

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

**Minutes of Meeting on TEAMS
December 18, 2020**

The meeting was called to order by Judge Michael Kainen. Present were Committee members: Penny Bennelli, Laura Bierley, Maggie Villeneuve, Judge Gregory Glennon, Sarah Haselton, Magistrate Christine Hoyt, Karen Reynolds, Alycia Sanders, Susan Ellwood, John Wilson and Judge Meagan Shafritz. 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 on May 8, 2020:** the minutes were unanimously approved as previously distributed.

- 2. Status of proposed and recommended amendments.**
 - a. Proposed new V.R.F.P. 4.3(f) (enforcement of money judgments). The rule was promulgated by the Vermont Supreme Court June 12, 2020 and became effective on August 18, 2020.
 - b. Proposed V.R.F.P. 4.3(b). Amendment abrogating subsection (1) in cases filed before effective date of Vermont Parentage Act, 15 V.S.A. 115A(d)(2) was promulgated by the Vermont Supreme Court July 13, 2020 and became effective September 14, 2020.
 - c. Proposed Amendment to Family Rules to Make Them Consistent with Amendments to V.R.C.P. 3.1. Recent amendments to V.R.C.P. 3.1 which became effective August 18, 2020, replace all references to “proceedings in forma pauperis” with “waiver of filing fees and costs.” This proposal amends V.R.F.P. (2)(a)(2) and V.R.F.P. 4.0(b)(3)(B) so that the Family Rules are consistent with civil, probate and appellate rules. The proposed amendment was approved by the Committee on May 17, 2020 and sent out for comment. The Comment period ended September 13, 2020. Judge Kainen reported that no comments had been received. The Committee voted unanimously to forward the rule to the Supreme Court to be promulgated.

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

Ms. Benelli reported that the subcommittee has not had time to work on this issue. It was agreed that Eddie Poff should replace Michele Olvera on the subcommittee.

Justice Johnson reported that the Supreme Court has been working on a policy related to public access to live streamed hearings that are supposed to be public. She anticipates that a standardized policy that will allow members of the public to access a hearing should be ready in a few weeks. If access is by livestream there will be no way to know who is in the court room. There are a number of people who are worried about the impact on the Family Division. A discussion amongst Committee members ensued. Specific concern was expressed with respect to relief from abuse hearings. There are some judges who feel more comfortable with remote rfa hearings because the parties are not in the same room. It was agreed that the issue be tabled for this meeting but placed on the agenda for the February meeting.

4. Administrative Order 50: Pilot Project for Service by Office of Child Support in Windsor and Windham Counties.

Dawn Sanborn from the Court Administrator's Office joined the Committee to discuss Administrative Order No. 50. A.O. 50 is a joint effort between the Judiciary and the Office of Child Support (OCS). It creates a pilot project to more efficiently provide service to defendants in cases where OCS is providing services under Title IV-D of the federal Social Security Act. See 33 V.S.A. § 4101(a) (designating OCS as agency responsible for Title IV-D). In cases in Windham and Windsor Units, where e-filing has been implemented, OCS will be able to effect service. Administrative Order 50 revises provisions of V.R.F.P. 4.1(a)(2) to implement this pilot project and allows service by email under specified conditions. Ms. Sanborn explained that there was a small working group that does regular check-ins to make sure the project is running smoothly. So far there have been no major issues. Magistrate Hoyt commented that the new process was working well in the Windsor Family Division and the Court is already seeing time savings.

5. 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).

Marshall Pahl presented a draft outline of the scope for a new rule – V.R.F.P. 1.1 (attached). To some degree the new rule will simply reflect procedural provisions that are in statute. The advantage to having a rule is that it consolidates procedure into one place. Judge Shafritz volunteered to work with the subcommittee on the drafting of a rule and was duly appointed by the Chair.

6. Request by Justice Dooley re coordination between Advisory Committee on Electronic Filing and Family Rules. Justice Dooley has requested feedback from all of the Rules Committees regarding Odyssey, the Court's new case management system. A meeting with Justice Dooley is not currently scheduled. Judge Kainen commented that one problem he has seen with the new system is the time it takes to process exhibits and put them in the judge's queue.

7. New Business:

a. Letter from the Children and Family Council for Prevention Programs requesting an 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.

Following a short discussion regarding the Council's request, it was agreed that the subcommittee on juvenile issues (Marshall Pahl, Karen Reynolds and Jody Racht) would draft a rule for the Committee's consideration.

b. Enforcement of Divorce judgments for property division. Issues raised by Justice Robinson's concurrence in **Blake v. Petrie**, 2020 VT 92 regarding the application of the requirement in 12 V.S.A. § 506 for a "new and independent action" within eight years following rendition of the judgment.

It was agreed to postpone discussion of this issue until Judge Carlson was present.

8. Dates for next meeting. It was agreed that the next meeting date would February 19, 2021, at 1:30.

There being no further business, the meeting was adjourned at 3pm.

Proposed Family Rule 1.1, Youthful Offender Proceedings – Scope/Outline

1. In general. Rule 1 governs except as set forth in this rule.
2. Preliminary proceedings.
 - a. Risk screening notification – Upon transfer from the criminal court or direct filing by the SA, the defendant shall be notified [by the court? by the SA? by DCF?] to participate in a risk screening within 15 days [§ 5280(d)]; Use and derivative use immunity for information provided by the defendant in the YO Consideration process [§ 5280(d)]. [This question will require more input from DCF and other stakeholders.]
 - b. Report – Within 30 days after the youth has completed the risk screening required by § 5280, the department shall file with the court a report including a recommendation that the case should or should not be diverted, a recommendation that the case is or is not appropriate for Youthful Offender status, and a description of the services available for the youth [§ 5282(a), (b)].
 - c. Bail/Conditions of Release – Bail or conditions of release imposed by the criminal division remain in effect unless or until modified by the criminal division or until conditions of probation are imposed by the juvenile division [§5281(c)(1)].
3. Hearing – A status conference shall be held within 35 days of the transfer of the case or the direct filing of a YO petition [§ 5283(a)]. If YO status is contested, there shall be a contested hearing – the rules of evidence apply generally [V.R.E. 101, 1001], but the rule prohibiting hearsay does not [§ 5283(c)(1)].
 - a. Colloquy – At the first hearing in the family division, the judge shall engage in a colloquy ensuring that the defendant voluntarily waives the right to a jury trial and right to a public proceeding. If the defendant will not waive, the case shall be transferred to the criminal division.
 - b. Grant/Denial – If the court grants the motion for Youthful Offender status, the case shall proceed to a bench adjudication as provided in V.R.F.P. 1 [§ 5284(c); 5281(d)]. If the court denies the motion for Youthful Offender, the case is transferred to the Criminal Division (and the juvenile file/case is closed?) [§ 5281(c)].
4. Collateral consequences – The Uniform Collateral Consequences Act applies to YO proceedings [13 V.S.A. § 8002] and requires that the court give notice of potential collateral consequences when the youth is charged, and prior to accepting a plea [13 V.S.A. § 8005].
5. Adjudication – If the motion for Youthful Offender status is granted, the case

shall be adjudicated as provided in V.R.F.P. 1, except that the entry of any conviction shall be deferred unless and until the court revokes Youthful Offender status pursuant to subsection X of this rule [§5285 (c)(2), (d)] .

6. Modification/revocation – Upon finding that a youth has violated the terms of the juvenile probation order [§ 5265], the court may modify the terms of juvenile probation, transfer supervision of the youth to DOC, or revoke the youth’s Youthful Offender Status [§ 5285(c)].
 - a. If the youth’s Youthful Offender status is revoked, the case will be transferred to the Criminal Division and the deferred adjudication shall be entered as a conviction in the criminal docket [§ 5285(c)(2); (d)].
7. Hearing prior to age 18. (Do we need a rule on this? The statute (§ 5286) is pretty clear.
8. Early termination of probation. Youthful Offender probation terminates when the term of probation is complete, the youth reaches age 22, or probation is terminated early pursuant to 33 V.S.A. § 5287.
 - a. A motion to terminate probation and discharge the youth from supervision may be filed at any time [§ 5287(a)].
 - b. If, following a hearing on the motion to terminate probation, the court discharges probation and closes the case, all records in the Criminal Division shall be expunged and all records in the Family Division sealed [§5287(d)].
9. Close of case. If the term of probation expires or the youth reaches age 22 and there are no pending violation of probation petitions, the case shall be closed and the records in the Criminal Division expunged and the records in the Family Division sealed [§ 5287].