

FINAL

VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES FOR FAMILY PROCEEDINGS

Minutes of Meeting on TEAMS  
January 31, 2025

The meeting was called to order by Judge McDonald-Cady. Present were Committee members: Judge Jennifer Barrett, Judge Jiron, Magistrate Barry Peterson, Judge Kathryn Kennedy, Margaret Villeneuve, Rachel Strecker, Laura Bierley, Kyle Hatt, Ashley Harriman, Emily Zukauskas, Sharon Gentry, Sue Buckholz, Nate Hine, and Susan Ellwood. Also present were ex-officio members, Justice Nancy Waples from the Vermont Supreme Court and Eddie Poff, from the Vermont Network Against Domestic Violence. Judge Amy Davenport (ret.) was present as the Reporter.

1. New Members: The Committee welcomed two new members recently appointed by the Vermont Supreme Court: Attorney Sharon Gentry and Attorney Kyle Hatt. Sharon Gentry replaces Alycia Sanders and Attorney Kyle Hatt replaces Jessica Seamen as the representative from the Agency of Human Services Office for Child Support.
2. Approval of draft minutes of the meeting of October 25, 2024: the draft minutes were unanimously approved.
3. Status of proposed amendments:
  - a. Rules related to Special Immigration Status for Vulnerable Non-Citizen Children (SJIS): See 4 V.S.A. § 33(18), 4 V.S.A. § 35, 14 V.S.A. § 3098. S.163/Act 98 substantially amends 14 V.S.A. § 3098 and adds a new section related to children in juvenile proceedings. The Supreme Court promulgated the proposed rule on November 4, 2024. Rules became effective January 3, 2025.
  - b. Amendment to Rule 4.2(e) Related to Venue for Post-Judgment Motions: Pursuant to the Committee's request, the Supreme Court promulgated the proposed amendment to Rule 4.2(e) related to venue for post-judgment motions on November 6, 2024, as an emergency rule. The deadline for comments on the emergency rule was January 6, 2025. Judge McDonald-Cady reported that she had received no written comments. The Committee discussed an issue raised by Kyle Hatt regarding whether a moving party should have the ability to request a venue change to the county where the non-moving party resides if the moving party's address is confidential and the parties both reside in Vermont in counties other than the county that last heard the matter. After considerable discussion, the Committee agreed to delay a request to the Supreme Court to promulgate the amendment as a final rule while a small subcommittee (Kyle Hatt, Maggie Villeneuve, Judge McDonald-Cady and Judge Davenport) considers a possible amendment to be presented to the full Committee at the April meeting. It was noted that the current amendment would continue to be in force as an emergency rule during this period.
4. Proposed Rule for Extreme Risk Protection Orders (ERPO): Discussion on this topic was delayed until the end of the meeting. See #11 below.
5. Applicability of V.R.Cr.P. 41.1 (Non-Testimonial Orders) to Juvenile Proceedings. The Committee has proposed a joint meeting with members from the Criminal Rules Committee to discuss the issues. Members from this Committee are: Judge McDonald- Cady, Marshall Pahl, Emily Zukauskas and

Judge Davenport. Judge Davenport reported that there had been no communication from the Criminal Rules Committee, and she would reach out to the Reporter in an effort to schedule a meeting.

6. Inconsistency between 15 V.S.A. § 783(c) and V.R.F.P. 4.3(b)(2)(c) related to wage withholding. Judge McDonald Cady explained that while the statute does not require a hearing unless the obligor files an objection to a petition to wage withholding, the rule requires that a hearing be scheduled within 14 days regardless of whether there is an objection or not. Judge Peterson remarked that hearings are currently always scheduled on petitions for wage withholding, but never within 14 days. The range can be anywhere from 45 days to three months depending on the county. It was agreed that the rule should align with the statute. Judge Davenport will draft an amendment to V.R.F.P. 4.3(b)(2)(f) to be reviewed by the Committee in April.
7. 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. Judge McDonald-Cady reported that the Subcommittee that was formed in October (Marshall Pahl, Emily Zukauskas, Ashley Harriman and Nate Hine) had met and was considering two issues: (1) the scope of the amendment in terms of the kinds of delinquent acts that it should apply to; and (2) the time frame between the imposition of a temporary COR and the preliminary hearing. The Committee is scheduled to meet again in February.
8. 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. Judge McDonald-Kerry reported that the subcommittee formed to review the draft proposal by the Attorney general's Office (Ashley Harriman, Marshall Pahl, Judge Kennedy and Nate Hine) has met and discussed the distinction between giving children/youth a voice and testimony from a child/youth with respect to a factually disputed issue. The subcommittee is scheduled to meet again in February.
9. 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 draft amendment to expand this provision to include Vulnerable Adult Protection matters brought under 33 V.S.A. §§ 6932-6942. The Committee voted unanimously to send the amendment to the Supreme Court with a request that it go out for comment.
10. Proposal to Amend Rule 9(c): There is a request from Judge Zonay on behalf of the trial judges to amend Rule 9(c) by deleting the last sentence which entitles a plaintiff to present evidence to the court if the court determines that the contents of the affidavit are insufficient to support an ex parte temporary order before a judge decides whether to grant or deny a temporary order. The problem with the current language is that it is unworkable. The Committee discussed an alternative approach that would allow judges to request that a Plaintiff provide additional information prior to making a decision on whether to grant or deny the request for an ex parte temporary order. There appeared to be consensus on this approach. Judge Davenport will draft language to be reviewed prior to the next Committee meeting.

11. 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.
12. Proposed Rule for Extreme Risk Protection Orders (ERPO): 13 V.S.A. § 4052 provides that jurisdiction for the issuance of an ERPO lies with the Family Division and that proceedings for the issuance of an ERPO “be in accordance with Vermont Family Rules.” The Committee continued its discussion of the draft rules submitted by the ERPO subcommittee (Judge McDonald-Cady, Rachel Strecker, Sue Buckholz, Laura Bierley, Kristin Gozzi and Judge Davenport). Specifically, the Committee discussed two issues raised at the last meeting. First, 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. There was general agreement in October that family/household members should receive notice of hearings, filings and orders after the transfer. Judge Davenport reported that she had discussed this with the Court’s IT division and Odyssey provides a special status for non-parties to receive notices from the Court. The second issue is 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, i.e. file an intent to pursue. The issue was discussed but no consensus was reached. The ERPO subcommittee will meet to review the current draft prior to the full Committee meeting in April.
13. 2025 Meeting Schedule: The meeting dates in 2025 are: April 25, July 18 and October 24.
14. The meeting adjourned at 3:43 p.m.