

VERMONT SUPREME COURT
Advisory Committee on Rules for Family Proceedings

2015 Annual Report
May 31, 2016

The Committee submits this report to the Supreme Court pursuant to Administrative Order No. 29, § 3. This report covers the Committee's activities in 2015. The Committee met five times, on January 23, March 27, June 12, September 11, and December 18, 2015. During the year, Penny Benelli, Anne Damone, Kurt Hughes, Harriet Hulz King, and John Wilson were appointed to replace Jean Murray, Mary Frost, Peter Lawrence and Susan Murray, who had resigned, and Sara Kobylenski, whose term had expired the previous year.

The Committee's recommended emergency amendment to V.R.F.P. 4(r) was promulgated July 1, effective immediately, with comments due by September 1, 2015. On December 18, 2015, the Committee voted unanimously to recommend to the Court that the amendment be made permanent.

The Committee's proposed amendments to V.R.F.P. 4(a)(2) and 9(a)(2), and proposed new V.R.F.P. 18, sent out for comment on December 15, 2014, with comments due on February 17, 2015, and proposed amendments to V.R.F.P. 4(j), (o), 9(e), and 15(f)(1)(A), sent out for comment on February 26, with comments due on April 27, 2015, were recommended to the Supreme Court for promulgation in a consolidated order on May 25, 2015. The recommended amendments to V.R.F.P. 4(j), (o), were withdrawn to be reconsidered in light of concerns of the Legislative Committee on Judicial Rules expressed on June 26, 2015. Revised drafts of those amendments will be considered at the first Committee meeting in 2016. The Committee's recommended amendments to V.R.F.P. 4(a)(2) and 9(a)(2), 9(e), and 15(f)(1)(A) and recommended new V.R.F.P. 18 were promulgated July 20, effective September 21, 2015.

The Committee's proposed promulgation orders for restructured V.R.F.P. 4.0-4.3 and for "substantive" changes in those rules will be sent out for comment in 2016, with an updated disposition table and consolidated Reporter's Notes.

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

I. MATTER NOT TO BE CONSIDERED FURTHER AT THIS TIME

1. The Committee agreed that Family Rules amendments to conform to Act 96 of 2013, "Respectful Language Act" were unnecessary in light of the fact that Legislative Counsel had reported that no statutory revisions were made pursuant to Act 96 in the current year.

2. The Committee agreed that Family Rules amendments to implement 15 V.S.A. §665(f) added by Act 197 of 2013, § 1 (Adj. Sess.) by adding a pleading requirement to

implement the statutory provisions concerning statutory rights and responsibilities and parent-child contact in cases where the child was conceived as the result of a sexual assault for which the nonmoving parent was convicted are not necessary for this purpose. The Committee recommended that the Family Division Oversight Committee develop a form that would allow the issues to be raised.

3. The Committee agreed that proposed amendments to V.R.C.P. 43(f) concerning interpreters would not require exemption or variation in the Family Rules.

II. 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 *In re K.F.*, 2013 VT 39, note 2 (6/7/13), that it develop a procedure for addressing ineffective assistance of counsel claims by parents in TPR proceedings.

2. The Committee will review amendments to V.R.F.P. 6 made necessary by Act 170 of 2013 (Adj. Sess.) with a joint subcommittee to be formed with the Probate Rules Advisory Committee

3. 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.

4. The Committee will determine whether the proposed “day is a day” amendments to V.R.C.P. 6, if promulgated, and various proposed and recently promulgated amendments to V.R.C.P. 5, could be incorporated in the Family Rules by reference or would require specific exemptions from, or variations in, the Civil Rules.

5. Two members of the Committee will participate in the Special ad hoc committee on video/audio appearances and cameras in the court organized by Justice Dooley.

In closing, the Committee and Reporter wish to express their appreciation to Scott Woodward, Esq., for his extraordinary assistance in developing the idea in The Reporter’s Advanced Civil Procedure course for restructured V.R.F.P. 4.0-4.3 and for “substantive” changes in those rules and in working with the Committee and Reporter on the many prior drafts of those rules that will be sent out for public comment in 2016

The Committee and Reporter also 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. Beth Robinson for her continuing assistance and support as Supreme Court liaison; Jean Murray, Mary Frost, Peter Lawrence, Susan Murray, and Sara Kobylenski for their long and faithful service as members of the Committee; and Court Administrator Patricia Gabel,

Supreme Court staff attorney Emily Wetherell, 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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Hon. Cortland T. Corsones
Anne Damone
Hon. Robert P. Gerety, Jr.
Hon. Kevin W. Griffin
Kurt Hughes
Michael Kainen
Harriet Hulz King
Hon. Barry Peterson
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Hon. D. Justine Scanlon
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Hon. Beth Robinson, Supreme Court Liaison
Michele Olvera, Vermont Network Liaison
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