

VERMONT SUPREME COURT
Advisory Committee on Rules for Family Proceedings

2012 Annual Report
January 25, 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 2011 annual report submitted to the Court on December 13, 2011. Since that report, the Committee has met four times—on April 13, September 7, and November 16, 2012, and January 25, 2013—to consider proposals to amend the Vermont Rules for Family Proceedings and related administrative orders. During the year, Susan M. Murray and Linda Aylesworth Reis were appointed to the Committee to replace Emily Davis, Lindsay Huddle, and Sara Kobylenski, whose terms had expired.

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; circulated on March 22, 2012, with comments due by May 21, 2012; recommended to the Court for promulgation with revisions on September 17, 2012; and reviewed by the Legislative Committee on Judicial Rules on November 13, 2012. The proposed amendments have been returned to the Committee for further consideration in conjunction with the Family Division Oversight Committee.

Amendments to 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), and to V.R.F.P. 14(d) to add “or other good cause” to the grounds on which the court may waive litigant education program attendance requirements, as proposed in the Committee's 2011 Annual Report dated December 13, 2011, were promulgated on May 30, 2012, effective July 30, 2012. See [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRFP4\(b\)\(2\)\(A\)and\(B\)and14\(d\).pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRFP4(b)(2)(A)and(B)and14(d).pdf).

The remainder of this report summarizes the Committee's activities under three headings: I. Proposed rules recommended for circulation to the bar. II. Matter 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. 1(b)(1) to require that the petition in a delinquency proceeding be supplemented by factual data concerning the race/ethnicity of the child who is the subject of the proceeding and to update statutory references in V.R.F.P. 1(b)(2) and 2(b)(2).

2. Amendment of V.R.F.P. 4(b)(1)(A) in light of *Samis v. Samis*, 2011 VT 21, par. 10-11 (2/18/11), to give the trial court discretion to allow a divorce action to be brought by a general guardian when the person under guardianship is able to communicate both an adequate understanding of the proceedings and his or her consent to going forward.

3. Amendment of V.R.F.P. 8(g) to eliminate the application of V.R.A.P. 10-12 in appeals from magistrates' decisions.

II. MATTER NOT TO BE CONSIDERED FURTHER AT THIS TIME

The Committee will not give further consideration to an amendment of V.R.F.P. 4(b)(1) requiring Form 813 to be filed with a complaint for divorce. The present requirement of V.R.F.P. 4(g)(2)(D) for filing the form on or before the date of the case manager's conference carries forward the provision of 15 V.S.A. § 662.

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 question whether mediation may be or should be required in Family Court.

2. The Committee is considering draft amendments "restyling" the Family Rules that were prepared by Professor Wroth's Advanced Civil Procedure class.

3. The Committee stands ready to consider appropriate Rules amendments when electronic filing is to be extended to the Family Division.

4. The Committee will consider whether V.R.F.P. 4(b)(1)(C) should 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.

5. The Committee will consider the effect of Act 119 of 2011 (Adj. Sess.) on provisions of the Family Rules, including V.R.F.P. 4(j)(2)(D) and 16.

6. The Committee, as noted above, will review its recommendation to amend V.R.F.P. 7 and add V.R.F.P. 7.1.

7. The Committee will take up the request of the Supreme Court in *Columbia v. Lawton*, 2013 VT 2 (1/18/13), to clarify the appropriate procedure for a non-party in a parentage case to seek to set aside a parentage judgment.

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; Emily Davis, Lindsey Huddle, and Sara Kobylenski for their long and faithful service as members 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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