

APPROVED

VERMONT SUPREME COURT

ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

Minutes of Meeting

April 7, 2017

The meeting was called to order at 1:35 p.m. in the Hoff Lounge, Vermont Law School, by Hon. Michael Kainen, chair. Present were Committee members Penny Benelli, Hon. Cort Corsones, Anne Damone, Hon. Robert Gerety, Kurt Hughes (by telephone), Alicia Humbert, Harriet King, Marshall Pahl, Karen Reynolds, Christine Speidel, and John Wilson. Also present were Hon. Beth Robinson, Judicial Liaison, and Professor L. Kinvin Wroth, Reporter.

1. Minutes. The draft minutes of the meeting of December 2, 2016, previously distributed, were unanimously approved.

2. Status of proposed and recommended amendments.

A. Professor Wroth reported that the amendments to former V.R.F.P. 4(j), (o), recommended on December 2, 2016, for promulgation were promulgated as V.R.F.P. 4.2(a) and 4.3(b) on December 15, 2016, effective February 20, 2017.

B. Professor Wroth noted that the Court's proposed amendments to V.R.F.P. 2(a) and 3(c) concerning multi-county venue in TPR and post-disposition and permanency proceedings, sent out for comment on January 13, 2016, as to which the Committee had expressed concerns in Chairwoman Racht's memorandum of May 5, 2016, had been withdrawn by the Court. Multi-county venue rules had been expressly authorized in Act 167 of 2015 (Adj. Sess.), § 4, adding 4 V.S.A. § 37(b)(4). Mr. Pahl reported that planning for implementation of the statute by the Chief Superior Court Judge and the offices of the Defender and Attorney generals was on hold because authorization of an additional courtroom and new judges in Franklin County had eased the pressure in those cases.

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 new subcommittee appointed at the last meeting (Ms. Racht, chair; Chairman Kainen; Mr. Pahl; and Ms. Reynolds) will report at the next meeting.

4. V.R.F.P. 6 (amendments made necessary by Act 170 of 2013 (Adj. Sess.) concerning minor guardianships). Ms. Speidel reported for the Family Rules members of the joint subcommittee (herself, Judge Gerety, Judge Scanlon, Ms. Racht, Ms. Reynolds, and Ms. Damone) that the subcommittee had met and would report at the next meeting with proposals for facilitating communication between Family and Probate courts when children were involved by

seeking amendments to 33 V.S.A. §5117 concerning confidentiality of records of juvenile proceedings to include probate guardianships and provisions for notification of parties.

5. Joint subcommittee to consider possible amendments to Vermont Rules of Public Access concerning Family Division records. Ms. Benelli reported that the subcommittee (herself, Ms. Racht, and Ms. Reis) had met to review the present exceptions to non-electronic access in the Public Access Rules and would report at the next meeting on the question whether Vermont should follow other states in limiting access in family matters because of privacy concerns. Justice Robinson said that the Committee should coordinate with the Public Access Rules Committee (Judge Tomasi, chair; Judge Morris, Reporter) in its consideration of rules for the electronic case management system. It was agreed that the possibility of a joint subcommittee should be explored, as well as the possibility of Scott Woodward's assistance.

6. Effect of proposed amendments to V.R.C.P. ("day is a day") on Family Rules. The subcommittee (Judge Corsones, Mr. Hughes, and Magistrate Peterson) reported that it had reviewed the proposed draft of the Family Rules "day is a day" amendments and Ms. Humboldt's and other comments. On motion duly made and seconded it was voted unanimously to change 14 days to 20 days in V.R.F.P. 4.3(b)(4) and to recommend that the draft be sent out for comment with that change.

7. Special ad hoc committee on video/audio appearances and cameras in the court. The Committee reviewed the April 3 revised draft of proposed V.R.C.P. 43.1(d) intended to replace V.R.F.P. 17 and provide a common rule for telephone attendance in Civil and Family Division proceedings. The draft was based on discussions between Chairman Kainen and Allan Keyes, Chair of the Civil Rules Committee. In consideration of paragraph (d)(2) concerning non-evidentiary proceedings, a question was raised as to the method of proceeding in the absence of agreement of the parties. Professor Wroth agreed to draft clarifying language and circulate it to the Committee and the Civil Rules Committee before consideration of the draft by the Special Ad Hoc Committee.

8. Case manager's conference—issues raised by Judge Carroll. In the absence of Ms. Racht, this item was deferred to the next meeting.

9. Adoption of Prisoner's Mailbox Rule for Family Rules. The Committee considered Justice Robinson's letter of January 10, 2017, conveying the Court's request that the Committee consider whether Family Rules amendments would be appropriate in view of the recent promulgation of V.R.A.P. 4(f) that adopted a "prisoner's mailbox" rule for appellate proceedings. The Committee also reviewed Professor Wroth's March 22 proposed draft of V.R.C.P. 3(b), providing for a complaint filed by an inmate, which had not yet been considered by the Civil Rules Committee. In discussion, questions were raised as to whether there were jurisdictional limits that had to be addressed, whether the rule should be discretionary for non-jurisdictional filings, whether it should be limited to the complaint or should be broader than the draft Civil Rule, and whether a similar provision should be made for military personnel overseas. Professor Wroth agreed to report at the next meeting on these questions and on the action of the Civil Rules Committee on the draft.

10. Other Business.

A. S.23. An Act Relating to Juvenile Jurisdiction. Mr. Pahl noted that section 6 of the present draft of the bill directs the Civil and Family Rules Committees to meet jointly by July 1, 2017, to review the Act and to adopt rules regarding waiver of trial by jury for youthful offenders, effective no later than July 1, 2018. After discussion, Mr. Pahl agreed to suggest to the appropriate legislative committees that the direction should be addressed to the Supreme Court rather than the advisory committees. [Note: Section 7 of the bill as passed by the Senate and House on April 28 directed the Court to review the Act and consider adoption of appropriate rules by July 1, 2018.]

B. V.R.F.P. 18. Mediation. Ms. Benelli expressed concerns about the requirement of V.R.F.P. 18(d)(1) that mediation be conducted by a mediator on the Family Division Program's list of mediators unless no acceptable mediator from the list is available. The qualifications for the list, which focused on skills needed for resolution of disputes involving domestic violence or other high conflict situations, deterred many capable mediators from seeking inclusion. Justice Robinson suggested that more time be allowed for the rule to be used in practice. Professor Wroth agreed to circulate the link to the Administrative Order providing for the list.

11. Date of next meeting. It was agreed that the next meeting would be held at 1:30 p.m. on June 23, 2017, at Vermont Law School.

There being no further business, the meeting was adjourned at 3:45 p.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter