

APPROVED

VERMONT SUPREME COURT

ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

Minutes of Meeting

March 27, 2015

The meeting was called to order at 9:45 a.m. in Room 216 Debevoise Hall, Vermont Law School by Jody Racht, chair. Present were Committee members Robin Arnell, Hon. Robert Gerety, Michael Kainen, Hon. Barry Peterson, Jean Murray, Susan Murray (by telephone), Linda Reis (by telephone), Christine Speidel, and John Wilson. Also present were Scott Woodward, Esq., Rule 4 consultant, and Professor L. Kinvin Wroth, Reporter.

1. Minutes.

The draft minutes of the meeting of January 23, 2015, previously distributed, were unanimously approved.

2. Status of proposed amendments.

- 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 were sent out for comment on December 15, 2014, with comments due on February 17, 2015. Comments received will be reviewed at the next meeting.
- The Committee's proposed amendments to V.R.F.P. 4(j), (o), 9(e), and 15(f)(1)(A) were sent out for comment on February 26, with comments due on April 27, 2015. Comments received will be reviewed at the next meeting.

3. Possible amendments to Vermont Rules of Public Access concerning Family Division records. After discussion of the materials sent out by Professor Wroth, the Committee agreed to form a joint subcommittee with the Advisory Committee on Public Access to Court Records to consider the question whether new provisions governing access to records of Family Division cases should be adopted. Ms. Susan Murray and Ms. Reis agreed to serve on the subcommittee. Chair Racht will notify Public Access Committee chair Hon. Thomas Zonay of their appointments.

4. Proposed V.R.F.P. 4.0-4.3. The Committee considered the July 25, 2014 clean draft of proposed V.R.F.P. 4.0-4.3 and the written comments of Ms. Arnell (August 13, 2014) and Ms. Susan Murray (August 15, 2014), most recently recirculated to the Committee in Professor Wroth's e-mail of March 24, 2015.

The Committee considered and agreed to accept Ms. Arnell's proposed revision of Rule 4.1(a)(1)(b)(i) to read "receives a grant for public assistance... on behalf of the children involved in the action," for conformity with the same language previously incorporated in Rule 4.1(a)(1)(b)(ii).

Ms. Arnell's suggestion concerning further revision of Rule 4.2(e) was added to the "parking lot" for subsequent consideration.

The Committee then considered Ms. Murray's comments and proposed revisions and made the following decisions, starting with Comment 2:

Comment 2. It was agreed that the substitution of more party-friendly terms for "plaintiff" and "defendant" should be considered in the context of the Rules as a whole, rather than as part of the Rule 4.0-4.3 restyling.

Comment 3. It was agreed that the first sentence of Rule 4.0(b)(2)(B)(v) should read "At any time service may be made by delivering to the defendant by any method chosen by the plaintiff the summons and a request that the defendant waive service by any other method." It was also agreed that the fourth sentence should read, "If the defendant answers the complaint, the defendant must do so... ."

Comment 5. Rule 4.0(b)(3). It was agreed that no action should be taken regarding potential incompetent parties in view of the Court's *Samis* decision. *Cf.* proposed Rule 4.0(b)(1)(c).

Comment 6. It was agreed to revise the last sentence of Rule 4.0(b)(3)(B) to read "The ~~several~~ clerks ~~is~~ are authorized to proceed by execution or action to recover all fees or costs that any party becomes liable to reimburse under this subparagraph, if such reimbursement is not made voluntarily upon demand."

Comment 7. Rule 4.0(c)(2). It was agreed that no change was necessary, because "will" was appropriate, and that "include" implies "but not limited to."

Comment 8. Rule 4.0(c)(3). It was agreed that no change was necessary, because the clerks' practice regarding verification and affidavits was a training issue.

Comment 9. It was noted that Rules 4.0(c)(3)-(4) had been separated after extensive discussion in September 2013, with edits made in December 2013 reflecting the current version, and that (3) was for parentage actions only while (4) was for all actions. Professor Wroth agreed to review the suggested changes and the previous discussion and report on whether further revision was appropriate.

Comment 10. It was agreed to add Rule 4.0(c)(4)(E) providing that the court could issue a temporary order for spousal maintenance.

Comment 11. Rule 4.0(c)(5). It was agreed that no change was necessary, because the third sentence applied only to the location of the judge and parties to a telephone conference.

Comment 12. Rule 4.0(c)(5)(B)(iv). It was agreed that no change was necessary, because the power to order discovery did not preclude prior discovery initiatives.

Comment 13. It was agreed to revise the first sentence of Rule 4.0(d)(2) as follows: “Even though the defendant does not file an answer, the defendant may, upon entering a written appearance as provided in Rule 15(a), be heard on issues of parental rights and responsibilities, spousal maintenance, ~~maintenance supplement~~, child support, maintenance supplement, property distribution, and counsel fees.” A comparable change will be made in Rule 4.0((g)(2).

Comment 14. Professor Wroth agreed to research the possible source of the provision of Rule 4.0(d)(3) allowing exclusion from the court room in former V.R.C.P. 80.

Comment 15. Rule 4.0(g)(3)(C). It was agreed that the scope of discovery limitations should be a separate agenda item.

Rule 4.0(g)(5). It was agreed to revise the second sentence as follows: “When a motion to modify is filed, parties must file affidavits and documents pursuant to paragraph (6) and Rule 4.1(b)(4), regardless of prior ~~information~~ disclosures made during that calendar year. Failure to comply will subject a party to the sanctions set forth in 15 V.S.A. § 662 and V.R.C.P. 37.

Comment 16. Rule 4.0(g)(5). It was agreed that no change was necessary, because “other private” was broad enough to include other financial records.

Comment 17: It was agreed to replace the last sentence of Rule 4.0(g)(6)(A) to read as follows: “The affidavits must be filed on the date set in the order of the court requiring the filing.”

Rule 4.1(a). It was agreed to revise the title of Rule 4.1(a) as follows: “**(a) Complaint; Service; Parties; Case Management Conference.**”

Rule 4.1(a)(2)(H). It was agreed to revise subparagraph (H) to be consistent with the changes to Rule 4.0(b)(2)(B)(v) in Comment 3.

Comment 19. Rule 4.1(b)(4)(A). It was agreed that no change was necessary, because interrogatories and requests are not due prior to the first court date or case manager’s conference.

Comment 20. It was agreed to revise Rule 4.1(f)(1) as follows: “(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 the registry.

Comment 21. It was agreed to revise Rule 4.2(b)(1) to be consistent with the changes to Rule 4.0(b)(2)(B)(v) in Comment 3.

Rule 4.2(b)(3). It was agreed that “rule” should be singular in the second line.

Rule 4.2(b)(3)(A). It was agreed to insert a comma after “. . . moving party, or”.

Comment 22. It was agreed to revise Rule 4.2(b)(3)(B) as follows unless inconsistent with a federal requirement: “(B) if the certified mail pursuant to paragraph (A) is refused by the party, service may be made by the moving party by mailing to the other party by ordinary first-class mail and by certifying that such service has been made.”

Comments 23 and 24. It was agreed to revise Rule 4.2(c)(2) as follows: “(2) *Affidavits of Income and Assets Required.* When a motion to modify a judgment regarding child support or spousal maintenance is filed, all parties must file affidavits and documents pursuant to Rules 4.0(g)(56) or 4.1(b)(4) as appropriate, regardless of prior information disclosures under Rule 4.0(g)(4) during that calendar year. Failure to comply will subject a party to the sanctions set forth in 15 V.S.A. § 662 and -V.R.C.P. 37.

Rule 4.3(b)(4). It was agreed that the last line should read “a request for hearing.”

Rule 4.3(c). It was agreed to revise Rule 4.3(c) as follows: “(c) **Grandparent Visitation.** Whenever custody or visitation of a minor child is in issue in an action subject to Rule 4.0 and 4.1, a grandparent of the child may ~~move the court~~ file a motion, in accordance with V.R.C.P. 5, requesting ~~to be awarded visitation rights for the grandparent with a grandchild.~~ The grandparent is not a party to the proceeding but may be called as a witness by the court and, when called, will be subject to cross-examination by the parties. A grandparent who has visitation rights has the right to move under Rule 4.2 to enforce or modify a judgment with respect to those visitation rights ~~of the grandparent.~~”

Rule 4.3(d)(1)(B). It was agreed to revise Rule 4.3(d)(1)(B) as follows: “(B) The value of assets and ~~debts~~ liabilities, including but not limited to the value of businesses owned by either or both parties.”

Rule 4.3(e)(1). It was agreed to insert a comma in the second line after “adjudicated.”

Rule 4.3(e)(2)(C). It was agreed to insert “the” before “parent coordinator in the first line.

Professor Wroth agreed to prepare a new draft incorporating these changes for the next meeting.

5. Next meetings. The next meeting of the Committee is scheduled for Friday, May 1, 2015, to consider the changes approved above and the “parking lot issues” for Rules 4.0-4.3, as

well as the remainder of the agenda. It was agreed to hold a second meeting on June 12, 2015. Both meetings will be at Vermont Law School, at 1:30 p.m.

There being no further business, the meeting was adjourned at 4:20 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter