

**APPROVED**

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

**Minutes of Meeting  
June 21, 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 (by telephone), Laura Bierley (by telephone), Hon. Thomas Carlson (by telephone), Anne Damone, Hon. Gregory Glennon (by telephone), Jody Racht, Karen Reynolds, Alycia Sanders, Caryn Waxman (by telephone), and John Wilson. Also present were Hon. Beth Robinson, Supreme Court liaison; Patricia Gabel, Court Administrator (by telephone); Michele Olvera, Legal Director, Vermont Network against Domestic and Sexual Violence; and Professor Emeritus L. Kinvin Wroth, Reporter.

Professor Wroth reported that Linda Reis had resigned from the Committee because of the press of other duties. Committee members expressed their gratitude for her years of service.

**1. Minutes.** The draft minutes of the meeting of March 29, 2019, 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. Professor Wroth reported that the Supreme Court's revised proposed draft of V.R.C.P. 79.2 et al., sent out for comment on September 6, with the comment period extended by the Court until January 31, 2019, and the Court's revised proposed draft of V.R.A.P. 35 and A.O. 46, with comment period extended to January 14, 2019, had been promulgated on May 1, effective September 3, 2019. The Legislative Committee on Judicial Rules (LCJR) considered the Rules as presented by Justice Dooley at its meeting on June 6, 2019, and had no comments.

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 with the substitution of amendments to V.R.P.P. 43 and new V.R.P.P. 43.1 proposed by the Probate Rules Advisory Committee for the originally proposed amendment to V.R.P.P. 43(b), the Rules were promulgated on May 1, effective August 3, 2019. LCJR considered the Rules as presented by Justice Dooley at its meeting on June 6, 2019, and after discussion agreed that they should be further considered at that Committee's next meeting.

C. Proposed amendment to V.R.F.P. 18(d)(1) clarifying process of appointing mediator, recommended to the Court on January 11. Professor Wroth reported that the amendment had been promulgated on February 4, effective April 8, 2019, and was considered by LCJR at its meeting on June 6, 2019. That Committee did not take formal action on the amendment, but

expressed concern that its language appeared to require a mediator designated by the court who is not on the Mediation Program's approved list to have domestic violence training regardless of whether the matter involved domestic violence. LCJR requested a response from the Family Rules Committee on this question.

In discussion, Ms. Gabel confirmed that domestic violence training was a specific component of the credentials required for inclusion on the Family Division Mediation Program's list of approved mediators. Committee members noted that the possibility of domestic violence must always be considered at the outset of any mediation especially if there is substantial disagreement among the parties about mediation or one or more of them is self-represented. Accordingly, although the final sentence of Rule 18(d)(1)(B) gives the judge some measure of discretion in assessing the credentials of an off-list mediator, that assessment must include consideration of the appropriateness of the mediator's domestic violence training and experience to the circumstances of the particular case. Chairman Kainen agreed to report the Committee's views on the purpose of the language to LCJR.

**3. Proposed V.R.F.P. 6.2 (mental health proceedings).** The Committee considered Professor Wroth's revised draft of proposed V.R.F.P. 6.2 [3/30/19], reflecting the elimination at the March 29 meeting of the references to 18 V.S.A., ch. 206, in original draft Rule 6.2(a)(1); the elimination of original draft Rule 6.2(b)(3); and deletion of the bolded language in Professor Wroth's draft Reporter's Notes raising the inconsistency between the Family Division venue provisions of original Rule 6.2(b)(3) and 18 V.S.A. § 8845 providing for annual judicial review of those proceedings in the Criminal Division. Professor Wroth reported that S.105, § 21, signed by the Governor on June 19, 2019 (no Act number assigned yet), changed "Criminal" to "Family" Division in 18 V.S.A., ch. 206, subch. 3, § 8840, providing for original jurisdiction of commitment proceedings, but that § 8845 was not amended. On motion duly made and seconded, it was voted unanimously, with Ms. Racht abstaining, to further revise proposed V.R.F.P. 6.2 to reflect legislative action. Professor Wroth agreed to circulate a new draft to the Committee for comment before requesting the Court to send it out for comment.

Justice Robinson excused herself from the meeting, noting that issues to be considered under item 4 might be involved in a case pending, but not yet argued, before the Supreme Court.

**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).** In the absence of Mr. Pahl, Ms. Racht reported that the subcommittee (Ms. Racht, Judge Kainen, Ms. Reynolds, and Mr. Pahl, chair) was considering two alternative approaches to addressing ineffective assistance claims—direct appeal and a procedure similar to V.R.C.P. 60(b). The subcommittee will report at the next meeting.

Justice Robinson returned to the 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 will continue to consider a draft of proposed amendments incorporating the applicable Family Rules guardianship rules in the Probate Rules at its September meeting.

**6. Vermont Rules for Public Access To Court Records.** Professor Wroth reported that the Rules for Public Access to Court Records adopted October 27, 2000, effective May 1, 2001, as amended, and the Rules Governing Dissemination of Electronic Case Records adopted March 6, effective June 1, 2002, as amended, had been abrogated and replaced by the Vermont Rules for Public Access to Court Records adopted by Supreme Court order of May 1, effective July 1, 2019. LCJR considered the Rules as presented by Justice Dooley at its meeting on June 6, 2019, and, after extensive questioning and responses by Justice Dooley, had no objections to the Rules.

Ms. Benelli reported that the subcommittee (herself, Ms. Reis, Ms. Olvera, and Ms. Sanders) established at the March 29 meeting to determine, (1) what can be done by rule and (2) what changes in or additions to provisions of the new Public Access Rules applying to family cases should be considered, had not met but would report at the September meeting. She noted that Ms. Reis had resigned from the Committee and hoped that another member could be appointed to the subcommittee. Justice Robinson suggested that the subcommittee's charge could be summarized as to decide whether there should be a broad exception for Family Division proceedings or whether the subcommittee should propose specific exemptions for particular cases.

**7. Applicability in Family Division of amendments to V.R.C.P. 5, 79(a). proposed by Special Committee on Electronic Filing to conform to proposed new V.R.E.F. 11,**

Professor Wroth reported that proposed Civil Rules amendments to conform to proposed new V.R.E.F. 11, drafted by the Special Committee on Electronic Filing, had been sent out for comment on June 19, with comments due by August 19, 2019. The Civil Rules Committee intended to present a consolidated group of comments by that deadline. It was agreed that individual Advisory Committee members should send any comments on the proposed Civil Rules amendments, as well as on the proposed Electronic Filing Rules, to the Special Committee on Electronic Filing by the August 19 deadline, with copies to other Advisory Committee members and the Reporter.

**8. 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). In the absence of Mr. Pahl, this item was deferred until the next meeting.

**9. Enforcement of money judgments.** (Action deferred at the November 2, 2018, meeting pending Civil Rules Committee's action on proposed amendments to V.R.C.P. 69 and other rules). Professor Wroth reported that the Civil Rules Committee had taken no action on the pending amendments at its June 21 meeting. The Committee then considered two proposals for a new V.R.F.P. 4.3(f) providing for enforcement in the Family Division of orders to pay money: (1) enforcement by any appropriate procedure provided in V.R.C.P. 69; (2) enforcement only by trustee process under V.R.C.P. 4.2 or wage withholding under V.R.F.P. 4.3(b)(2).

Judge Carlson said he favored the second approach because of the difficulty of importing into the Family Division some but not all procedures embraced in V.R.C.P. 69—for example, foreclosure would not be appropriate and execution, if available, was too cumbersome. Post-

judgment trustee process and wage withholding are already available in the Family Division and well-known. In response to a suggestion that attachment and equitable remedies should also be made available, Judge Carlson agreed to provide a new draft for the next meeting incorporating other specific enforcement procedures.

**10. Other business.** There was no other business

**11. Dates of next meetings.** The next meetings of the Committee are scheduled for September 13, and November 8, 2019.

There being no further business, the meeting was adjourned at 3:25 p.m.

Respectfully submitted,

L. Kinvin Wroth  
Reporter