

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

**Minutes of Meeting at Vermont Law School
January 24, 2020**

The meeting was called to order by Judge Tom Carlson presiding as chair for Judge Kainen. Present were Committee members Penny Bennelli, Judge Gregory Glennon (by telephone), Sarah Haselton (by telephone), Magistrate Christine Hoyt, Jody Racht, Karen Reynolds, Alycia Sanders, Susan Ellwood, Caryn Waxman (by phone) and John Wilson. Judge Kainen participated by phone for the first portion of the meeting. Theresa Scott was present sitting in for Anne Damone. Also present were ex-officio members: Justice Beth Robinson and Michele Olvera, Legal Director, Vermont Network; Judge Amy Davenport (ret) was present as the Reporter.

The Committee welcomed Susan Ellwood who was recently appointed to the Committee. Attorney Ellwood serves on both the Family Rules Committee and the Family Oversight Committee. Judge Davenport reported that the Supreme Court has appointed Judge Meagan Shaffritz to the Committee.

1. **Approval of draft minutes of the meeting of November 8, 2019:** the minutes were unanimously approved as previously distributed.

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

A. Proposed amendment to V.R.F.P. 18(d)(1)(B) clarifying process of appointing mediator, recommended to the Court on January 11, promulgated February 4, effective April 8, 2019. Considered by LCJR on June 6, 2019. Question raised by LCJR on final phrase of subparagraph (d)(1)(B). Chairman Kainen reported that once he explained the Committee's thinking regarding the domestic violence training requirement, there were no further questions by the LCJR concerning the amendment.

B. Proposed new V.R.F.P. 6.2 (mental health proceedings). Sent out for comment on October 1, with comments due by December 1, 2019. Chairman Kainen reported that no comments have been received regarding the proposed rule. The Committee agreed that the rule should be submitted to the Supreme Court for final approval.

C. Proposed new V.R.F.P. 4.3(f) (enforcement of money judgments). Sent out for comment on October 1, with comments due by December 1, 2019. Chairman Kainen reported that only one comment has been received. The comment was from Judge Helen Toor who thought that the use of the phrase "trustee process" might be confusing and recommending using the term "wage garnishment" instead. After a brief discussion, the Committee concluded that any possible confusion could be cleared up with an amendment to the Reporter's Notes. Judge Carlson and Judge Davenport will work on proposed language and report back at the next meeting.

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).** Chairman Kainen reported that he had transmitted the memo drafted by Attorney

Racht to the Supreme Court. Justice Robinson reported that the Court has discussed the memo, is grateful to the Committee for the time and effort that went in to drafting the memo, and is not requesting further rule-making at this time.

4. V.R.F.P. 6. Amendments made necessary by Act 170 of 2013 (Adj. Sess.) concerning minor guardianships. Probate Rules Committee is meeting on February 12, 2020 and action on proposed new V.R.P.P. 80.9-80.12, adapting applicable provisions of V.R.F.P. 6, 6.1, 7, 7.1, to Probate practice is on its agenda. Judge Davenport will check with Kinvin regarding any decisions made by the Probate Rules Committee and will report to this Committee at the next meeting.

5. Vermont Rules for Public Access to Court Records. Abrogated and replaced by order of May 1, effective July 1, 2019. Subcommittee (Ms. Bennelli, Ms. Olvera, and Ms. Sanders) to report on whether there should be a broad exception to the revised Public Access Rules to cover Family Division proceedings, or whether there should be specific exemptions to those rules for particular Family Division cases. Attorney Bennelli reported that due to her schedule over the course of the last couple of months, the subcommittee has not had time to meet. She promised that the subcommittee would have a report ready for the next meeting.

6. Applicability in Family Division of amendments to V.R.C.P. 5, 79(a), and V.R.F.P. 15, recommended by Special Committee on Electronic Filing to conform to proposed new V.R.E.F. 11, promulgated December 11, 2019, effective March 2, 2020. This matter was removed from the Agenda given the fact that the amendment to V.R.F.P. 15 adding a cross reference to the Vermont Rules for Electronic Filing to subsection (f) regarding attorney license number and eCabinet registration numbers, has already been promulgated and will become effective on March 2, 2020.

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.) Consideration of youthful offender rules in light of Act 45 of 2019 (5/30/19). Subcommittee (Mr. Pahl, chair, Ms. Racht, Ms. Reynolds) to report. Atty. Pahl was not able to be present at the meeting. Ms. Racht reported that the subcommittee is in a holding pattern at the moment waiting to see whether the Legislature will make further changes to the statutes related to juvenile jurisdiction and youthful offenders. Judge Carlson suggested that a rule similar to V.R.Cr.P. 11 regarding the colloquy that should take place in juvenile proceedings when the juvenile enters an admission, would be helpful.

8. Live-streaming in Family Court hearings. Consideration of Magistrate Hoyt's e-mail of August 7, 2019, concerning the application of present and new V.R.C.P. 79.2 to live-streaming of Family Court proceedings and other issues raised by new V.R.C.P. 79.2 in light of proposed V.R.F.P. 19 sent to the Court on November 3, 2018, but not acted upon and of emergency amendments to V.R.C.P. 79.2 promulgated on September 3, with comments due on November 8, 2019. The Committee discussed whether it should make any further proposals to the Supreme Court. Justice Robinson pointed out that the Supreme Court had adopted some, but not all, of the Committee's proposals in the amendments to V.R.C.P. 79.2. She reported that, since the Court strongly favors consistent rules across all divisions, any proposal for a different rule in family proceedings should specifically detail the reasons that support it. After some discussion, the Committee agreed that there is significant overlap between the rules for public access to court

records in family proceedings (See #5 above) and the issues raised regarding live streaming in family court hearings. The matter was therefore referred to Atty Bennelli's subcommittee to be included as part of the subcommittee's report at the next meeting.

9. V.R.F.P. 4.3(b)(1). Applicability of Rule 4.3(b)(1) in cases filed before effective date of Vermont Parentage Act, 15 V.S.A. 115A(d)(2). The draft amendment abrogating V.R.F.P. 4.3(b)(1) was considered and unanimously approved with the proviso that it not become effective until July 1, 2020.

10. Dates of next meetings. Next meeting is scheduled for March 13, 2020 at 1:30 pm. It was pointed out that the Family Oversight Committee has already scheduled a meeting at the same time on that date. Judge Carlson agreed to discuss with Judge Kainen the possibility of changing this Committee's meeting time to the morning from 9 am to noon. The Committee further agreed to schedule the next meeting on Friday, May 8 at 1:30 pm. Again, this is a proposed meeting date and time for the Family Oversight Committee although a formal notice has not been sent.

There being no further business, the meeting was adjourned.