

**APPROVED**

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

**Minutes of Meeting on TEAMS  
October 15, 2021**

The meeting was called to order by Judge Michael Kainen. Present were Committee members: Penny Bennelli, Laura Bierley, Maggie Villeneuve, Judge Gregory Glennon, Judge Megan Shafritz, Marshall Pahl and Jessica Seman. Also present were ex-officio members: Justice Beth Robinson and Eddie Poff from the Vermont Network; Judge Amy Davenport (ret) was present as the Reporter.

- 1. Approval of draft minutes of the meeting of February 19, 2021.** The minutes were unanimously approved as previously distributed.

- 2. Committee Membership.**

The Committee welcomed Attorney Jessica Seman as the new representative for AHS. She replaces Sarah Haselton who has taken another position and is no longer employed at AHS. Attorney Seman is employed at OCS.

State's Attorney Karen Reynolds has also resigned from the Committee because she has taken a new position. The Supreme Court is waiting for Department of State's Attorneys to recommend a replacement.

Finally, long-time member, John Wilson, informed the Supreme Court at the end of August that he did not want to be re-appointed at the conclusion of his three-year term as the "lay person" member of the Committee. The Vermont Supreme Court has requested that the Committee forward to the Court three names as possible replacements. John Wilson is an experienced GAL and the Committee agreed that the ideal replacement would be another GAL. Atty. Bennelli offered to speak with two GALs from Windsor with whom she has worked, either one of whom in her opinion would be excellent. If either are interested, she will forward their names to Judge Davenport. Judge Davenport will contact the GAL Coordinator, Robert Post, for his suggestions and recommendations.

- 3. Vermont Rules for Public Access to Court Records and Live Streaming in Family Court.**

Atty Bennelli reported that the Subcommittee had not met. Given her busy schedule, Alycia Sanders will take over the lead on this project.

- 4. Rules Related to Youthful Offender Proceedings in the Family Division (Act 45 of 2019, Act 201 of 2018 and Act 72 of 2017).** The Subcommittee on juvenile proceedings (Mr. Pahl, chair, Ms. Racht, and Judge Sharfritz) have drafted a proposed rule to govern youthful offender proceedings which was sent to the Committee with the agenda. Mr. Pahl explained that the proposal for the most part tracks the youthful offender statute which is quite prescriptive in describing the procedure. While the Committee as currently constituted unanimously support it, Deputy State's Atty. Reynolds did not have time to review it prior to her resignation from the

Committee and Attorney Pahl recommended that no action be taken on the proposal until her replacement had had an opportunity to weigh in since the proposal impacts the State's Attorneys. There followed a discussion of the only issue that is not prescribed by statute which is the designation of the entity with the responsibility to provide notice to the youth regarding the YASI screening. The rule proposed by the subcommittee provides that this is the responsibility of the Court. This is also the recommendation of the Juvenile Stakeholder Group which includes both Judge Grearson and Laurie Canty from the Court Administrator's Office. It appears that a number of courts including Windham, Windsor, Bennington, Lamoille, Franklin and Orleans, are using a form order initially drafted by Judge Treadwell (hereinafter "the Treadwell Order") and thus are already providing notice by the court. In Washington, however, notice is provided by the State's Attorney. Judge Shaffritz questioned whether the Treadwell Order would work in Chittenden County because screenings take place in multiple locations. It was agreed that the logistics between the Court and DCF need to be worked out for the Treadwell Order to work. It was decided that the Treadwell Order would be circulated to the Committee and that the proposed rule would be put on the agenda for the next meeting.

5. **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:** Atty Pahl reported that while he did not believe that the resolution of this issue would be complicated, it will impact the State's Attorneys and therefore progress should wait until a State's Attorney representative has been appointed to replace Deputy State's Atty. Reynolds.
6. **Enforcement of Divorce judgments for property division.** At the meeting last February, it was agreed that the Committee should propose an amendment to the Reporter's Notes for Rule 4.2 which references the Supreme Court's decision in **Blake v. Petrie**, 2020 VT 92, to wit. that a filing under Rule 4.2 is not sufficient to renew a judgement. Judge Davenport reported that Reporter's Notes are never amended, but that Equity Publishing may cite the case in the Annotation section under the Rule. Atty Benelli reported that VBA Family Committee will consider the possibility of a legislative amendment to 12 V.S.A. §506.
7. **Amendments to V.R.F.P. 6 and 6.1.** At the February meeting, Judge Glennon pointed out that the Supreme Court had recently adopted new probate rules regarding the appointment of GALs by the probate court in proceedings involving minor guardianships (See V.R.P.P. 80.9) and adult guardianships (See V.R.P.P. 80.10). These rules became effective in August of 2020. The Committee agreed in February to propose an amendment to Rules 6 and 6.1 that would eliminate the applicability of the Family rules to the appointment of GALs in probate proceedings. The Committee reviewed a draft of a proposed amendment which was provided with the agenda and voted unanimously to approve sending it to the Supreme Court for comment and promulgation.
8. **New business.**
  - a. **Amendment to V.R.F.P. 18 – Mediation in Family Proceedings.** Proposal to clarify that mediation can be either in person or virtual. A proposed amendment was attached to the agenda. This issue arose as a result of the Supreme Court's request that the Committee consider whether the provisions of A.O. 49 which allows mediations ordered in civil cases to be conducted virtually, should be made permanent. A poll was taken of family court practitioners the results of which indicate that there is not strong preference for in person over virtual in family matters. It was reported by Ms. Lloyd that mediation using remote technology was strongly supported by the mediators. A suggestion was made that the

Committee might want to simply amend Rule 18 of the Family Rules to indicate that mediation could be conducted virtually at the discretion of the mediator or by order of the Court. The Committee voted unanimously to approve sending the proposed amendment to Rule 18 to the Supreme Court for comment and promulgation.

- b. Amendments to V.R.F.P. 2(a)(2) and (3); 6(c)(2); 6.1(c)(1); 8(h).** The Committee next took up amendments to the Family Rules that are necessary as a result of the abrogation of V.R.C.P. 78(a) and the incorporation of an updated version of portions of that rule in V.R.C.P. 7(b)(6). A proposal to amend Rules 2(a)(2) and (3); 6(c)(2); 6.1(c)(1); 8(h) was included with the agenda for this meeting. After some discussion, the Committee voted unanimously in favor of the amendments and to forward them to the Supreme Court for promulgation.
- c. Amendment to V.R.F.P. 9(b) and ((g)(1) and V.R.F.P. 4.3(a)(7).** A proposal to include the following amendments to the rules on public access to court records (PACR) and amend the family rules are currently under consideration by the Committee on Public Access to Court Records:
- i.** Require email addresses as part of contact information from plaintiffs in RFA proceeding when filing a petition and defendants in RFA proceedings when filing a motion to modify an emergency order;
  - ii.** provide notice to the parties of the duration of restricted access consistent with a proposed rule by the PACR; and
  - iii.** provide for the termination of restricted access upon termination of the RFA order unless otherwise ordered by the court.

This proposal would require amendments to V.R.F.P. 9(b) and (g) and V.R.F.P. 4.3(a)(7). Drafts of the proposed amendments to PACR(6)(b)(9), V.R.F.P. 9(b) and (g) and V.R.F.P. 4.3(a)(7) were sent out to the Committee with the agenda. The PACR Committee has begun to review the amendment to PACR (6)(b)(9) but has not completed work on it. After some discussion, the Committee decided to put the proposal to amend the Family Rules on the agenda for the next meeting.

## **9. Other Business**

Justice Robinson raised two new issues related to V.R.F.P. 4.3(a) Procedure Where Divorce, Annulment, and Abuse Prevention Actions are Pending. Her questions included (1) whether this “special procedure” rule applied to parentage proceedings; and (2) why a prior abuse prevention action is automatically consolidated when a divorce is filed after the RFA under Rule 4.3(a)(2), but consolidation is not automatic under Rule 4.3(a)(3) when the divorce precedes the RFA proceeding even when there are minor children involved. The Committee reviewed the language related to applicability of the rules in Rule 4.0(a) and concluded that there was some ambiguity which might require an amendment. After some further discussion regarding whether automatic consolidation should occur in all cases or only in cases where there are minor children, it was decided that this issue should be placed on the agenda for the next meeting.

- 10. Next Meeting Dates.** It was agreed that the Committee would meet again on January 21, 2022 and April 22, 2022 from 1:00 to 3 pm.

The meeting was adjourned at 3:00 p.m.