

**APPROVED**

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS  
Minutes of Meeting  
September 26, 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 in person were Committee members Robin Arnell, Mary Frost, Hon. Robert Gerety, Hon. Kevin Griffin, Michael Kainen, Peter Lawrence, Jean Murray, Susan Murray, Hon. Justine Scanlon (by phone), and Christine Speidel. Also present were Michele Olvera, Network representative, and Professor L. Kinvin Wroth, Reporter.

**1. Minutes.**

The draft minutes of the meeting of March 28, 2014, previously distributed, were unanimously approved. The previously distributed draft summary of the meeting of June 13, 2014, at which a quorum was not present, was unanimously accepted.

**2. Status of proposed amendments.** Professor Wroth reported that

- The amendments of V.R.F.P. 7 and the addition of V.R.F.P. 7.1, promulgated on January 22, 2014, and previously extensively reviewed during the comment period by the Legislative Committee on Judicial Rules, were reviewed on June 17, 2014, by that Committee without further comment.
- No comments had been received from the bar on proposed V.R.F.P. 16, sent out for comment on December 19, 2013, with comments due by February 21, 2014. The rule was reviewed on June 17, 2014, by the Legislative Committee on Judicial Rules without comment.

On motion duly made and seconded, it was voted unanimously to recommend the proposed rule to the Court for promulgation.

- No comments had been received by Civil Rules Committee on the proposed amendment to V.R.C.P. 43(f) covering interpreters, sent out for comment on June 13, 2014.
- No comments had been received from the bar on emergency amendments to V.R.F.P. 12(a), (d), promulgated July 16, 2014, effective immediately, to address legislative amendment of V.R.F.P. 12 by Act 192 of 3013 (Adj. Sess.), § 22, effective July 1, 2014.

On motion duly made and seconded, it was voted unanimously to recommend the emergency amendments to the Court for permanent promulgation.

- No comments had been received from the bar on the proposed amendment of V.R.F.P. 1(a)(3) incorporating a reference to V.R.Cr.P. 11.1, sent out for comment on July 21, 2014.

On motion duly made and seconded, it was voted unanimously to recommend the proposed rule to the Court for promulgation.

**3. Required mediation in domestic cases.** The Committee considered Professor Wroth's September 22 further revised draft of proposed V.R.F.P. 18 and comments received from Committee members on it. In discussion, it was agreed that "are both represented by counsel and" should be deleted from paragraphs (c)(1) and (2), that paragraph (c)(3) should read "(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," and that subdivision (d) should begin "In a mediation ordered under (b)." Professor Wroth agreed to revise the Reporter's Notes to reflect these changes. On motion duly made and seconded, it was voted unanimously to propose that the rule be sent out for comment as revised.

**4. Consideration of *Columbia v. Lawton*, 2013 VT 2 (1/18/13).** The Committee considered the September 26 draft of the subcommittee (Ms. Arnell, Susan Murray, and Chairwoman Racht) revising Professor Wroth's October 18, 2013, draft of amendments to V.R.F.P. 4(j) and (o). The amendments were intended to address the question raised in *Columbia v. Lawton* concerning the remedy for a person seeking to establish parentage after a prior determination of parentage to which that person was not a party. In discussion, it was noted that *Columbia* had interpreted 15 V.S.A. §302(a) to prohibit a parentage action in the Family Division by a non-party after a prior Family Division parentage determination in the absence of a showing of a constitutional right. It was agreed that the Committee's goal was to develop a procedure in the Family Rules for a non-party to raise a constitutional claim. Although 15 V.S.A. §302(a) also applies to parentage determinations in Probate Court adoption proceedings, 15A V.S.A. § 3-706(c) provides a shorter time limit on motions for relief from an adoption decree under V.R.P.P. 60(b). Accordingly, though the issue should be pointed out to the Probate Rules Committee, a Family Rules amendment should be limited to parentage actions. Professor Wroth agreed to provide a new draft for the next meeting in which references to adoption in the present draft would be eliminated from Rules 4(o)(1)(A) and (C), subparagraph (1)(B) would be eliminated as substantive, and draft Reporter's Notes would be prepared.

**5. Consideration of *In re K.F.*, 2013 VT 39, note 2 (6/7/13).** The subcommittee (Judge Griffin, Messrs. Kainen and Sheil, and Chairwoman Racht) had considered Chairwoman Racht's memorandum on practice in other states concerning ineffective assistance of counsel in TPR proceedings. Chairwoman Racht noted that the Vermont Parentage Representation Center wished to be heard on the process and standard for a rule on this matter. Judge Griffin agreed to send the Racht memo to the full Committee and present a subcommittee draft at the next meeting. The subcommittee will meet with interested groups.

**6. V.R.F.P. 4(b)(2)(D). Separation of parties during case management conferences.**

Mr. Lawrence reported for the subcommittee (Mss. Arnell, Frost, Olvera; Mr. Lawrence; Magistrate Peterson) that this should be deemed a best practices issue. Accordingly, the subcommittee had referred the matter to the Oversight Committee for consideration by Family Division case managers.

**7. Proposed V.R.F.P. 4.0-4.3.** This item was passed over in view of the absence of Scott Woodward.

**8. V.R.F.P. 6. Amendments made necessary by Act 170 of 2013 (Adj. Sess.) concerning minor guardianships.** It was agreed to form a joint subcommittee with the Probate Rules Advisory Committee to review this and other minor guardianship issues. Chairwoman Racht, Judge Scanlon, and Ms. Speidel agreed to represent the Family Rules Committee on the joint subcommittee. Chairwoman Racht agreed to communicate with Judge Ertel, chair of Probate Rules, concerning the organization of the subcommittee.

**9. Family Rules amendments to conform to Act 96 of 2013, “Respectful Language Act.”** Professor Wroth reported that the Legislative Council was charged with identifying statutory provisions not covered in Act 96 that needed to be revised or eliminated. It was agreed that when that task was completed, Professor Wroth would find a law student to examine the Rules for necessary changes.

**10. Family Rules amendments to implement 15 V.S.A. §665(f) added by Act 197 of 2013, § 1 (Adj. Sess.) denying parent child contact to perpetrator of sexual assault.** Mr. Lawrence reported that the Family Division Oversight Committee had asked the Family Rules Committee to review this question. It was agreed that a subcommittee consisting of Judge Griffin, Mr. Lawrence, Susan Murray, and Ms. Olvera would review the question and report at the next meeting.

**11. V.R.F.P. 9(e). Time deadline for hearing request after denial of ex parte order.** Mr. Lawrence reported that the Family Division Oversight Committee had asked the Family Rules Committee to review this question. It was suggested that five business days would be appropriate. Professor Wroth agreed to prepare a draft for the next meeting.

**12. V.R.F.P. 15(f)(1)(A). Application of automatic withdrawal provision to Rule 9 cases.** The Committee reviewed the proposal of Sandy Paritz of VLA. Professor Wroth agreed to prepare a draft amendment adding Rule 9 to V.R.F.P. 15(f)(1)(A) and to make sure that Rule 15(c)(1) was consistent with the change.

**13. Other Business: Public access to Family Division court records.** The Committee considered Professor Wroth’s September 24 e-mail reporting the request of the Public Access Rules Committee for a joint subcommittee to consider a new Family Division exception to the Vermont Rules for Public Access to Court Records. Professor Wroth agreed to discuss the question further with Justice Dooley, Supreme Court liaison to the Public Access Rules

Committee.

**14. Next meetings.** It was agreed that the Committee would meet on Friday, November 21, at 9:00 a.m. at Vermont Law School and on Friday, January 23, 2015, at 9:30 a.m. in Rutland.

There being no further business, the meeting was adjourned at 4:05 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter