

APPROVED

VERMONT SUPREME COURT

ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

Minutes of Meeting

April 22, 2016

The meeting was called to order at 1:40 p.m. in the Hoff Lounge, Vermont Law School, by Jody Racht, chair. Present were Committee members Penny Benelli, Anne Damone, Hon. Robert Gerety, Kurt Hughes, Marshall Pahl, Christine Speidel, and John Wilson. Also present were Hon. Beth Robinson, Supreme Court liaison; Michele Olvera, Vermont Network representative; and Professor L. Kinvin Wroth, Reporter.

The Committee welcomed new members Kurt Hughes and Marshall Pahl.

1. Minutes. The draft minutes of the meeting of December 18, 2015, previously distributed, were approved, with seven in favor and one abstention.

2. Status of proposed amendments.

A. Professor Wroth reported that the Committee's recommended permanent amendment to V.R.F.P. 4(r) was promulgated January 11, effective March 11, 2016.

B. The Committee considered the proposed amendments to V.R.F.P. 2(a) and 3(c) sent out by the Court for comment on January 13, with comments due on February 16, 2016, upon which the Court has requested Committee comment. Under the amendments, V.R.C.P. 82, providing that the rules could not affect jurisdiction and venue, did not apply to termination of parental rights (TPR) and post-disposition and permanency proceedings and that the Court by administrative order could consolidate such proceedings in up to four contiguous counties, with venue in one of those counties.

Comments received from others noted that post-disposition and permanency proceedings not involving TPR did not involve the time and resource allocations that the amendments were intended to address and questioned whether the rule should include such proceedings, which would inhibit attaining the goal of the consolidated venue provisions because of their large number. Committee members shared that concern in extensive discussion. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend to the Court that the consolidated venue provisions apply only to cases where a TPR petition or motion has been filed and only until entry of final judgment on the petition or motion. It was agreed that explanatory Reporter's Notes could address the mechanics of transfer to the regional court. After further discussion, on motion duly made and seconded, it was voted

unanimously to recommend that the rule include a provision for a party to opt-out of the venue changes on narrow and clearly stated grounds.

Other questions discussed included whether the proposed rule was within the scope of the rule-making power and the need for clearer procedural guidelines for the timing and operation of the process, whether in the rule or an accompanying administrative order. It was agreed that the possibility of telephone appearance could be left to the application of V.R.F.P. 17. Chairwoman Racht agreed to send a memorandum to the Court providing the Committee's comments and recommendations.

C. Professor Wroth reported that the proposed amendments adding V.R.F.P. 4.0-4.3 were sent out for comment on February 16, with comments due on April 15, 2016. Chairwoman Racht reported that no comments had been received. In view of the importance of the amendments, it was agreed to defer further action on them until Ms. Benelli had circulated them to the members of the VBA Family Law Section with a specific request for review and comment.

3. Reconsider proposed amendments to V.R.F.P. 4(j), (o). The Committee considered Professor Wroth's April 19 revised draft of amendments to V.R.F.P. 4(j), (o). On motion duly made and seconded, it was voted unanimously to recommend that the amendments be sent out for comment, deleting "must be made within a reasonable time" and "and heard" in the second sentence of proposed Rule 4(o)(1).

4. Consideration of *In re K.F.*, 2013 VT 39, note 2 (6/7/13) (request to develop procedure for addressing ineffective assistance of counsel claims by parents in TPR proceedings). On Chairwoman Racht's recommendation, it was agreed to discharge the subcommittee and present the issues to the Committee as a whole for consideration at the next meeting. Chairwoman Racht will send the Committee her memorandum on the issues and a recent Maine case in point.

5. V.R.F.P. 6. Amendments made necessary by Act 170 of 2013 (Adj. Sess.) concerning minor guardianships. Ms. Speidel reported for the joint subcommittee with the Probate Rules Committee (Chairwoman Racht, Judge Scanlon and herself) that the subcommittee had concluded that no rule amendment was necessary to accommodate the statute and had drafted an amendment to Rule 4 (1) to require a uniform affidavit of prior and pending proceedings, and (2) to require the clerk where a new proceeding is filed to notify the clerk of any court with a proceeding already pending concerning the same child. The subcommittee will have a draft for the next meeting. The subcommittee will also address decoupling the GAL rules for family and probate court and clarifying the process for communication between the two courts. Ms. Damone agreed to join the subcommittee to assist in both the drafting process and the decoupling issues.

6. Form to implement 15 V.S.A. §665(f) added by Act 197 of 2013, § 1 (Adj. Sess.). Chairwoman Racht reported that she had advised the Oversight Committee of the need for a form. It was agreed that this item could be removed from the agenda.

7. Joint subcommittee to consider possible amendments to Vermont Rules of Public Access concerning Family Division records. Ms. Benelli reported that many states have more restrictive rules for access to both paper and electronic records in family matters than does Vermont. It was agreed that Scott Woodward would be asked to undertake a comprehensive survey of other states, with particular emphasis on differences in cases involving electronic case records.

8. Effect of proposed amendments to V.R.C.P. 5 and 6 (“day is a day”) on Family Rules. Mr. Hughes reported for the subcommittee (Judge Corsones, Magistrate Peterson, and himself) that the subcommittee intended to report at the next meeting. Professor Wroth agreed to coordinate with other rules committees and the Legislative Counsel’s office concerning timing of adoption of day-is-a-day amendments.

9. Special ad hoc committee on video/audio appearances and cameras in the court. Mr. Wilson reported that the Committee had met electronically with judges from other states concerning video appearance, had reviewed the current Chittenden County video arraignment practice, and was in the process of drafting rules to address the video appearance needs of the Civil, Criminal, Family, and Probate divisions. The Committee meets again on May 6.

10. Case manager’s conference—issues raised by Judge Carroll. The Committee reviewed Judge Carroll’s March 9 email concerning non-party presence at a case manager’s conference and the amount of information about a conference to be reported to the judge. Chair Racht will ask the Oversight Committee whether these issues could be dealt with as best practices or require a rule.

Next meetings. It was agreed that the next meetings of the Committee would be held on June 17, and September 16, 2016, at 1:30 p.m. at Vermont Law School.

There being no further business, the meeting was adjourned at 4:30 p.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter