

**APPROVED**

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS**

**Minutes of Meeting  
September 7, 2018**

The meeting was called to order at 1:40 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Robert Gerety, acting chair in the necessary absence of Hon. Michael Kainen, chair. Present were Committee members Laura Bierley (by telephone), Hon. Cortland Corsones, Hon. Gregory Glennon, Hon. Christine Hoyt, Jody Racht, Linda Reiss (by telephone), Karen Reynolds, and Caryn Waxman (by telephone). Also present were Hon. Beth Robinson, Supreme Court liaison; Michele Olvera, Domestic Violence Network liaison; and Professor L. Kinvin Wroth, Reporter.

**1. Minutes.** The draft minutes of the meeting of May 4, 2018, were unanimously approved as previously distributed.

**2. Status of proposed and recommended amendments.**

A. Application to Family Division of new V.R.C.P. 79.2, recommended to the Court on January 2, 2018, by Special Committee on Video and Cameras in the Court; proposed revised draft sent out for comment by the Court on September 6, with comments due on November 5, 2018. Professor Wroth noted that the rule (and the identical V.R.Cr.P. 53) would continue to be expressly inapplicable under V.R.F.P. 1-3), but would apply generally in proceedings under V.R.F.P. 4.0-4.3, 8-9, because not expressly made inapplicable to those proceedings. Justice Robinson summarized changes from the previous draft, which the Committee, by Professor Wroth's letter of February 20, 2018, to the Chief Justice, had asked be made inapplicable in Family Division cases, pending development of a rule appropriate for those cases.

After discussion, Judge Corsones agreed to review the September 6 revised draft and recommend a course of action to the Committee. It was agreed that Committee members should send their comments on the rule to Judge Corsones by September 21 and that he would send his recommendations to Professor Wroth by October 10 for distribution and consideration by the Committee.

B. Proposed draft of V.R.C.P. 43(a), et al. (including V.R.F.P. 17), video and audio appearance, and proposed AO 47, Technical Standards, prepared by Special Committee on Video and Cameras in the Court, sent out for comment on January 24, with comments due on March 23, 2018. Professor Wroth reported that the Special Committee had received no comments on the proposal but had not yet made a final recommendation to the Court concerning it.

3. 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). Ms.

Racht. In the absence of Mr. Pahl, reported that the subcommittee (Ms. Racht, Judge Kainen, Ms. Reynolds, and Mr. Pahl, chair) would report at the next meeting.

4. V.R.F.P. 6. Amendments made necessary by Act 170 of 2013 (Adj. Sess.) concerning minor guardianships. Professor Wroth reported that at its October 3 meeting, the Probate Rules Committee would consider a final draft of proposed amendments incorporating the applicable Family Rules guardianship rules in the Probate Rules.

5. Joint subcommittee to consider to Vermont Rules of Public Access concerning Family Division records. Ms. Racht reported that she had spoken to Judge Morris, Reporter to the Public Access Rules Committee. That Committee is developing amendments to the Public Access Rules, including the provisions of V.R.P.A.C.R. 6(b) that affect family proceedings. Justice Robinson reported that the Court had appointed Ms. Reis to represent the Family Rules Committee on the Public Access Rules Committee. It was agreed to defer discussion of the issues until that Committee's proposed amendments were circulated for comment.

6. Case manager's conference—issues raised by Justice Carroll. Ms. Racht reported that the issues would be on the agenda of the next meeting of the Family Division Oversight Committee. It was agreed to remove this item from the agenda, pending any proposal from the Oversight Committee regarding an amendment to the Family Rules.

7. Adoption of Prisoner's Mailbox Rule for Family Rules. Professor Wroth reported that amendments to V.R.C.P. 3 and 5(e) and V.R.A.P. 25 addressing prisoner's mailbox issues were promulgated June 13, effective August 13, 2018. In the absence of further action by the Committee, new V.R.C.P. 3(b) concerning the filing of a complaint would continue to be expressly inapplicable under V.R.F.P. 1-3. New V.R.C.P. 5(e)(4) concerning filings after the complaint would apply under V.R.F.P. 2 and 3 and would apply generally in proceedings under V.R.F.P. 4.0-4.3, 8-9, because not expressly made inapplicable to those proceedings. It was agreed that no further action was necessary and that this item should be removed from the agenda.

8. Act 72 of 2017. An Act Relating to Juvenile Jurisdiction. (Section 7 directs the Supreme Court to consider adoption of appropriate rules by July 1, 2018.) The subcommittee (Ms. Racht, Ms. Reynolds, and Mr. Pahl, chair) will report at the next meeting.

9. V.R.F.P. 18. Mediation. The Committee considered Professor Wroth's September 5, 2018, draft of an amendment to V.R.F.P. 18(d) clarifying the process for appointment of a mediator when appointment has been ordered under Rule 18(b). On motion duly made and seconded, after discussion, it was voted unanimously to recommend to the Court that the amendment be sent out for comment, with the correction of a typo in subparagraph (A) and addition of a period at the end of subparagraph (B).

10. V.R.F.P. 4.0(g)(3). Discovery questions. In the necessary absence of Ms. Damone, this item was deferred until the next meeting.

11. AO 29. Proposal regarding Committee structure. Justice Robinson briefly explained the proposal, which had not been circulated to the Committee. It was agreed to consider it at the next meeting.

12. Membership issues. Resignations of Ms. King and Mr. Hughes. After discussion, it was agreed that Committee members should send suggestions for new members to Justice Robinson for consideration by the Court.

13. Other business. There was no other business

14. Dates of next meetings. The next meeting of the Committee is scheduled for November 2, 2018. It was agreed that additional meetings should be held on January 11, and March 29, 2019.

There being no further business, the meeting was adjourned at 3:20 p.m.

Respectfully submitted,

L. Kinvin Wroth  
Reporter