendments have not yet been circulated. Justice Skoglund wished to review the language and amount of detail in the proposed amendment of Rule 7 and proposed Rule 7.1 but has not yet completed her review.

A consolidated text of Vermont Rules for Electronic Filing, as amended, and of Rule 3 of the Vermont Rules Governing Dissemination of Electronic Case Records, as amended, and all related Civil and Appellate rules amendments through March 22, 2011, has been compiled. *See* http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/CONSOLIDATEDElectronicDisseminationAppellateCivil_October2011.pdf. These amendments, as well as other amendments promulgated subsequently to V.R.E.F. 3(f) and 10(a), were made permanent by order of the Supreme Court dated August 31, 2011, effective October 31, 2011. *See* [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRE FmadePermanent.docx.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRE%20FmadePermanent.docx.pdf). The relevant rules committees have been directed to report

on necessary changes to those rules made necessary by experience in practice on a continuing basis. The Committee continues to monitor Family Division issues, and consider the development of Family Rules, in electronically filed cases.

The remainder of this report summarizes the Committee's activities under two 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 proposed amendments to the Vermont Rules for Family Proceedings be circulated to the bar for comment. A proposed promulgation order is being transmitted to the Court simultaneously with this report:

1. Amendments of V.R.F.P. 4 (b)(2) to provide a simplified method of waiver of service in Family Division cases in lieu of the incorporation of V.R.C.P. 4(l).
2. Amendment of V.R.C.P. 14(d) to add “or other good cause” to the grounds on which the court may waive litigant education program attendance requirements

II. MATTERS NOT TO BE CONSIDERED FURTHER AT THIS TIME

The Committee will not give further consideration to an amendment of V.R.F.P. 4(a) eliminating the requirement of signature of a pro se’s summons by a judge or a clerk for electronic filing purposes until electronic filing is ready to be required in the family Division.

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. “Restyling” the Family Rules. The Committee is considering draft amendments “restyling” the Family Rules that were prepared by Professor Wroth’s Advanced Civil Procedure class.
3. 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; Hon. Ernest T. Balivet for his service as a member of 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

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