

STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2023

Order Promulgating Amendments to Rules 1(a)(1) and 17 of the Vermont Rules for Family Proceedings

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 1(a)(1) of the Vermont Rules for Family Proceedings be amended as follows (new matter underlined):

RULE 1. PROCEDURE FOR JUVENILE DELINQUENCY PROCEEDINGS

(a) **Applicability of Rules to Juvenile Proceedings.**

(1) *In General.* The Rules of Criminal Procedure shall apply to all delinquency proceedings commenced pursuant to Chapters 51 and 52 of Title 33 of the Vermont Statutes Annotated or transferred from other courts pursuant to 33 V.S.A. § 5203 except as otherwise provided by this rule. References to an information or an indictment shall be deemed references to the petition filed under Chapter 52. In addition, Rule 43.1 of the Vermont Rules of Civil Procedure shall apply to remote proceedings as set forth in Rule 17.

Reporter's Notes—2023 Amendment

Vermont Rule for Family Proceedings 1(a)(1) is amended to make V.R.C.P 43.1 applicable to delinquency proceedings for the purposes of remote proceedings under V.R.F.P. 17.

2. That Rule 17 of the Vermont Rules for Family Proceedings be amended as follows (new matter underlined; deleted matter struck through):

RULE 17. REMOTE AND HYBRID PROCEEDINGS WITH TESTIMONY OR AND PARTICIPATION BY VIDEO OR AUDIO CONFERENCE

(a) **Divorce, Annulment, ~~and~~ Legal Separation, and Parentage.** Rule 43.1 of the Vermont Rules of Civil Procedure applies in all proceedings under Rules 4, and 8, ~~and 9~~ of these Rules.

(b) **Children in Need of Care or Supervision; and Termination of Parental Rights.** Rule 43.1 of the Vermont Rules of Civil Procedure applies to status conferences and pretrial conferences in proceedings under Rules 2 and 3 of these Rules. All other proceedings under Rules 2 and 3 will be in person except that for good cause based on the factors in V.R.C.P. 43.1(h) the court may permit a particular party, counsel, witness, guardian ad litem, or other person to participate by audio or video conference on its own initiative under V.R.C.P. 43.1(d)(1)(B), or in response to a motion or stipulation filed pursuant to V.R.C.P. 43.1(d)(2). The testimony of a party may not be taken by video or audio conference without that party's consent.

(c) Juvenile Delinquency and Youthful Offender.

(1) Status Conferences and Pretrial Conferences. V.R.C.P. 43.1 applies to status conferences and pretrial conferences in proceedings under V.R.F.P. 1 and 1.1. Remote participation satisfies the attendance requirement under V.R.F.P. 1(e).

(2) All Other Proceedings. All other proceedings V.R.F.P. 1 and 1.1 will be in person except that for good cause based on the factors in V.R.C.P. 43.1(h) the court may permit a particular party, counsel, witness, guardian ad litem, or other person to participate by audio or video conference on its own initiative under V.R.C.P. 43.1(d)(1)(B), or in response to a motion or stipulation filed pursuant to V.R.C.P. 43.1(d)(2). Any remote witness testimony allowed in a merits proceeding will be by video conference and must be in accordance with the provisions of V.R.Cr.P. 26.2.

(d) Mental-Health Proceedings. Rule 43.1 of the Vermont Rules of Civil Procedure applies in hearings for involuntary treatment under 18 V.S.A. § 7615, for continued treatment under 18 V.S.A. § 7621, and for involuntary medication under 18 V.S.A. § 7625, except that such hearings will be remote unless a party reasonably in advance of a hearing requests or the court on its own initiative orders an in-person hearing.

~~(d)~~ (e) Minor Guardianship Proceedings. Rule 43.1 of the Vermont Rules of Civil Procedure applies in all minor guardianship proceedings transferred from the Probate to the Family Division under 4 V.S.A. § 455 and 14 V.S.A. § 2624(b).

(f) Abuse Prevention. All proceedings under 15 V.S.A. §§ 1101-1115, will be hybrid unless upon a party's request or on the court's own initiative the court orders participation by a particular method: in person or by video or audio conference. Requests by a party need not comply with V.R.C.P. 7 but must be served pursuant to V.R.C.P. 5.

(g) All Other Proceedings. V.R.C.P. 43.1 applies to all other proceedings not specifically addressed in this rule over which the Family Division has jurisdiction under 4 V.S.A. § 33.

Reporter's Notes—2023 Amendment

Vermont Rule for Family Proceedings 17 is amended to update its provisions concurrent with changes to V.R.C.P. 43.1. Rule 17 as originally adopted in 2009 authorized testimony by telephone in family division proceedings. The rule was amended in 2019 concurrent with the adoption of V.R.C.P. 43.1, which addressed appearance by video and audio conference generally. The 2019 revision of V.R.F.P. 17 incorporated V.R.C.P. 43.1 for several types of proceedings in the family division but did not include delinquency proceedings under V.R.F.P. 1 or youthful offender proceedings under V.R.F.P. 1.1.

V.R.F.P. 17(a) is amended to clarify that V.R.C.P. 43.1 applies in parentage proceedings in addition to the existing named proceedings under V.R.F.P. 4 (divorce, annulment, and separation).

V.R.F.P. 17(b) is amended to modify the application of V.R.C.P. 43.1 in juvenile matters. V.R.C.P. 43.1 uses different standards for evidentiary and nonevidentiary proceedings. This distinction is not appropriate for juvenile matters where certain proceedings, although not evidentiary under the definition in V.R.C.P. 43.1, involve important matters. Thus, amended subdivision (b) provides that only status conferences and pretrial conferences incorporate Rule 43.1. Because these are nonevidentiary, they do not require good cause to be remote or hybrid. The method of participation for these hearings may also be determined by a standing order pursuant to 43.1(c)(1)(A). Under the amended language, all other proceedings, including proceedings that are frequently nonevidentiary such as permanency reviews, must be in person unless in response to a motion or on its own initiative the court finds good cause to allow participation by video or audio conference. In addition, the rule specifies that a party's testimony may not be taken by video or audio conference without the party's consent.

V.R.F.P. 17(c) adds a new provision that extends the coverage of V.R.F.P. 17 to include juvenile delinquency and youthful offender proceedings under V.R.F.P. 1 and 1.1. As in subdivision (b), it distinguishes between status conference/pretrial proceedings and all other proceedings. In paragraph (c)(1), status conferences and pretrial proceedings are subject to the provisions of V.R.C.P. 43.1. In paragraph (c)(2), all other proceedings including other nonevidentiary proceedings must be in person unless in response to a motion or on its own initiative the court finds good cause to allow participation by video or audio conference. A further distinction is made for witness testimony at a merits hearing. The testimony must be by video conference and is subject to the requirements of V.R.Cr.P. 26.2 including written notice at least 14 days in advance, V.R.Cr.P. 26.2(c), an express waiver by the youth on the record regarding applicable confrontation rights, V.R.Cr.P. 26.2(d), and the manner in which the video conference testimony must be taken, V.R.Cr.P. 26(d). The application of the pertinent criminal rule to delinquency and youthful offender proceedings is consistent with the general rule in V.R.F.P. 1(a)(1) that the Rules of Criminal Procedure apply to delinquency proceedings unless specifically made not applicable under V.R.F.P. 1(a)(2) or modified under V.R.F.P. 1(a)(3).

V.R.F.P. 17(d), formerly subdivision (c), regarding mental-health proceedings, is amended to provide that hearings for involuntary treatment, continued treatment, and involuntary medication are

scheduled as remote proceedings. However, if a party reasonably in advance of a hearing requests, or the court on its own initiative orders, the proceedings will be in-person. The intent of the change is that a request by a party for an in-person proceeding is granted automatically, i.e., the request is not a motion that the court must rule upon. Likewise, the court may, on its own initiative, schedule an in-person hearing.

V.R.F.P. 17(e), formerly subdivision (d), pertaining to minor guardianship proceedings is unchanged.

New subdivision (f) governs hearings in abuse-prevention hearings under V.R.F.P. 9. The rule adopts the identical language governing stalking proceedings under new V.R.C.P. 43.1(k). Both rules provide that proceedings will be hybrid unless upon a party's request or the court's own initiative the court orders participation by a particular method. Although the rule allows the parties to file motions for participation by a particular method, the courts must manage these motions to avoid their use for purposes of harassment, intimidation, or delay. The rule states that a request by a party need not comply with V.R.C.P. 7, governing the content of motions, but must be served pursuant to V.R.C.P. 5. This modification recognizes the need for flexibility in these proceedings.

New subdivision (g) incorporates V.R.C.P. 43.1 into other proceedings in the family division that are not otherwise specifically addressed in the rule.

2. That these amendments be prescribed and promulgated, effective on October 2, 2023. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 10th day of July, 2023.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice