

**APPROVED**

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

**Minutes of Meeting  
March 29, 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, Laura Bierley (by telephone), Hon. Thomas Carlson (by telephone), Anne Damone (by telephone), Hon. Robert Gerety, Sarah Haselton (by telephone), Hon. Christine Hoyt, Jody Racht, Alycia Sanders (by telephone), Caryn Waxman, and John Wilson. Also present were Michele Olvera, Legal Director, Vermont Network against Domestic and Sexual Violence; and Professor L. Kinvin Wroth, Reporter.

**1. Minutes.** The draft minutes of the meeting of January 11, 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, 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 Supreme Court on September 6, with comment period extended to January 31, 2019. Professor Wroth reported that the Court would consider whether to promulgate the rule and related amendments and administrative order at its administrative meeting on April 1, 2019.

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 Special Committee had sent its recommended revised draft of the proposed amendments to the Supreme Court on January 28, 2019, and that the Court would consider whether to promulgate the rules and related administrative order at its administrative meeting on April 1, 2019.

C. Proposed amendment to V.R.F.P. 18(d) (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.

**3. Draft rule for mental health proceedings proposed by Family Division Oversight Committee.** Judge Katharine Hayes and Andrew Stone, Technology Projects Manager in the Office of the Court Administrator, joined the meeting by telephone for the discussion of Professor Wroth's March 13, 2019, proposed draft proposed promulgation order for a new V.R.F.P. 6.2 embodying Judge Hayes' original draft as revised after discussion at the January 11 meeting of the Committee. Judge Hayes stated that the rule was necessary to provide a

standardized procedure for the many mental health proceedings in the Family Division in time for the beginning of electronic filing under the new case management system in the Family Division. The draft provided a single procedure for proceedings under 18 V.S.A. Chapters 179 and 181 (Involuntary Treatment), 206 (Care for Persons with an Intellectual Disability who Present a Danger of Harm to Others), and 215 (Guardianship Services for People with Developmental Disabilities). The venue provisions of subdivision (b) were the most important part. The remainder of the rule covered forms and procedures that had been devised in practice by the Attorney General's Office and Vermont Legal Aid, as well as a provision for electronic filing that was already in use for the mental health docket.

The Committee considered the bolded language in Professor Wroth's draft Reporter's Notes raising a possible inconsistency between the Family Division venue provisions of proposed Rule 6.2(b)(3) for applications for judicial review under 18 V.S.A. §8845 of Chapter 206 proceedings and the language of §8845 providing for judicial review of those proceedings in the Criminal Division. Committee members agreed that in practice judicial review proceedings under Chapter 206 were brought in the Family Division despite the language of the statute. On motion duly made and seconded, it was voted, ten in favor, none opposed, Ms. Racht abstaining, to delete the reference to 18 V.S.A., ch. 206, in draft Rule 6.2(a)(1), as well as draft Rule 6.2(b)(3) and the bolded language in the Reporter's Notes. In further discussion, it was agreed that Committee members would seek to obtain legislation in the current session that would conform the statute to current practice. On motion duly made and seconded, it was voted, ten in favor, none opposed, Ms. Racht abstaining, to approve the March 13 draft of proposed Rule 6.2 as revised, subject to reconsideration when the results of the legislative initiative were known.

**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 her August 2014 memo to the subcommittee (Ms. Racht, Judge Kainen, Ms. Reynolds, and Mr. Pahl, chair) focused on states using a general approach to claims of ineffective assistance of counsel in TPR cases—an open-ended approach under a procedure similar to V.R.C.P. 60(b). However, the subcommittee was now also considering an approach adopted in Florida in 2017 with strict time limits. The subcommittee will report 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 will give further consideration to a draft of proposed amendments incorporating the applicable Family Rules guardianship rules in the Probate Rules at its April meeting.

**6. Proposed Revised Rules for Public Access to Court Records, sent out for comment on February 11, with comments due on April 12, 2019.** See [https://www.vermontjudiciary.org/sites/default/files/documents/PROPOSED%20VRPACR\\_0\\_0.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/PROPOSED%20VRPACR_0_0.pdf). Ms. Benelli described the work of the previous subcommittee on the Public Access Rules, which was abandoned when the Public Access Rules Committee undertook the wholesale revision of those Rules, now out for comment. Professor Wroth noted that provisions of the proposed Rules affecting family cases included Rules 6(b)(9)-(12). After discussion of the scope of the rule-making power when public access provisions were statutory, it was agreed to re-

establish a subcommittee to consist of Ms. Benelli, Ms. Reis, Ms. Olvera, and Ms. Sanders with the charge to determine (1) what can be done by rule and (2) what changes in or additions to provisions of the proposed Public Access Rules applying to family cases should be considered.

**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.)** In the absence of Mr. Pahl, chair of the subcommittee (Ms. Racht, Ms. Reynolds, and Mr. Pahl, chair), Professor Wroth presented the following written report received from Mr. Pahl that morning:

The YO amendments bill has passed the Senate, but has not yet been taken up by the House. The current version, as passed the Senate, is here:

<https://legislature.vermont.gov/Documents/2020/Docs/BILLS/S-0133/S-0133%20As%20Passed%20by%20the%20Senate%20Unofficial.pdf>

I still think that our committee should make the YO rules and that we should wait until the current legislation is complete. It is sure to change significantly before it becomes law - the House can't leave anything the Senate's done alone and there are some substantive pieces of the bill that have caused a bit of controversy, so there's bound to be more significant changes before it becomes something that the committee (or subcommittee) can work from.

The bill as it stands does the following, in addition to some stylistic changes that I'm not mentioning here:

- 1) Simplifies definitional language from 5102 - In the definition of "child," rather than listing all of the circumstances where a "child" is not treated as a "child," the bill just provides the same general definition followed by "unless otherwise provided by Chapters 52 or 52A of this title." The problem was that the list of exceptions in the definition did not match all the exceptions in the statute.
- 2) Clarifies that jurisdiction ends at the age of 22. There had been confusion about whether it was "through" age 22 or "to" age 22.
- 3) Allows prosecutors to direct-file 5204(a) charges as YO cases for 14-18 year olds but takes away the ability to direct-file 5204(a) charges as YO cases for 18-22 year olds.
- 4) Gives prosecutors unreviewable authority to choose whether a 20-21 year old charged with a 5204(a) offense may seek YO status.
- 5) Clarifies that conditions of release and bail may only be modified by the criminal division pursuant to Title 13, Chapter 229.
- 6) There's a section at the end that has nothing to do with YO - it creates presumptive eligibility criteria for drug court.

Marshall Pahl

Deputy Defender General/Chief Juvenile Defender

**8. Enforcement of money judgments (Action deferred at November 2, 2018, meeting pending Civil Rules Committee's action on proposed amendments to V.R.C.P. 69).** Judge Carlson, who had requested that the issue be put back on the agenda because of uncertainty as to the procedure for enforcement of money judgments, proposed consideration of an amendment to V.R.F.P. 16 that would cover enforcement of judgments by incorporating applicable provisions

of V.R.C.P. 69 after its pending amendment. Professor Wroth agreed to work with Judge Carlson to prepare and present a draft proposed amendment at the next meeting.

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

**10. Dates of next meetings.** The next meetings of the Committee are scheduled for June 21, and September 13, 2019.

There being no further business, the meeting was adjourned at 3:30 p.m.

Respectfully submitted,

L. Kinvin Wroth  
Reporter