

APPROVED

VERMONT SUPREME COURT

ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

Minutes of Meeting

December 15, 2017

The meeting was called to order at 1:35 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Robert Gerety at the request of Hon. Michael Kainen, chair, who was participating by telephone. Present were Committee members Penny Benelli (by telephone), Hon. Cortland Corsones, Anne Damone (by telephone), Hon. Christine Hoyt, Kurt Hughes (by telephone), Alicia Humbert (by telephone), Marshall Pahl, Jody Racht, Karen Reynolds, Christine Speidel, Caryn Waxman, and John Wilson. Also present were Hon. Beth Robinson, Supreme Court Liaison; Hon. Joseph Lorman, newly appointed Family Division magistrate; and Professor L. Kinvin Wroth, Reporter.

The Committee welcomed newly appointed members Hon. Christine Hoyt and Caryn Waxman.

1. Minutes. The draft minutes of the meeting of October 6, 2017, were unanimously approved as previously distributed.

2. Committee schedule and structure. The Committee discussed the proposed 2018 meeting dates circulated by Professor Wroth. It was agreed that meetings would be held at 1:30 p.m. on Friday, February 2, May 4, September 7, and November 2, 2018, at Vermont Law School unless a different location is later specified. Additional meetings may be scheduled by agreement of the Committee if business requires.

3. Status of proposed and recommended amendments.

A. Proposed new V.R.C.P. 79.2, sent out for comment on July 18 by Special Committee on Video and Cameras in the Court, with comments due on September 18, 2017. Ms. Speidel reported for the subcommittee (Judge Corsones, Judge Gerety, Ms. Reis, and Ms. Speidel) that because of the potential for harassment and embarrassment in Family Division domestic proceedings, participants and non-participants, as defined in the proposed rule, should be allowed to make audio or visual recordings of proceedings only with the permission of the judge. After discussion in which it was noted that media almost never were present in Family Court, on the motion of the subcommittee, it was resolved unanimously, that the Advisory Committee on Rules for Family Proceedings wishes to advise the Special Committee for Video Appearance and Cameras in the Court and the Supreme Court that the Advisory Committee is concerned with the application of proposed V.R.C.P. 79.2 in the Family Division and is considering a rule providing that no

one may make or transmit a visual or audio recording of any proceeding or activities in a proceeding in the Family Division without the permission of the judge granted for good cause.

B. Proposed draft of V.R.C.P. 43.1, et al., video appearance, prepared by Special Committee on Video and Cameras in the Court, sent to the Supreme Court on October 30, 2017, Professor Wroth reported that the proposed draft of V.R.C.P. 43.1, et al., together with a proposed Administrative Order containing technical standards for equipment, would be presented to the Court at its January administrative meeting, with a request that both be sent out for comment. In discussion, Committee members noted that proposed V.R.C.P. 43.1(d)(3)(B)(v) reflected a preference for video proceedings in considering whether to require audio participation or testimony. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that V.R.C.P. 43.1 (d)(3)(B)(v) be either deleted or revised to make clear that the rule did not reflect a preference for video.

4. 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). Mr. Pahl reported for the subcommittee (Ms. Racht, Judge Kainen, Mr. Pahl, Ms. Reynolds) that it was considering the Florida rule, which took an approach similar to a motion under V.R.C.P. 60 rather than a direct appeal, and would make a recommendation at the next meeting.

5. V.R.F.P. 6. (Amendments made necessary by Act 170 of 2013 (Adj. Sess.) concerning minor guardianships). The Committee received Professor Wroth's letter of October 13, 2017, to the Supreme Court endorsing the report of the joint subcommittee on minor guardianships. Professor Wroth reported that the Probate Rules Committee was considering four proposed rules that would incorporate in probate practice applicable provisions of present V.R.F.P. 6, 6.1, 7, and 7.1.

6. Joint subcommittee to consider possible amendments to Vermont Rules of Public Access concerning Family Division records. Justice Robinson advised the Committee that the electronic filing system was now being configured by the Court Administrator's office. The present plan was for e-filing to be rolled out in Windsor, Windham, and Orange counties by mid-2019. Public access would be automated with access only at courthouse kiosks, thus not violating the prohibition of 12 V.S.A. §5 against internet access to Family Division records.

Ms. Benelli reported for the Family Rules members of the joint subcommittee with the Public Access Rules Committee (Ms. Benelli, Ms. Racht, Ms. Reis, with the assistance of Mr. Woodward) that they had been considering the manner of access to electronic records of Family Division cases. They would reexamine their charge and the status of the joint subcommittee and report at the next meeting. Professor Wroth agreed to send to the subcommittee, with copies to the rest of the Committee, relevant extracts from the minutes and other documents. On motion duly made and seconded, there being no further discussion, it was voted unanimously to table this item until the next meeting

7. Case manager’s conference—issues raised by Judge Carroll. It was agreed to table this item in the absence of Ms. Racht, who had had to leave the meeting.

8. Adoption of Prisoner’s Mailbox Rule for Family Rules. Professor Wroth reported that the Civil Rules Committee had under consideration amendments to V.R.C.P. 3 and 5 addressing prisoner’s mailbox issues for pleadings and other papers.

9. 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.) Mr. Pahl reported for the subcommittee (Mr. Pahl, chair; Ms. Racht; Ms. Reynolds) that it would present recommendations at the next meeting.

10. V.R.F.P. 18. Mediation. Concerns with requirement of V.R.F.P. 18(d)(1) regarding Family Division Program’s list of mediators. Ms. Benelli stated that the basic concern was that, to be selected, a mediator not on the Program’s list had to have the same credentials required for those on the list—a qualification that many otherwise qualified lawyer-mediators could not afford to meet. She agreed to present a draft for the next meeting adding language to paragraph (d)(1) that would make clear that a mediator otherwise acceptable to the parties or the court could serve. After further discussion, Ms. Speidel agreed to provide a report for the next meeting on the question whether the court could order mediation with a mediator to whom one party objected.

11. Other Business. There was no other business.

12. Dates of next meetings. The next meeting will be held at 1:30 p.m. on Friday, February 2, 2018, at Vermont Law School. See item 2 above for list of all 2018 meeting.

There being no further business, the meeting was adjourned at 4:30 p.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter