

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS
Minutes of Meeting
November 16, 2012

The meeting was called to order at 1:30 p.m. in Room 216, Debevoise Hall, Vermont Law School, by Jody Racht, chair. Present were Committee members Robin Arnell, Mary Frost, Hon. David Howard, Hon. Christine Hoyt, Peter Lawrence, Hon. Kathleen Manley, Jean Murray, Susan Murray, Linda Reis, and Robert Sheil. Also present was Professor L. Kinvin Wroth, Reporter.

The Committee welcomed Susan Murray and Linda Reis, recently appointed to succeed Emily Davis and Lindsey Huddle, whose terms had expired.

1. Approval of Draft Minutes of the Meeting of September 7, 2012.

The draft minutes of the meeting of September 7, 2012, as previously distributed, were unanimously approved.

2. Review of the Committee's Recommendations to Amend V.R.F.P. 7 and to Add V.R.F.P. 7.1 and 9(l), and of Recently Promulgated Amendments to V.R.F.P. 4(b)(2)(A) and 14.

Chairwoman Racht and Professor Wroth reported that the Committee's recommendation for promulgation had been transmitted to the Supreme Court on September 20, 2012. The Court had not yet acted on the recommendation. The proposed amendments were reviewed by the Legislative Committee on Judicial Rules on November 13. That committee had no objection to proposed V.R.F.P. 9(l) but intended to advise the Court that it wished to consider VRFP 7 and 7.1 further at a subsequent meeting. The committee had no objections to V.R.F.P. 4(b)(2)(A) and 14. One member asked that the Committee consider whether Rule 4(b)(2)(A) and (B) should require notice to the Office of Child Support if child support is payable to OCS for a child of a prior marriage of either party.

3. Required Mediation in Domestic Cases.

Chairwoman Racht reported that she had been advised that there was no funding to support mandatory mediation but that a rule that would allow a court to order mediation in a particular case, drawing on the existing Family Court Mediation Program, might be appropriate. After discussion, Professor Wroth agreed to provide a proposed draft rule for the next meeting.

4. Electronic Filing Amendments to Family Rules.

Chairwoman Racht and Professor Wroth reported that it was still not clear when electronic filing would be extended to the Family Division.

5. Review of V.R.F.P. 4(b)(1)(A) in light of *Samis v. Samis*, 2011 VT 21, par. 10-11

(2/18/11), http://info.libraries.vermont.gov/supct/current/op2010-031.html#_ftn2.

The Committee reviewed Professor Wroth's Draft III of an amendment to V.R.F.P. 4(b)(1)(A) dated November 14, 2012. The amendment was intended to address issues raised at the September. After discussion, on motion duly made and seconded, it was voted unanimously to recommend that the present draft be sent out for comment.

6. Proposed Amendments of V.R.F.P. 1(b) and 2(b) to Comply with Federal Requirements and Make Technical Corrections.

The Committee considered Professor Wroth's draft amendments of V.R.F.P. 1(b) and 2(b) to require inclusion of race and ethnicity data in petitions in juvenile and CHINS cases. After discussion of concerns of the state's attorneys, it was agreed that the draft of Rule 1(b)(1) should be revised to read, in effect, "The Petition, to which shall be attached Form 101, Law Enforcement Juvenile Data Sheet, prepared by law enforcement," and that Rule 2(b)(1) should read, "Form 101... if available, or another source," with a comment in the Reporter's Notes that "another source" could include an affidavit of a social worker in support of the petition. There was no discussion of the draft amendments to Rules 1(b)(2) and 2(b)(2), which were intended to update statutory references. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that the draft amendments as revised be sent out for comment.

7. V.R.F.P. 4(b)(1)(C)—Public Assistance Information Requirement.

Ms. Arnell presented the report of the subcommittee on Judge Davenport's request that the requirement of V.R.F.P. 4(b)(1)(C) for provision of public assistance information in a divorce complaint be eliminated in cases where there are no children. After discussion about other possible methods of getting necessary information to the Office of Child Support, such as notice rather than service and including a provision in Rule 4(b)(1)(A) regarding the complaint, the subcommittee agreed to present a draft amendment proposal at the next meeting.

8. V.R.F.P. 8(g)—Notice re Completion of the Record in Magistrate Appeals.

The Committee reviewed Professor Wroth's draft amendment of V.R.F.P. 8(g) eliminating the requirement that the provisions of V.R.A.P. 10-12 concerning notice of completion of the record in an appeal from a magistrate's decision be followed in magistrate appeals. On motion duly made and seconded, there being no discussion, it was voted unanimously to recommend that the draft amendment be sent out for comment.

9. V.R.F.P. 1(b)(2), 2(b)(2)—Correction of Statutory References.

This item was addressed under item 6.

10. Proposal to Require Form 813 to Be Filed with the Initial Paperwork in Divorces and Parentage Cases.

After discussion of the possibility of changing the present filing requirement of V.R.F.P. 4(g)(2)(D)(i) for the Form 813, as proposed by Ms. Frost, it was agreed that no action could be taken to amend the rule, because the present rule followed the requirement of 15 V.S.A. § 662(a).

11. Proposed Amendment of V.R.F.P. 4 to Allow the Initial Filings to Be Sent to OCS by Regular Mail.

It was agreed that this item should be included in the charge to the Rule 4 subcommittee under item 7.

12. Effect on Family Rules of Act 119, Effective 7/1/12, Relating to Child Support Enforcement.

Ms. Arnell reported that §2 of Act 119 amended 15 V.S.A. § 603 in ways that might conflict with V.R.F.P. 16. She, Magistrate Hoyt, and Judge Manley agreed to serve as a subcommittee to review that question and other possible conflicts between the Act and the Rules—*e.g.*, a possible conflict between amended 15 V.S.A. § 660(d) and V.R.F.P. 4(j)(2)(B).

13. Other Business.

Professor Wroth stated that he would send a draft annual report to the Committee for review before transmitting the report to the Court.

14. Dates of next meetings.

It was agreed that the Committee would meet on January 25, 2013, from 9:30 until 2:00 at VLS to review the proposed restyled version of V.R.F.P. 4 prepared by Scott Woodward of Professor Wroth's Advanced Procedure class, and on March 15 and May 3 at 1:30 at VLS to consider the remaining agenda.

15. Adjournment.

The meeting was adjourned at 4:30 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter