

VERMONT SUPREME COURT
Advisory Committee on Rules of Criminal Procedure
2013 - 2014 Annual Report

The Advisory Committee on the Rules of Criminal Procedure submits this report to the Vermont Supreme Court pursuant to Administrative Order No. 20, § 5. This report covers the committee's activities for the period since the submission of the committee's 2012-2013 annual report on December 6, 2013. Since that report, the committee has met on January 31, 2014, August 8, 2014 and November 21, 2014 to consider amendments and other matters pertaining to the Vermont Rules of Criminal Procedure and relevant provisions of the Vermont Rules of Appellate Procedure.

During 2014, former Justice Brian L. Burgess retired from the committee; Justice Geoffrey Crawford was designated to serve as committee liaison to the Court, and served in this capacity until his appointment to the federal bench; and the terms of Superior Judge James R. Crucitti, Joanne Charbonneau and Karen Rush Shingler expired. Superior Judge Martin A. Maley was appointed to replace Judge Crucitti, Laurie Canty was appointed to replace Ms. Charbonneau and Daniel Sedon was appointed to replace Ms. Shingler.

This report summarizes the status of proposed rule amendments and the committee's activities under the following headings: I. Amendments promulgated by the court; II. Proposed Amendments that have been through the comment period and are being recommended to the court for promulgation; III. Proposed amendments being recommended for circulation to the Bar and public for comment; IV. Amendment requests considered by the committee but not recommended for further action at this time; and V. Matters remaining on the committee's agenda.

I. AMENDMENTS PROMULGATED BY THE COURT

Since the date of the last Criminal Rules Committee Annual Report, the court promulgated the following amendments to the criminal rules on December 11, 2014 to become effective on February 13, 2015:

1. **Omnibus amendments to conform the Rules to the nomenclature of court restructuring act.** *Committee Agenda Item 2010-05*, with additional included amendments to the following Rules:
2. **Amendment to Rule 6** (Grand Jury procedures) *Committee Agenda Item 2012-05*.
3. **Amendment to Rule 12** (Pleadings and Motions before Trial; Status Conference) *Committee Agenda Item 2011-06*
4. **Amendment to Rule 18(a)** (Venue; trial of multiple charges in single adjacent unit) *Committee Agenda Item 2013-01*

5. Amendment to Rule 41 (Motion for Return of Property under Rule 41(f))
Committee Agenda Item 2012-02

II. PROPOSED AMENDMENTS RECOMMENDED FOR PROMULGATION

There are no proposed amendments awaiting a court promulgation order.

III. PROPOSED AMENDMENTS RECOMMENDED FOR CIRCULATION TO THE BAR

The Committee recommends that the Court circulate to the public and the bar for comment the following proposed amendments (a proposed promulgation order is appended to this report):

1. **Amendment to V.R.A.P. 3(b)(2)** The committee recommends adoption of the amendment to this appellate rule being proposed by the civil rules advisory committee. The amendment would eliminate automatic appeal in cases where sentence of life imprisonment is imposed upon either express waiver of appeal, or entry of a plea of guilty or nolo contendere. In such cases, a sentenced defendant would still be entitled to initiate timely appeal in compliance with the appellate rules, but appeal would not be automatically entered by the clerk. The criminal rules committee had developed alternate wording, but on review of the civil rules committee version, withdrew its alternate draft and recommends that the court adopt the civil rules committee proposed amendment. The committee anticipates that the civil rules committee will forward to the court its proposed amendment to this appellate rule, but wanted to note the concurrence of the criminal rules committee. *Committee Agenda Item 2011-02*

2. **Amendment to Rule 5** The committee recommends publication of these proposed amendments for circulation to the bar and public comment. The amendments would add to Rule 5 advisements reference to pre-trial screening and assessment, use and derivative use immunity for participating defendants, and other provisions consistent with Section 2 of Act 195 (2014 Adj. Sess.) the pretrial services legislation. *Committee Agenda Item 2014-04*

3. **Amendment to Rule 16** The committee recommends amending Rule 16 by adding new subdivision (d)(3) to eliminate conflict between Rule 16 discovery obligations and confidentiality protections for victims' contact information contained in 13 V.S.A. § 5310. *Committee Agenda Item 2013-06*

4. **Amendment to Rule 28** The committee recommends amending Rule 28 to make court payment of court-appointed interpreters mandatory in accordance with judiciary policy and Access to Justice obligations. The civil rules committee is considering a parallel amendment to V.R.C.P. 43(f), but the committee concluded that differences in procedure and practice in the Criminal Division warrant the separate details being proposed as an amendment to

Rule 28. *Committee Agenda Item 2013-10*

5. **Amendment to Rule 30** The committee recommends amending Rule 30 by clarifying the procedure for preserving objections to the charge. This amendment is recommended in response to the court's decision in *State v Vuley*, 2013 VT 9. *Committee Agenda Item 2013-03*

6. **Amendment to Rule 41** The committee recommends amending Rule 41 to allow reliable electronic filing of warrant returns to avoid requiring law enforcement officers to drive long distances to timely file a return. *Committee Agenda Item 2013-11*

7. **Amendment to Rule 45(a) and Rules 12.1; 29; 32; 33 and 47** The committee recommends amending Rule 45(a) and related Rules 12.1, 29, 32, 33 and 47 to adopt the "day is a day" rule for computing the running of time. The proposed amendment is virtually identical to the provisions of Federal Rule 45 and to amendments to V.R.C.P. 6 being proposed by the civil rules committee. The purpose is to standardize and simplify the computation of time under the rules. *Committee Agenda Item 2013-05*

IV. PROPOSED AMENDMENTS NOT RECOMMENDED

1. Proposed addition of Rule 41.2 to add procedures for hospitalization hearings arising from competency and sanity determinations in criminal cases. The committee voted to defer any action on this request until appellate resolution of several trial court orders involving these issues or pending further legislative action. *Committee Agenda Item 2014-03*

V. MATTERS REMAINING ON THE COMMITTEE'S AGENDA

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

1. **Proposed Amendment to Rules 11/ 11.1** The committee has established a subcommittee to make a comprehensive review of Rules 11, 11.1 and possibly Rules 5 and 32 and to present recommendations for amendments to the committee for review in response to suggestions from the Court and passage of the Uniform Collateral Consequences of Conviction Act, H. 413/Act No. 181 (2014 Adj.Sess.) *Committee Agenda Item 2013-04*

2. **Proposed Amendment to Rule 17** to expressly authorize issuance of non-proceedings subpoenas for documents and conditions thereof. *Committee Agenda Item 2013-02*

3. **Proposed Amendment to Rule 24(a)(2)** to authorize more flexible access to juror information by attorneys in criminal matters by allowing distribution of juror questionnaires to counsel. The committee has established a subcommittee to review this issue in collaboration with the Advisory Committee on Public Access to Court Records and report back to the committee with any proposed rule amendment that may be advisable. *Committee Agenda*

Item 2014-02

4. **Proposed Amendment to Rule 32** to specify procedures for restitution hearings as requested in the concurring opinion of Justice Dooley in *State v. Morse*, 2014 VT 84). *Committee Agenda Item 2014-08*

5. **Proposed amendment to Rule 32** to specify procedures for objection to sentencing information including PSI sentencing recommendations, and general and special conditions of probation, if recommended in PSI, as requested in the concurring opinion of Justice Dooley in *State v. Cornell*, 2014 VT 82. *Committee Agenda Item 2014-09*

6. **Proposed new Civil Rule 80.7a** to adopt Animal Forfeiture procedures per Act 201 (2014 Adj.Sess.), S. 237, effective July 1, 2014. *Committee Agenda Item 2014-06*

7. **Coordination with Civil Rules Advisory Committee on amending Civil Rule 5(b)(2)** to allow service of pleadings/papers by email in criminal cases (Criminal Rule 49(b) authorizes service to be made "in the manner provided in civil actions.") *Committee Agenda Item 2014-01*

8. **Electronic Filing in the Criminal Division.** The Committee remains ready to review the Vermont Rules for Electronic Filing, adopted as emergency amendments together with related emergency amendments to the Rules for Dissemination of Electronic Case Records on August 17, effective on October 1, 2010, to determine what amendments to those rules and the Criminal Rules will be necessary to provide for the use of the Judiciary's e-Cabinet electronic filing system in the Criminal Division of the Superior Court. *Committee Agenda Item 2010-04*

9. **Review of Act 096 (2014 Adj.Sess.)** Respectful Language Legislation and implications for the Criminal Rules. *Committee Agenda Item 2014-07*

10. **Proposed amendment to Rule 41** to clarify whether notice to the defendant is required for a post-charge search warrant to address an issue raised in a decision by Judge Sontag in *State v. Jodi LeClaire*. After extensive consideration, the Committee voted to table consideration of any amendment pending appellate resolution of the issue, with a number of members concerned that ex parte issuance of search warrants in a pending criminal case presents significant issues of judicial ethics not amenable to a rule of procedure. *Committee Agenda Item 2014-05*

The Committee wishes to thank all the members of the Vermont bench and bar, the members of the Joint Legislative Committee on Judicial Rules, Court Administrator Patricia Gabel and her predecessor, Robert Greemore, Deb Laferriere, Emily Wetherell, Larry Abbott, and others who have participated in the rule-making process through their thoughtful suggestions, comments, and assistance and to especially thank Hon. Brian L. Burgess, Vermont Supreme Court Justice, retired, for his long and valued service and guidance as the Supreme

Court liaison to the committee. The committee also wishes to thank Hon. Geoffrey W. Crawford for his service as the Supreme Court liaison Justice before his appointment to the Federal Bench and to thank Hon. James R. Crucitti, Karen Rush Shingler, Esq. and Joanne Charbonneau for their many years of service on the committee. The committee also would like to express particular thanks to Assistant Attorney General John Treadwell who, before his current designation as a voting member of the committee, provided invaluable assistance to the committee with respect to a number of rule amendment proposals.

Respectfully submitted,



P. Scott McGee, Chair

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cc: Hon. Walter M. Morris, Jr., Reporter