

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS
Minutes of Meeting
May 3, 2013

The meeting was called to order at 2:10 p.m. in the Leonard and Joan Wing Mediation Room, Old Superior Court Building, Center Street, Rutland by Jody Racht, chair. Present were Committee members Robin Arnell, Hon. Cortland Corsones, Mary Frost, Hon. David Howard, Hon. Christine Hoyt, Peter Lawrence, Jean Murray, Linda Reis, and Hon. Justine Scanlon. Also present were Hon. Beth Robinson, Supreme Court Liaison; Scott Woodward, VLS 2011; and Professor L. Kinvin Wroth, Reporter.

The 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.** The revised draft minutes of the meeting of January 25, 2013, as previously distributed, were unanimously approved.

2. **Review of Comments on Proposed Amendments to V.R.F.P. 1(b), 2(b), 4(b)(1)(A), and 8(g).** The Committee reviewed comments received from attorneys affiliated with Vermont Legal Aid's Disability Law and Senior Citizens Law projects concerning the proposed amendments of V.R.F.P. 4(b)(1)(A). Both comments suggested that the applicability of the rule should be limited to guardians appointed with powers of general supervision under 14 V.S.A. sec. 3069(c)(1) or 18 V.S.A. sec. 9310(a)(1). Committee members agreed that this limitation was consistent with the intention of the original language of the proposed amendment. In further discussion, however, Committee members questioned whether, even as so narrowed, the proposed amendment was appropriate in light of limitations on the powers of a general guardian conferred in 14 V.S.A. sec. 3069(c) and the broad sweep of the reasons for decision in *Samis v. Samis*.

On motion duly made and seconded, there being no further discussion, it was voted, nine in favor, one opposed, to eliminate the following language in the proposed amendment: "provided that it may be signed and sworn to by the previously appointed general guardian ... of ... an adult plaintiff who has been found to be a person in need of supervision as a result of mental and adaptive limitations, or to be otherwise incompetent or incapacitated, when the court so orders upon a finding that the plaintiff understands the nature of the proceeding and knowingly and voluntarily consents to its commencement."

No comments were received on the proposed amendments to V.R.F.P. 1(b), 2(b), and 8(g). It was agreed that those proposed amendments should be recommended to the Court for promulgation as circulated. [In subsequent correspondence, a majority of the Committee agreed that the proposed amendment of V.R.F.P. 4(b)(1)(A) should be recommended for promulgation with the language set forth above eliminated, the language rejected by *Samis* shown as deleted,

and the amendment to update the statutory reference in the last line included.]

3. Report of Subcommittee on Joint Review of Proposed Amendments of V.F.R.P. 7 and Proposed Addition of V.R.F.P. 7.1.

The Committee reviewed the changes in recommended V.R.F.P. 7(b) and (c) proposed by the joint subcommittee of Rules and Oversight Committee members. On motion duly made and seconded, after discussion, it was voted unanimously to incorporate those changes in the rule as previously recommended to the Court and to recommend those changes and the rest of the previously recommended amendments of V.F.R.P. 7 and the proposed addition of V.R.F.P. 7.1 and V.R.F.P. 9(l) to the Court for promulgation.

7. V.R.F.P. 4(b)(1)(C)—Public Assistance Information Requirement. It was agreed to disband the subcommittee on this question and to address it either in the Rule 4 restyling project or in connection with amendments to address electronic filing issues.

8. Effect on Family Rules of Act 119, effective 7/1/12, Relating to Child Support Enforcement. Ms. Arnell will report at the next meeting on the effect of Act 119 on V.R.F.P. 16.

9. Consideration of *Columbia v. Lawton*, 2013 VT 2 (1/18/13). It was agreed that a subcommittee consisting of Ms. Arnell, Susan Murray, and Chairwoman Racht will report at the next meeting on the question whether V.R.C.P. 60(b) as applied in Family Division cases should be amended, or another rule adopted, to permit a non-party to a parentage case to set aside a parentage judgment.

10. 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 distributed in Professor Wroth’s April 30 e-mail Scott Woodward identified the following issues that remained open for further consideration after discussion of his draft of proposed V.R.F.P. 4.0 at the January 25 meeting:

4.0(a)(5). Determine if venue clause (race to notice) can be deleted without causing substantive issues.

4.0(b)(1)(C). Change to reflect decision on proposed amendment of V.R.F.P. 4(b)(1)(A).

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

4.0(b)(2)(C). Any effect from *Samis*?

4.0(b)(2)(D). Hold to see if affected by pending H.523.

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

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

4.0(e)(1). Consider deletion of “at least one week.”

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

4.0(g)(4), (5) and (8)(A). Consider moving to Rule 4.1(b).

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).

Mr. Woodward and Professor Wroth will prepare a revised draft of Rule 4.0 and affected parts of other rules for discussion at the next meeting.

11. Other Business. In view of the time, the remainder of the agenda was deferred to a subsequent meeting.

12. Next Meetings. It was agreed that the Committee would meet on June 28 from 10:00 a.m. to 1:00 p.m. in the Environmental Division court room, Barre, to address the remainder of the Rule 4 restyling and restructuring. The Committee will also meet on July 26 from 1:30 until 4:00 p.m. to consider all other remaining agenda items.

There being no further business, the meeting was adjourned at 4:25 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter