

**FINAL**

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

**Minutes of Meeting on TEAMS  
April 21, 2023**

The meeting was called to order by Judge Tom Carlson. Present were Committee members: Judge Michael Kainen, Mag. Barry Peterson, Judge Gregory Glennon, Susan Ellwood, Laura Bierley, Margaret Villeneuve, Penny Benelli, Jessica Seamen, Alycia Sanders, Nate Hine, Jody Racht, Kristin Gozzi and Marshall Pahl. Also present was ex-officio members: Justice Nancy Waples from the Vermont Supreme Court and 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 20, 2023: the draft minutes were unanimously approved.
2. Status of proposed amendments:
  - a) Amendment to V.R.F.P. 4.3(a)(3) to allow for automatic consolidation when divorce filing precedes an RFA proceeding. The amendment was promulgated by the Supreme Court on February 6, 2023; to become effective June 5, 2023. It was reviewed without objection by LCJR on April 12, 2023.
  - b) Draft amendments to V.R.F.P. 17 related to remote participation in family proceedings proposed to the Supreme Court's Special Advisory Committee on Remote Access. The amendment to V.R.F.P. 17 relates to remote proceedings in tandem with a proposed amendment to V.R.C.P. 43.1. Comments related to either or both were due to Scott Griffith, Chair of the Special Advisory Committee on Remote Proceedings by February 13, 2023. They have not yet been promulgated. The Criminal Rules Committee reviewed the proposed amendment to Rule 17 related to youthful offender and delinquency proceedings (Rule 17(b)). The Committee has proposed the addition of a new subsection (c) to Rule 17 entitled "Juvenile Delinquency; Youthful Offender; Colloquy and Waiver Required for Provision of Witness Testimony by Audio or Video Conference" which references some but not all of V.R.Cr.P. 26.2. Meanwhile, V.R.Cr.P. 26.2, is still undergoing some revisions based on comments the Criminal Rules Committee has received. A small subcommittee consisting of Judge Carlson, Marshall Pahl and Judge Davenport will review V.R.Cr.P. 26.2 and make recommendations to the full Committee as to whether Rule 17 should incorporate by reference all of V.R.Cr.P. 26.2 for delinquency and youthful offender cases or single out discreet parts of it. Judge Carlson recommended that 26.2 be referenced both in V.R.F.P. 1(a) and V.R.F.P. 17. This matter will be on the agenda for the July meeting.
3. Report from Subcommittee on Juvenile Proceedings (Marshall Pahl, Judge Kerry Mc-Donald-Cady, Jody Racht, Kristin Gozzi)

- a. Amendment to V.R.F.P.(1)(b)(1) to provide enforcement of the requirement in the rule to provide race and ethnicity data at the time of filing a delinquency petition. Marshall Pahl reported that the subcommittee had met. The Subcommittee's recommendation is that race/ethnicity be required by Odyssey (the court's electronic filing system) when a case is filed in lieu of an amendment to V.R.F.P.(1)(b)(1). Justice Waples reported that the Vermont Supreme Court is looking into the issue of race/ethnicity data as part of its Commission on Diversity, Equity and Inclusion in the Courts. The Commission has a subcommittee on data chaired by Justice Cohen. Justice Waples' understanding is that Tyler Technologies (the parent company of Odyssey) has told the Court that Odyssey cannot be programmed to require race/ethnicity data. The Committee also discussed the issue of law enforcement perception vs. self-identification of race/ethnicity by the youth. A concern was expressed that the response by Tyler Technologies did not make sense. The Juvenile Subcommittee will continue to discuss how this issue should be resolved.
  - b. V.R.F.P. 1(a)(3): Applicability of V.R.Cr.P. 11(c) (8) advice collateral consequences to delinquency cases. After some discussion, it was agreed by the Committee that a collateral consequences colloquy should be developed for delinquency cases. Judge Carlson and Marshall Pahl will draft a proposed colloquy for the Committee's review at the July meeting.
4. Joint subcommittee with Probate Rules Committee to consider whether legislation giving family and probate divisions jurisdiction to make findings related to Special Immigration Status (SIJ) requires rules. The Committee has not met since its last meeting in December. Judge Davenport will schedule another meeting once she has identified a lawyer with immigration expertise who can assist the Committee.
  5. 4.1(e) Waiver of Final Divorce Hearing for self-represented litigants. The committee reviewed a draft by Judge Carlson to amend V.R.F.P. 4.1(e) to allow a waiver of a final divorce hearing for some cases with self-represented litigants who have a child or children. A spirited discussion took place with some advocating for a waiver and others opposed. It was agreed that a double standard currently exists in the Family Rules in terms of how final hearings are treated in divorce with children cases as compared to parentage cases. If a stip is filed in a parentage case, the stip can be reviewed and be incorporated into a final order without the necessity of a final hearing regardless of whether the parents are represented or not. On the other hand, a final hearing is required in divorce cases with children and can only be waived if both litigants are represented by attorneys.
  6. Proposal to review Family Rules for outdated terms. This matter was put over until the July meeting.
  7. New Business: There were no items of new business.
  8. Future Meetings: The Committee has two more meetings scheduled in 2023: July 21 and October 20. Both meetings are from 1:30 – 3:30 pm.
  9. The meeting was adjourned at 3:01 p.m.