

**APPROVED**

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

**Minutes of Meeting  
January 11, 2019**

The meeting was called to order at 1:40 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Michael Kainen, chair. Present were Committee members Penny Benelli, Hon. Thomas Carlson (by telephone), Anne Damone (by telephone), Hon. Robert Gerety (by telephone), Hon. Gregory Glennon (by telephone), Sarah Haselton (by telephone), Marshall Pahl, Linda Reis (by telephone), Karen Reynolds, Alycia Sanders, and John Wilson. Also present were Hon. Beth Robinson, Supreme Court liaison (by telephone), and Professor L. Kinvin Wroth, Reporter.

The Committee welcomed new members Hon. Thomas Carlson, Sarah Haselton, and Alycia Sanders and by unanimous vote expressed thanks to Hon. Cortland Corsones, Alicia Humbert, and Kurt Hughes for their years of service on the Committee

**1. Minutes.** The draft minutes of the meeting of November 2, 2018, were unanimously approved as previously distributed.

**2. Status of proposed and recommended amendments.**

A. Application to Family Division of new V.R.C.P. 79.2, recommended to the Court on January 2, 2018, by Special Committee on Video and Cameras in the Court; proposed revised draft sent out for comment by the Court on September 6, with comments due on November 5, 2018. Professor Wroth reported that the deadline for comments had been extended by the Court to January 31, 2019, and that the Committee's comment in the form of proposed V.R.F.P. 19, sent to the Court on November 3, 2018, would be considered at that time.

B. Proposed draft of V.R.C.P. 43(a), et al. (including V.R.F.P. 17), video and audio appearance, and proposed AO 47, Technical Standards, prepared by Special Committee on Video and Cameras in the Court, sent out for comment on January 24, with comments due on March 23, 2018. Professor Wroth reported that the Family Rules Committee had agreed at its meeting of February 2, 2018, that the January 23 draft of proposed V.R.C.P. 43.1 and its incorporation in proposed amendments to V.R.F.P. 17 were acceptable. He further reported that the Special Committee would decide by e-mail ballot not later than January 18, 2019, whether to recommend the proposed rules and amendments to the Court for promulgation.

C. Proposed amendment to V.R.F.P. 18(d) (d)(1) clarifying process of appointing mediator, sent out for comment on November 8, 2018, with comments due on January 7, 2019. Chairman Kainen reported that no comments had been received. On motion duly made and seconded, there being no discussion, it was voted unanimously to recommend the amendment to the Court for promulgation as proposed.

**3. Draft rule for mental health proceedings proposed by Family Division Oversight Committee.** The Committee considered Professor Wroth's January 7, 2019, draft of proposed

V.R.F.P. 19 covering mental health proceedings based on the draft presented for the Family Division Oversight Committee by Judge Hayes at the last meeting. In discussion, it was agreed that the reasons for the list of inapplicable Civil Rules in Rule 19(a)(2)(B) should be explained in the Reporter's Notes, that the possible statutory source of the venue provisions in Rule 19(b) should be reviewed and discussed in the Reporter's Notes, and that the Reporter's Notes should point out that the standardized discovery order required should be developed in each court as part of necessary provisions for the forthcoming implementation of the case management system. Professor Wroth agreed to prepare a new draft, to be numbered either Rule 3.1 or 9.1, with Reporter's Notes, for the next meeting.

**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 that the subcommittee (Ms. Racht, Judge Kainen, Ms. Reynolds, and Mr. Pahl, chair) was working on two alternative proposals that would be presented at the next meeting. One proposal was that challenges for ineffective assistance of counsel should be made under the procedure provided in V.R.C.P. 60(b), which would give the court maximum flexibility. The alternative approach would be a rule that required a challenge to be made by a specific time after entry of the TPR order or be waived. In discussion concerns were expressed that the procedure should not impose additional delays in the finality of the order that would delay the completion of adoption proceedings in Probate Court. Justice Robinson stated that the Court would prefer a report from the Committee covering the issues, rather than a proposed rule, and called the Committee's attention to a memorandum prepared by Ms. Racht for the subcommittee in 2017 that surveyed the practice in other states. Judge Kainen agreed to ask Ms. Racht to send the memo to the Committee for consideration with the alternative proposals at the next meeting.

**5. V.R.F.P. 6. Amendments made necessary by Act 170 of 2013 (Adj. Sess.) concerning minor guardianships.** Professor Wroth reported that the Probate Rules Committee expects to complete a draft of proposed amendments incorporating the applicable Family Rules guardianship rules in the Probate Rules at its next meeting, which will be held in April.

**6. Joint subcommittee to consider to Vermont Rules of Public Access concerning Family Division records.** Professor Wroth reported that the Public Access Rules Committee had completed its work on extensive amendments to the Public Access Rules necessary for implementation of the new case management system and had sent them to the Court with the request that they be sent out for comment. Justice Robinson stated that the Court would consider the proposed amendments at a special administrative meeting on January 24 and noted the need to have the Rules in place for the start of the new system in the fall. It was agreed to continue to defer discussion of issues concerning Family Division records until the proposed amendments were circulated for comment.

**7. 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 that, in view of pending legislation that had been drafted by the Juvenile Justice Working Group, composed of all relevant interests including himself, the subcommittee (Ms. Racht, Ms. Reynolds, and Mr. Pahl, chair) had concluded that there was no point in considering rules now.

He summarized the six components of the legislative package: (1) Conditions of release in the Criminal Division; (2) authorization for the juvenile court to issue a warrant for an offender's parole violation; (3) authorization for state's attorneys to bring serious felonies in the Criminal Division, with discretion to bring them in juvenile court; (4) extension of the existing discretion regarding Criminal or juvenile trial of 16 to 17 year olds to 14 or 15 year olds; (5) authority to find incompetence or insanity to be in the Criminal Division mental health system, rather than in CHINS proceedings; (6) clarification that youthful offender status ends at age 22. Mr. Pahl asked that Committee members send him any other matters that they felt should be in the package.

**8. V.R.F.P. 4.0(g)(3). Discovery questions.** Professor Wroth reported that he had not prepared a draft order amending Rule 4.0(g)(3) to eliminate its initial two sentences concerning proposed final orders because no amendment was necessary. Those sentences were not included in Rule 4.0(g)(3) as proposed by the Committee and as promulgated. They appear in the Lexis print and online texts of the rule as the result of an editorial error that duplicated the language of Rule 4.0(e)(1)(C). The publisher will correct the error with a print errata sheet, in the next pocket part, and by revision of the online text.

**9. Other Business.** There was no other business

**10. Dates of next meetings.** The next meeting of the Committee is scheduled for March 29, 2019. It was agreed that subsequent meetings should be scheduled for June 21, and September 13, 2019.

There being no further business, the meeting was adjourned at 3:05 p.m.

Respectfully submitted,

L. Kinvin Wroth  
Reporter