

APPROVED

VERMONT SUPREME COURT

ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

**Minutes of Meeting
December 18, 2015**

The meeting was called to order at 10:15 a.m. in the Wing Mediation Center, Rutland County Courthouse, by Jody Racht, chair. Present were Committee members Robin Arnell, Penny Benelli, Hon. Cortland Corsones, Harriet King, Robert Sheil, Christine Speidel, and John Wilson. Also present were Hon. Beth Robinson, Supreme Court liaison; Scott Woodward, Esq., Rule 4 consultant; and Professor L. Kinvin Wroth, Reporter.

Although a quorum was not present at the meeting, Chairwoman Racht subsequently obtained responses from five absent members to her e-mail of January 3, 2016, requesting votes on three items. Those votes are counted in the tabulations for those items below.

1. Minutes. The draft minutes of the meeting of September 11, 2015, previously distributed, were approved, with 12 in favor and one abstention.

2. Status of proposed amendments.

A. The Committee considered the recommended emergency amendment to V.R.F.P. 4(r), promulgated July 1, effective immediately, with comments due by September 1, 2015. No comments had been received. On motion duly made and seconded, there being no discussion, it was voted unanimously to recommend to the Supreme Court that the amendment be made permanent.

B. Chairwoman Racht reported that at a meeting on September 24, 2015, the Legislative Committee on Judicial Rules reviewed the Advisory Committee's recommended amendments to V.R.F.P. 4(a)(2) and 9(a)(2), 9(e), and 15(f)(1)(A) and new V.R.F.P. 18, which had been promulgated July 20, effective September 21, 2015. The Legislative Committee had no objections to the amendments but asked for clarification of the responsibility for payment for mediation under new V.R.F.P. 18. Chairwoman Racht had sent a clarifying letter to the Legislative Committee chair on September 30.

3. Reconsider proposed amendments to V.R.F.P. 4(j), (o). The Committee considered Professor Wroth's alternative drafts of amendments clarifying the procedure for a nonparty to reopen a parentage determination. It was agreed by those present that Draft II, providing for a single motion to intervene and set aside the motion on Constitutional grounds, was preferable. Professor Wroth agreed to prepare a new draft for the next meeting with Reporter's Notes explaining the potential Constitutional basis.

4. Proposed V.R.F.P. 4.0-4.3. The Committee considered Professor Wroth's December 17 separate draft promulgation orders for restructured V.R.F.P. 4.0-4.3 and for "substantive" changes in those rules, with revised Reporter's Notes. On motion duly made and seconded, after discussion, it was voted unanimously to recommend to the Supreme Court that both drafts should be sent out for public comment, with an updated disposition table and consolidated Reporter's Notes. The Committee expressed its appreciation to Scott Woodward for his extraordinary assistance in developing the idea for the new rules and working with the Committee and Reporter on the many prior drafts.

5. 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. Chairwoman Racht reported that the subcommittee (Judge Griffin, Messrs. Kainen and Sheil, and herself) had reviewed a more recent decision and will present a draft at the next meeting.

6. V.R.F.P. 6. Amendments made necessary by Act 170 of 2013 (Adj. Sess.) concerning minor guardianships. Ms. Speidel, Family Rules joint subcommittee member, reported that there would be a new draft for the next meeting. Chairwoman Racht agreed to send draft bills regarding the guardianship statute to the subcommittee.

7. Family Rules amendments to implement 15 V.S.A. §665(f) added by Act 197 of 2013, § 1 (Adj. Sess.). Chairwoman Racht agreed to convey to the Family Division Oversight Committee the Advisory Committee's previous recommendation that the Oversight Committee develop a form that would allow the issues to be raised.

8. Joint subcommittee to consider possible amendments to Vermont Rules of Public Access concerning Family Division records. Chairwoman Racht reported that the joint subcommittee with the Public Access Rules Committee had met and was considering whether amendments should also be made to the Family Rules in light of e-filing and web access concerns. The subcommittee will undertake a review of other states' procedures, ABA recommendations, and the literature. Mr. Woodward volunteered to work with the subcommittee.

9. Effect of proposed and promulgated Civil Rules amendments on Family Rules. It was agreed to ask Judge Corsones, Mr. Hughes, and Magistrate Peterson to serve as a subcommittee to determine whether the proposed "day is a day" amendments to V.R.C.P. 6, if promulgated, and various proposed and recently promulgated amendments to V.R.C.P. 5 could be incorporated in the Family Rules by reference or would require specific exemptions from, or variations in, the Civil Rules. It was agreed that proposed amendments to V.R.C.P. 43(f) concerning interpreters would not require exemption or variation in the Family Rules.

10. Special ad hoc committee on video/audio appearances and cameras in the court. Chairwoman Racht and Ms. King reported that the Special Committee had met and would address the question of video/audio appearances for the next several meetings, beginning on January 4. Mr. Wilson agreed to take Chairwoman Racht's place on the Special Committee.

11. Other Business. Chairwoman Racht noted that Peter Lawrence, having retired from practice, was no longer a member of the Committee. She also noted that Robert Sheil, a longtime member and former chair, was retiring from the Defender General's Office and would also leave the Committee. Those present expressed gratitude for the long years of effective service contributed by both Mr. Lawrence and Mr. Sheil. Mr. Sheil thanked the members and noted that his service had been both a pleasure and an important opportunity to serve the bar and the public.

12. Date of next meetings. It was agreed that the Committee would meet at 1:30 p.m. on February 12, 2016, at Vermont Law School. Professor Wroth will survey the members as to their availability for a meeting in Rutland on April 8, or April 15, 2016.

There being no further business, the meeting was adjourned at 2:00 p.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter