

APPROVED

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS
Minutes of Meeting
January 23, 2015**

The meeting was called to order at 9:45 a.m. in the main court room, Rutland County Court House, by Jody Racht, chair. Present were Committee members Robin Arnell, Hon. Cortland Corsones, Hon. Robert Gerety, Hon. Kevin Griffin, Michael Kainen, Hon. Barry Peterson, Linda Reis, and John Wilson. Also present was Professor L. Kinvin Wroth, Reporter.

The Committee welcomed newly appointed member John Wilson to his first meeting.

1. Minutes.

The draft minutes of the meeting of September 26, 2014, previously distributed, were unanimously approved.

2. Status of proposed amendments. Professor Wroth reported that

- The Committee's recommended amendments to V.R.F.P. 1(a)(3), 12(a), (d), and 16, had been promulgated on December 11, 2014, effective February 13, 2015.
- The Committee's proposed amendments to V.R.F.P. 4(a)(2) and 9(a)(2), and proposed new V.R.F.P. 18 had been sent out for comment on December 15, 2014, with comments due on February 17, 2015. Comments received will be reviewed at the next meeting.

3. Proposed statutory changes with implications for the administration of the Family Court. At the request of Justice Robinson, the Committee reviewed, and provided the following comment on, statutory changes contained in a bill being prepared by the Court to address reductions in the Judiciary's budget:

- **Direct on the record review of magistrate child support orders by the Supreme Court without intervening appeal to the Superior Court.** There was no opposition to this proposal. There was some discussion around ensuring the same review procedure in the Supreme Court as is currently in place in the Superior Court, as well as providing for an expedited review procedure (*e.g.*, the rocket docket).
- **Authorization for masters referrals.** There was overwhelming support for this proposal. Members questioned why the qualifying amounts of the marital estate property and non-wage income were set so high. The Committee recommended that the Court consider a proposal that would drop the monetary amounts and give judges the discretion to look at both assets and income, not just non-wage income.

- **Elimination of service by court in Family Court cases with a minor child.** There was general support for eliminating service by court and requiring the filing party to bear costs and responsibility for service. There were a number of unanswered questions that arose with respect to how the proposal would impact OCS-involved cases. The Committee recommended that OCS be consulted on the impact of this proposal on that department and any federal mandates related to its work.

4. **Consideration of *Columbia v. Lawton*, 2013 VT 2 (1/18/13).** The Committee considered Professor Wroth's January 2 revised draft of amendments to V.R.F.P. 4(j) and (o) with Reporter's Notes, reflecting comments at the last meeting. In discussion, it was agreed that the rule is not intended to establish the elements of a direct action based on the Constitution but to make clear that a Constitutional claim is possible. It was also noted that V.R.C.P. 60(b)(1)-(3) imposed a one-year limit on claims, so that a claim brought forward later would have to be based on V.R.C.P. 60(b)(6). On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that the proposed amendments be sent out for comment. Professor Wroth asked that the subcommittee (Ms. Arnell, Susan Murray, and Chairwoman Racht) send him any comments on the draft Reporter's Notes.

5. **Consideration of *In re K.F.*, 2013 VT 39, note 2 (6/7/13).** Chairwoman Racht noted that she had sent to the Committee for information her August 29 memo prepared for the subcommittee (Judge Griffin, Messrs. Kainen and Sheil, and herself). The subcommittee will meet and present a recommendation at the next meeting.

6. **Proposed V.R.F.P. 4.0-4.3.** Professor Wroth reviewed the July 2014 draft of proposed V.R.F.P. 4.0-4.3 and related materials that he had recirculated to the Committee for this meeting. It was agreed that the Committee's next meeting should be devoted to a full discussion of the draft with Scott Woodward present. Professor Wroth agreed to recirculate the draft with comments received in August 2014 and any additional comments.

7. **V.R.F.P. 6. Amendments made necessary by Act 170 of 2013 (Adj. Sess.) concerning minor guardianships.** Chairwoman Racht reported that she and Judge Ertel, chair of the Probate Rules Advisory Committee, had agreed to form a joint subcommittee to review this and other minor guardianship issues, including the mechanics of permanent guardianships. Judge Gerety agreed to join the Committee's representation on the joint subcommittee consisting of Judge Scanlon, Ms. Speidel, and Chairwoman Racht.

8. **Family Rules amendments to conform to Act 96 of 2013, "Respectful Language Act."** It was agreed that when that task of the Legislative Council to identify statutory provisions not covered in Act 96 was completed, Professor Wroth would find a law student to examine the Rules for necessary changes.

9. **Family Rules amendments to implement 15 V.S.A. §665(f) added by Act 197 of 2013, § 1 (Adj. Sess.) denying parent child contact to perpetrator of sexual assault.** Judge Griffin reported that the subcommittee consisting of Mr. Lawrence, Susan Murray, Ms. Olvera, and himself would report at the next meeting. It was noted that the question posed by the Family

Division Oversight Committee was whether a rules change was necessary.

10. V.R.F.P. 9(e). Time deadline for hearing request after denial of ex parte order.

The Committee reviewed Professor Wroth's January 22 draft of a proposed amendment to V.R.F.P. 9(e). In discussion, it was agreed that the rule should say "business days" and that the period should run from the entry on the docket of the denial of the order. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that the proposed amendment be sent out for comment with those revisions.

11. V.R.F.P. 15(f)(1)(A). Application of automatic withdrawal provision to Rule 9 cases.

The Committee reviewed Professor Wroth's January 22 draft of a proposed amendment to V.R.F.P. 15(f)(1)(A). On motion duly made and seconded, there being no discussion, it was voted unanimously to recommend that the proposed amendment be sent out for comment.

12. Other Business: Public access to Family Division court records. It was agreed to defer this item until the next meeting. Professor Wroth agreed to resend his September 24 e-mail with background material on the issue.

13. Next meetings. It was agreed that the Committee would meet at 1:30 p.m. on Friday, March 27, 2015, to consider proposed V.R.F.P. 4.0-4.3 and on Friday, May 1, 2015, to consider the remainder of the agenda. Both meetings will be at Vermont Law School.

There being no further business, the meeting was adjourned at 1:45 p.m. with a unanimous and enthusiastic vote of thanks to Rutland Superior Court Clerk Therese Corsones for her generous hospitality.

Respectfully submitted,

L. Kinvin Wroth, Reporter

