

APPROVED

VERMONT SUPREME COURT

ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

**Minutes of Meeting
December 2, 2016**

The meeting was called to order at 1:40 p.m. in the Hoff Lounge, Vermont Law School, by Hon. Michael Kainen, chair. Present were Committee members Penny Benelli (by telephone), Hon. Robert Gerety, Kurt Hughes, Alicia Humbert, Marshall Pahl, Jody Racht, Linda Reis (by telephone). Karen Reynolds, Hon. Justine Scanlon (by telephone), Christine Speidel, and John Wilson. Also present were Hon. Beth Robinson, Judicial Liaison; Scott Woodward, Esquire; and Professor L. Kinvin Wroth, Reporter.

The Committee welcomed Judge Kainen to his new position as chair..

1. Minutes. The draft minutes of the meeting of June 17, 2016, previously distributed, were unanimously approved.

2. Status of proposed and recommended amendments.

A. The Committee considered the proposed amendments to V.R.F.P. 2(a) and 3(c) sent out by the Court for comment on January 13, with comments due on February 16, 2016, and Chairwoman Racht's memorandum of May 5, 2016, expressing the Committee's concerns about the proposed amendments. Justice Robinson stated that multi-county venue rules had now been expressly authorized by Act 167 of 2015 (Adj. Sess.), § 4, adding 4 V.S.A. § 37(b)(4), and that the Court would develop a plan after resolution of pending issues with the Defender General. At that point, the need for rules would be determined. Mr. Pahl reported that discussions among the Chief Superior Court Judge and the offices of the Defender and Attorney generals were close to resolution of the issues.

The Committee then considered Shari Young's e-mail of July 11, 2016, to Chairwoman Racht on behalf of the Best Practices Subcommittee of the Justice for Children Task Force, asking whether Act No. 170 of 2015 (Adj. Sess.), §12, which added 33 V.S.A. § 5125 concerning reinstatement of parental rights, required implementing rules. After discussion, it was agreed that no rules appeared to be necessary. Ms. Racht agreed to advise Ms. Young to consult the Oversight Committee on the matter.

B. The Committee considered the proposed amendments of V.R.F.P. 4(j), (o), sent out for comment on May 16, with comments due on July 15, 2016. No comments had been received. On motion duly made and seconded, there being no discussion, it was

voted unanimously to recommend the amendments to the Court for promulgation as circulated.

C. Professor Wroth reported that the Committee's recommended amendments abrogating former V.R.F.P. 4 and adding V.R.F.P. 4.0-4.3, together with conforming amendments to provisions of other rules, were promulgated August 25, effective December 5, 2016. The rules had been reviewed by the Legislative Committee on Judicial Rules on November 26, 2016, without objection.

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). Ms. Racht reported that the subcommittee had not met. After discussion, it was agreed that a new subcommittee consisting of Ms. Racht as chair, Chairman Kainen, Mr. Pahl, and Ms. Reynolds would review past efforts and present draft amendments 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 Scanlon, Ms. Racht, Ms. Reynolds, Ms. Damone) that the subcommittee had been addressing problems of facilitating communication between Family and Probate courts when children were involved, in light of the provisions of 33 V.S.A. §5117 concerning confidentiality of records of juvenile proceedings. The primary concern was whether a change by rule or administrative order could be effective in the absence of a statutory change clarifying confidentiality. A related issue was the relationship between records that may be inspected under 33 V.S.A. §5117 and those that are sealed under 33 V.S.A. §5119. Of overriding concern was the difficulty of inter-Division communication in the present state of technology in the Family and Probate divisions.

Committee members suggested that a rule allowing the sharing of confidential information without sacrificing confidentiality was important and should be developed to identify an area where technological requirements needed to be addressed. It was agreed that the subcommittee should consider and report its conclusions on whether (1) it should disband in the absence of legislative clarification, (2) it should point out the problem and a desired solution to the Legislature, or (3) it should proceed to draft a rule to spur both technological progress and legislative action.

Justice Robinson gave a brief summary of the Court's current efforts to develop a fully electronic system: (1) The plan is to develop a tree of rules for every case type. (2) Files will be primarily electronic and accessible subject to various security levels. (3) Development for the next three to five years will begin with selection of a primary vendor in December 2016, followed by pilot implementation of the system in three counties by Summer 2018, with statewide implementation no later than 2021.

5. Joint subcommittee to consider possible amendments to Vermont Rules of Public Access concerning Family Division records. The subcommittee (Ms. Benelli, Ms. Racht, Ms. Reis), as charged at the last meeting, will review the present exceptions to non-electronic access

in the Public Access Rules with the assistance of Mr. Woodward and report at the next meeting.

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) will review Professor Wroth’s September 9 proposed draft promulgation order and Committee members’ comments on it and send a revised draft order by e-mail to Committee members for review as soon as possible before asking Professor Wroth to send it to the Court.

7. Special ad hoc committee on video/audio appearances and cameras in the court.

The Committee reviewed draft 5 of V.R.C.P. 43.1, V.R.F.P. 17, and other rules (11/29/16) and draft 3 of Proposed Technical Standards for implementation of the rules (11/29/16). After discussion in which it was noted that V.R.F.P. 17 presently worked well in divorce and other civil family proceedings but that the complexity for telephone testimony under the proposed rule would create difficulties in dealing with the numerous pro se litigants in Family Court, it was the consensus to advise the Special Committee that present V.R.F.P. 17 should be retained for Family Court proceedings.

8. Case manager’s conference—issues raised by Judge Carroll. Ms. Racht reported that she had received no information on the Oversight Committee views on the subject..

9. Other Business: Entry order honoring former Chairwoman Racht. Justice Robinson presented the attached Supreme Court entry order of December 1, 2016, honoring and thanking Jody Racht for her years of effective service and achievements as Chair of the Family Rules Committee. All present responded with a rising ovation and vote of thanks for Chairwoman Racht’s dedication and successful efforts.

10. Date of next meeting. Professor Wroth agreed to circulate dates for a meeting to be held on a Friday afternoon meeting in March 2017.

There being no further business, the meeting was adjourned at 4:45 p.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter

Attachment: Supreme Court Entry Order (12/1/16)