

APPROVED

VERMONT SUPREME COURT

ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

Minutes of Meeting

June 12, 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, Hon. Cortland Corsones, Peter Lawrence, Linda Reis, Bob Sheil, Christine Speidel (by telephone), 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. (Mary Frost, having retired from her position as Clerk of the Bennington Unit, has resigned from the Committee.)

1. Minutes. The draft minutes of the meeting of March 27, 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 proposed amendments to V.R.F.P. 4(a)(2) and 9(a)(2), and proposed new V.R.F.P. 18, sent out for comment on December 15, 2014, with comments due on February 17, 2015, and proposed amendments to V.R.F.P. 4(j), (o), 9(e), and 15(f)(1)(A), sent out for comment on February 26, with comments due on April 27, 2015, were recommended to the Supreme Court for promulgation in a consolidated order on May 25, 2015. Professor Wroth reported that all of the recommended amendments will be promulgated on July 1, 2015, but that the Court has asked the Committee to consider changes in recommended new V.R.F.P. 18. All of these amendments and Rule 18 will be reviewed by the Legislative Committee on Judicial Rules on June 26.

The Committee considered Justice Robinson's June 9 e-mail communicating the Court's request that the Committee consider a revision of recommended Rule 18(c)(3) that, while addressing the concerns that underlie the initial proposal, would provide some discretion to trial judges to order mediation after a final order in exceptional circumstances on the basis of certain factors or pursuant to specific findings. In discussion, it was noted that the Committee had considered a comment suggesting discretion in its previous deliberations on the rule but had decided not to include it, believing that a bright-line rule was necessary so that one party could not force another to mediate involuntarily. It was also noted that a judge might not know the circumstances in which a prior order had been issued. After further discussion, on motion duly made and seconded, it was voted unanimously to recommend that V.R.F.P. 18(c) as previously recommended be revised as indicated with underlining and strikeouts below:

(c) Exceptions. The court will not order mediation if

(1) at the commencement of the action or proceeding, the parties jointly certify that they have in good faith voluntarily engaged in mediation with a neutral of their choice regarding the issue or issues that would have been the subject of the court's order and file with the court a report of the neutral describing the process employed and the results;

(2) at, or at any time after, the commencement of the action or proceeding, the parties jointly agree on the record that they will voluntarily participate in mediation regarding the issue or issues that would have been the subject of the court's order and will file the neutral's report of the process and results by a specific date;

(3) a relief-from-abuse action is pending between the parties, or a final order ~~has ever been~~ issued in such an action between the parties is in effect; ~~or~~

(4) a final order issued in a relief from abuse action between the parties is no longer in effect; provided that the court may order mediation in such a case if the court specifically finds good cause to believe that mediation would be appropriate in the circumstances; or

(5) the court determines that mediation would not be appropriate due to allegations of abuse, the possibility of undue hardship, or for other reasons.

Professor Wroth agreed to send the revised draft to the Committee by e-mail and to submit it to the Court if it was approved by a majority of the Committee in reply.

3. V.R.F.P. 4(r). Property Masters. The Committee considered Justice Robinson's e-mail of May 18, 2015, suggesting that the Committee consider the effect of the amendment of 32 V.S.A. § 1758 (H. 490, § E204.10, signed by the Governor, 6/11/15), effective 7/1/15, on V.R.F.P. 4(r). The Act amended § 1758 to permit the Superior Court to order that the parties share the cost of a master in a contested distribution of property exceeding \$500,000 in value or a claim for maintenance where there is non-wage income of \$150,000 or more, excluding up to \$500,000 of income from the sale of a primary residence or jointly owned business. After discussion, it was voted unanimously that Professor Wroth should draft an amendment to Rule 4(r) incorporating the statutory provisions for circulation to the Committee for review with the revisions to V.R.F.P. 18 considered under item 2.

4. Proposed V.R.F.P. 4.0-4.3. The Committee considered Professor Wroth's draft promulgation order for proposed V.R.F.P. 4.0-4.3 (6/9/15) with changes recommended by those present at the May 1 meeting at which there was no quorum.

Rule 4.0(b)(2)(B)(v). The changes were approved. Professor Wroth agreed to comment in the Reporter's Notes to this provision, and similarly revised Rules 4.1(a)(2)(H) and 4.2(b)(1)(C), on the starting point for time periods when service or response was undertaken by electronic means.

Rule 4.2(b)(1). The changes were approved, with the deletion of “or” after subparagraph (A), the addition of “; or” after subparagraph (B), and deletion of the superfluous “the” in the fourth line of subparagraph (C).

The Committee approved all other changes shown in the draft promulgation order for proposed V.R.F.P. 4.0-4.3

The Committee then considered Professor Wroth’s draft promulgation order containing proposed “substantive” amendments incorporated in proposed Rules 4.0-4.3 (6/10/15) as identified by those present at the May 1 meeting at which there was no quorum.

Paragraphs 1-3, 5, 7, and 8 of the draft order were approved as drafted. The following paragraphs were approved with the indicated changes shown as underlined or struck out:

4. That Rule 4.0(d)(2) of the Vermont Rules for Family Proceedings be amended to read as follows (new matter underlined):

6. That Rule 4.1(f)(1) of the Vermont Rules for Family Proceedings be added to read as follows (new matter underlined):

RULE 4.1. CASES INVOLVING MINOR CHILDREN

(f) Orders of Support.

(1) Every order of child support or spousal maintenance made or modified under this rule must, if contested, contain findings and conclusions, must in all cases contain a separately captioned order, and must be mailed to each party, ~~and~~ Child support orders must also be mailed to the registry.

Professor Wroth agreed to circulate a draft of the proposed Rule 4.0-4.3 promulgation order showing any further changes resulting from recent amendments to V.R.F.P. 4 and changes in the Reporter’s Notes in bold, as well as a draft of the proposed “substantive” promulgation order with updated Reporter’s Notes.

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. The subcommittee (Judge Griffin, Messrs. Kainen and Sheil, and Chairwoman Racht) will report 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 conform to Act 96 of 2013, “Respectful Language Act.” The Committee adopted the recommendation of those present at the May 1 meeting at which there was no quorum to drop this item from the agenda.

8. Family Rules amendments to implement 15 V.S.A. §665(f) added by Act 197 of 2013, § 1 (Adj. Sess.). The subcommittee (Judge Griffin, Mr. Lawrence, Susan Murray, Ms. Olvera) proposed the addition to V.R.F.P. 4(b)(1) of 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. The Family Division Oversight Committee would be asked to develop a form. Professor Wroth agreed to prepare a draft rule amendment for consideration at the next meeting.

9. Joint subcommittee to consider possible amendments to Vermont Rules of Public Access concerning Family Division records. Chairwoman Racht reported that she and Judge Zonay, chair of the Public Access Rules Committee, had formed a joint subcommittee consisting of herself, Ms. Reis and Susan Murray from this Committee and Judge Zonay, Hon. Timothy Tomasi, and Priscilla Dubé, Esquire of the Public Access Rules Committee to consider this matter,.

10. Other Business. Mr. Lawrence reported for the Committee’s information that the Family Division Oversight Committee was considering a proposal for a pilot project in Windham and Franklin counties in which the Office of Child Support would be given a time block for enforcement actions and would provide service for those actions. After the Oversight Committee and the Court Administrator’s Office have set up the project an amendment to V.R.F.P. 4(b)(2)(B)(i) would be needed.

11. Date of next meeting. It was agreed that the next meeting would be held on September 11, 2015, in Rutland if space is available, otherwise at Vermont Law School..

There being no further business, the meeting was adjourned at 4:150 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter