

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS
Minutes of Meeting
October 25, 2013

The meeting was called to order at 9:30 a.m. in Room 216 Debevoise Hall, Vermont Law School, by Jody Racht, chair. Present were Committee members Robin Arnell, Hon. Cortland Corsones, Michael Kainen, Peter Lawrence, Jean Murray, Susan Murray (by phone), Hon. Barry Peterson, Robert Sheil, and Christine Speidel. Also present were Michele Olvera, Vermont Network liaison, and Professor L. Kinvin Wroth, Reporter.

The Committee welcomed Hon. Barry Peterson to his first meeting as a member of the Committee.

1. **Minutes.** The draft minutes of the meeting of September 20, 2013, were approved as previously circulated, with the understanding that the drafting notes on restyled Rules 4.0-4.2 in item 3 would be reviewed again at the December 6 meeting, which will be devoted to the restyled rules.

2. **Status of proposed and recommended amendments.** Professor Wroth noted that on June 18, 2013, the Court Administrator had circulated the Committee's revised proposed amendments to V.R.F.P. 7 and new V.R.F.P. 7.1, and the previously proposed V.R.F.P. 9(l), for comment, with comments due on August 16. See [https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRF7_7%201_9\(l\).pdf](https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRF7_7%201_9(l).pdf). The Legislative Committee on Judicial Rules had reviewed these proposed amendments and rules at a meeting on August 15, 2013, with Judge Davenport, Peter Lawrence, Chairwoman Racht, and Professor Wroth present.

The Legislative Committee had previously reviewed proposed V.R.F.P. 9(l) without comment and had no further comments on it. Accordingly, on the Advisory Committee's recommendation, the Court on September 12, effective November 12, 2013, promulgated the rule as circulated. See [https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRF9\(l\).pdf](https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRF9(l).pdf).

The Legislative Committee made a number of comments on proposed Rules 7 and 7.1. Professor Wroth prepared a draft dated October 16, 2013, responding to those comments. That draft was reviewed by Judge Davenport, Mr. Lawrence, and Chairwoman Racht and was considered by the Advisory Committee at this meeting. The Committee made a number of suggestions concerning language of the rules and amplification of the Reporter's Notes. On motion duly made and seconded, it was voted unanimously that Professor Wroth should incorporate those suggestions in a further revised draft to be sent to the Family Division Oversight Committee for review and that, if the Oversight Committee concurred, the draft should be recommended to the Court for promulgation.

3. Required mediation in domestic cases. The Committee considered Professor Wroth's October 22 further revised draft of proposed V.F.R.P. 18, incorporating Committee suggestions at the July 26 meeting that the rule should allow the court to order mediation on the motion of a party or its own motion in cases other than those under Rule 9 after due consideration of the possibility of the presence of domestic violence. In discussion, it was agreed that, because mediators from the Family Division Mediation Program were not always available in some counties, paragraph (d)(1) should provide that another mediator could be designated if the parties agreed and the court approved, but that the Oversight Committee was to be asked to advise on how judges should assess qualifications in appointing mediators not on the list. It was also agreed that (c)(2) should be divided into two paragraphs, with (2) providing that there should be no mediation if there were a pending RFA proceeding or a final RFA order and (3) carrying forward former (2). It was further agreed that the rule should make clear that it was not intended to prevent the parties from undertaking mediation voluntarily. Professor Wroth will incorporate these suggestions in a new draft for consideration at the January 24 meeting.

4. Effect on Family Rules of Act 119, effective 7/1/12, Relating to Child Support Enforcement. The Committee considered an October 18 draft of amendments to V.R.F.P. 16 prepared by Ms. Arnell and Professor Wroth to incorporate provisions addressing nonpayment of financial obligations adopted by Act 119 of 2011 (adj. sess.) and incorporated in 15 V.S.A. § 603. On motion duly made and seconded, after discussion, it was voted unanimously to recommend that the amended rule be sent out for comment with appropriate Reporter's Notes.

5. Consideration of *Columbia v. Lawton*, 2013 VT 2 (1/18/13). The Committee considered an October 18 draft of amendments to V.F.R.P. 4(j) and (o) prepared by Professor Wroth and reviewed by the subcommittee (Ms. Arnell, Ms. Murray, and Chairwoman Racht) on the question whether V.R.C.P. 60(b) as applied in Family Court should be amended, or another rule adopted, to permit a non-party to a parentage case to set aside a parentage judgment. Subcommittee members noted that a number of questions were still unresolved, including whether there should be time limits on application of the rule, whether certain cases should be exempt (e.g., parentage orders in divorce proceedings), whether creating a right for a biological parent to challenge a parentage judgment was within the rule-making power, and whether there should be a bond provision in the rule. It was agreed to defer action until further discussion of this draft at the January 24 meeting,

6. Comment on proposed amendment of V.R.C.P. 43(e) regarding appointment and compensation of interpreters (incorporated by reference in Family Rules). It was agreed to remove this item from the agenda pending further action on the question by the Civil Rules Committee and the Judiciary's Interpretation Subcommittee.

7. 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). The subcommittee (Messrs. Kainen and Sheil and Chairwoman Racht) will report at the January 24 meeting.

8. Consideration of request by Civil Rules Committee to consider effect of potential adaptation in V.R.C.P. 6(a) of 2009 amendment of F.R.C.P. 6(a) establishing “day is a day” rule for computing time. It was agreed to remove this item from the agenda pending further action on the question by the Civil Rules Committee.

9. Other business. Professor Wroth stated that he would circulate a draft annual report electronically for review and approval.

10. Dates of next meetings. The next meeting will be held on Friday, December 6, 2013, to complete the review of restyled Rules 4.0-4.3 at a location that can provide appropriate technological support. A subsequent meeting to address the remaining agenda will be held on January 24 at 1:30 p.m. at Vermont Law School.

There being no further business, the meeting was adjourned at 11:55 a.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter