

**VERMONT SUPREME COURT**  
**ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS**  
**Minutes of Meeting**  
**June 28, 2013**

The meeting was called to order at 10:00 a.m. in the Environmental Division court room, Barre, by Jody Racht, chair. Present were Committee members Robin Arnell, Hon. Cortland Corsones, Hon. Christine Hoyt, Peter Lawrence, Hon. Kathleen Manley, and Jean Murray. Also present were Hon. Beth Robinson, Supreme Court liaison; Michele Olvera, Vermont Network liaison; Scott Woodward, VLS 2011; and Professor L. Kinvin Wroth, Reporter.

The chair reported that Michael Kainen, Windsor County State's Attorney, had been appointed to replace Rhonda Sheffield, who had resigned. Committee welcomed Justice Robinson to her first meeting as newly designated Supreme Court liaison and expressed great thanks to the Honorable Marilyn S. Skoglund for her many years of service in that role.

1. **Minutes**. Consideration of the draft minutes of May 3, 2013, was deferred in the absence of a quorum.
2. **Status of proposed and recommended amendments**. Professor Wroth reported that the Supreme Court on June 11, 2013, effective August 12, 2013, had promulgated the Committee's recommended amendments to V.R.F.P. 1(b)(1)-(2), 2(b)(2), 4(b)(1)(A), and 8(g). On June 18, 2013, the Court Administrator had sent out for comment the Committees revised proposed amendments to V.R.F.P. 7 and new V.R.F.P. 7.1 and 9(l), with comments due on August 16, 2013. He noted that the Legislative Committee on Judicial Rules had scheduled a meeting for August 16, 2013, at which the proposed amendments might be on the agenda.

3. **Proposed Restyling and Reorganization of V.R.F.P. 4**. The Committee considered the track-changes and clean drafts of revisions to proposed V.R.F.P. 4.0 and 4.1 redistributed in Professor Wroth's June 24 e-mail. Scott Woodward led discussion of the following specific issues identified for resolution in the minutes of the May 3 meeting:

4.0(a)(5). Determine if venue clause (race to notice) can be deleted without causing substantive issues. In discussion, it was agreed that the first-in-time standard was unnecessarily rigid and appeared to have originated as a County Court rule of procedure, rather than being compelled by statute [*see* original Reporter's Notes to V.R.C.P. 80(i) (1971)]. The court has authority inherently and by analogy to other rules to order joint hearings of separate actions and determine the order of trial in the most appropriate unit. [*cf. Hallet v. Mullin*, 155 Vt., 650, 583 A.2d 101 (1990) (mem.); V.R.F.P. 4(n); V.R.C.P. 42(a).] Accordingly, it was agreed that Rule 4.0(a)(5) should be deleted.

Professor Wroth noted that although this change was presumably within the procedural rule-making power, it went beyond mere restyling because it made a change in practice and meaning that was "substantive" rather than stylistic. He advised the

Committee that in both the restyling of various of the Federal Rules and in developing the recently promulgated restyled Vermont Rules of Appellate Procedure, the committees had prepared and sent out for comment separate “pure restyling” and “substantive” (*i.e.*, non-restyling) proposed promulgation orders that were consolidated in a single final order for promulgation. Before making a recommendation to the Supreme Court for circulation of proposed V.R.F.P. 4.0-4.3 or other restyled rules, the Committee should identify and combine in a separate order changes that were more than restyling.

4.0(b)(1)(C). Change to reflect decision on proposed amendment of V.R.F.P. 4(b)(1)(A)? It was agreed to change the clause to read, “(C) must be signed and sworn to by the plaintiff, if of sound mind and of the age of 16 years,” to reflect the June 11 amendment of V.R.F.P. 4(b)(1)(A) effective August 12, 2013..

4.0(b)(2)(A). Review simplified language in April 30 draft.

4.0(b)(2)(C). Any effect from Samis? It was agreed that there was no apparent effect of the *Samis* amendment of present V.R.F.P. 4(b)(1)(A) on this provision but that, since the provision applied to a minor in any party status, not merely as plaintiff, consideration should be given to putting it in a different location.

4.0(b)(2)(D). Hold to see if affected by pending H.523. Amendments to 32 V.S.A. § 1431(h) in H.523, enacted as Act No. 67 of 2013, § 3, need to be reviewed by the Committee to see if they make a change that should be reflected in the rule.

4.0(c)(1). Retain, with reference in 4.1. Agreed.

4.0(c)(2)-(3). Consider whether they should remain as separate paragraphs.  
Agreed.

4.0(c)(5)(A). Substitute “family division” for “family court.” Agreed.

4.0(c)(5)(B). Move last sentence of (v), defining “unfit parent,” to (ii). Agreed.

4.0(d). Inconsistencies regarding parties and appearance. After discussion of the inconsistent use of the terms “party,” “defendant,” “attend,” and “appearance ,” especially in light of the inclusion of parentage proceedings under 15 V.S.A. §§ 303, 305, Justice Robinson agreed to prepare a revised draft of subdivision 9d).

4.0(e)(1). Consider deletion of “at least one week.” It was agreed to substitute “sufficiently” for “at least one week” in the last sentence.

4.0(e)(1)(C) and (e)(2). Consider combining as a new Rule 4.1(e). Agreed.

4.0(g)(4), (5), and (8)(A) [former (9)(A)]. Consider moving to Rule 4.1(b)(1).  
After discussion, it was agreed that Rule 4.1(b) should be revised to read substantially as follows:

**(b) Discovery and Required Information.**

(1) In actions under this rule, discovery may be taken as provided in Rule 4.0(g)(1)-(5), subject to the provisions of paragraphs (2)-(4).

(2)-(4) [language of present draft Rule 4.1(b)(1)-(3)].

It was further agreed that Rule 4.0(g)(4) and (5) in the former draft should be moved to Rule 4.1(b)(2) and (3), Rule 4.0(g)(6) and (7) should be renumbered as Rule 4.0(g)(4) and 5, Rule 4.0(g)(8)(A) should be moved to Rule 4.1(b)(2)(a), and that Rule 4.0(8)(B) and (C) should be renumbered as Rule 4.0(6)(A) and (B).

In view of the time, the following items identified in the May 3 minutes were not addressed:

- 4.0(g)(6). Should it go in Rule 4.2(c)?
- 4.0(h)(1). Consider moving to a new Rule 4.1(f).

**4. Next Meetings.** It was agreed that the Committee would meet on July 26, 2013, in the Environmental Division court room, Barre, from 1:30 until 4:00 p.m. to consider all other agenda items on the May 3 agenda. The Committee will also meet on September 20, 2013, in the Environmental Division court room, Barre, from 9:30 until 12:00 p.m. to address the remainder of the Rule 4 restyling and restructuring. Scott Woodward and Professor Wroth will send out by September 6 a revised clean draft of Rules 4.0 and 4.1 and a list of issues for discussion under Rules 4.2 and 4.3, with a request for comments by September 13.

There being no further business, the meeting was adjourned at 12:30 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter