

APPROVED

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

**Minutes of Meeting
November 8, 2019**

1. Minutes. The draft minutes of the meeting of September 13, 2019, were unanimously approved as previously distributed.

The meeting was called to order at 1:35 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Michael Kainen, chair. Present were Committee members Laura Bierley (by telephone), Hon. Thomas Carlson (by telephone), Hon. Gregory Glennon (by telephone), Sarah Haselton (by telephone), Hon. Christine Hoyt, Jody Racht, Marshall Pahl, Karen Reynolds, Alycia Sanders, and John Wilson (by telephone). Also present were Michele Olvera, Legal Director, Vermont Network; Professor Emeritus L. Kinvin Wroth, Reporter, and Hon. Amy Davenport (retired), Reporter- to-be.

Judge Kainen welcomed Judge Davenport, who will assume the role and responsibilities of Reporter at the next meeting

Professor Wroth reported that Susan Ellwood, Montpelier attorney, had just been appointed to the Committee in place of Linda Reis, who had resigned.

2. Status of proposed and recommended amendments.

A. Proposed amendment to V.R.F.P. 18(d)(1) clarifying process of appointing mediator, recommended to the Court on January 11, promulgated on February 4, effective April 8, 2019, question raised by Legislative Committee on Judicial Rules LCJR), June 6, 2019, on final phrase of subparagraph (d)(1)(B). Chairman Kainen stated that LCJR had not met since June, but that he would report the Committee's views on the purpose of the language to LCJR before its next meeting, now scheduled for December 6, 2019.

B. Proposed new V.R.F.P. 6.2 (mental health proceedings) sent out for comment on October 1, with comments due by December 1, 2019. Chairman Kainen reported that no comments had been received to date.

C. Proposed new Rule 4.3(f) (enforcement of money judgments) sent out for comment on October 1, with comments due by December 1, 2019. Chairman Kainen reported that no comments had been received to date.

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). The Committee considered Ms. Racht's draft report to the Supreme Court summarizing the subcommittee's research and laying out the options, including the formalization of Rule 60(b) and the details of a direct appeal rule. The Committee expressed its thanks to Ms. Racht and the subcommittee for their extensive efforts on the issue and agreed that Chairman Kainen should send the report to the Court as drafted.

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

5. Vermont Rules for Public Access To Court Records, adopted by Supreme Court order of May 1, effective July 1, 2019, and considered by LCJR without objection on June 6, 2019. Ms. Sanders reported for the subcommittee (Ms. Benelli, Ms. Olvera, and herself) that, at the next meeting, the subcommittee would present amendment proposals addressing whether there should be a broad exception to the revised Public Access Rules for Family Division proceedings or whether there should be specific exemptions to those rules for particular family cases.

In discussion, Committee members suggested that it was important to consider changing notions of privacy, that the public nature of family proceedings does not inhibit persons from saying what they like in court, that more privacy would encourage individuals to regard the courts as available, and that in OCS cases the state has an interest in access to non-public information.

6. Applicability in Family Division of amendments to V.R.C.P. 5, 79(a). proposed by Special Committee on Electronic Filing to conform to proposed new V.R.E.F. 11. Professor Wroth reported that the Special Committee on Electronic Filing was meeting at the present time to consider proposed Civil and Family Rules amendments to conform to proposed new V.R.E.F. 11, drafted by the Special Committee and sent out for comment on June 19, with comments due by August 19, 2019. It was agreed to defer this item pending the action of the Special Committee.

7. 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.) Consideration of youthful offender rules in light of Act 45 of 2019 (5/30/19). Mr. Pahl reported that further legislative action had occurred and that the subcommittee (Ms. Racht, Ms. Reynolds, and himself, chair) would present any necessary rules proposals at the next meeting.

8. Live-streaming in Family Court hearings. The Committee further considered Magistrate Hoyt's e-mail of August 7, 2019, concerning the application to live-streaming in Family Court of present and new V.R.C.P. 79.2, as further amended by emergency amendments to V.R.C.P. 79.2 promulgated on September 3, with comments due on November 8, 2019. In discussion, concerns were expressed for the breadth of the definition of "media" in new V.R.C.P. 79.2 and in proposed V.R.F.P. 19 sent to the Court on November 3, 2018, but not acted upon. On motion duly made and seconded, it was voted unanimously to consider a revision of the November 2018 draft of proposed V.R.F.P. 19 at the next meeting.

9. V.R.F.P. 4.3(b)(1). Applicability in cases filed before the effective date of the Vermont Parentage Act, 15 V.S.A. 115A(d)(2). After discussion of the memorandum of November 1, 2019, prepared by Laur Izutsu, law clerk to Magistrate Hoyt, it was agreed to consider a draft amendment abrogating V.R.F.P. 4.3(b)(1) at the next meeting.

10. Dates of next meetings. Further meetings were scheduled for January 24, and March 13, 2020.

There being no further business, the meeting was adjourned at 3:15 p.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter