

VERMONT SUPREME COURT
Advisory Committee on Rules for Family Proceedings
2009 Annual Report
December 7, 2009

The Committee submits this report to the Supreme Court pursuant to Administrative Order No. 29, § 3. This report covers the Committee's activities since its last annual report submitted to the Court on October 1, 2008. Since that report, the Committee has met four times—on November 14, 2008, and April 17, August 28, and December 4, 2009—to consider proposals to amend the Vermont Rules for Family Proceedings, the Vermont Rules of Appellate Procedure, and related administrative orders. During the year, Christine Speidel was appointed to replace Katherine Berkman Spence, who had resigned because she had left the employment of Vermont Legal Aid. Hon. Cortland T. Corsones was appointed to replace Hon. Christina Reiss, who had resigned because she was nominated to the federal bench. Lane Dunn replaced Jill Richard as representative of the Vermont Network against Domestic and Sexual Violence.

In its order of November 12, 2008, the Supreme Court promulgated the Committee's recommended amendments adding V.R.F.P. 1(j), effective January 12, 2009, to provide a procedure governing withdrawal of an admission of delinquency comparable to V.R.Cr.P. 32(d), and amending V.R.F.P. 3(a)(3), effective on November 12, 2008, to address editorial concerns raised by the Legislative Committee on Judicial Rules concerning a previously promulgated amendment. *See* [http://www.vermontjudiciary.org/rules/Promulgated/VRFP1\(j\)and3\(a\)\(3\).Promulgated.pdf](http://www.vermontjudiciary.org/rules/Promulgated/VRFP1(j)and3(a)(3).Promulgated.pdf). These amendments were reviewed by the Legislative Committee on Judicial Rules on December 8, 2008, without comment.

Emergency amendments to V.R.F.P. 1-3, 6, 12 to implement 33 V.S.A. chs. 51-53 as enacted by Act 185 of 2007 (Adj. Sess.), effective January 1, 2009, were transmitted to the Supreme Court on November 7, 2008, and promulgated on December 17, 2008, effective January 1, 2009, with a direction that the Advisory Committee report on any comments received by September 30, 2009. *See* <http://www.vermontjudiciary.org/rules/Promulgated/VRFP-Act185Changes.PROMULGATED.pdf>. These amendments were reviewed by the Legislative Committee on Judicial Rules on January 14, 2009, without comment. No other comments having been received, the Committee will recommend by separate letter that these amendments be made permanent.

Emergency amendments to A.O. 38, allowing video conferencing on a case-by-case basis as well as a county-by-county basis, in order to reduce the cost of transporting lodged defendants in the face of economic exigencies, were promulgated by the Court on December 17, 2008, effective January 1, 2009, with a direction that the Advisory Committee report on any comments received by September 30, 2009. *See* [http://www.vermontjudiciary.org/rules/Promulgated/A.O.38amendment PROMULGATED.pdf](http://www.vermontjudiciary.org/rules/Promulgated/A.O.38amendment_PROMULGATED.pdf). These amendments were reviewed by the Legislative Committee on Judicial Rules on January 14, 2009, without suggested changes. No other comments having been

received, the Committee will recommend by separate letter that these amendments be made permanent.

Administrative Directive No. 26 was amended January 13, 2009, effective on that date, to provide amended time guidelines for juvenile docket case processing. *See* <http://www.vermontjudiciary.org/rules/Promulgated/26.juvenilecourtcasedispositionguidelines.amendedjan09FINAL.pdf>.

Emergency amendments to V.R.A.P. 3(d), 8(c)(2), 10(b)(7), and 26(b) and (d) and A.O. 4, § 4(c)(1). to implement 33 V.S.A. chs. 51-53 as enacted by Act 185 of 2007 (Adj. Sess.), effective January 1, 2009, were promulgated on June 17, 2009, effective May 28, 2009, with a direction that the Advisory Committee report on any comments received by September 30, 2009. *See* http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDEMERGENCYvrap3_d_8_c_2_10_b_7_26_b_d_ao4_c_1_-2.pdf. No comments having been received, the Committee will recommend by separate letter that these amendments be made permanent.

The following amendments were circulated for comment on November 21, 2008, with comments due on January 26, 2009: V.R.F.P. 4(b)(2)(B) (clarify procedure for scheduling hearing or case manager's conference in cases involving minor children and extend time periods in which hearing or conference is to be held, consistent with current practice); V.R.F.P. 4(g)(1) (abrogated consistent with proposed Rule 17); V.R.F.P. 9(a)(3) (allow depositions in relief from abuse proceedings only by order of court on showing of good cause); V.R.F.P. 15 (permit lawyers to enter limited appearances for *pro se* clients in certain cases in Family Court); V.R.F.P. 17 added to incorporate the provisions of V.R.F.P. 4(g)(1) for testimony by telephone, which would be abrogated, and make them applicable in all Family Court actions. *See* [http://www.vermontjudiciary.org/rules/proposed/VFFP4\(b\)\(2\)\(B\)-4\(g\)\(1\)_9\(a\)\(3\)_15_17PROPOSED.pdf](http://www.vermontjudiciary.org/rules/proposed/VFFP4(b)(2)(B)-4(g)(1)_9(a)(3)_15_17PROPOSED.pdf). Comments received from the Legislative Committee on Judicial Rules and others were considered by the Advisory Committee on April 17, 2009. By letter of November 2, 2009, the Committee recommended these amendments to the Supreme Court for promulgation as circulated or with appropriate revisions reflecting comments received. By separate letter the Committee will recommend a revised version of its previously recommended new V.R.F.P. 17 intended to address concerns raised by the Court by the version originally submitted.

The remainder of this report summarizes the Committee's activities under two headings: I. Matters not to be considered further at this time. II. Matters remaining on the Committee's agenda.

I. MATTERS NOT TO BE CONSIDERED FURTHER AT THIS TIME

The following items have been dropped from the Committee's agenda and will not be considered further unless consideration is requested by the Court or another committee:

1. It was suggested that the appearance *pro hac vice* provisions of V.R.F.P. 15(e) should be made expressly applicable to delinquency proceedings under V.R.F.P. 1. The Committee determined that no action was necessary on this matter. V.R.Cr.P. 44.2(b), which is virtually identical to V.R.F.P. 15(e), presently applies to proceedings under V.R.F.P. 1 by virtue of V.R.F.P. 1(a)(2) and (3). See Reporter's Notes to V.R.F.P. 15 (1996).

2. It was suggested that the Rules address the problem that arises because retirement fund administrators may decline to honor a Qualified Domestic Relations Order (QDRO) in which the litigants' social security numbers have been redacted as required by V.R.C.P. 5(g) in the absence of a specific request from the court. Recognizing both the need for SSNs for QDRO purposes and the requirements for redaction of SSNs found in the Public Access Rules and recent legislation addressing identity theft issues, the Committee voted to recommend to the Civil Rules Committee that it consider an amendment to V.R.C.P. 5(g) adding "or to the extent required by law" at the end of the subdivision.

3. V.R.C.P. 3.1(b). The Civil Rules Committee has withdrawn its recommendation of a proposed amendment of V.R.C.P. 3.1(b) to provide for partial payment of entry and service fees on a sliding scale. Accordingly, the Family Rules Committee will no longer consider this proposal.

II. MATTERS REMAINING ON THE COMMITTEE'S AGENDA

The following matters remain on the Committee's agenda for further consideration:

1. V.R.F.P. 7. The Committee will continue to review V.R.F.P. 7 concerning representation of minors by guardians *ad litem* in proceedings under V.R.F.P. 4 and 9.

2. V.R.F.P. 9(j). The Committee will continue to consider the need for amendments of V.R.F.P. 9, including amendments of Rule 9(f)(j) to address issues in proceedings for protection of vulnerable adults pursuant to 33 V.S.A. § 6931 *et seq.*

4. Form 228. The Committee will review the recommendation of the Civil Rules Committee that substantial amendments to clarify Court Administrator's Form 228 be proposed.

(5) Required Mediation in Family Court. The Committee will continue to consider the question whether mediation may be or should be required in Family Court.

(6) Nominal Filing Fee for Parentage and Divorce Cases. The Committee will consult with the Family Court Oversight Committee on the question whether a nominal filing fee should be required for post-judgment motions in parentage and divorce proceedings and other situations.

(7) Family Oversight Committee Form 813 Proposal. The Committee will consider whether the proposal of the Family Court Oversight Committee to divide Form 813 into separate parts for income and expenses and for property would require a rules change.

(8) Electronic Filing. The Committee will review any proposals by the Special Advisory Committee on Electronic Filing and the Electronic Case File that affect proceedings in Family Court.

In closing, the Committee and the Reporter wish to thank all the members of the Vermont bench and bar, the members of the Legislative Committee on Judicial Rules, and members of the public who have participated in the rule-making process through their thoughtful suggestions and comments; Hon. Christina Reiss and Katherine Berkman Spence, Esquire, for their long service as members of the Committee; and former Court Administrator Lee Suskin, Deb Laferriere, Larry Abbott, and other court administrative personnel for their continuing assistance.

Respectfully submitted,

Jody Racht, Chair

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