

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

2013 Annual Report  
December 13, 2013

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 2012 annual report submitted to the Court on January 25, 2013. Since that report, the Committee has met six times—on May 3, June 28, July 26, September 20, October 25, and December 6, 2013—to consider proposals to amend the Vermont Rules for Family Proceedings. During the year, Michael Kainen was appointed to the Committee to replace Rhonda Sheffield, who had resigned. Hon. Barry Peterson was appointed to replace Hon. Christine Hoyt, who was assigned to other administrative duties. Hon. Beth Robinson was designated as Supreme Court liaison to replace Hon. Marilyn Skoglund, who was designated as liaison to the Civil Rules Committee.

The Committee's proposed amendments to V.R.F.P. 1(b)(1)-(2), 2(b)(2), 4(b)(1)(A), and 8(g) were circulated by the Court Administrator for comment on February 12, with comments due on April 12, 2013. After review of comments received, the Committee recommended the amendments for promulgation with revisions narrowing the scope of the amendment of V.R.F.P. 4(b)(1)(A) as originally proposed. The amendments as recommended were promulgated by the Court on June 11, effective August 12, 2013. See [https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRF1\(b\)\(1\)\\_2\(b\)\(2\)\\_4\(b\)\(1\)\(A\)\\_8\(g\).pdf](https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRF1(b)(1)_2(b)(2)_4(b)(1)(A)_8(g).pdf). At its meeting on August 15, 2013, the Legislative Committee on Judicial Rules had no substantive comments on these amendments.

The Committee's revised 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 its previously proposed addition of V.R.F.P. 9(l) to implement 33 V.S.A. §§ 6931 *et seq.*, concerning petitions for relief of a vulnerable adult from abuse, neglect, or exploitation, was circulated for comment by the Court Administrator on June 18, 2013, with comments due on August 16. See [https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRF7\\_7%201\\_9\(1\).pdf](https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRF7_7%201_9(1).pdf). The Legislative Committee on Judicial Rules reviewed these proposed amendments and rules at a meeting on August 15, 2013. Because the Legislative Committee had no further comments on proposed V.R.F.P. 9(l), on the Advisory Committee's recommendation, the Court on September 12, effective November 12, 2013, promulgated the rule as circulated. See [https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRF9\(1\).pdf](https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRF9(1).pdf). The Advisory Committee on October 25 approved a further revised draft of proposed Rules 7 and 7.1 responding to comments of the Legislative Committee. That draft was concurred in by the Family Division Oversight Committee and was reviewed by the Legislative committee on Judicial Rules at a meeting on December 13, 2013, without further comment. It is being recommended to the Court for promulgation 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 AMENDMENT RECOMMENDED FOR CIRCULATION TO THE BAR**

The Committee recommends that a proposed amendment to V.F.R.P. 16 intended to incorporate provisions addressing nonpayment of financial obligations adopted by Act 119 of 2011 (adj. sess.) and incorporated in 15 V.S.A. § 603 be circulated to the bar for comment. A proposed promulgation order will be transmitted to the Court separately from this report:

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

1. It was proposed that V.R.F.P. 4(b)(1)(C) be amended to allow notice of filings in cases involving children to be sent to the Office of Child Support other than by service of the complaint by certified mail as a means of providing public assistance information. The Committee did not proceed with this proposal, deciding to address it either in the Rule 4 restyling project or in connection with amendments to address electronic filing issues.

2. The Committee removed consideration of the impact of electronic filing on the Family Rule from its agenda pending further direction from the Supreme Court in view of the limited progress on the effort to extend electronic filing beyond civil cases in Rutland and Windsor counties.

3. The Committee removed consideration of H.523 from its agenda on being advised that an amendment to it that would have included side judges in child support proceedings was not adopted before the bill, as S. 31, was adopted as Act 63 of 2013.

4. The Committee removed from its agenda consideration of the effect of potential adaptation in V.R.C.P. 6(a) of 2009 amendment of F.R.C.P. 6(a) establishing “day is a day” rule for computing time pending further action on the question by the Civil Rules Committee.

## **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 develop a rule giving Family Division judges discretion to order mediation in an appropriate case..

2. 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.

3. The Committee will continue with the restyling and restructuring of V.R.F.P. 4 to provide a more accessible and understandable format for the provisions of the present rule.

4. 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.

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. Marilyn Skoglund for her continuing assistance and support as Supreme Court liaison; Hon. Christine Hoyt and Rhonda Sheffield for their long and faithful service as members of the Committee; and Court Administrator Robert Greemore; his successor, Patricia Gabel; 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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