

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS**

**Minutes of Meeting on TEAMS
October 25, 2024**

The meeting was called to order by Judge McDonald-Cady. Present were Committee members: Judge Jennifer Barrett, Judge Kathryn Kennedy, Margaret Villeneuve, Rachel Strecker, Laura Bierley, Marshall Pahl, Emily Zukauskas, Nate Hine, and Susan Ellwood. Also present was ex-officio member, Eddie Poff, from the Vermont Network Against Domestic Violence. Judge Amy Davenport (ret.) was present as the Reporter.

1. New Members: The Committee welcomed Emily Zukauskas, Deputy State’s Attorney in Windsor County, who was recently appointed by the Vermont Supreme Court to replace Kristin Gozzi. Judge McDonald-Cady reported that the Supreme Court has also appointed Sharon Gentry to replace the vacancy caused by Alycia Sanders’ resignation. Attorney Gentry will hopefully be able to join us at our meeting in January. Jessica Semen has also recently resigned following her appointment as a Magistrate. Her position on the Committee will be filled by a designee from the Agency of Human Services.
2. Approval of draft minutes of the meeting of July 19, 2024: the draft minutes were unanimously approved.
3. Status of proposed amendments:
 - a. Proposed Amendment to V.R.F.P. 1(i)(2)(B) and (7) related to respectful language: reviewed favorably by the Legislative Committee on Judicial Rules (LCJR) on June 19 and October 16, 2024. Promulgated August 12, 2024, effective 1/1/25.
 - b. Proposed Amendment to Remove V.R.F.P. 15(i) related to eCabinet registration number requirement: Promulgated August 12, 2024, reviewed favorably by LCJR on October 16, 2024, effective 1/1/25.
 - c. Rules related to Special Immigration Status for Vulnerable Non-Citizen Children (SIJS): See 4 V.S.A. § 33(18), 4 V.S.A. § 35, 14 V.S.A. § 3098. S.163/Act 98 substantially amended 14 V.S.A. § 3098 and added a new section related to children in juvenile proceedings. Proposed rules were out for comment until October 14, 2024. No comments were received. Committee voted unanimously to recommend to the Supreme Court that the rules be promulgated.
4. Amendment to Rule 9 Related to Complaints for Extreme Risk Protection: At the Committee’s October meeting, Attorney Ellwood on behalf of the Family Oversight Committee, requested that the Committee consider a rule to protect the confidentiality of contact information applicable to Extreme Risk Protection Orders (ERPO). 13 V.S.A. § 4052 provides that jurisdiction for the issuance of an ERPO lies with the Family Division. 13 V.S.A. § 4052 provides that proceedings for the issuance of an ERPO “be in accordance with Vermont Family Rules.” The Committee discussed the draft rules submitted by the ERPO subcommittee (Judge McDonald-Cady, Rachel Strecker, Sue Buckholz, Laura Bierley, Kristin Gozzi and Judge Davenport). In particular, the Committee discussed two issues highlighted by the ERPO Subcommittee: (1) Whether a family/household member who requests an emergency temporary order should continue receive notice of hearings and orders

once the case has been transferred to the State's Attorney; and (2) Whether a family/household member should have the opportunity to ask for a hearing and/or submit additional documentation when their request for an emergency order is denied as is currently the rule for RFAs. With respect to the first issue, there was general agreement that the family/household member should continue to receive notice of hearing and court orders following transfer to the State's Attorney. Judge Davenport to research whether this is possible in Odyssey. With respect to the second issue, opinion was mixed. It was agreed that the matter be put over to the next meeting for further discussion.

5. Amendment to Rule 4.2(e) Related to Venue for Post-Judgment Motions: The Court Users Group (CUG) and the Change Advisory Board for the Court's IT Division has requested that the Family Rules Committee consider an amendment to the venue provisions for post-judgment motions to accommodate changes in the system due to the advent of the Odyssey case management system. The current rule allows a litigant to file a motion in a county other than the county where the original judgment was rendered (or more properly the county where the most recent final judgment was issued) unless the opposing party still resides in the original county or neither party is a resident of the state. The framework of the new e-filing system requires a change of venue to be filed in the county where the most recent final judgment was issued, in order for a case to move to another county. The current rule is thus unworkable. The Committee reviewed a draft amendment submitted by the post judgment venue subcommittee (Mag. Peterson, Maggie Villeneuve and Judge Davenport). The Committee unanimously approved a motion requesting that the Supreme Court send the amendment out for comment. Further, in light of the delay and backlogs, the Committee voted to request that the Supreme Court promulgate the amendment as an emergency rule while the proposed amendment is out for comment.
6. Applicability of V.R.Cr.P 41.1 Non-Testimonial Identification (NTO) in Juvenile Proceedings: Marshall Pahl reported that the Criminal Rules Committee has referred a problem with the application of V.R.Cr.P. 41.1 to delinquency proceedings to the Family Rules Committee. V.R.Cr.P. 41.1 is not one of the rules listed in V.R.F.P. 1(a)(1) or (2), which means that under the Family rules it is applicable to juvenile proceedings. However, because the definition of "offense" in V.R.Cr.P. 41.1(m)(1) does not specifically include delinquencies, some judges have interpreted the criminal rule as precluding the issuance of an NTO in a juvenile case. A subcommittee from Family Rules was formed at the July meeting. Members from Family Rules include Judge McDonald-Cady, Marshall Pahl, Emily Zukauskas and Judge Davenport as the Reporter. Judge Davenport reported that the Criminal Rules Committee will consider naming its subcommittee members when it meets in November.
7. Inconsistency between 15 V.S.A. § 783 and V.R.F.P. 4.2(f) related to wage withholding. It was agreed to put this matter over until the Committee's next meeting in January.
8. New Business
 - a. Amendment to Rule 1 to allow the issuance of temporary conditions of release in delinquency proceedings prior to preliminary hearing. Rule 1 does not currently authorize the issuance of conditions of release prior to a preliminary hearing. V.R.Cr.P. 5(b) which permits the issuance of conditions of release prior to a preliminary hearing upon the release of persons who are arrested, is not applicable

to delinquency proceedings pursuant to Rule 1(a)(1). The issue is whether to amend Rule 1 to allow for the issuance of conditions of release prior to a preliminary hearing. Attorney Pahl noted that while there is a need to allow conditions of release to be put in place prior to preliminary hearings, it should be done in such a way as to maintain confidentiality and avoid excessive use of VCR charges. It was agreed to appoint a subcommittee to work on a draft. Volunteers for the subcommittee to include: Marshall Pahl, Emily Zukauskas, Ashley Harriman and Nate Hine. Judge Davenport will join as Reporter.

- b. Amendment to Rules 2 and 3 related to the testimony of children. Currently, the rules for procedure in CHINS and TPR cases do not address the conditions under which children may testify. The Attorney General’s Office has drafted a proposal to amend Rules 2 and 3. A subcommittee was formed to review the draft proposal. Volunteers include: Ashley Harriman, Marshall Pahl, Judge Kennedy and Nate Hine. Judge Davenport will join as Reporter.
 - c. Amendment to Rule 17(f) related to hybrid proceedings. Currently Rule 17(f) requires that abuse prevention proceedings be hybrid unless court orders court participation by another method. The Committee discussed a proposal to expand this provision to include Vulnerable Adult Protection matters brought under 33 V.S.A. §§ 6932-6942. There appeared to be general consensus that the vulnerable adult protection statutes should be included. Judge Davenport to draft an amendment for the Committee’s consideration in January.
9. Future Projects: The following projects are on hold to be revisited as work allows:
- a. Proposal to review Family Rules for respectful language: Given the degree of work before the Committee at this time, it was agreed to postpone further discussion of this issue.
 - b. Amendment to Rule 4.2(f) to require an automatic scheduling of a child support hearing when the extent of parent-child contact is modified: Rachel Strecker raised this issue at the January meeting. It was agreed that the Committee should consider an amendment that would require an automatic child support hearing whenever a change to parent child contact substantially increases or decreases the amount of contact that the non-custodial parent has with the child. The difficulty will be to define a “substantial change.” The Committee agreed to form a subcommittee to work on this issue. The subcommittee consists of Mag. Peterson, Jessica Semen, Rachel Strecker and Judge Davenport as Reporter.
10. 2025 Meeting Schedule: The Committee agreed to change the January meeting date to January 31. The meeting dates in 2025 are: January 31, April 25, July 18 and October 24.
11. The meeting adjourned at 3 p.m.