

APPROVED

VERMONT SUPREME COURT

ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

Minutes of Meeting

October 6, 2017

The meeting was called to order at 1:35 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Robert Gerety in the necessary absence of Hon. Michael Kainen, chair. Present were Committee members Penny Benelli, Anne Damone, Kurt Hughes (by telephone), Alicia Humbert, Harriet King (by telephone), Marshall Pahl, Linda Reis, Christine Speidel, and John Wilson. Also present were Hon. Beth Robinson, Supreme Court Liaison, and Professor L. Kinvin Wroth, Reporter.

1. Minutes. The draft minutes of the meeting of April 7, 2017, previously distributed, were unanimously approved with the correction that Ms. Speidel was present in person.

2. Structure of Committee. The Committee considered two questions raised by Justice Robinson: Whether a smaller committee or committees would have more success in getting a quorum for meetings, and whether the charge of the Committee to cover both divorce and juvenile and DCF matters was too broad.

In discussion, Committee members suggested that smaller groups with specialized knowledge could focus better on issues and perhaps have shorter meetings, but that subcommittees could serve that function. Professor Wroth noted that subcommittees were being currently used by the Committee on an ad hoc basis to address specific problems and described the use a number of years ago by the Civil Rules Committee of a subcommittee, including non-Committee members with special expertise, to develop the present Vermont Rules of Professional Conduct based on the ABA Model Rules. Members noted that the full Committee represented a balance of public and private professional perspectives, as well as that of the Judiciary, all of which it was “good to have in the room” to review and comment on focused subcommittee work.

It was agreed that there should be a further meeting in 2017, that Professor Wroth should propose a full schedule of meetings for 2018 at that meeting, and that measures should be taken to establish a more systematic use of subcommittees.

3. Status of proposed and recommended amendments.

A. Professor Wroth reported that the proposed amendments to former V.R.F.P. 4(j), (o), providing for non-party motions for relief from parentage judgments, were sent out for comment on May 16, with comments due on July 15, 2016, were recommended on December 2, 2016, for promulgation; were promulgated as V.R.F.P. 4.2(a) and 4.3(b)(1) on December 15, 2016,

effective February 20, 2017, and were reviewed by the Legislative Committee on Judicial Rules without comment on June 8, 2017.

B. Professor Wroth reported that amendments to conform V.R.C.P. 6 and other time provisions of the Civil, Family, and other rules to federal rules amendments (“day is a day” rules), were promulgated on September 20, 2017, to be effective on January 1, 2018. In response to a question, he noted that the promulgation included amendments to Rule 4.3(b)(2), as previously amended effective February 20, 2017, described in 3.A above

C. The Committee reviewed proposed new V.R.C.P. 79.2, sent out for comment on July 18 by the Special Committee on Video and Cameras in the Court, with comments due on September 18, 2017. After discussion of problems concerning the use of cameras and other electronic devices (*e.g.*, smartphones) in family proceedings, on motion duly made and seconded, it was voted unanimously to establish a subcommittee to consider the application of proposed V.R.C.P. 79.2 to cases on the Family Division’s domestic docket. Ms.Reis, Ms. Speidel, and Judge Gerety agreed to serve on the subcommittee. As acting chairman of the Committee, Judge Gerety asked Ms. Speidel to serve as chair of the subcommittee and said that he would invite Judge Corsones also to serve.

D. The Committee reviewed the May 8, 2017, draft of V.R.C.P. 43.1, et al., concerning video and telephone appearance, prepared by the Special Committee on Video and Cameras in the Court, and the May 29 draft of proposed Rule 43.1(d) intended to replace V.R.F.P. 17 with a uniform rule for telephone appearance in Civil and Family cases. Professor Wroth noted that the May 29 draft included suggestions made at the Family Rules Committee’s April 7 meeting. In discussion, it was agreed to advise the Special Committee that the rule should use the broader term “audio only” to include not only telephone but other interactive audio facilities available on the web; that the proposed rule was unclear whether its intent was to reflect a preference for video; and that, in an evidentiary proceeding, the parties should be able to agree to proceed by audio unless the court finds good cause to require otherwise.

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 necessary absence of Ms. Racht, Mr. Pahl reported that the subcommittee (Ms. Racht, Judge Kainen, Mr. Pahl, Ms. Reynolds) 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. The Committee reviewed the report of the joint Family-Probate rules subcommittee (Ms. Speidel, Ms. Reynolds, Ms. Damone) on inter-division communication in minor guardianship matters. Professor Wroth reported that the Probate Rules Committee had advised the Supreme Court that it endorsed the report. After discussion, on motion duly made and seconded, it was voted unanimously that the Committee endorses the recommendations of the report, including the proposal for a legislative study committee. Professor Wroth agreed to draft a letter for Chairman Kainen to send to the Court.

6. Joint subcommittee to consider possible amendments to Vermont Rules of Public

Access concerning Family Division records. In the necessary absence of Ms. Racht, Ms. Benelli reported that the subcommittee (Ms. Benelli, Ms. Racht, Ms. Reis, with the assistance of Mr. Woodward) would report at the next meeting, Justice Robinson reported that at the end of June the Judiciary had signed an agreement with a consultant for implementation of the case management system.

7. Case manager's conference—issues raised by Judge Carroll. It was agreed to defer this item until the next meeting.

8. Adoption of Prisoner's Mailbox Rule for Family Rules. It was agreed to defer this item until the next meeting, pending action by the Civil Rules Committee on a similar item.

9. Act 72 of 2017. An Act Relating to Juvenile Jurisdiction. Professor Wroth noted that §7 of the Act directs the Supreme Court to consider adoption of a new or amended rule to implement provisions of the Act by July 1, 2018. It was agreed to establish a subcommittee to consider the question, consisting of Mr. Pahl, chair; Ms. Racht; Ms. Reynolds; and others whom they might wish to add.

10. V.R.F.P. 18. Mediation. In discussion of the provision of V.R.F.P. 18(d)(1) for use of a mediator from the Family Division Mediation Program's list, Ms. Speidel said that the rule was not intended to require use of a mediator from the list in a mediation by agreement when the parties could agree on another mediator. Ms. Benelli agreed to draft proposed clarifying language for the next meeting. Justice Robinson will ask Jeremy Zeliger of the Court Administrator's staff, who administers the Family Mediation Program, to attend the next meeting by telephone.

11. Adoption of V.R.E.F. 4(g) regarding separate motions for independent forms of relief for Family proceedings. Judge Gerety's proposal was withdrawn without action.

12. Other Business. There was no other business.

13. Date of next meeting. It was agreed that the next meeting would be held at 1:30 p.m., Friday, December 15, 2017, at Vermont Law School.

There being no further business, the meeting was adjourned at 4:45 p.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter