

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

**Minutes of Meeting on TEAMS  
April 21, 2022**

The meeting was called to order by Judge Michael Kainen. Present were Committee members: Penny Benelli, Laura Bierley, Margaret Villeneuve, Judge Megan Shafritz, Judge Tom Carlson, Judge Christine Hoyt, Susan Ellwood, Alycia Sanders, Althea Lloyd, Jessica Seamen, Jody Racht, Marshall Pahl (for part of the time). Also present was ex-officio member: Eddie Poff from the Vermont Network Against Domestic Violence. Judge Amy Davenport (ret.) was present as the Reporter.

1. Approval of draft minutes of the meeting of January 21, 2022: The draft minutes were unanimously approved.
2. Committee vacancies: Judge Kainen informed the Committee that Nate Hine, a GAL serving Washington, Orange and Windsor counties, is interested in serving on the Committee. His name has been sent to the Vermont Supreme Court with a request that he be appointed as the lay member of the committee.
3. Status of proposed amendments: None pending approval.
  - a. Amendment to V.R.F.P. 6(a) and 6.1(a) to eliminate applicability of Family Rules to the appointment of guardians ad litem in probate guardianship proceedings. The committee recommended the proposed amendment on October 15, 2021. It was sent out for comment by the Supreme Court. The comment period ended on January 18, 2022. No comments were received. The proposed amendment was forwarded to the Supreme Court for promulgation on March 9, 2022 and reviewed by LCJR on April 14, 2022. Promulgated April 18. Effective June 20, 2022.
  - b. Amendment to V.R.F.P. 18 – Mediation in Family Proceedings. Proposal to clarify that mediation can be either in person or virtual. The committee recommended the proposed amendment on October 15, 2021. It was sent out for comment by the Supreme Court. The comment period ended on January 18, 2022. No comments were received. The proposed amendment was forwarded to the Supreme Court for promulgation on March 9, 2022 and reviewed by LCJR on April 14, 2022. Promulgated April 18. Effective June 20, 2022.
  - c. Amendments to V.R.F.P. 2(a)(2) and (3); 6(c)(2); 6.1(c)(1); 8(h). These amendments were required as a result of the abrogation of V.R.C.P. 78(a) and amendment to V.R.C.P. 7(b)(6). The proposed amendment was sent out for comment by the Supreme Court. The committee recommended the proposed amendment on October 15, 2021. It was sent out for comment by the Supreme Court. The comment period ended on January 18, 2022. No comments were received. The proposed amendment was forwarded to the Supreme Court for promulgation on March 9, 2022 and reviewed by LCJR on April 14, 2022. Promulgated April 18. Effective June 20, 2022.
4. Report from Subcommittee on Juvenile Proceedings (Marshall Pahl, Judge Shaffritz, Dickson Corbett, Jody Racht)
  - a. V.R.F.P. 1.1 Procedure for Youthful Offender Proceedings in the Family Division. Marshall Pahl explained the new proposed rule for youthful offender proceedings which

the Committee has reviewed in draft form on multiple occasions. The proposed rule has the full support of the Juvenile subcommittee. The Committee voted unanimously to send Proposed Rule 1.1 to the Vermont Supreme Court with a request that it be sent out for comment.

- b. Amendment to V.R.F.P.(1)(b)(1) to provide enforcement of the requirement to in the rule to provide race and ethnicity data at the time of filing a petition. Marshall Pahl reported that Corbett Dixson has been working to address the inconsistency in race and ethnicity reporting with a change to the case management software used by the State's Attorneys. The change would require data entry of this information when a case is opened instead of allowing it to be optional. If the software change is successful, an amendment to the Rule will not be necessary. It was decided to put the matter on the agenda for a progress report when the Committee meets in July.

5. Report from Subcommittee on Public Access to Court Records and Live Streaming in Family Court. (Penny Benelli, Alycia Sanders, Laura Bierly and Eddie Poff)

- a. Special Advisory Committee on Remote Access: At the October meeting of the Family Rules Committee, Justice Robinson reported that the Court and the Court Administrator's Office were discussing how to make hearings in high profile cases more accessible to the public than is currently possible with WebEx. One possibility under discussion by the Supreme Court's Special Advisory Committee on Remote Access was livestreaming proceedings using a YouTube channel. Attorney Benelli reported that this type of livestreaming was of great concern to the subcommittee because litigants would no longer be able to know who was present during their divorce, parentage or RFA hearing. The subcommittee proposed that a letter be sent to Scott Griffith, the Acting Court Administrator who currently chairs the Special Advisory Committee, expressing these concerns. It was agreed that Ms. Benelli would draft a letter that Judge Davenport could circulate to the Committee with a poll to determine whether there was sufficient support by the full Committee to send the letter.
- b. Amendment to V.R.F.P. 9(b) and 9(g)(1) and V.R.F.P. 4.3(a)(7) to provide email addresses in RFA proceedings and define period during which proceedings are confidential. Attorney Benelli reported that the subcommittee had discussed the proposal and, while the subcommittee recommended that V.R.F.P. 9(b) and 9(g)(1) be amended to include email addresses when available as part of the required contact information, the subcommittee was opposed to placing a time limit on the confidentiality of the contact information. She explained that the subcommittee was concerned that self-represented litigants who wanted their contact information to remain confidential, would not realize that they needed to ask the court for an order once the relief from abuse order expired. After some discussion, the Committee voted to approve the amendments to V.R.F.P. 9(b) and 9(g)(1) as proposed by the subcommittee.
- c. Amendment to V.R.F.P. 4.3(a)(3) to allow for automatic consolidation when divorce filing precedes an RFA proceeding. The Committee reviewed the proposal by the subcommittee to amend Rule 4.3(a) to (1) clarify that the subsection applied to all actions subject to Rule 4.0 including divorce, annulment and parentage; (2) in Rule 4.3(a)(2) when there is a prior RFA proceeding, to add a provision that contact information provided in the RFA proceeding remains confidential after consolidation without written consent of the party;

and (3) in Rule 4.3(a)(3) when there is a prior action subject to Rule 4.0, provide for automatic consolidation under three specific circumstances: (a) the complaint in the action subject to 4.0 is still pending; (b) there is a pending post judgment motion in the action subject to 4.0; or (c) the requests for relief in the RFA would modify a provision of an outstanding order in the action subject to 4.0. Otherwise, consolidation would only occur upon motion of either party or the court. After much discussion, the only change that could not be agreed upon was the added provision to Rule 4.3(a)(2) regarding the continued confidentiality of the contact information once the RFA and the action subject to Rule 4.0 are consolidated. It was pointed out that there is already a process and a form for requesting an order from the court regarding the confidentiality of certain information. After much discussion, the Committee agreed to table the proposed amendment to 4.3 and take it up at the next meeting. The public access subcommittee agreed to continue to work on language that might meet the concerns raised during the discussion and Maggie Villeneuve agreed to join the subcommittee meetings.

6. Request by Probate Rules Committee for joint subcommittee to consider whether legislation giving family and probate divisions jurisdiction to make findings related to Special Immigration Status (SIJ) requires rules. See 4 V.S.A. §33(18), 4 V.S.A. §35, 14 V.S.A. §3098. Judge Davenport reported that S.163 has passed the House and the Senate and will likely be enacted. It was agreed to put this over to the next meeting and in the meantime review the new legislation to see if rules would be appropriate.
7. Update on new service rules on service proposed by the Civil Rules Committee on Family proceedings. The Civil Rules Committee has put together a proposal amending the rules for service following initial service to allow for service by e-mail. See: [https://www.vermontjudiciary.org/sites/default/files/documents/PROPOSEDVRCP\\_5\\_6%28a%29%284%29\\_29\\_79.1--FOR COMMENT.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/PROPOSEDVRCP_5_6%28a%29%284%29_29_79.1--FOR COMMENT.pdf) Based on comments received by the Civil Rules Committee, they have eliminated the option for self-represented litigants to leave filings with the clerk except in this limited circumstance: "If the filer is prevented by rule or court order from contacting the other party or receiving the other party's contact information, the filer may serve by leaving with the clerk." This would apply in stalking and abuse case where plaintiff's contact information is confidential. The Committee discussed the proposed amendment and had no objections to the change made by the Civil Rules Committee.
8. New Business: There was no new business.
9. Future Meetings: The next scheduled meeting of the Committee is July 22, 2022, from 1 – 3 p.m. The Committee agreed to also meet on October 21, 2022.
10. The meeting was adjourned at 3 p.m.