

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS
Minutes of Meeting
September 7, 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, Emily Davis, Mary Frost, Hon. David Howard, Hon. Christine Hoyt, Lindsey Huddle, Sara Kobylenski, Peter Lawrence, Robert Sheil, and Christine Speidel (by phone). Also present were Michele Olvera, Network Representative, and Professor L. Kinvin Wroth, Reporter.

1. A. Minutes.

The minutes of the meeting of April 13, 2012, as previously distributed, were unanimously approved, with the correction that the meeting was held in the Supreme Court conference room, Montpelier.

B. Status of Proposed Amendments.

Professor Wroth reported that

1. The Committee's proposal abrogating and replacing V.R.F.P. 7 and adding V.R.F.P. 7.1 to revise provisions concerning representation by attorneys and guardians ad litem in proceedings under V.R.F.P. 4 and 9, and adding V.R.F.P. 9(l) to implement 33 V.S.A. §§ 6931 *et seq.*, concerning petitions for relief of a vulnerable adult as defined in 33 V.S.A. § 6902(14) from abuse, neglect, or exploitation, were transmitted to the Court for circulation to the bar in the Committee's 2010 Annual Report, dated June 4, 2011. The proposed amendments were circulated on March 22, 2012, with comments due by May 21, 2012. See [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDAmendmentstoVRFC7_7.1_9\(l\).pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDAmendmentstoVRFC7_7.1_9(l).pdf). Comments received were previously distributed. See agenda item 2.

2. The Committee's proposed amendments to V.R.F.P. 4 (b)(2) to provide a simplified method of waiver of service in Family Division cases in lieu of the incorporation of V.R.C.P. 4(l), and to V.R.F.P. 14(d) to add "or other good cause" to the grounds on which the court may waive litigant education program attendance requirements, as proposed in the Committee's 2011 Annual Report dated December 13, 2011, and recommended at the April 13 meeting for promulgation as circulated, were promulgated on May 30, 2012, effective July 30, 2012. See [http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRF4\(b\)\(2\)\(A\)and\(B\)and14\(d\).pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRF4(b)(2)(A)and(B)and14(d).pdf).

3. Amendments to V.R.C.P. 77(d), V.R.E.F. 3(b) and (c), and A.O. 41 and proposed new Administrative Orders Nos. 44 and 45, recommended by the Special Committee on Rules for Electronic Case Filing to facilitate development of a statewide practice of requiring court notices to be sent electronically pursuant to directives to be issued by the Court Administrator for specific units or divisions of the Superior Court as they develop the capability for electronic delivery, were promulgated on May 30, 2012, effective July 30, 2012. See

[http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRCP77\(d\)andVREF3\(b\)and\(c\).pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRCP77(d)andVREF3(b)and(c).pdf);
<http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATED%20AO41%20sec7.pdf>;
<http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDAO44.pdf>;
<http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDAO45.pdf>.]

2. Review of Comments on Proposals to Amend V.R.F.P. 7 and to Add V.R.F.P. 7.1 and 9(I).

The Committee reviewed comments on the proposals abrogating and replacing V.R.F.P. 7 and adding V.R.F.P. 7.1 concerning representation of minors by attorneys and guardians ad litem. See agenda item 1.B.1. In response to the concern that proposed V.R.F.P. 7.1 would impose delays and other obstacles in dealing with a child witness not a subject of the proceeding, Committee members noted that proposed Rule 7.1(b) was virtually identical to existing Rule 7(e)(2), which it replaced. The provision in the new rule requiring permission to be sought only makes explicit the necessary implication of the former rule and gives the parties and the court flexibility as to how and when the question should be addressed. The provisions of subdivisions (c) and (d) concerning the appointment and role of a guardian if one is appointed are added for clarity and consistency with proposed Rule 7(e) and (f), do not affect the discretion concerning appointment that the court has under existing Rule 7(e)(2), and should not increase the number and cost of appointments.

In response to concerns that proposed revised Rule 7 would change and minimize the role of guardians ad litem, Committee members noted that Rule 7 applies only to proceedings under Rules 4 and 9 for divorce, parentage, and relief from abuse, in which guardians ad litem in many instances were untrained. The guardianship provisions of Rule 6 applicable to CHINS and delinquency proceedings under Rules 1 and 2, in which trained guardians ad litem are relied upon, continue to apply. In general, Committee members agreed that divorce and RFA proceedings would benefit from the tighter structure and greater clarity of the new rule and that no significant decline in the number of guardians available was anticipated as a result of its adoption.

In further consideration of proposed revised Rule 7, Committee members suggested that the provision of Rule 7(d)(1) requiring the court to appoint an attorney and guardian ad litem in determining whether to allow a child who is a subject of the proceeding to testify could impose unnecessary delays and burdens in certain instances—for example, a 17-year old minor pro se plaintiff in an RFA action against a non-family member. It was further noted that 15 V.S.A. § 594(b) requires appointment of an attorney for a child in a divorce proceeding before the child may be called as a witness but is silent as to appointment of a guardian ad litem. On motion duly made and seconded, after discussion, it was voted unanimously that Rule 7(d)(1) should be revised to provide that in cases under Rule 4 the court shall appoint an attorney and may appoint a guardian ad litem. On motion duly made and seconded, after discussion, it was voted, 8 in favor, 3 opposed, that Rule 7(d)(1) should also be revised to provide that in cases under Rule 9 the court may appoint an attorney and/or a guardian ad litem.

On motion duly made and seconded, there being no discussion, it was voted unanimously that V.R.F.P 7 and 7.1 should be recommended to the Court for promulgation as circulated, with the previously adopted revisions of V.R.F.P. 7(d)(1). Professor Wroth agreed to revise the Reporter's Notes to clarify the matters discussed concerning Rule 7.1 and to suggest factors to be considered by the court in exercising its discretion under Rule 7(d)(1) as revised.

Chairwoman Racht reported that no comments on proposed V.R.F.P. 9(l) had been received. On motion duly made and seconded, there being no discussion, it was voted that proposed V.R.F.P. 9(l) should be recommended to the Court for promulgation as circulated.

3. Required Mediation in Domestic Cases.

Chairwoman Racht reported that she had been unable to communicate with the Court Administrator and the Supreme Court to determine the feasibility of funding to establish a properly supervised system of required qualifications and professional training for mediators to be appointed if a rule requiring mediation in Family Division cases were adopted. Accordingly, it was agreed to defer consideration of this item to 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. Professor Wroth called the Committee's attention to the recently promulgated rule amendments and orders to facilitate electronic delivery of court notices that could be made applicable in some or all Family Division units, as described in agenda item 1.B.3.

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 June 18, 2012, Draft II of an amendment to V.R.F.P. 4(b)(1)(A) intended to address issues raised at the April meeting. In discussion, it was agreed that the rule should apply only to previously appointed general guardians and that "the best interest of the plaintiff" was an inappropriate additional standard. Professor Wroth agreed to provide a new draft for the next meeting.

6. Proposed Amendment of V.R.F.P. 1 to Comply with Federal Requirements.

The Committee considered the amendment of V.R.F.P. 1(b) and 2(b) to require inclusion of race and ethnicity data in petitions in juvenile cases, as requested in a June 12, 2012, memorandum of Theresa Lay-Sleeper of DCF Children and Family Council for Prevention Programs and a July 11, 2012, memorandum of Administrative Judge Davenport. Vermont is at risk of losing federal funding under the Juvenile Justice Delinquency Prevention Act for failing to collect such data and administrative problems are also caused by the failure. Professor Wroth

agreed to provide draft amendments addressing the problem for the next meeting.

7. Reorganization of V.R.F.P. 4.

As previously agreed, this item was deferred until a subsequent meeting at which it could be addressed in full.

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

The Committee considered the request in Judge Davenport's July 11 memorandum 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. In discussion, other related problems were noted with the provision, including that the PATH program no longer carried that name and was not the only source of public assistance; that amendment of the complaint was an impractical and often ignored method of updating a party's public assistance status; and that certified mail was an unnecessarily cumbersome way of giving notice of the action or change of status to the Office of Child Support. Ms. Arnell, Ms. Frost, and Magistrate Hoyt agreed to serve as a subcommittee to present a draft of appropriate amendments at the next meeting.

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

The Committee considered the request in Judge Davenport's July 11 memorandum that the requirement of V.R.F.P. 8(g) 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 eliminated as inappropriate for magistrate appeals. Professor Wroth agreed to prepare a draft addressing the request for the next meeting.

Next Meetings.

It was agreed that the Committee would meet at 1:30 p.m. on Friday, November 16, 2012, at Vermont Law School to consider all pending matters except the reorganization of Rule 4, and that Rule 4 would be discussed at a meeting primarily for that purpose to be held from 9:30 a.m. until 2:00 p.m. on January 25, 2013, at the law school.

There being no further business, the meeting was adjourned at 4:30 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter