

APPROVED

VERMONT SUPREME COURT

ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

**Minutes of Meeting
September 11, 2015**

The meeting was called to order at 1:35 p.m. in Room 216 Debevoise Hall, Vermont Law School by Jody Racht, chair. Present were Committee members Robin Arnell, Penny Benelli, Hon. Cortland Corsones, Anne Damone, Hon. Robert Gerety, Michael Kainen, Harriet King, Bob Sheil, Christine Speidel, and John Wilson. Also present were Hon. Beth Robinson, Supreme Court liaison; Michele Olvera, Domestic Violence Network representative; Scott Woodward, Esq., Rule 4 consultant; and Professor L. Kinvin Wroth, Reporter.

The Committee welcomed new members Penny Benelli, Anne Damone, and Harriet King, and by acclaim expressed its thanks to departing members Mary Frost, Jean Murray, and Susan Murray for their long years of effective service.

1. Minutes. The draft minutes of the meeting of June 12, 2015, previously distributed, were unanimously approved. The draft summary of the meeting of May 1, 2015, at which a quorum was not present, was unanimously accepted/

2. Status of proposed amendments. Professor Wroth reported that the Committee's recommended emergency amendment to V.R.F.P. 4(r) was promulgated July 1, effective immediately, with comments due by September 1, 2015. The Committee's recommended amendments to V.R.F.P. 4(a)(2) and 9(a)(2), 9(e), and 15(f)(1)(A) and recommended new V.R.F.P. 18 were promulgated July 20, effective September 21, 2015.

3. Reconsider proposed amendments to V.R.F.P. 4(j), (o). Professor Wroth noted that these amendments had been recommended for promulgation on May 27. He had subsequently requested that the Court defer promulgation in light of concerns about standing and procedure expressed by the Legislative Committee on Judicial Rules at a meeting on June 26, 2015. After extensive discussion, he agreed to prepare two alternative drafts for the next meeting—one to clarify that motions under V.R.C.P. 60(b) and 24(a) should be filed simultaneously but ruled on sequentially, the other to provide for a single motion not tied to the existing Civil Rules motions.

4. Proposed V.R.F.P. 4.0-4.3. The Committee considered Professor Wroth's September 9 proposed separate draft promulgation orders for restructured V.R.F.P. 4.0-4.3 and for "substantive" changes in those rules, all as agreed on at the June 12 meeting.

On motion duly made and seconded, after discussion, it was voted unanimously that, in Rule 4.2(b)(1)(C), 20 days should be changed to 15 in the sentence concerning the response.

On motion duly made and seconded, after discussion, it was voted unanimously that both orders, as revised by the previous motion, should be recommended to be sent out for public comment with the Reporter's Notes to be completed by Professor Wroth, with the assistance of Mr. Woodward.

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 the practice in other states and was considering the question with stakeholders whether relief should be granted at the trial or appellate level. The subcommittee 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. Chairwoman Racht and Family Rules joint subcommittee members (Ms. Speidel and Judge Scanlon) will report at the next meeting.

7. Family Rules amendments to implement 15 V.S.A. §665(f) added by Act 197 of 2013, § 1 (Adj. Sess.). The Committee reviewed Professor Wroth's September 10 draft of a new V.R.F.P. 4(b)(1)(D) adding a pleading requirement to implement the statutory provisions concerning statutory rights and responsibilities and parent-child contact in cases where the child was conceived as the result of a sexual assault for which the nonmoving parent was convicted. On motion duly made and seconded, after discussion, it was voted unanimously that the Committee does not believe that a rule is necessary for this purpose and recommends that the Family Division 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 to discuss the necessity for and scope of a rule covering access to Family Division records and will review the present Vermont statutory records exceptions that may be applicable to Family Division records. (Note: 1 V.S.A. § 317(c)(34) exempts affidavits of income and assets per 15 V.S.A. § 662 and VRFPP 4 from public inspection and copying. 12 V.S.A. §5 prohibits the court from permitting "public access via the Internet to... family case records.")

9. Effect of proposed and promulgated Civil Rules amendments on Family Rules. Professor Wroth noted that proposed amendments to V.R.C.P. 43(f) concerning interpreters and proposed "day is a day" amendments to V.R.C.P. 6 and other Civil Rules had been sent out for comment on August 6, with comments due on October 5, 2015, and that amendments to V.R.C.P. 4(b), (l) and 5(d), (h) had been promulgated July 20, effective September 21, 2015. He agreed to prepare any necessary drafts addressing the effect of these amendments on the Family Rules for the next meeting.

10. Date of next meetings. It was agreed that the Committee would meet on December 18, 2015, from 10:00 a.m. until 2:00 p.m. in Rutland if space is available, otherwise at Vermont Law School, and on February 12, 2016 at 1:30 p.m. at Vermont Law School.

There being no further business, the meeting was adjourned at 3:35 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter