

**VERMONT SUPREME COURT**  
**Advisory Committee on Rules for Family Proceedings**

2014 Annual Report  
December 4, 2014

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 2013 annual report submitted to the Court on December 13, 2013. Since that report, the Committee has met three times—on January 24, March 28, and September 26, 2014—to consider proposals to amend the Vermont Rules for Family Proceedings. During the year, Hon. Kevin W. Griffin and Hon. Robert P. Gerety, Jr., were appointed to the Committee to replace Hon. David A. Howard and Hon. M. Kathleen Manley, who had resigned.

The Committee's recommended 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, promulgated by the Court on January 22, 2014, was reviewed by the Legislative Committee on Judicial Rules on June 17, 2014, without comment.

The Committee's proposed amendments to V.R.F.P. 16 to incorporate provisions of 15 V.S.A. § 603, enacted by 2011, No. 119 (Adj. Sess.), § 2, establishing an enhanced procedure for civil contempt in the enforcement of orders of the Family Division in divorce proceedings that create a financial obligation were sent out for comment on December 19, 2013, with comments due on February 21, 2014. No comments were received from the bar. The amendments were reviewed on June 17, 2014, by the Legislative Committee on Judicial Rules without comment. On September 26, 2014, the Advisory Committee recommended that the rule be promulgated as sent out for comment. That recommendation and a recommended promulgation order will be transmitted to the Court in a separate letter.

No comments were received from the bar on emergency amendments to V.R.F.P. 12(a), (d), requested by the Court, suggested by members of the Committee, and promulgated July 16, 2014, effective immediately, to address legislative amendment of V.R.F.P. 12 by Act 192 of 2013 (Adj. Sess.), § 22, effective July 1, 2014, or on the Committee's proposed amendment of V.R.F.P. 1(a)(3) incorporating a reference to V.R.Cr.P. 11.1 and sent out for comment on July 21, 2014. Comments on both rules were due on September 19, 2014. No comments were received from the bar on either rule. On September 26, 2014, the Committee recommended that emergency V.R.F.P. 12(a), (d), be promulgated as permanent amendments and that V.R.F.P. 1(a)(3) be promulgated as sent out for comment, subject to any comments from the Legislative Committee on Judicial Rules (LCJR). At a meeting on December 2, 2014, LCJR had no comments. Accordingly, those recommendations and proposed promulgation orders will be transmitted to the Court in a separate letter.

The remainder of this report summarizes the Committee's activities under three headings: I. Proposed amendment 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 a proposed new V.R.F.P. 18 providing for mediation in the Family Division, and related conforming amendments to V.R.F.P. 4(a) and 9(a), be sent out for comment. A proposed promulgation order will be transmitted to the Court separately.

## **II. MATTER NOT TO BE CONSIDERED FURTHER AT THIS TIME**

It was proposed that V.R.F.P. 4(b)(2)(D) be amended to provide for separation of parties during case management conferences. Considering that this should be deemed a best practices issue, the Committee referred the matter to the Family Division Oversight Committee for consideration by Family Division case managers.

## **III. MATTERS REMAINING ON THE COMMITTEE'S AGENDA**

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

1. The Committee will continue to consider the request of the Supreme Court in *Columbia v. Lawton*, 2013 VT 2 (1/18/13), to clarify the appropriate procedure under which a non-party in a parentage case may seek to set aside a parentage judgment.
2. The Committee will continue with the restyling and restructuring of V.R.F.P. 4 as V.R.F.P. 4.0-4.3 to provide a more accessible and understandable format for the provisions of the present rule.
3. The Committee will consider the request of the Supreme Court in *In re K.F.*, 2013 VT 39, note 2 (6/7/13), to develop a procedure for addressing ineffective assistance of counsel claims by parents in TPR proceedings.
4. The Committee will review amendments to V.R.F.P. 6 made necessary by Act 170 of 2013 (Adj. Sess.) and other matters pertaining to minor guardianships through a joint subcommittee to be formed with the Probate Rules Advisory Committee
5. The Committee will consider Family Rules amendments to conform to Act 96 of 2013, "Respectful Language Act," when the Legislative Council has completed its compilation of statutory provisions not covered in Act 96 that need to be revised or eliminated.
6. The Committee will consider Family Rules amendments to implement 15 V.S.A. §665(f) added by Act 197 of 2013, § 1 (Adj. Sess.) denying parent child contact to the perpetrator of a sexual assault.
7. The Committee will consider an amendment to V.R.F.P. 9(e) providing a time deadline for a hearing request after denial of an ex parte order.
8. The Committee will consider an amendment to V.R.F.P. 15(f)(1)(A) providing for the application of its automatic withdrawal provision to Rule 9 cases.
9. The Committee will consider possible amendments to the Vermont Rules of Public Access concerning Family Division records with a joint subcommittee formed with the Public access Rules Advisory Committee.

In closing, the Committee and 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; Scott Woodward of the Vermont bar for his drafting assistance on restyling and restructuring V.R.F.P. 4; Hon. Beth Robinson for her continuing assistance and support as Supreme Court liaison; Hon. David A. Howard and Hon. M. Kathleen Manley for their long and faithful service as members of the Committee; and Court Administrator Patricia Gabel; Deb Laferriere; Larry Abbott; and other court administrative personnel for their continuing assistance.

Respectfully submitted,

Jody Racht, Chair

For the Committee:

Robin S. Arnell  
Hon. Cortland T. Corsones  
Mary Frost  
Hon. Robert P. Gerety, Jr.  
Hon. Kevin W. Griffin  
Michael Kainen  
Peter M. Lawrence  
Jean Murray  
Susan M. Murray  
Hon. Barry Peterson  
Linda Aylesworth Reis  
Hon. D. Justine Scanlon  
Robert H. Sheil  
Christine S. Speidel

Hon. Beth Robinson, Supreme Court Liaison  
Michele Olvera, Vermont Network Liaison  
Professor L. Kinvin Wroth, Reporter