First Report of the Working Group to Recommend Improvements to CHINS Proceedings

December 1, 2015

William Sorrell, Attorney General, *Chair*

David Cahill, Executive Director of State's Attorneys and Sheriffs

Hon. Brian Grearson, Chief Superior Judge

Susan Hong, Guardian ad Litem, Vermont Superior Court

Ken Schatz, Commissioner for Children and Families

Matthew Valerio, Defender General

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I. The Working Group

Act 60 of the 2015 Acts and Resolves establishes "a working group to recommend ways to improve the efficiency, timeliness, and process of Children in Need of Care or Supervision (CHINS) proceedings." Act 60 § 24(a). The working group consists of six members:

- Hon. Brian Grearson, Chief Superior Judge;
- Matthew Valerio, Defender General;
- William Sorrell, Attorney General, *Chair*;
- Ken Schatz, Commissioner for Children and Families;
- David Cahill, Executive Director of State's Attorneys and Sheriffs; and
- Susan Hong, Guardian ad Litem for Chittenden County Superior Court (appointed by Judge Grearson).

See Act 60 § 24(b). The working group is directed by Act 60 to "study and make recommendations concerning" the following ten topics:

(1) how to ensure that statutory time frames are met in 90 percent of proceedings;

(2) how to ensure that attorneys, judges, and guardians ad litem appear on time and are prepared;

(3) how to monitor and improve the performance and work quality of attorneys, judges, and guardians ad litem;

(4) how to ensure that there is a sufficient number of attorneys available to handle all CHINS cases, in all regions of the State, in a timely manner;

(5) the role of guardians ad litem, and how to ensure their information is presented to, and considered by, the court;

(6) how to expedite a new proceeding that concerns a family with repeated contacts with the child protection system;

(7) whether requiring a reunification hearing would improve child welfare outcomes;

(8) how and whether to provide financial assistance to individuals seeking to mediate a dispute over a postadoption contact agreement;

(9) how and whether to change the confidentiality requirements for juvenile judicial proceedings under 33 V.S.A. chapter 53; and

(10) any other issue the working group determines is relevant to improve the efficiency, timeliness, process, and results of CHINS proceedings.

Act 60 § 24(c).

Section 24(e) of Act 60 directs the working group to provide a report on its findings and recommendations with respect to topics (1) through (5) on or before November 1, 2015, to the Joint Legislative Child Protection Oversight Committee, the House Committees on Human Services and on Judiciary, and the Senate Committees on Health and Welfare and on Judiciary. Pursuant to a request from the working group, those committees extended the deadline for this report until December 1, 2015. The working group must file a second report with respect to topics (6) through (10) by November 1, 2016. The working group "shall cease to exist on November 2, 2016." Act 60 § 24(f).

The Attorney General called the first meeting of the working group for August 10, 2015. *See* Act 60 § 24(f)(1). In light of conflicting obligations that arose for some members following the tragic deaths of a DCF social worker and three others on August 7, 2015, the working group's first meeting was rescheduled for September 10, 2015. Attorney General William Sorrell was selected as chair at that meeting. *See* Act 60 § 24(f)(2). Additional meetings were held on September 22, October 6, October 23, and November 16, 2015. Pursuant to invitations from the working group, Robert Paolini, Executive Director of the Vermont Bar Association, attended the October 23 meeting, and Emily Gould, Chair of the Vermont Bar Association's dispute resolution section, attended the November 16 meeting.

In preparing this report, the working group has been assisted by Shari Young, Manager of the Juvenile Court Improvement Program; Marshall Pahl, Supervising Juvenile Defender; Susanne Young, Deputy Attorney General; Benjamin Battles, Assistant Attorney General; Leslie Wisdom, General Counsel, Department for Children and Families; and David Kennedy, Guardian ad Litem Program Manager. Pursuant to § 24(d) of Act 60, the Attorney General's Office provided administrative and legal assistance to the working group.

II. The Participants in Abuse and Neglect Proceedings

This report makes initial recommendations that the working group believes will improve the efficiency and effectiveness of the State's legal system for

protecting children from abuse and neglect. It became clear to the group that there was not necessarily a shared common understanding across the system of every participant's role in the child protection legal process. Additionally, there are some differences in practice, interpretation, and application of existing law in proceedings around the State. Finally, a lack of continuity of judges, attorneys, social workers, and guardians ad litem throughout a proceeding can affect the timeliness and quality of a proceeding.

Abuse and neglect cases typically involve more participants than other types of proceedings. Below is a list of roles under current law and practice. The working group is not recommending any changes to existing law with respect to these roles and responsibilities at this time.

1. State's Attorneys

CHINS petitions are filed on behalf of the "State" by the State's Attorney for the county where the child who is the subject of the petition lives. The State's Attorneys represent "the people" of Vermont. DCF is defined as a "party" to these proceedings, separate from the State. Although there is collaboration between the State's Attorney and DCF workers about how a case will proceed, and discussion and assistance given in preparation for hearings, the State's Attorney does not represent DCF in a traditional attorney-client relationship. Consequently, on rare occasions, the State's Attorney may advocate in court for a position that differs from that of DCF. In that event, an Assistant Attorney General (AAG) may appear at a CHINS proceeding on behalf of DCF. State's Attorneys typically remain with a juvenile case unless a petition to terminate parental rights (TPR) is filed, at which time an AAG almost always steps in to litigate the TPR.

2. Department for Children and Families (Family Services Division)

When DCF believes that a child is in immediate danger, it will request that a State's Attorney seek an emergency care order from the court. Only a law enforcement officer or the court may remove a child from his or her home. DCF does not have that authority. When a law enforcement officer takes physical custody of a child, the officer must contact DCF and deliver the child to a location designated by DCF. The removing officer or DCF social worker provides a supporting affidavit to the State's Attorney, who then immediately requests an emergency care order from the court. Based on that request, which may be made without notice to any other party, the court will issue an emergency care order if the facts set forth in the supporting affidavit support a finding that the child's continued residence in the home is contrary to the child's welfare. Pending the issuance of an emergency care order, DCF has the authority to make reasonable decisions concerning the child's immediate placement, safety, and welfare. A temporary care hearing must be held within 72 hours of an emergency care order. It is an evidentiary hearing to determine temporary custody of the child pending disposition. It must be attended

by the child (if older than 10), the parent, the guardian ad litem, the attorney for the child, the attorney for the parent (if requested), the DCF case worker, and the State's Attorney.

In non-emergency situations, DCF is also responsible for requesting that the State's Attorney file a CHINS petition in appropriate situations. At the temporary care hearing stage, DCF is responsible for providing the court and parties with the reasons for its custodial recommendations, including DCF's history with the child and family; the need for DCF custody of the child, if applicable; information about services that could facilitate the child remaining with the custodial parent; identification and location of noncustodial parents, relatives or others with a significant relationship to the child, as well as other relevant information. DCF is also responsible for assessing the suitability of any temporary care placements for children and making recommendations regarding parent-child contact.

For children who have been placed in state custody, DCF is responsible for preparing the initial case plan.[1] DCF is also responsible for preparing the disposition case plan for all children who have been adjudicated CHINS regardless of their custodial status.[2] All disposition case plans must state a goal for how and when a child will be placed in a safe and permanent home. For disposition case plans with a permanency goal of parental reunification, DCF is responsible for monitoring the progress of the parents with the case plan and notifying interested parties (foster parents, relatives, etc.) of post-disposition hearings and the opportunity to be heard at these hearings. If the disposition sought is termination of parental rights, the Attorney General's Office represents DCF in the petition seeking termination and in all proceedings related to that petition.

Conditional custody orders are issued when the court determines the child may safely remain in the custody of the custodial parent, guardian, or other custodian (for example, a relative of the child), subject to such conditions and limitations the court determines are necessary to protect the child's welfare. Children with a conditional custody order are not in state custody. DCF is responsible for monitoring conditional custody orders imposed by the court,

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[1] For children in state custody, DCF social workers have many responsibilities outside of the court proceedings such as ensuring that the child's day-to-day needs are addressed, including the need for a safe and stable caregiver; ensuring appropriate medical care occurs; meeting the educational needs of the child; supporting foster care providers; creating safe parent-child contact opportunities; implementing court-ordered parent child contact; meeting with children and families; coordinating auxiliary supports for the child, including mental health treatment and other supports necessary for their safety and well-being; as well as many other duties. As of October 2015, there were 1,365 children in state custody, an increase of 12 percent compared to the same month last year.

[2] The required elements of a disposition case plan are set forth at 33 V.S.A. § 5316.

known as protective supervision, including by making unannounced visits to the home in which the child is residing.[3]

DCF must ensure that permanency reviews are held at least every 12 months for children in DCF custody. To that end, DCF must file with the court a notice of permanency review together with a case plan and recommendation for a permanency goal. The court must hold a permanency review hearing within 30 days of that filing. DCF is also responsible for ensuring that reasonable efforts have been made to finalize a permanency plan for the child, which may include reunification or alternative permanent living arrangements.

Finally, if there are changed circumstances that affect the disposition case plan and goal, DCF is responsible for seeking to modify the disposition order with the court.

3. Office of the Attorney General

The Office of the Attorney General represents the interests of DCF as well as the "people" of Vermont. In addition to representing DCF in TPR and appellate proceedings, AAGs act as outside general counsel to DCF. They advise the department on pending legislation, represent the department in civil and other litigation involving the department's interests, draft and review contracts, and represent the department in administrative appeals related to matters of foster care licensing, child care subsidy, child care licensing, and child protection registry use. There are currently ten full time AAGs to represent DCF around the state at TPR hearings, one half-time AAG who handles TPR appeals (and other related appeals when a State's Attorney requests assistance), and one half-time contracted attorney who provides legal services to the Springfield district office. AAGs assigned to other divisions in the Attorney General's Office also regularly handle child protection appeals in the Vermont Supreme Court as needed.

4. Office of the Defender General

The Office of the Defender General—through staff attorneys, contract counsel, and, in limited circumstances, ad hoc counsel—provides legal representation for almost all children, parents, and other non-state parties in CHINS cases from the initial hearings all the way through the appellate process. Unless a legal conflict requires a different arrangement, the children are represented by an attorney from a Defender General staff office and parents or other parties are represented by contracted conflict counsel. In addition to providing representation, the Office of the Defender General manages the budget and provides oversight and training for the entire system of public defense. Through the Juvenile Defender's office, the Defender General represents juveniles in post-

[3] In October 2015, DCF was responsible for 267 families—for a total of 504 children—with conditional custody orders in open CHINS cases.

disposition permanency hearings, provides legal consultation and advice to staff office attorneys, and provides representation to juveniles in administrative matters related to CHINS cases. There are currently 20 attorneys employed directly by the Office of the Defender General providing representation in CHINS cases, 14 attorneys in offices contracted by the Defender General to provide primary public defense services in counties without staff offices who provide representation in CHINS cases, and 66 attorneys who have contracts to provide representation in CHINS cases as conflict counsel.

5. Guardians ad Litem

Guardians ad litem are trained, unpaid, court-appointed advocates "whose goal shall be to safeguard the ward's best interests and rights" (V.R.F.P. 6(e)(1)) throughout the CHINS process until a child achieves permanency. Guardians ad litem provide critical information to attorneys and function as both a collaborator with and a check and balance to DCF. Their responsibilities include gathering information from all sources close to the child; advocating for services and collaboration; communicating with DCF and the child's attorney; and ensuring directly or through the child's attorney that the court is informed of all relevant information. Specifically, guardians ad litem accomplish this by:

- Meeting and communicating regularly with children to foster connection and understanding in order to advocate effectively for their best interests.
- Meeting or otherwise communicating with parents, other family members or caregivers, and service providers such as DCF, school staff, clinicians, therapists, and physicians.
- Advocating for necessary services and collaborative efforts between hearings and throughout the process.
- Informing appropriate parties, including DCF and the child's attorney, at any time in the CHINS process, of necessary information regarding the safety, well-being, and best interests of the child.
- Ensuring that the court is informed of all relevant information to ensure consideration of the best interests of the child either through the child's attorney or directly, in accordance with Rule 6 of the Vermont Rules of Family Proceedings.

The Vermont Guardian ad Litem Program (VTGAL) is overseen by the National Court Appointed Special Advocate Association (NCASA), which provides training materials, oversight, and quality assurance. VTGAL is currently in violation of NCASA standards in all areas, but most significantly with respect to NCASA's standards that: (i) a volunteer be assigned to no more than 2 cases or 4

children at one time (VTGAL currently has an average of 7.5 children per guardian in CHINS cases alone); and (ii) there be a full-time supervisor for every 30 volunteers (VTGAL would require 9 FTE to meet that standard. VTGAL currently has a total of 1.7 FTE "coordinators" that perform supervisory and administrative tasks across the State, leaving some counties unserved and all counties underserved; one FTE as the program manager for the State; and a .5 temporary staff person who provides administrative support to the program).

6. The Judiciary

The judge's role is to make fair decisions in a timely manner based on the information presented.

In abuse and neglect cases, the judge must assure that safe and timely permanency for children are the paramount concerns in the conduct of the proceedings. 33 V.S.A. § 5101 (a)(4). In doing so, the judge is guided by the child's best interests. The judge exercises oversight to ensure that the proceedings are fair and consistent with the legal rights of all parties. The judge has the responsibility to hold DCF accountable for seeing that the services outlined in the case plan are provided. The judge also has the responsibility to hold the attorneys accountable to provide effective legal representation. Judges need complete and accurate information in order to make well-informed decisions. Vermont trial court judges are expected to take an active role in managing the flow of litigation. Effective case flow management is critical to achieving timely permanent placements for abused and neglected children.

III. Findings and Recommendations

1. Ensuring that statutory time frames are met in 90 percent of proceedings.

Vermont law establishes a number of timelines relevant to CHINS cases.[4] A hearing and adjudication of the merits of a CHINS petition, for example, should occur within 60 days of a temporary care order (in emergency cases) or a preliminary hearing on the CHINS petition (in non-emergency cases). *See* 33 V.S.A. §§ 5313(b). A disposition order should occur within 35 days of the merits adjudication. *See* 33 V.S.A. §§ 5317(a). In addition, certain federal funds are conditioned on the State's compliance with other timelines—including that TPR petitions be filed once a child has been in state custody for 15 out the most recent 22

[4] See Exhibit 1 to this report for a complete description of relevant timelines.

months, unless there is a compelling reason not to file. *See* 45 C.F.R. § 1356.21(i)(1)(i).

The child protection system has struggled to meet the statutory timelines in abuse and neglect cases for years. For each year since 2011, the 60-day deadline for deciding the merits of a CHINS petition has been met in less than 50% of abuse and neglect cases. Similarly, the 95-day deadline for reaching disposition has been met, on average, in less than 40% of abuse and neglect cases over the same period. Moreover, recent caseload increases, largely related to Vermont's opioid addiction crisis, represent a significant obstacle to improvement. The number of new abuse and neglect cases filed has more than doubled between 2010 and 2015. Between 2014 and 2015 alone, new case filings increased by more than 30%. The opioid addiction crisis cannot adequately be addressed through CHINS litigation. Moreover, the statutory timelines in abuse and neglect cases do not correspond with the much longer timelines associated with successfully overcoming addiction. Nonetheless, the child protection system should strive, to the extent possible, to facilitate early intervention, access to treatment, and monitoring for families affected by addiction.

All parts of the child protection system are under tremendous stress and would benefit from additional resources. Even with significant additional investment, it is not realistic to expect to meet statutory time frames in 90% of cases in the near term. The working group believes, however, there are two steps that the Legislature could take that would help make the merits and disposition phases of abuse and neglect cases more efficient.

First, the Legislature could amend 33 V.S.A. § 5315 to provide that the "final decision" for purpose of appeal in a CHINS matter is the disposition order, not the decision on the merits of the CHINS petition. Under current law as interpreted by the Vermont Supreme Court, a decision on the merits that a child is CHINS must be appealed immediately or the appeal is deemed waived. *See generally In re D.D.*, 194 Vt. 508 (2013). In a single case, this can result in multiple appeals that strain attorney and court resources and delay permanency for the child. It would be more efficient if, in most cases, the decision on the merits could only be appealed after a disposition order is entered. The working group recommends the following amendment:

§ 5315. Merits adjudication

(a) At a hearing on the merits of a petition, the State shall have the

burden of establishing by a preponderance of the evidence that the child is in need of care and supervision. In its discretion, the Court may make findings by clear and convincing evidence.

(b) The parties may stipulate to the merits of the petition. Such stipulation shall include a stipulation as to the facts that support a finding that the child is in need of care and supervision.

(c) If the merits are contested, all parties shall have the right to present evidence on their own behalf and to examine witnesses.

(d) A merits hearing shall be conducted in accordance with the Vermont Rules of Evidence. A finding of fact made after a contested temporary care hearing based on nonhearsay evidence may be adopted by the Court as a finding of fact at a contested merits hearing provided that a witness who testified at the temporary care hearing may be recalled by any party at a contested merits hearing to supplement his or her testimony.

(e) If the merits are contested, the Court after hearing the evidence shall make its findings on the record.

(f) If the Court finds that the allegations made in the petition have not been established, the Court shall dismiss the petition and vacate any temporary orders in connection with this proceeding. A dismissal pursuant to this subsection is a final order subject to appeal.

(g) If the Court finds that the allegations made in the petition have been established based on the stipulation of the parties or on the evidence if the merits are contested, the Court shall order the Department to prepare a disposition case plan within 28 days of the merits hearing and shall set the matter for a disposition hearing. An adjudication pursuant to this subsection is not a final order subject to appeal separate from the resulting disposition order.

(h) The Court in its discretion and with the agreement of the parties may waive the preparation of a disposition case plan and proceed directly to disposition based on the initial case plan filed with the Court pursuant to section 5314 of this title.

Second, the Legislature could add a new section to chapter 53 of Title 33 that expressly authorizes parties to enter into, and for the courts to consider and approve when appropriate, stipulated CHINS findings and defined case plans. Such stipulated agreements would include parents in the case planning process at an early stage and thus would provide an incentive not to contest a CHINS finding. In addition to helping resolve cases more quickly, the child's best interests would be protected because stipulations would require DCF agreement and court approval. The working group recommends the following addition:

§ 5315a. Merits stipulation

(a) At any time after the filing of the petition and prior to an order of adjudication on the merits, the Court may approve a written stipulation to the merits of the petition and any or all elements of the disposition plan, including the permanency goal, placement, visitation, or services.

(b) A stipulation shall not be approved unless:

1) the Parties to the petition, as defined in §5102(22), agree to the terms of the stipulation; and

2) the Court determines that the child's, and parents', guardian's or custodian's, agreement are voluntary and that they understand the nature of the allegation and the rights which will be waived if the Court approves the stipulation and issues an order based upon the stipulation.

* * * *

The working group also believes that alternative dispute resolution procedures—such as early case evaluation by a neutral practitioner that is not affiliated with any party, case plan review by an individual with dispute resolution training, and/or mediation—may have potential to facilitate early resolution of some cases, particularly when such procedures are used before a CHINS petition is adjudicated. The working group will continue to explore this possibility with Emily Gould, Chair of the Vermont Bar Association's dispute resolution section.

2. **Ensuring that attorneys, judges, and guardians ad litem appear on time and are prepared.**

The working group discussed how scheduling conflicts for contract attorneys assigned to cover multiple counties contribute to delays, and that court hearings sometimes begin later than planned due to unavoidable scheduling demands on the courts. The working group also notes, however, that proceedings are rarely continued as a result of such delays. A delayed start to a scheduled hearing does not necessarily mean that progress is not being made on the matter outside of the courtroom. Hearings provide an opportunity for attorneys, guardians ad litem, social workers, parents, and children to meet face-to-face and discuss the case. This is no substitute, however, for communication between parties before the court date so that parties are prepared to proceed when the case is called. The members of the working group will continue to examine the issue, but did not agree that a systemic problem exists related to lack of timeliness or preparation.

3. **Monitoring and improving the performance and work quality of attorneys, judges, and guardians ad litem.**

The working group concluded that much can be accomplished within and among the agencies represented on the working group to enhance performance, productivity, and a better use of resources in the long term. As noted above, attaining these goals is hindered by differences in practice, interpretation, and application of existing law in proceedings around the State as well as by a lack of continuity of judges, attorneys, social workers, and guardians ad litem throughout a single proceeding.

The working group identified several areas where it could work internally and externally to advance uniformity and consistency, including:

- Working with a shared understanding of, and respect for, every participant's roles.

- More frequent and better communication among participants about the overall administration of the child protection "system." The working group will continue to explore the best model over the second year of its existence.

- More training, and in particular, more interdisciplinary training to stretch limited training funds. The working group believes it is important to develop training that includes all professionals

(guardians ad litem, lawyers, social workers, and judges) on topics that lend themselves to improving the system's overall approach to child protection. The working group will explore in greater detail how to pool limited training funds and collaborate on designing, scheduling, and encouraging joint participation in training sessions.

- More robust performance evaluations within each participant agency that includes soliciting input from other agencies familiar with an individual's work (such as opposing counsel, guardians ad litem, judges, and social workers), if structured and administered properly.

The working group meetings themselves have been beneficial to all participants and have fostered a better understanding of the resource and other limitations and challenges within each segment of the system. Meetings also highlighted the benefit of ongoing discussion and communication among the entities represented on the working group. Consensus was not achieved on every idea discussed with respect to how performance could be improved in each area of practice and responsibility. Discussions about deficiencies, perceived and real, were difficult at times but served to provide a context for later and future meetings of the working group. Continued dialog, enhanced communication, and more strategic use of training resources will promote the ultimate goal of a child protection system that best serves the needs of children at risk.

4. Ensuring the availability of a sufficient number of attorneys to handle all CHINS cases, in all regions of the State, in a timely manner.

The working group discussed the increasingly limited number of attorneys in Vermont that are able and willing to handle juvenile work—in particular, attorneys to represent parents and children in juvenile proceedings under contracts with or through employment as staff attorneys by the Defender General's Office. Older lawyers are retiring and younger ones are not replacing them. The pay is low and the practice area is not popular.

In addition, the judiciary's resources are stretched thin and there is limited court time available for all dockets, including juvenile proceedings. It is often difficult for courts to coordinate appearances of contract attorneys who cover multiple counties.

The working group has discussed and will continue to explore different ways in which the various stakeholders can effectively address backlogs and spikes in caseloads in different jurisdictions throughout the State. It became clear that a

more strategic approach that ensures all government participants are planning and allocating resources to these cases in the same jurisdictions at the same time would be beneficial. At the same time, focused efforts in courts that are experiencing backlogs or spikes in filings would be an opportune time to utilize alternative dispute resolution in appropriate cases.

5. The role of guardians ad litem, and ensuring their information is presented to, and considered by, the court.

The working group reviewed the current law that relates to the roles and responsibilities of guardians ad litem in child protection cases. The group agreed that Rule 6 of the Rules for Family Proceedings—and in particular section (e)(3) of that rule—adequately defines the parameters of a guardian ad litem's role.[5] As set forth in Rule 6 and as understood by the working group:

- A guardian ad litem shall not be asked or offer an opinion or position at any contested merits hearing.
- A guardian ad litem shall be asked and have the opportunity to state his or her position or opinion and the reasons for that position or opinion at temporary care hearings and disposition hearings without needing to base it on evidence in the record.
- For all other hearings the guardian ad litem shall be asked and have the opportunity to state his or her position or opinion, but that position or opinion must be based upon evidence in the record.

The working group believes that termination of parental rights hearings are appropriately understood as disposition hearings. The working group, however, will explore whether the Family Court Rules Committee should consider amending Rule 6 to clarify that termination of parental rights hearings are disposition hearings for the purpose of that rule.

The working group notes that significant variation exists throughout the State regarding how judges, attorneys, and social workers engage with guardians ad litem in abuse and neglect proceedings. All participants in those proceedings would benefit from additional training and cross-disciplinary discussion with respect to the role of the guardian ad litem.

[5] Family Rule 6 is attached to this report as Exhibit 2.

The working group identified the lack of resources for the guardian ad litem program as particularly problematic. It will not be possible to comply with NCASA standards or to improve recruitment, training, and supervision of guardians ad litem without additional funding and personnel.

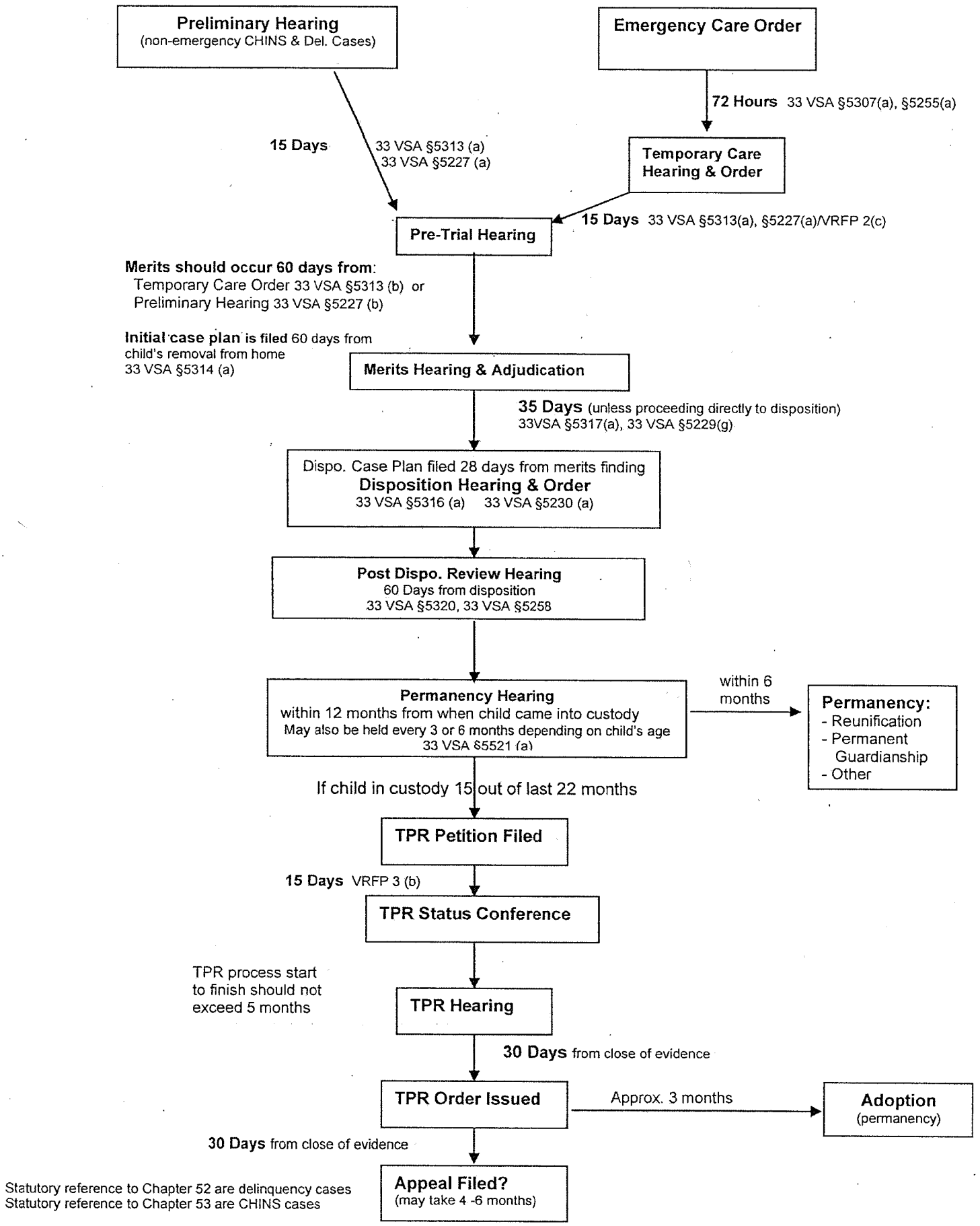
The working group also believes that volunteer guardians ad litem who are trained to handle abuse and neglect cases should not be assigned to other dockets. Most guardians ad litem are not properly trained for such assignments. Those assignments interfere with their ability to provide valuable assistance in abuse and neglect cases.

IV. Conclusion

With the submission of this report, the working group has fulfilled the first half of its statutory charge. For this session, the working group recommends two statutory changes. The working group's meetings have been informative, respectful, and constructive. Many good ideas in addition to those recommended in this report have been discussed and debated. The working group will continue to work through its statutory charge and further explore the ideas that have been generated through its work.

EXHIBIT 1

JUVENILE PROCEEDINGS FLOWCHART
(not all cases follow this progression)



Statutory reference to Chapter 52 are delinquency cases
Statutory reference to Chapter 53 are CHINS cases

EXHIBIT 2

West's Vermont Statutes Annotated
West's Vermont Court Rules
Rules for Family Proceedings

Vermont Family Proceedings Rule 6

RULE 6. REPRESENTATION BY ATTORNEYS AND GUARDIANS AD LITEM OF MINORS

Currentness

(a) Applicability. This rule applies to all proceedings under 33 V.S. A. Chapters 51, 52 and 53 (Juvenile Judicial Proceedings) which are held within the family court and to any proceeding under Article 1 of Subchapter 2 of 14 V.S.A. Chapter 111 (Guardians of Minors) in which the probate court, in its discretion, seeks to appoint a guardian ad litem for a minor; and to any proceeding under 18 V.S.A. Chapters 179 and 181 (Involuntary Treatment), and Chapter 206 (Care for Mentally Retarded Persons), involving a minor.

(b) Appointment of Counsel. In proceedings under 33 V.S.A. Chapters 51, 52 and 53, the court shall assign counsel pursuant to Administrative Order No. 32 to represent the child unless counsel has been retained by that person.

(c) Appointment of Guardian Ad Litem.

(1) *Proceedings under 33 V.S.A. Chapters 51, 52 and 53.* In all proceedings under Chapters 51, 52 and 53 of Title 33, appointment of a guardian ad litem for the child shall be governed by Family Court Rules 1, 2 and 3.

(2) *Guardians of Minors.* In proceedings under Article 1 of Subchapter 2 of 14 V.S.A. Chapter 111, the probate court, in the exercise of its discretion, may appoint a guardian ad litem for a minor upon notice to the minor, with opportunity to request a hearing.

Hearings on these motions shall be set expeditiously, and sufficiently in advance of the hearing on the merits so as to allow the guardian ad litem adequate time to prepare for the hearing on the merits. Civil Rule 78(b) shall not apply to these motions.

When served upon the proposed ward, the motion and affidavit must include or be accompanied by a clear explanation that the proposed ward need not consent to the motion, and that the person has a right to appear in person before the court to object, or may object by letter.

(3) *Selection, Replacement, Discharge.* The guardian ad litem shall be selected and replaced as appropriate by the court in its

discretion.

(d) Settlements, Compromises and Waivers.

(1) *In General.* In any proceeding in which a guardian ad litem has been appointed pursuant to the Family Court Rules, the court shall review all settlements, compromises, waivers of evidentiary, statutory, constitutional or common-law privileges, stipulations and other decisions affecting the substantial rights or interests of the ward.

(2) *Disagreements Between Ward and Guardian Ad Litem.* When a ward and a ward's guardian ad litem disagree as to a matter governed by subdivision (d)(1) of this rule, the attorney assigned to represent the ward shall promptly and fully inform the court of the position of the guardian ad litem. The guardian ad litem also shall be afforded the right to be heard but shall not disclose privileged information or information that has not been admitted into evidence. The court may, in its discretion, appoint additional counsel for the guardian ad litem.

(3) *Waivers of Constitutional and Other Important Rights.* When a ward or a guardian ad litem wishes to waive a constitutional right of the ward, enter an admission to the merits of a proceeding, or waive patient's privilege under V.R.E. 503, the court shall not accept the proposed waiver or admission unless the court determines, after opportunity to be heard, each of the following:

(A) that there is a factual and legal basis for the waiver or admission;

(B) that the attorney has investigated the relevant facts and law, consulted with the client and guardian ad litem, and the guardian ad litem has consulted with the ward;

(C) that the waiver or admission is in the best interest of the ward; and

(D) that the waiver or admission is being entered into knowingly and voluntarily by the ward and also by the guardian ad litem, except as set forth in (4) below.

(4) *Approval Without Ward's Consent of Constitutional or Other Important Waivers.* A waiver or admission listed in subdivision (d)(3) of this rule may be approved of with the consent of the guardian ad litem but without the consent of the ward if the ward, because of mental or emotional disability, is unable to understand the nature and consequences of the waiver or admission or is unable to communicate with respect to the waiver or admission. A person who has not attained the age of thirteen shall be rebuttably presumed to be incapable of understanding the nature and consequences of the waiver or admission and of communicating with respect to the waiver or admission; a person thirteen years old or older shall be rebuttably presumed to be capable. The rebuttable presumptions shall have the effect set forth by Vermont Rule of Evidence 301 and shall also allocate the burden of persuasion. Notwithstanding this subdivision, in all cases in which it is alleged that a person had committed a crime or delinquent act, that person's knowing and voluntary consent shall be required with respect

to the waiver or admission.

(e) Role of Guardian Ad Litem.

(1) *In General.* The guardian ad litem shall act as an independent parental advisor and advocate whose goal shall be to safeguard the ward's best interest and rights.

(2) *Duties Generally.* Each guardian ad litem shall meet with the ward, the ward's attorney, and others who may be necessary for an understanding of the issues in the proceeding. The guardian ad litem shall be familiar with all pertinent pleadings, reports, and other documents. The guardian ad litem shall discuss with the ward and the ward's attorney all options which may be presented to the court, and shall assist the attorney in advising the ward regarding those options.

(3) *Courtroom Role.* The guardian ad litem shall not be asked for nor provide an opinion on the merits to the court at any contested merits hearings held under Chapters 52 and 53 of Title 33, Vermont Statutes Annotated. The guardian ad litem may, at a disposition or temporary care hearing held under Chapters 52 and 53, state his or her position or opinion and the reasons therefor. In any other proceeding governed by this rule, the guardian ad litem may, at any phase of the proceeding, state his or her position or opinion and the reasons therefor, which reasons shall be based upon the evidence which is in the record. At any hearing the court may inquire, subject to the provisions of this rule, whether the guardian ad litem is satisfied with the representation of the ward by the attorney, including but not limited to the presentation of evidence made by the ward's attorney. If the guardian ad litem at any time is not satisfied that the ward's rights and interests are being effectively represented, the guardian ad litem shall so advise the court in open court, orally or in writing.

(4) *Guardian Ad Litem as Witness.* A guardian ad litem may be called as a witness only when that person's testimony would be directly probative of the child's best interest, and no other persons could be employed or subpoenaed to testify on the same subject matter. When a guardian ad litem is to be called as a witness, the court may appoint a new guardian ad litem.

(5) *Reports Prepared by Guardians Ad Litem.* If the guardian ad litem prepares a written report, it shall be submitted to the court only by agreement of the parties or pursuant to the Vermont Rules of Evidence and subject to paragraph (4) of this subdivision.

(f) Record of Proceedings. The court shall make a verbatim record of all proceedings under this rule.

Credits

[Amended effective December 1, 1995; January 12, 1996. Amended Dec. 17, 2008, eff. Jan. 1, 2009.]

Editors' Notes

REPORTER'S NOTES--2010 AMENDMENT

Emergency amendments to V.R.F.P. 1-3, 6, and 12 intended to implement 33 V.S.A. chapters 51-53 as enacted by Act 185 of 2007 (Adj. Sess.), effective January 1, 2009, were promulgated on December 17, 2008, effective January 1, 2009, with a direction that the Advisory Committee on Family Rules report on any comments received by September 30, 2009. No comments having been received, these amendments are now made permanent.

REPORTER'S NOTES--2009 EMERGENCY AMENDMENT

Rule 6 is amended on an emergency basis to incorporate in the rule changes made necessary by the enactment of Act No. 185 of 2007 (Adj. Sess.), which repealed 33 V.S.A. chapter 55 covering juvenile proceedings and replaced it with 33 V.S.A. chapters 51-53, effective January 1, 2009. Simultaneous amendments have been made to Rules 1, 2, 3, and 12. The changes substitute references to, or language from, appropriate sections of the newly enacted legislation. See Reporter's Notes to those amendments.

REPORTER'S NOTES--1996 AMENDMENT

Rule 6(c)(3) is amended to delete this sentence as it was inadvertently added to the rule promulgated by the Supreme Court on August 19, 1995, effective on December 1, 1995. The requirement that the guardian ad litem be a disinterested person was intended to apply only to adults in certain specified proceedings and is now covered by Rule 6.1(c)(3).

REPORTER'S NOTES--1995 AMENDMENT

Rule 6 is amended in connection with the simultaneous promulgation of Rule 6.1. The purpose of the amendments and the new rule is to separate the procedures and roles for attorneys and guardians ad litem in cases involving minors from those in cases involving adults. Rule 6 will now govern only Family Court cases involving minors (juvenile proceedings and guardianships of minors). Rule 6.1 covers proceedings involving adults who may benefit from the appointment of a guardian ad litem.

Rule 6(a) is amended to eliminate references to proceedings now covered by Rule 6.1. See Rule 6.1(a).

Rule 6(b) is amended to limit its applicability to juvenile proceedings under 33 V.S.A. Chapter 55.

The final sentence of Rule 6(c)(1) is deleted. Appointment of a guardian ad litem for an adult who is not a party to the proceeding may be made pursuant to the court's inherent power. See 14 V.S.A. § 2657. Rule 6(c)(2) is amended to limit its applicability to guardianships of minors and to clarify the language of the second paragraph. Rule 6(c)(3) is amended to require that a person appointed as guardian ad litem be "disinterested" and not related to the parties. The purpose of this provision is to permit the court to consider possible conflicts of interest that may arise when a relative, or a state agency in a custodial relationship, serves as guardian. The final sentence of Rule 6(c)(3) is eliminated because guardians of incompetent adults are now covered in Rule 6.1.

Rule 6(d) remains unchanged.

Rule 6(e)(3) is amended by the addition of a sentence making clear that the guardian ad litem may communicate concerns about the representation to the court at any time at the hearing. The rule provides the option of written communication because communication in open court may be intimidating for a lay guardian. The remainder of Rule 6(e) remains unchanged.

Rule 6(f) remains unchanged.

REPORTER'S NOTES--1991 EMERGENCY AMENDMENT

After new Family Court Rule 6 was promulgated, the Advisory Committee received comments raising an important issue not brought to the Committee's attention during the formal comment period. The language of Rule 6(d)(3) appeared to require that an evidentiary hearing be held before any ruling could be entered on each of the criteria set forth in that subdivision. This appeared to require greater judicial involvement than the model upon which this rule was based, change of plea proceedings under Criminal Rule 11. In some proceedings this would cause unnecessary delay.

The Committee therefore recommended that the rule be changed to replace the words "finds, after hearing" by the words "determines, after opportunity to be heard." These changes bring the rule into conformity with Criminal Rule 11. (For example, V.R.Cr.P. 11(d) bars acceptance of plea unless the trial court first addresses defendant personally, "determining" that the plea is voluntary.) These changes authorize the court to make the necessary rulings without convening an evidentiary hearing, although in its discretion it is free to do so. See W. LaFave and J. Israel, Criminal Procedure at 653 (West 1984) (generally courts are able to determine factual basis for a plea under federal rule 11 by inquiring of defendant and prosecutor and examining court documents).

The Committee recommended that these changes be made before the effective date of the rule, and the Court agreed.

REPORTER'S NOTES

This rule is adopted after lengthy study by the Court's Advisory Committee on Rules for Family Proceedings. The rule establishes the roles of attorneys and guardians ad litem in the various actions listed in subdivision (a)--juvenile court proceedings, involuntary guardianships, involuntary treatment proceedings, sterilization proceedings, proceedings pertaining to placement at the Brandon Training School, and protective services proceedings.

Proceedings under this rule involve actions in which the state is a party adverse to a ward. Representation by an attorney is critical to maintaining a fair balance between the state and the individual. The two most important provisions of this rule, subdivisions (d) and (f) (setting forth procedure by which waivers of important rights may be made on behalf of wards and defining the roles of guardians ad litem in particular proceedings), in particular, could not function without representation by counsel. Subdivision (b) therefore requires that counsel be appointed in all cases covered by the rule, unless counsel already has been retained.

Although the juvenile court statute makes appointment of counsel optional, the uniform practice within the juvenile court has been to make the assignment in all cases. The rule conforms to prevailing practice in juvenile proceedings and supersedes the statute.

Vermont statutes on involuntary treatment, involuntary sterilization, Brandon Training School, protective services and involuntary guardianships mandate appointment of counsel. 14 V.S.A. § 3065, as amended by 1991, No. 38, § 1; 18 V.S.A. §§ 7510, 7613, 8710, 8825, 9308. The rule implements these statutes.

Subdivision (c) governs appointment of guardians ad litem. The rule recognizes that guardians ad litem play an important role in safeguarding the rights of minors. See Reporter's Notes to V.R.C.P. 17(b) (under Pettengill v. Gilman, 126 Vt. 387, 232 A.2d 773 (1967), judgment against incompetent person, unrepresented by guardian ad litem, may be set aside) and 33 V.S.A. § 5525 (appointment of guardian ad litem mandatory unless counsel appointed). In contrast to the appointment of

attorneys, however, guardians ad litem are not required in all cases under this rule.

Under subdivision (c)(1), Family Court Rules 1, 2 and 3 govern appointment of guardians ad litem in juvenile court proceedings. Following 33 V.S.A. § 5525, these rules mandate appointment of guardians ad litem but leave to the discretion of the court whether a substitute for the child's parent should be appointed to serve that role.

Subdivision (c)(1) also recognizes that an adult party in juvenile court may need the assistance of a guardian ad litem (for example, a developmentally disabled adult parent). As subdivision (c)(1) states, subdivision (c)(2) provides the procedure for appointment of guardians ad litem for these adult parties. The procedure under subdivision (c)(2) calls upon the court to rule upon a request for guardian ad litem upon motion and hearing.

If, however, the child's parent has not yet attained the age of majority, no motion or hearing is needed; under this rule (and Vermont precedent) a minor always requires the assistance of a guardian ad litem. Both the parent and the child are "children" for purposes of subdivision (c)(1).

Subdivision (c)(2) provides that in all other proceedings guardians ad litem are to be appointed upon motion and hearing. The rule does not set forth the standard by which motions will be decided. This is left to caselaw. See Morissette v. Morissette, 143 Vt. 52, 463 A.2d 1384 (1983) (capacity to understand the nature of the proceedings), Pettengill, supra, and W. LaFave and A. Scott, Criminal Law 332-36 (1986) (summarizing standards) and subdivision (f) of this rule (setting forth role of guardian ad litem). The motion may be filed by any attorney or party. It must be supported by affidavit. The court also may raise the issue on its own. Except where the proposed ward consents to the motion in open court, the motion and affidavit must be served upon the proposed ward. The motion cannot be granted except after hearing, unless the proposed ward consents in open court and the court finds in the exercise of its discretion that the affidavit provides sufficient support for the motion.

The rule requires that hearings on motions to appoint guardians ad litem be scheduled expeditiously, and sufficiently in advance of the hearing on the merits so as to allow adequate time for the guardian ad litem, once appointed, to meet with the ward and the ward's attorney to prepare for the hearing on the merits. In order to facilitate scheduling of the hearing on the motion, V.R.C.P. 78(b) is made inapplicable to these motions. For the same reason, attorneys who believe they have grounds for filing motions for appointment of guardian ad litem should do so promptly.

When the proposed ward is served with the motion or affidavit he or she also must be served with a "clear explanation that the proposed ward need not consent to the motion, and that the person has a right to appear in person before the court to object, or may object by letter."

Subdivision (c)(3) makes explicit that it is the judge who has the authority to select and replace guardians ad litem, in the exercise of each judge's discretion. The discretion to choose or substitute guardians ad litem, however, is limited by the duty to discharge a guardian ad litem once the court finds that the reason for appointing a guardian ad litem has ceased to exist. State v. Ladd, 139 Vt. 642, 433 A.2d 294 (1981). The concluding sentence of subdivision (c) articulates the holding of Ladd.

Subdivision (d) governs the authority of the guardian ad litem and the ward to enter into waivers, admissions and settlements. Under Pettengill, supra, counsel and a guardian ad litem lack the authority to submit a case to the court on conceded facts unless the facts are to the ward's advantage. This rule implements the concerns underlying Pettengill.

Subdivision (d)(1) calls for judicial supervision of all settlements, stipulations and waivers which affect the ward's

substantial rights and interests. The emphasis is on "substantial" rights, not merely substantive rights. Substantial procedural rights are intended to be reviewed by the court. The court will be exercising its discretion; no specific findings or conclusions are needed, unless the matter is one governed by subdivision (d)(3) of the rule, discussed below.

Subdivision (d)(2) addresses those situations in which a ward and a guardian ad litem may find themselves in disagreement. In order to ensure that the court is informed of all relevant information, and in order to protect the rights of the ward while preserving the function of the guardian ad litem, this subdivision requires the attorney for the ward to fully inform the court of the guardian ad litem's point of view (as well as that of the ward). The guardian ad litem also has the right to address the court. However, the rule specifies that the guardian ad litem shall not disclose privileged information or information that has not been admitted into evidence. In those conflict situations in which the guardian ad litem is relying upon unprivileged information not admitted into evidence, the court may wish to assign counsel to the guardian ad litem so that this information may be properly presented. See the discussion below of subdivision (e), the role of the guardian ad litem.

Subdivision (d)(3) comes into play when a ward or a guardian ad litem wishes to waive a constitutional right of the ward, enter an admission to the merits of a proceeding, or waive patient's privilege under V.R.E. 503. The court shall not accept any such waiver or admission unless, after hearing, the court finds that each of the four criteria of the rule has been satisfied. First, the court must find that there is a factual and legal basis for the proposal. See V.R.Cr.P. 11(f) (factual basis for plea agreement) and In re Dunham, 144 Vt. 444, 479 A.2d 144 (1984) (applying V.R.Cr.P. 11(f) and holding that the factual basis for each element of a criminal charge must affirmatively appear in the record of the change of plea). Some procedural defects may not be waived, regardless of the intent of the parties. For example, the assistance of a guardian ad litem is not subject to waiver if, under the law, a guardian otherwise would be required. In re Dobson, 125 Vt. 165, 212 A.2d 620 (1965). Second, the court must find that the attorney has investigated the relevant facts and law, and has consulted with the client and guardian ad litem if any. Third, the court must find that the waiver or agreement is in the best interest of the minor or allegedly incompetent person. Finally, the court must find that the agreement is being entered into knowingly and voluntarily by the ward and by the guardian ad litem. Compare V.R.Cr.P. 11(d) (determining that plea of guilty is voluntary). The rule has been drafted to make clear that each of these four criteria must be met; an abundance of evidence on one criterion cannot compensate for a deficiency of evidence on any other.

Patient's privilege is included, along with constitutional waivers and admissions on the merits, for a number of reasons. First, it is the policy of the Family Court Rules to encourage litigants and potential litigants to seek the assistance of mental health professionals and other therapists, without undue fear of later disclosure. Second, involuntary waiver of patient's privilege in the Title 18 proceedings to which this rule applies often would have the effect of an admission on the merits. This not only would deter patients from seeking treatment but, without the procedural protections the rule provides, would be fundamentally unfair.

Subdivision (d)(4) dispenses with part of the fourth finding under (d)(3), the requirement of consent by the ward. Consent by the ward is not needed if that person "because of minority or mental or emotional disability," is "unable to understand the nature and consequences of the decision or is unable to communicate with respect to the decision." The rule sets forth several presumptions to determine a minor's ability to communicate with respect to the decision. Persons twelve years old or younger are rebuttably presumed to be incapable. Persons thirteen years old or older are rebuttably presumed to be capable. The presumptions have the effect set forth in Vermont Rule of Evidence 301 and they also have the effect of allocating burdens of proof (which is not true under V.R.E. 301). Thus, for example, a child of ten years has the burden of proving capacity to communicate with respect to the decision; once he or she produces any admissible evidence in support of capacity the presumption "bursts" and the question is strictly one of meeting a burden of persuasion.

Subdivision (d)(4) contains an important caveat. If a person is accused of a crime or delinquent act in a proceeding under this rule, the court cannot accept the settlement or waiver without that person's knowing and voluntary consent.

Subdivision (e) defines the role of the guardian ad litem. Subdivision (e)(1) provides that the guardian ad litem shall act as the ward's "independent, parental advisor and advocate." Well-prepared, concerned guardians ad litem are essential to the proper functioning of the family court. These rules require that counsel be appointed to represent a ward in every proceeding subject to these rules, but a lawyer alone cannot adequately represent a client who is a minor or otherwise under a disability. A lawyer needs a client who can make, or share in the making of, important decisions. As pointed out in Ethical Consideration 7-12 of Vermont's Code of Professional Responsibility:

> Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make.... [O]bviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent.

Guardians ad litem under this rule act as parent-figures, whether or not they are, in fact, the parents of the ward. They ensure that the child or ward understands his or her choices, if capable of understanding, and that the child or ward makes the best choices possible. They assist the child or ward in working with the lawyer, and in some situations (described in subdivision (d)(4)) they in effect become the client.

Under prior practice in some courts, guardians ad litem assisted the lawyers in finding and developing evidence. This rendered them subject to call as witnesses. A guardian ad litem cannot function as a ward's advisor from the witness stand. Moreover, under cross-examination the guardian ad litem may be called upon to disclose information which the ward communicated under an expectation of privacy. See new Vermont Rule of Evidence 412, making such statements generally inadmissible. The rule therefore strives to separate the role of guardians ad litem from that of investigators or detectives. When a guardian ad litem learns of facts about which he or she is competent to testify, and only when there is a strong need for that evidence to be produced, the guardian ad litem may be called as a witness. See subdivision (e)(4) of the rule. An example of a situation in which testimony would be proper would be when a guardian ad litem, in visiting a child at home, witnesses an unmistakable act of child abuse for which there are no other witnesses.

The court, in its discretion, may appoint a replacement for a guardian ad litem who is called as a witness. See the concluding sentence of subdivision (e)(4).

Attorneys are bound by D.R. 7-106(C), which prohibits them from making in-court comments that are unsupported by admissible evidence. In the day-to-day functioning of the adversary system, this can be a very difficult stricture for lawyers to meet. But compliance is essential if the adversary system is to produce just results. See Ethical Considerations 7-19, 7-20, 7-24 and 7-25. For the same reason, it is important that guardians ad litem refrain from asking the family court to base its decisions upon factual allegations not supported by evidence. When guardians ad litem are asked to serve also as investigators, this limit becomes difficult if not impossible for guardians ad litem to recognize and respect.

The rule calls upon the court, lawyers and guardians ad litem to respect this fundamental protection of fairness in two ways. First, it draws a line between the role of guardian ad litem and that of investigator, in subdivision (e)(4), discussed above. See also Family Court Rule 5 (authorizing appointment of persons to perform home studies) and Reporter's Notes to Rule 5 (distinguishing investigator's role from that of guardian ad litem). Second, it specifies in subdivision (e)(3) that a guardian ad litem's statements to the court must be based upon evidence which is in the record except as expressly provided. The two exceptions are detention and disposition hearings under the Juvenile Procedure Act. These particular proceedings are not bound by the evidence rules. Detention hearings are emergency hearings which result in orders of limited duration; of necessity the procedures must be informal. Disposition hearings rely heavily on prehearing disclosure to avoid unfairness. See subdivision (e)(5) of this rule, and Family Court Rules 1(h) and 2(g).

Inevitably situations will arise in which a guardian ad litem believes that important information should be presented to the court but is not in evidence. This may be because of inadequate preparation by the ward's attorney, failure of communication between the guardian ad litem and the attorney, or a number of other reasons. These rules do not contemplate transformation of the guardian ad litem into a witness at this juncture in order to place the missing evidence into the record. The duty of the guardian ad litem in this situation is to voice his or her concerns, first to the attorney and then to the court if the concerns have not been addressed. The court possesses the authority to inquire into the matter, and, where appropriate, to continue the proceedings so that the additional information can be the subject of discovery or trial testimony. The court has the authority under Vermont Rule of Evidence 614 to call any witness on its own motion or on the suggestion of a party, including the guardian ad litem.

Subdivision (e)(2) sets forth the general duties of a guardian ad litem. These include meeting with the ward and the ward's attorney, reading all the pertinent pleadings and reports, discussing the ward's options with the attorney and the ward, and assisting the attorney in advising the ward.

Subdivision (e)(3) defines the guardian ad litem's courtroom role. For the reasons discussed above, the rule generally limits the guardian ad litem to statements which are based upon the record. However, no statements of opinion whatsoever are proper at any contested merits hearing under the Juvenile Procedure Act. At these trials on the merits the issues are whether the state has met its burden of proving neglect, unmanageability, abuse or delinquency. These are not issues upon which a guardian ad litem's opinion may be helpful. The only proper expressions of opinion are those of the parties' attorneys, applying the relevant law to the facts, subject to DR 7-106.

Subdivision (e)(3) provides, however, that at any hearing the court may inquire of the guardian ad litem whether the guardian ad litem is satisfied with the representation of the ward by the attorney, including but not limited to the presentation of evidence made by the ward's attorney. As already noted, this opportunity may lead the court to continue the proceedings so that additional information may be developed.

Subdivision (e)(4) is discussed at length above. Subdivision (e)(5) recognizes the practice, in some courts, of utilizing reports prepared by guardians ad litem. The rule allows but discourages this practice, by permitting submission of such reports only by agreement of the parties or pursuant to the Vermont Rules of Evidence and paragraph (4) of this subdivision. Paragraph (4) precludes guardians ad litem from testifying as witnesses except in accordance with narrowly drawn criteria.

Subdivision (f) requires that all proceedings under this rule be recorded. It is similar to V.R.Cr.P. 11(g).

Rules Fam. Proc. Rule 6, VT R FAM P Rule 6
Current with amendments received through August 1, 2015

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