

**APPROVED**

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

**Minutes of Meeting  
November 2, 2018**

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, Hon. Cortland Corsones, Anne Damone, Hon. Robert Gerety, Hon. Christine Hoyt, Marshall Pahl, Karen Reynolds, Caryn Waxman, and John Wilson (by telephone). Also present were Hon. Beth Robinson, Supreme Court liaison, and Professor L. Kinvin Wroth, Reporter.

**1. Minutes.** The draft minutes of the meeting of September 7, 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.

Judge Corsones summarized his recommendations for a version of V.R.C.P. 79.2 appropriate to practice in the Family Division, previously sent to the Committee. The Committee then considered Professor Wroth's October 19, 2018 draft of a proposed V.R.F.P. 19 intended to incorporate Judge Corsones's recommendations with the basic provisions of V.R.C.P. 79.2, eliminating the provisions concerning jurors and jury trial. In discussion, it was agreed that "personal digital assistant" should be inserted in proposed Rule 19(b)(4)(B), preceding "PDA," that the order of proposed Rule 19(d)(3)(B)(i) and (ii) should be reversed and their wording revised for clarity, and that the numbering of the paragraphs under proposed Rule 19(e) should be corrected to reflect the deletion of former paragraph (e)(2). On motion duly made and seconded, there being no further discussion, it was voted unanimously that the draft proposed V.R.F.P. 19 should be sent to the Court by Professor Wroth as a comment on proposed revised V.R.C.P. 79.2 in time to meet the November 5 submission deadline.

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 he would work with Justice Dooley on development of a final recommendation to the Court by the Special Committee.

**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 to present the Oversight Committee's

proposed July 5, 2018, draft of V.R.F.P. 19, Mental Health Proceedings. Judge Hayes stated that the purpose of the proposal was to fill a gap by providing 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 Attorney General's Office and Vermont Legal Aid had contributed to the drafting process.

In discussion, it was suggested that V.R.F.P. 6 and 6.1 should be referred to either in the rule or the Reporter's Notes; that it might be appropriate to place the rule with those rules rather than at the end of the Rules; that, because discovery was covered by subdivision (e), the Civil Rules governing discovery should be included in the list of inapplicable rules in paragraph (a)(2); that V.R.C.P. 23.2 was inadvertently listed twice in that paragraph; that the statutory venue provisions underlying subdivision (b) should be cited in the Reporter's Notes; and that subdivision (g), permitting electronic filing, reflected current practice in mental health cases. On motion duly made and seconded, there being no further discussion, it was voted unanimously to consider the rule in the form of a proposed promulgation order to be prepared by Professor Wroth 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 and would 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 next meeting.

6. Joint subcommittee to consider to Vermont Rules of Public Access concerning Family Division records. Professor Wroth reported that the Public Access Rules Committee is continuing its work on amendments to the Public Access Rules, including the provisions of V.R.P.A.C.R. 6(b) that affect family proceedings. It was agreed to continue to defer discussion of the issues until that Committee's 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 the subcommittee (Ms. Racht, Ms. Reynolds, and Mr. Pahl, chair) has a preliminary draft and asked that Committee members send to the subcommittee comments on problems that they see under the Act—for example, how to modify bail conditions that have been set by the Criminal Division in a case that is then sent to the Family Division.

8. V.R.F.P. 18. Mediation. Professor Wroth reported that he had sent the proposed amendments of V.R.F.P. 18(d), approved by the Committee at its last meeting, to the Court and that he expected it to be sent out for comment in November.

9. V.R.F.P. 4.0(g)(3). Discovery questions. The Committee considered Ms. Damone's May 30, 2018, e-mail forwarding Judge Treadwell's concern that the phrase "proposed final order" in V.R.F.P. 4.0(g)(3) was unclear. Committee members noted that the same language appeared in V.R.F.P. 4.0(e)(1)(C). Professor Wroth agreed to prepare a proposed promulgation order deleting the first two sentences of V.R.F.P. 4.0(g)(3) for the next meeting.

10. AO 29. Proposal regarding Committee structure. Justice Robinson briefly explained the proposal, which was intended to start a conversation about how best to divide the Committee's members and their time among the different areas and issues covered by the Family Rules. Those who specialize in one area may find that half of a meeting that they attend does not address their interests. The concept embodied in the draft is to achieve the goal by dividing the Committee into standing subcommittees with responsibilities for specific areas, with less frequent meetings of the full committee. The threshold question: Is there a need for such a change? In discussion, a number of members noted the value even to specialists in understanding the broader range of Family Division issues and noting the way that, especially in procedural terms, they may intersect. The real issue is moving the agenda of each meeting along. Others saw the benefit of being able to have fewer meetings. In a straw vote, the majority favored not pursuing the issue. Accordingly, Justice Robinson asked that the item be removed from the agenda.

11. Enforcement of money judgments. The Committee considered Judge Gerety's concern that the question of enforcement of money judgments in the Family Division was confusing. In discussion, it appeared that there were differences of opinion among judges sitting in the Family Division on the applicability of V.R.C.P. 69 in Family Division cases. Distinctions were noted among judgments for a single sum that could be enforced by remedies such as execution (if a sheriff could be found to act) and trustee process and orders to comply with an order for continuing periodic payment of—*e.g.*—child support, which could be enforced by injunction. The availability of the civil action of debt on a judgment was also noted. Professor Wroth reported that the Civil Rules Committee was considering a full scale modernization of V.R.C.P. 69 and related provisions. It was agreed that further consideration of these issues should be deferred until the Civil Rules Committee produced a draft of its efforts. In the meantime, the topic would be an appropriate one for a continuing judicial education program, perhaps at Judicial College.

12. Membership issues. Professor Wroth reported that Ms. Reis and Mr. Wilson had both accepted reappointment to the Committee. Justice Robinson stated that the Court would presumably act at its November meeting on the appointment of one private practitioner to replace Mr. Hughes and Ms. King, who had resigned, and a designee of the Agency of Human Services to replace Alicia Humbert, who had been appointed as a magistrate, thus reducing the Committee to its original size.

13. Other business. There was no other business

14. Dates of next meetings. The next meetings of the Committee are scheduled for January 11, and March 29, 2019.

There being no further business, the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

L. Kinvin Wroth  
Reporter