

## CRIMINAL RULES ADVISORY COMMITTEE

May 6, 2022 Meeting  
1:30 p.m.  
Vermont Supreme Court (via Zoom)

### AGENDA

Meeting Opening; Chair John Treadwell; General announcements; member opening comments and news items.

#### OLD BUSINESS:

1. Approve minutes of February 4, 2022 meeting.
2. **2022-01: V.R.Cr.P. 25** (Disability of a Judge); Amendment of V.R.Cr.P. 25 to Comport with Provisions of Current F.R.Cr.P. 25 (Would add provisions for Judge Disability *During Trial* and After a Verdict or Finding of Guilty and Further Amend Existing Rule; Request of the Court; status of Committee proposal).
3. **2020-02: V.R.Cr.P. 7** (Indictment and Information); *Pre-Trial* Amendment of information or indictment by a Prosecuting Attorney, standards and court authority. Promulgated on November 15, 2021, effective January 18, 2022. Favorably reviewed by LCJR on April 14, 2022.
4. **2020-07; Proposed V.R.Cr.P. 11(a)(4)**; Following *Benoit*, 2020 VT 58, amendment to add 11(a)(4), which would authorize preservation of challenge to predicate conviction in post-plea PCR review, on approval by the Court *without* agreement of the State, in cases where there is no plea agreement (i.e., a defendant pleads “straight up”). *Published for comment on 8/3/21, comment period closed on 10/4/21; promulgated on 4/18/22, effective 6/20/22.*
5. **2015—02: Proposed V.R.Cr.P. 26.2; Video Testimony by Consent/Agreement of Parties** (*Cf.* VRCrP 43.1) (Subcommittee—Sedon, Brill, Kennedy, Treadwell—met on 1/7/23; Considered with minor revisions at 2/4/22 Committee meeting. *Committee review of revised draft with further edits addressing waiver colloquy and standards for a defendant’s withdrawal of waiver and agreement; approval for publication and comment.*)
6. **2021-05: V.R.Cr.P. 45(a)(4)(A) and (e); In Determining “Last Day”, Filing by Email Can be Completed up to Midnight of That Day; Abrogation of the “3 Day Rule”.** (Amendments published for comment on January 11, 2022; comment period closes on February 14, 2022.) *Transmittal with recommendation for promulgation on March 23, 2022.*
7. **2020-03: Collateral Consequence advisement in Fish and Game matters prosecuted as criminal offenses** (Twarog). *Continued discussion--rule, or administrative recommendation? Is the issue addressed in current expungement statutes? Sentencing Commission treatment/recommendation? Committee action or table?*
8. **2021-02: V.R.Cr.P. 53 and V.R.C.P. 79.2 (Recording Court Proceedings); and V.R.Cr.P. 53.1 (Use of Video Recording Equipment Where the Official Record is Made by**

**Video Recording); Issues Associated with Defense Request to Video Record Jury Trial.**

Rules 53/79.2 authorize *audio* recording by participants but prohibit video recording absent good cause shown. (Request for review of rules; trial court opinions in *Alvarez; Colehamer*) (*Report and recommendations of subcommittee appointed at August 13 meeting-Turner, Kennedy, Sedon, Lanthier, Arms*).

**9. 2020-04: V.R.Cr.P. 35 and 13 V.S.A. § 7042. (Sentence Reconsideration; Stipulations to Modify at Any Time)** (Brill; Zonay; Turner). *Restored to agenda per discussion at 11/19/21 and 2/4/22 Committee meetings for discussion of 2022 legislative response to Sentencing Commission recommendation of statutory enactment.*

**10.** Status report: Activity of Committee on Remote Testimony (This Committee last met on 4/14/22) (Reporter Morris; *Justice Carroll*).

**11. 2021-04: A.O. 5—Prompt Disposition of Criminal Cases.** (Adopted in 1972 and apparently last amended in 1978; referenced in *State v. Reynolds*, 2014 VT 16, 196 Vt. 113, 121, with indication in opinion that the issue of non-binding time frames and possible revision or repeal of A.O. 5 would be referred to the Criminal Rules Committee). Note potential Rule 48 implications/relationship. *Discussion: December 15, 2021 letter from Justice Carroll on behalf of the Court requesting formation of a joint committee with Criminal Division Oversight Committee to consider revisions; Alison Arms, Rose Kennedy, Domenica Padula, Dan Sedon, Mary Kay Lanthier and Mimi Brill from Criminal Rules; Report on status of comprising joint Committee*

**NEW BUSINESS:**

**12. 2022-02: Proposed Amendment of VRCrP 44.2 (Pro Hac Vice Admission)—** Amendment of VRCrP 44.2 to comport with contemporaneous amendment of VRCP 79.1(e), making clear that admission pro hac vice is a matter of course on motion supported by the pro hac vice licensing card issued by the Court Administrator pursuant to A.O. 41, § 16.

**13. 2022-03: Proposed Amendments of VRAP 33.1 and 34 (Procedures for Remote and In-person Arguments)** *Overview of amendments and Committee comments; comment period closes on 6/20/22.*

**14.** Next Committee Meeting Date(s).

**15.** Any other business.

**16.** Adjourn.

**AGENDA ITEMS DEFERRED:**

**17. 2019-02: V.R.Cr.P. 18(b); Venue; Exceptions.** Proposal for additional exception to the general rule, to authorize change of plea and sentencing for “out of unit” charges at regional arraignment, by agreement of the parties. (Zonay proposal). A draft was transmitted to the Court for information and reference only.<sup>1</sup>

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<sup>1</sup> Provisions of A.O. 49 as amended presently supplement Rule 18 and control certain aspects of venue.

**18. 2014-06: Proposed New Civil Rule 80.7a** (Civil Animal Forfeiture procedures) per Act 201 (2014 Adj. Sess.), S. 237, effective 7/1/14. (Draft to be sent to Civil Rules Committee for comment.)

**19.** Preparation of Annual Report to Supreme Court.

[5/2/22]