

APPROVED

VERMONT SUPREME COURT

ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

Minutes of Meeting

June 17, 2016

The meeting was called to order at 1:40 p.m. in the Hoff Lounge, Vermont Law School, by Jody Racht, chair. Present were Committee members Anne Damone, Harriet King, Kurt Hughes, Marshall Pahl, Hon. Barry Peterson, Karen Reynolds, Christine Speidel, and John Wilson. Also present were Michele Olvera, Vermont Network representative; Rebecca Turner, Supervising Attorney, Appellate Division, Office of the Defender General, Scott Woodward, Esquire; and Professor L. Kinvin Wroth, Reporter.

The Committee welcomed new member Karen Reynolds.

1. Minutes. The draft minutes of the meeting of April 22, 2016, previously distributed, were unanimously approved, with the correction of Chairwoman Racht's title in item 10.

2. Status of proposed amendments.

A. Professor Wroth reported that legislation awaiting the Governor's signature would affect the proposed amendments to V.R.F.P. 2(a) and 3(c) upon which the Committee had commented at the Court's request. Accordingly, it was agreed to consider at the next meeting, whether the legislation required changes in the proposed amendments.

B. Chairwoman Racht and Professor Wroth reported that no comments had been received on the proposed amendments adding V.R.F.P. 4.0-4.3 sent out for comment on February 16, with comments due on April 15, 2016, either at the June 14 meeting of the Legislative Committee on Judicial Rules (LCJR) or by the June 15 deadline in Ms. Benelli's request for comments from the VBA Family Law Section. Accordingly, on motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that the new rules be promulgated as circulated for comment after review by Professor Wroth to assure that all recent amendments to present V.R.F.P. 4.

C. Chairwoman Racht reported that no comments had been made on the proposed amendments to V.R.F.P. 4(j), (o), sent out for comment on May 16, with comments due on July 15, 2016, at the June 14 meeting of the LCJR. Since the comment period had not yet run, it was agreed that these amendments would be considered 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). The Committee considered Chairwoman Racht’s memorandum of August 29, 2014, and *In re M.P.*, 2015 ME 138, distributed in her June 9 e-mail. In discussion, Mr. Pahl and Ms. Turner noted that the Defender General’ office was involved in 90% of TPR appeals and that direct appeal under Vermont’s system would present an irreconcilable conflict between the appellate office and trial counsel alleged to have provided ineffective assistance, which would be raised in nearly every case. They suggested that post-conviction review filed pro se, with court-appointed counsel, after the decision of other issues on direct appeal, would be more effective, resulting in fewer ineffective assistance claims. In response to the concern that this approach would add time to for reaching decision it was agreed that a subcommittee consisting of Ms. Reynolds, Judge Griffin or another judge, Mr. Pahl, and Chairwoman Racht would look at the practice in other states as to the number of, and time involved in, effective assistance proceedings and would present a draft rule for consideration at the next meeting

4. V.R.F.P. 6. Amendments made necessary by Act 170 of 2013 (Adj. Sess.) concerning minor guardianships. The Committee considered Ms. Speidel’s June 16 report for the joint subcommittee with the Probate Rules Committee (Chairwoman Racht, Judge Scanlon and herself). On motion duly made and seconded, after discussion, it was voted, eight in favor and one abstaining, to adopt the subcommittee’s first recommendation: “The judiciary should pursue computer programming improvements to allow court staff to search cases statewide. The functionality to find concurrent open cases regarding a child should be prioritized.” On motion duly made and seconded, after further discussion, it was voted unanimously to ask the subcommittee to review its remaining recommendations and to provide draft amendments to V.R.F.P. 4 and other rules implementing them at the next meeting.

The following suggestions, shown in bold italics, were made concerning the subcommittee’s proposed new V.R.F.P. 4(b)(1)(B):

(B) Proceedings involving Child Custody. -- If custody of a child, including visitation rights, is in issue, the complaint or an accompanying affidavit shall contain the information required by Chapter 20 of Title 15 V.S.A., the Uniform Child Custody Jurisdiction and Enforcement Act, and shall disclose any other court proceeding ***in Vermont or elsewhere*** involving the child, whether closed or pending. A copy of any current order ***in Vermont or elsewhere*** concerning custody or visitation shall be filed with the complaint if available. If the affidavit discloses a pending proceeding before the Vermont Superior Court, the family division clerk shall notify the clerk of the court where the proceeding is pending of the new filing.

The subcommittee was encouraged to make clear the confidentiality requirements of V.R.F.P. 1 and 2 concerning disclosure of orders.

It was agreed that the Probate Rules Committee should be asked to take the lead in proposing changes to decouple the GAL rules for family and probate court and to clarify the process for communication between the two courts.

Ms. Reynolds and Ms. Damone agreed to join the subcommittee to assist in both the drafting process and the decoupling issues.

5. Joint subcommittee to consider possible amendments to Vermont Rules of Public Access concerning Family Division records. The Committee reviewed Scott Woodward's June 10 memorandum reporting that 12 V.S.A. §5 currently prohibits internet access to Family Court records and summarizing the range of legislation in other states. The joint subcommittee (Ms. Benelli, Ms. Reis, and Chairwoman Racht) was asked to review the present exceptions to non-electronic access in the Public Access Rules and report at the next meeting with any recommendations for amendment.

6. Effect of proposed amendments to V.R.C.P. 5 and 6 ("day is a day") on Family Rules. The Committee reviewed Mr. Hughes' June 17 e-mail report of the subcommittee (Judge Corsones, Magistrate Peterson, and himself) on potential day is a day issues Professor Wroth agreed to put Allan Keyes' proposed changes and those of the subcommittee in the form of a draft promulgation order to send to the subcommittee as the basis for a report at the next meeting.

7. Special ad hoc committee on video/audio appearances and cameras in the court. The Committee reviewed the May 18 draft amendments of V.R.C.P. 43.1 and related Family Rules provisions prepared by the Special ad hoc Committee. Professor Wroth noted that the Special Committee was to meet on June 24 and asked Committee members to send him comments on the draft before that date. He noted that the Committee would have a final draft to review at its next meeting.

8. Case manager's conference—issues raised by Judge Carroll. Chairwoman Racht reported that she awaits word from the Oversight Committee as to whether these issues could be dealt with as best practices or require a rule.

9. Comments on V.R.F.P. 18 as promulgated. The Committee considered comments on the new mediation rule, V.R.F.P. 18, summarized in Ms. Benelli's e-mail of June 1, 2016. It was agreed to take no action on the comments in the absence of a specific request.

Next meeting. It was agreed that the next meeting of the Committee would be held on September 16, 2016, at 1:30 p.m. at Vermont Law School.

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

Respectfully submitted,

L. Kinvin Wroth
Reporter