

**VERMONT SUPREME COURT**  
**ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS**  
**Minutes of Meeting**  
**March 28, 2014**

The meeting was called to order at 1:45 p.m. in Room 216, Debevoise Hall, Vermont Law School, by Jody Racht, chair. Present in person were Committee members Hon. Cortland Corsones, Hon. Kevin Griffin, Michael Kainen, Peter Lawrence, Hon. Barry Peterson, Linda Reis, Robert Sheil, and Christine Speidel.. Present remotely by AnyMeeting software were Robin Arnell and Jean Murray, Also present were Hon. Beth Robinson, Supreme Court liaison (remotely by AnyMeeting); Scott Woodward; and Professor L. Kinvin Wroth, Reporter.

1. **Minutes.** The draft minutes of December 6, 2013, and January 24, 2014, as previously circulated, were unanimously approved.
2. **Status of proposed and recommended amendments.** Professor Wroth reported that no comments had been received on the Committee's proposed amendments to V.R.F.P. 16, sent out for comment on December 19, 2013, with comments due on February 21, 2014. It will be reviewed at the next meeting
3. **Proposed Restyling and Reorganization of V.R.F.P. 4.0-4.2.** The Committee reviewed Professor Wroth's March 27 revised clean draft of V.R.F.P. 4.0-4.2 and Scott Woodward's March 27 summary of changes and comments made on those rules at the December 6 meeting. Professor Wroth noted that the clean draft contained some further changes of style for consistency.

The following December 6 changes were accepted as shown in the clean draft:

- 4.0(b)(3)(B)
  - "Court" changed to lower-case "court"
  - "**shall** require that payment ..." changed to "**will** require that payment ..."
  - Extra "n" deleted after "action"
- 4.0(c)(5)
  - "custody is" changed to "parental rights and responsibilities are"
  - 4.0(c)5(B)(ii) – parentheses removed around "unfit parent" language
- 4.0(d)(1)
  - "held" inserted, missing in last edits of this provision
  - Extra "." Deleted
- 4.1(a)(1)(B)(iii)
  - "Vermont Rule of Civil Procedure" abbreviated to "V.R.C.P."
- 4.1(a)(2)(F)
  - "Vermont Rule of Civil Procedure" abbreviated to "V.R.C.P."
- 4.1(b)(1)

- Comment: Reference back to 4.0(g)(1)-(6) and whether that reference should be to five or six paragraphs
- 4.1(b)(2)
  - Language follows statute
- 4.1(c)
  - Title changed from “Delay Where Custody of Children Involved” to “Delay Where Minor Children Are Involved.”
- 4.2(b)(1)(B)
  - “shall” changed to will

The following additional changes and comments were made:

- In proposed V.R.F.P. 4.1(a)(1)(B)(i)-(ii), it was agreed that the reference should be to “the Economic Services Division of the Department for Children and Families.”
- With regard to proposed V.R.F.P. 4.1(c), a question was raised regarding the limit of the provision to divorce actions, in light of 15 V.S.A. § 301, which gives children of unmarried parents the same rights as those of married parents. It was agreed that a change to reflect this concern would be substantive and should be dealt with separately from the restyling/restructuring changes.
- It was agreed that the correct cross-reference in proposed V.R.F.P. 4.1(d) was to proposed V.R.F.P. 4.3(b).
- It was agreed that no change was necessary in proposed V.R.F.P. 4.2(f) because its language was incorporated in 15 V.S.A. § 668(b) as enacted in 2011.

On motion duly made and seconded, after discussion, it was voted unanimously to accept the clean draft of proposed V.R.F.P. 4.0-4.2 as modified in this meeting and to request Professor Wroth to prepare Reporter’s Notes for those rules and present them at the next meeting devoted to proposed V.R.F.P. 4.0-4.3.

#### **4. Proposed Restyling and Reorganization of V.R.F.P. 4.3.**

The Committee then considered Scott Woodward’s April 17, 2011, draft of proposed restyled/restructured V.R.F.P. 4.3 with comments by Christine Speidel and Justice Robinson.

- It was agreed that the following changes will be made throughout the draft:
  - The use of “shall,” “will,” “may,” and “must” will be reviewed and made consistent with usage in proposed V.R.F.P. 4.0-4.2
  - “Vermont Rule of Civil Procedure” will be rendered as “V.R.C.P.”
  - “Family court” will be changed to “family division”
  - The phrase “subject to this rule” will be corrected to reflect the numbering of the proposed rules
- 4.3(a)
  - It was agreed to consider change of title to reflect that subdivision (a) is about consolidation

- 4.3(a)(2)
  - It was agreed that the first sentence should be retained even though redundant with proposed V.R.F.P. 4.0(b)(1)(F)
- 4.3(a)(3)(B)
  - It was agreed to substitute “for relief without notice to the other party” for “ex parte relief”
  - The use of “proceeding” will be reviewed for consistency with other provisions of proposed V.R.F.P. 4.0-4.3
- 4.3(b)
  - It was agreed that Ms. Arnell would review subdivision (b) and determine whether paragraphs (1)-(3) reflected current practice and whether paragraph (4) was obsolete
- 4.3(d)—actually (c)
  - It was agreed that this subdivision would remain in Rule 4.3 because it is a special proceeding and applies in both pending actions and post-judgment proceedings
- 4.3(e)—actually (d)
  - It was agreed that this subdivision would remain in Rule 4.3 because it is a special proceeding and applies in both pending actions and post-judgment proceedings
- 4.3(e)(6)(B)—actually (d)(6)(B)
  - Consideration will be deferred because of pending legislation
  - Professor Wroth will review Justice Robinson’s concerns regarding service of objections in light of V.R.C.P. 53
- 4.3(f)—actually (e)
  - It was agreed that this subdivision would remain in Rule 4.3 because it is a special proceeding and applies in both pending actions and post-judgment proceedings

It was agreed that for present purposes, proposed V.R.F.P. 4.3 should remain in the current format and that the Reporter’s Notes would explain the structure of proposed V.R.F.P. 4.0-4.3.

On motion duly made and seconded, after discussion, it was voted unanimously to accept the modifications of the April 2011 draft of proposed V.R.F.P. 4.3 as made in this meeting, subject to Ms. Arnell’s conclusions regarding proposed V.R.F.P. 4.3(b), and to request Professor Wroth to prepare a clean draft and Reporter’s Notes for the rule to be presented at the next meeting devoted to proposed V.R.F.P. 4.0-4.3.

**5. Next Meeting.** The next meeting of the Committee will be held in Rutland from 1:30-4:00 p.m. on Friday, April 25, 2014, to consider agenda items remaining after the January 24 meeting.

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

Respectfully submitted,

L. Kinvin Wroth, Reporter