

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS
Minutes of Meeting
January 24, 2014

The meeting was called to order at 1:40 p.m. in Room 216 Debevoise Hall, Vermont Law School, by Jody Racht, chair. Present were Committee members Robin Arnell, Michael Kainen, Peter Lawrence, Jean Murray, Hon. Barry Peterson, Linda Reis, Robert Sheil, and Christine Speidel (by telephone). Also present were Michele Olvera, Vermont Network liaison, and Professor L. Kinvin Wroth, Reporter.

Chairwoman Racht announced Hon. Kevin Griffin would replace Hon. David Howard on the Committee,

1. **Minutes.** Approval of the minutes of the meeting of December 6, 2013, which was devoted to the project for reorganizing/restyling V.R.F.P. 4, was deferred until a forthcoming meeting to be devoted to completion of the project.
2. **Status of proposed and recommended amendments.** Professor Wroth reported that the Committee's proposed amendments of V.R.F.P. 16 were sent out for comment on December 19, 2013, with comments due by February 21, 2014; that the Supreme Court on January 22 has promulgated the Committee's recommended amendments of V.R.F.P. 7 and 7.1, and that he had sent the Committee's 2013 Annual Report to the Court on December 12, 2013.
3. **Required mediation in domestic cases.** The Committee considered Professor Wroth's January 19 draft of proposed V.F.R.P. 18 with Reporter's Notes. In discussion, it was agreed that the last sentence of Rule 18(b) should read "...efficient resolution of those issues... ." In response to the question in Mary Frost's January 22 e-mail regarding the meaning of "a final order has been issued" in clause (c)(3), it was agreed to delete "whether or not the parties agree" and "a final order has been issued in such an action," so that the clause would read "a relief from abuse action is pending between the parties." The Reporter's Notes will state that the rule is not intended to preclude voluntary participation in mediation by the parties. It was also agreed that "whether or not the parties agree" should be deleted from clause (c)(4) and that the Reporter's Notes should state that "other reasons" in that clause would include deliberate use of the process to defer action on the merits.

In discussion of Ms. Frost's concern about limiting mediators to those on the approved list, it was agreed that the paragraph (d)(1) should read

(1) The mediation will be conducted by an individual mediator from the Family Division Mediation Program's list of mediators, ~~designated by acceptable to the court and acceptable to the parties.~~ If no mediator on the Mediation Program's list who is acceptable to the court and the parties is available to conduct the mediation, the court,

with the agreement of the parties, may designate another mediator with credentials comparable to the minimum requirements for inclusion on the list.

The Reporter's Notes will emphasize that the reason for looking to the approved list in the first instance and requiring equivalent credentials for a mediator not on the list is to assure that any mediator to be employed has sufficient training and experience to deal with any issues of domestic violence that might arise.

It was also agreed to insert a new paragraph (d)(5) reading, "If at any time the mediator determines that the issues are not suitable for mediation, the mediator may refer the matter back to the court to be determined in further proceedings as ordered by the court." To address the possibility that a party might fail to comply with the terms of an agreement signed by the parties and mediator and filed with the court, it was agreed that V.R.C.P. 16.3(h) concerning sanctions should be incorporated in the rule. Committee members also noted *Pouech v. Pouech*, 2006 VT 40 discussing the circumstances in which the Family Court could reopen a stipulated settlement agreement to assure that it was fair and equitable.

Professor Wroth will incorporate these changes in a new draft for consideration at the next meeting.

4. Consideration of *Columbia v. Lawton*, 2013 VT 2 (1/18/13) (should V.R.C.P. 60(b) as applied in Family Court be amended, or another rule adopted, to permit non-party to parentage case to set aside parentage judgment). Chairwoman Racht reported that the subcommittee (Ms. Arnell, Ms. Murray, and herself) had met with Justice Robinson to consider her concerns that the focus should be mainly on process. The subcommittee is working on a revision of Professor Wroth's October 18 draft that it will send to him for review and distribution before the next meeting

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 (Messrs. Kainen and Sheil and herself), to which Judge Griffin has been added, has been gathering information and will report at the next meeting.

6. Effect on V.R.F.P. 1(a)(3) of emergency amendment adding V.R.Cr.P. 11.1, effective November 13, 2013, implementing Act 76 of 2013 concerning required additional colloquy. Mr. Sheil reported that V.R.Cr.P. 11.1 essentially incorporated the requirements of Act 76 of 2013, codified as 18 V.S.A. § 4230(a)(5), for additional colloquy with defendant on collateral consequences of a plea of guilty or nolo contendere to certain offenses. He noted that V.R.F.P. 1(a)(3) presently makes V.R.Cr.P. 11 applicable with certain exceptions and suggested and suggested that V.R.Cr.P. 11.1 be added to the Family Rule, subject to appropriate exceptions. Professor Wroth agreed to prepare a draft for the next meeting.

7. Other business. Chairwoman Racht asked the Committee to consider whether addition of a case manager to the committee would be desirable. It was agreed that she would

recommend to the Court that a case manager be added.

10. Dates of next meetings. It was agreed that, subject to the availability of Scott Woodward, the next meeting will be held on Friday, March 28, 2014, at 1:30 p.m. at Vermont Law School to complete the review of restyled Rules 4.0-4.3 with the same technology that was used effectively at the December 6 meeting for distant participants. It was further agreed that a meeting to address the remaining agenda will be held on April 25 at 1:30 p.m. at Rutland, subject to the availability of meeting space.

There being no further business, the meeting was adjourned at 3:30 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter