[As approved at Committee meeting on October 12, 2018]

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE
Minutes of Meeting
May 4, 2018

The Criminal Rules Committee meeting commenced at approximately 10:00 a.m. at the Supreme Court in Montpelier. Present were Chair Judge Tom Zonay; Anna Saxman, Devin McLaughlin, Dan Sedon, Dan Maguire, Rosemary Kennedy, Judge Alison Arms, Mimi Brill, Evan Meenan, Laurie Canty, John Treadwell, Supreme Court liaison Justice Karen Carroll (via phone), and Committee Reporter Judge Walt Morris. Committee members Mark Kaplan, Judge Martin Maley, Evan Meenan and Kelly Woodward were absent. Newly designated Defender General's representative Rebecca Turner attended and was recognized as the sole voting representative of the Defender General's office, in that her designation (on 4/30/18) followed the Court's April 30, 2018 amendment of A.O. 20, and preceded convening of the present meeting.

The meeting opened with the Chair's offering welcome, congratulations and thanks to Ms. Saxman for her long service on the Committee, and welcome to Ms. Turner as the new designee of the Defender General.

1. The Minutes of the February 2, 2018 meeting were not completed in time for Committee review. Reporter Morris indicated that they would be promptly forthcoming and circulated to the Committee via email; he proceeded to provide an oral report of the activity and decisions of the Committee taken at the February 2nd meeting. The minutes will be subject to review and approval at the next duly scheduled Committee meeting.

2. Terms of Committee Members; Members Subject to reappointment as of July 1, 2018.

Reporter Morris reviewed the terms of the revised A.O. 20, promulgated by the Court effective April 30, 2018. He indicated that the revisions had two principal objectives: to clarify that the member designees of the Vermont Bar Association, Attorney General and Defender General were not limited to service of three consecutive terms (or parts thereof); and to clarify the means by which per diem compensation and expenses may be requested and authorized.[1] Identical revisions of the Rules authorizing each of the Court's other Advisory Rules Committees have been issued, each effective April 30th. Reporter Morris indicated that the following members' terms of service would be up for renewal effective July 1, 2018: Zonay; Arms; Kaplan; McLaughlin; and Woodward. He encouraged each to seek renewal of their terms, and to advise him in the event that they did not wish to have reappointment to the Committee.

3. Review of Final Versions of Amendments for Promulgation Recommendation.

The Committee reviewed four proposed rules amendments that had been subject to

[1] Though no longer term limited, the designees of the AG and DG remain subject to approval by the Court.

publication and comment, for final promulgation recommendation to the Court. These are: (a) 2017-07, V.R.Cr.P. 17(a) (Subpoenas; officials authorized to issue); (b) 2015-03, V.R.Cr.P. 23(d) (procedure and admonition to jurors upon separation from voir dire to trial); (c) 2016-02, V.R.Cr.P. 42 (revised criminal contempt procedure); and (d) 2017-04, V.R.Cr.P. 44.2 (appearance and withdrawal of attorneys-elimination of references to law office study in consequence of revised A.O. 41). Reporter Morris noted that the comment period as to the Rule 42 amendments did not expire until May 9th, five days after the meeting. After discussion, the Committee unanimously approved of all four proposals for transmittal to the Court for final promulgation. As to the Rule 42 amendments, the Committee decided that unless adverse comment was received on or before May 9th, the recommendation for final promulgation would be included in the transmittal with the three other proposals of amendment.[2]

4. **2018-01: V.R.Cr.P. 53; V.R.C.P. 79.2 (Possession and Use of Recording and Transmitting Devices in Court) (Amendments to 1988 Rules for "Cameras in Court")**

At the Committee's February 2nd meeting, Justice Dooley provided an overview of the provisions of the proposed rules, and the committee process of their development.[3] At the present meeting, the Committee engaged in a detailed review of the proposals of amendment. A number of key issues were identified by the Committee: (1) **Enforceability**—what standards would the judge employ in regulating possession/use of electronic devices in court, especially for non-participants/observers? Lawyers, and even self-representing individuals may be subject to particular sanctions associated with the procedural and professional ethics rules. Media device usage is usually more readily identifiable, for purposes of placement and regulation as well. But what measures, short of, yet including contempt power, would be available to regulate participant and non-participant use? Judge Arms indicated that a threshold challenge for the judge is the difficulty of reliably determining when an electronic device is actually being used, given the variety and "miniaturization" of devices. Justice Carroll indicated that a key focus of the Court in considering the recommended promulgation is the issue of possession and use in court of cell phones by non-participants. Dan Maguire expressed concern that to address this concern, the situation may be heading to one in which no cell phones at all are permitted in Court. Justice Carroll indicated that a survey had recently been circulated to the judges to receive views as to these issues. She indicated that there would outreach to and through the Vermont Bar Association as well to receive comment from the bar as to cell phone possession and use. In related but somewhat different circumstances, it was noted that in certain cases of public note, as in *State v. Herrick*,[4] preventing use of buttons, placards, and other expressions in court on the part of participants presents a challenge for the judge. (2) **Protection of attorney/client confidentiality** in the course of proceedings. Concern was again expressed as to

[2] No adverse comment was received as to the Rule 42 amendments; the four proposals of amendment were transmitted to the Court on May 24, 2018. The Court issued orders for final promulgation of these amendments on June 13, 2018 each effective on August 13, 2018.

[3] Simultaneous and identical amendments of rules for possession and use of electronic devices in court will be promulgated for the criminal, civil (including family) and probate divisions. As Justice Dooley explained, the amendments are needed in consequence of the issues presented by common contemporary use of electronic devices capable of recording and transmitting images and audio that were not a feature of courtrooms and proceedings at time of adoption of the existing "Cameras in Court" rules, which addressed still and video camera use, virtually exclusively by the media.

[4] 2011 VT 94, ¶¶ 12-17.

assuring that any recording of attorney client communications and interactions in the course of proceedings be prohibited. (3) **Bench conferences and jurors**. General sense was to continue the prohibition on recording of bench conferences, even though these are certainly accessible as on the record. Clear concern was expressed that there be no recording and transmission of depictions of jurors, as this would have the potential to present risks to fair trial, and impede the already challenging process of securing willing potential jurors to serve. (4) **Pooling**. It was noted that the existing rules, requiring media to agree as to pooling without judicial need to intervene, was preferable, even though the technologies of the current varieties of electronic recording and transmission devices might warrant review. Under the proposed amendments, it is left to the judge's discretion to require that multiple persons and interests seeking to record agree among themselves as to an arrangement for pooled coverage. The Committee respectfully requested that Justice Carroll relay the various comments of members as to the proposed amendments to the Court.

5. **2015-02: Testimony in Criminal Cases via Video Conference or Telephone; Administrative Order No. 38; Proposed Civil Rule (V.R.C.P. 43.1) (Participation or Testimony by Video Conference or Telephone); Adoption of Provisions of Civil Rule for Criminal Proceedings.**

The Advisory Committee on Rules of Civil Procedure has transmitted a proposal of amendment to add Civil Rule 43.1, which would authorize testimony of witnesses via video conference or telephone in civil (and family) proceedings under uniform procedures and standards. Adoption of any components of these proposed amendments for criminal proceedings has been a subject of discussion at numerous Committee meetings. Consistent objection has been expressed by some Committee members as to any proposal that would obviate the need for personal appearance of witnesses in criminal proceedings, most especially at trial, where a Defendant is vested with Sixth Amendment and Article 10 Confrontation rights. Notwithstanding the limited exceptions to personal appearance associated with V.R.E. 807 and 804(a), absent a Defendant's knowing and voluntary waiver of Confrontation guarantees, the decisions in *State v. Thomas*, 376 P. 3d 184 (NM 2016) and *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009) would appear to strictly proscribe Court authorization for testimony of State witnesses other than "live" in court. In previous meetings, the Committee debated at length whether testimony of certain witnesses (ex. as to chain of custody) could be authorized by the Court in absence of agreement, as opposed to witnesses deemed "essential" or central to credibility assessment. The Committee has also previously debated at length the criteria that might be employed by a judge in determining whether to permit video testimony in criminal cases.

At its September 22, 2017 meeting, the Committee consensus was to move away from any proposal that would authorize the judge to authorize video or audio testimony over objection, in favor of a rule that would establish procedures and criteria for provision of testimony by agreement of the parties. Understanding that the Court may wish to examine an alternative in which the judge, for specific need and upon specific findings, could authorize video/audio testimony over objection, two alternative proposals were to be prepared by an established subcommittee. These alternative drafts—"A" and "B" were prepared by the subcommittee per this direction, but the Committee was unable to reach them for discussion at the February 2nd meeting. At the May 4, 2018 meeting, on behalf of the subcommittee, Dan

Sedon outlined the competing considerations presented by the drafts—the long established Confrontation Clause guarantees generally prohibiting other than "in person" testimony, and a new generation of practitioners and judges who have become accustomed to video testimony in discovery depositions and civil proceedings, including civil trials. In Dan's assessment, the issue of allowance for some testimonies in some circumstances was worthy of consideration.[5] Judge Zonay opined that given the decisions previously discussed by the Committee, such video testimony would require the consent of the Defendant. Devin McLaughlin inquired as to whether a Defendant had a right, consistent with Compulsory Process guarantees, to have video testimony of witnesses upon request, even without State consent; is it a "one way street"? As to whether apart from Compulsory Process, the State had a Due Process right to insist upon personal appearance by a Defendant's witnesses, Mimi Brill opined that she did not think there was such an interest on the part of the State. Judge Zonay questioned whether the State was without any recourse in production of a witness' testimony via video absent a Defendant's consent. The discussion then turned to whether and what limitations could be placed upon a Defendant's Compulsory Process rights, in terms of expense and practical limitations upon production of a very remote (or costly) witness' testimony.[6] Anna Saxman mentioned that the issue of securing witness' testimony was featuring increasingly in deportation cases. Ms. Saxman also stated that the Right to Present a Defense was an important underlying consideration with respect to production of witnesses. Recalling prior Committee discussions, Dan Sedon observed that in a very limited number of cases, V.R.E. 807 authorizes video recorded, or two-way closed circuit television testimony at trial of children and certain persons with specified cognitive disabilities who are victim of sexual offenses, or abuse, neglect or exploitation. The judge's determination of whether to allow such testimony invokes a constitutionally based calculus, and requires a finding of substantial risk of trauma substantially impairing the ability of the person to testify.

Ultimately, the Committee agreed with Dan's suggestion that at the next meeting, draft proposals "A" and "B" would be reviewed in detail, with a final decision to be then made as to whether either or both proposals would be forwarded to the Court for its consideration, along with the proposed amendments to add Civil Rule 43.1 which had already been transmitted.

6. **2016-03: Act No. 169, S.155; Electronic Communications Privacy Act; Implications for/Revisions of V.R.Cr.P. 41; Proposed V.R.Cr.P. 41, 41.2, 41.3 and 41.5.**

Prior to his appointment to the bench, former Committee member John Treadwell drafted proposals of reorganization and amendment of Rule 41 at the Committee's request to reflect changes responsive to enactment of the ECPA. The separate "subdivisions" of the rule as reorganized and amended include provisions for warrants of general application (41); to monitor conversations (41.2); for tracking devices (41.3); and for searches implicating the Electronic

[5] In prior meetings, Committee members recognized that as to expert testimonies, both in pre-trial motions and at trial, there are some instances in which both the State and Defendant might benefit from the ability to secure testimony via video, given the substantial expense and difficulty of securing presence of certain witnesses. See, Minutes, 9/22/17, p. 5; 5/12/17, p.7; 2/10/17, pp. 4-5.

[6] See, e.g., *State v. Eldert*, 2015 VT 87 (non-Sixth Amendment case, discussing the Right of Confrontation in probation violation cases, and "good cause" balancing test factors in admission of reliable hearsay in lieu of live witness testimony)

Communications Privacy Act, including use of drones (41.4). A new subdivision 41.5 addresses the maintenance and filing of, and access to, records of searches conducted pursuant to warrant.[7]

At the Committee's February 2, 2018 meeting, Mr. Treadwell provided an overview of the various amendments to Rule 41 that have accompanied expansion of the types of searches and seizures occurring with advancement of technologies for search.[8] He then lead the Committee through a detailed review of each of the draft subdivisions. For general provisions, monitoring of conversations, use of tracking devices and regulation of warrant documents, there was little comment or concern, as these subdivisions consisted largely of a reorganization of the existing Rule 41 into subparts.[9]

Most of the Committee's discussion focused upon proposed 41.4, particularly the provisions governing searches employing drones.[10] At the meeting on May 4th, the Committee again focused upon proposed 41.4.

The "Drone Statute", 20 V.S.A. § 4622 (c), contains two basic provisions related to recourse to judicial warrants for search by drones. Law enforcement use of drones is authorized, in pertinent part: "(2)(A) pursuant to a warrant obtained under Rule 41 of the Vermont Rules of Criminal procedures; or (C) a judicially recognized exception to the warrant requirement." Further, per § 4622 (d)(3), "If a law enforcement agency uses a drone in exigent circumstances pursuant to subdivision (c)(2)(B)…the agency shall obtain a warrant for the use of the drone within 48 hours after the use commenced." The statute contains its own Exclusionary Rule provisions, in the event that the post-search warrant application is denied, or the search exceeds lawful purposes authorized by the statute.[11] The statute thus makes law enforcement use of drones subject to the generally applicable terms of Rule 41, with post-search warrant required if exigency is claimed as a "judicially recognized exception."

In the course of discussion on May 4th, two alternative views emerged: (1) a rule should be promulgated as to searches employing drones; however, the draft should avoid parroting or "rubber stamping" the statute to the extent possible; or (2) no rule should be promulgated, leaving assessment of validity of searches via drone to case by case analysis, employing the general provisions of Rule 41 and prevailing constitutional principles. Judge Zonay emphasized that recourse to warrants should be encouraged, and that a rule which incorporates provisions of

[7] Rule 41.1 is excluded from the new captioning, since 41.1 has long been promulgated to address non-testimonial identification procedures. No amendment to this rule is contemplated.

[8] As the Reporter's Notes indicate, Rule 41 has been amended in 2007, 2010, 2011, 2013, 2015 and 2016. See Notes for explanation of the various amendments and their bases.

[9] Dan Sedon raised a concern, that in breaking the types of searches out into discrete subdivisions, there might be cases in which the search, and its applicable rule(s), don't neatly fit into one or the other subdivision. As Dan put it, "neither fish nor fowl." The response of others was that the validity of searches with or without warrant must ultimately addressed by the courts on a case by case basis under determinative Constitutional analysis, apart from stated rules, and that cross referencing generally applicable principles in the rules could serve to avert the concern that a particular search and warrant process doesn't "fit" within the structure of the rules. Cross referencing will be addressed in the final draft.

[10] See draft subsection 41.4(b)(3), and the comments reflected in the minutes of the February 2, 2018 meeting, pp. 8-9.

[11] See § 4622 (d)(3)(B) and (e).

the statute, including its protections for persons subject to drone searches, would provide important guidance to law enforcement and the public.

The Committee discussion turned back to an issue previously identified with the statute's requirement of "retroactive" recourse to a judicial warrant after a drone search had been completed under claimed exigent circumstances. There was significant concern among Committee members as to how this would work, and whether post-search applications would serve merely to "bootstrap" issuance of a warrant in effect validating a search for which exigent circumstances did not exist in the first instance. It was noted that the scope of Article 11 protections diverges from the Fourth Amendment, as evidenced by *State v. Oakes,* 157 Vt. 171 (1991), which rejects the "Good Faith" exception to the Exclusionary Rule established in *U.S. v. Leon,* 468 U.S. 897 (1984) for purposes of the Fourth Amendment. The concern expressed being that an officer would claim to have acted under a "good faith" belief that exigent circumstances existed to secure a post-search warrant retroactively validating an unlawful search. The response to this concern was that as with traditional applications of the exclusionary rule, a judge in a given case on a particular set of established facts would determine the constitutional validity of a particular drone search, whether warrantless, or with a post-search warrant secured consistent with the ECPA.[12]

The Committee's consideration of the Rule 41 amendments closed out with discussion of *Carpenter v. United States,* No. 16-402, then pending for decision in the U.S. Supreme Court,[13] and *United States v. Jones,* 565 U.S. 400 (2012). These cases have addressed searches via tracking devices (*Jones)* and through accessing cell phone data (Cell Site Location Information) through service providers to locate and monitor the travel of individuals *(Carpenter).* Consideration of these cases prompted brief discussion of tracking devices, authorized duration of their use per warrants, and implications for proposed rules governing drone searches. The Committee expressed interest in receiving some further research as to pertinent recent cases.[14]

The proposed amendments of 41.4 would also prescribe procedures for warrants for "protected user information" such as internet accessible electronic information of consumers possessed by providers.[15] Given the focus upon drones, the Committee did not engage in detailed

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[12] This interpretation is supported by the language of the state ECPA statute itself: "Pursuant to 20 V.S.A. § 4622(d)(3)(A) where a law enforcement agency has, within the past 48 hours, commenced use of a drone in exigent circumstances pursuant to a *judicially recognized exception* to the warrant requirement to search for and seize (evidence specified further in the rule)" a warrant must then be requested (emphasis and parenthetical matter added)

[13] The Court subsequently issued its decision on June 22, 2018, holding that the government's acquisition of an individual's cell-site records was a Fourth Amendment search, requiring a warrant issued upon finding of probable cause.. See *Carpenter,* 585 U.S. ___.

[14] Rule 41 was amended in 2013 to expressly include procedures regulating warrants for tracking devices. See, 41(d)(2)(C); (d)(5)(D); and (e)(5).

[15] "Protected User Information" is defined as "electronic communication content, including the subject line of e-mails, cellular tower-based location data, GPS or GPS-derived location data, the contents of files entrusted by a user to an electronic communication service pursuant to a contractual relationship for the storage of the files whether or not a fee is charged, data memorializing the content of information accessed, or viewed by a user, and any other data for which a reasonable expectation of privacy exists." See, 13 V.S.A. § 8101(8). Existing Rule 41(d)(f)(B) presently governs warrants seeking "*electronically stored information*." Such would not necessarily be considered the equivalent of protected user information, as the primary target of the search for the latter would be the service provider, even though the privacy interests of the user are invoked.

consideration of these provisions of the proposal, and discussions will continue at the next meeting.

7. **2018-03: V.R.Cr.P. 32(c)(4); *State v. Lumumba*, 2018 VT 40 (4/6/18)(Objections to PSI Content and Recommendations.)**

In its opinion, the Court requested that the Committee revisit amending 32(c)(4) to require disclosure of probation conditions sought in a PSI, as well as record objection to any proposed conditions in order to preserve claims of error.[16] The Committee has previously considered the very same issue following the decisions in *State v. Cornell,* 2014 VT 82, *State v. Morse,* 2014-84, and *State v. Bostwick,* 2014 VT 97, and then respectfully recommended that the Court not consider adoption of any requirement of objection to PSI content other than that currently required as to "facts contained" in the PSI (i.e. evidentiary content sought to be considered by the judge in sentencing) See, Agenda Item # 2014-08. The proposal previously under consideration would have adopted a variation of F.R.Cr.P. 32(f), which requires timely provision of written objections to PSI content, "including objections to material information, sentencing guideline ranges and policy statements contained in or omitted from the report."[17]

Previous objections to the proposed requirements centered upon concerns for judicial independence, and discretion, at sentencing. Judge Arms indicated that a requirement of timely advance objection would only work, presupposing that a complete list of conditions of sentence, including probation conditions, was in fact provided at the outset in the PSI, and this is not always the case. Apart from inadvertent omissions from the PSI, a judge may determine in the course of a sentencing hearing that a particular requirement or condition of sentence is necessary on the record then developed, and the judge is not always in a position to fully articulate and receive party reactions to inclusion of a particular condition that is not included in the PSI, and yet may have ample factual basis provided on the record.

Rebecca Turner indicated that in event of "surprise" conditions imposed, unless a post-sentence motion is filed, a defendant would be considered to have waived objection, raising potential for routine filing of motions for reconsideration/ reduction or modification of sentence in an effort to safeguard and preserve claims of error. She referred to the text of the *Lumumba* opinion at ¶ 12, which does indicate that a defendant's remedy for a judge's imposition of unnoticed or unforeseen conditions of sentence would be via post-sentence motion or by motion under Rule 35(a) to the trial court. Failing such a motion, any claimed error would not be deemed preserved, but reviewable only for plain error.

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[16] See, *Lumumba, supra.* ¶ 28: "…we request that the criminal rules committee propose rules to regularize the procedures for considering probation conditions at sentencing. Proposed rules should set forth how the State and defendants must raise and preserve issues. Our recent decisions have required evidence to support specific conditions to show the condition is related to the crime for which a defendant is convicted and necessary for rehabilitation. If a defendant objects to a condition because it does not meet that standard or for another reason that will require evidentiary support for the condition, then the defendant should have to state this position prior to sentencing to enable the state to obtain the necessary evidence."

[17] The proposal considered would have required objection to any "facts", as well as "other material information…including sentencing recommendations, and recommendations as to mode of sentence, general or specific conditions of sentence, and correctional programming, and policies stated or omitted from the report."

Some Committee members were of the view that the requirements proposed do not reflect the actual dynamic of sentencing proceedings in Vermont, in which the procedure for objections to factual content in PSIs is well understood and treated in redaction proceedings, yet considerable flexibility is accorded, consistent with Due Process and the reality of overworked PSI authors, in consideration of what conditions of sentence may be warranted and sustained on the sentencing record. Ultimately, the Committee consensus was to continue its discussions of the Court's request at its next meeting, with an alternative draft of amendments to be available for consideration.[18]

8. **2018-02: S. 159 (2018 Adj. Session); H. 523 (2017 Adj. Session); Impact upon V.R.E. 807; V.R.Cr.P. 15 and 17**

This legislation, in the referenced bills, would expand VRE 807 (video testimony in cases with certain child or other victims with disabilities) to include cases involving bodily injury or serious bodily injury. Other sections of the bills would alter the circumstances for taking depositions under V.R.Cr.P. 15, and would require a hearing before a court before a subpoena is issued for a victim's school or other confidential records, with implications for V.R.Cr.P. 17. The Committee previously reviewed these proposals at the request of the House Judiciary Chair, and was unable to reach consensus as to the merit of the resulting rules amendments, as reflected in the minutes of previous meetings. Reporter Morris indicated that the legislation had not in fact advanced at all during the ensuing weeks of the legislative session, and was unlikely to be adopted.[19]

9. **Agenda Items Deferred:**

2013-04—General Revisions of Rule 11 (General Reformatting and Restyling); 2016--06--Amendment to Rule 43(c) to Expressly Permit Waiver of Appearance at Arraignment (Impact of decision in *In re: Bridger,* 2017 VT 79); **2017-08—Amendment to Rule 11(f); Procedure for Factual Basis Finding**

These three items had been deferred by the Committee at its February meeting. As of the May 4th meeting date, only one significant appellate decision had been issued that would serve to further construe the reach and requirements of the majority opinion in *Bridger*.[20] Accordingly the Committee unanimously agreed to carry these items forward in deferred status until a future meeting, and issuance of significant post-*Bridger* decisions in cases known to be pending and awaiting decision.

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[18] F.R.Cr.P. 32 does set forth two additional provisions related to PSI contents and objections of pertinence. In the federal system. upon serving of written objections to PSI content to the party opponent and probation officer, the probation officer is authorized to meet with the parties to discuss objections, conduct further investigation, and revise the PSI as appropriate. The probation officer may then submit an addendum to the PSI containing any unresolved objections, grounds for them, and the PO's comments as to them. F.R.Cr.P. 32(f)(3) and (g).

[19] The legislative session closed following the May 4th meeting, with no action taken on the proposals.

[20] See, *In re: Alexis Gabree,* 2017 VT 84 (9/8/17). *In re: Cynthia Pinheiro,* 2018 VT 50 (5/4/18), a unanimous opinion, was issued on the day of the meeting, and was not before the Committee at all for its consideration. *Pinheiro* construed the Court's obligations under V.R.Cr.P. 11(c) to explain all essential elements of the offense in plea colloquy. The opinion expressly did not address Rule 11(f)'s factual basis requirement in that the claim was not preserved.

2015-01: Amendments to Rules 4(a)(b), 5(c); Electronic Filing of Probable Cause Affidavits; Electronic Filing of Sworn Documents in lieu of "hard" copies; Conformity with V.R.E.F. 7(c). Pending action of PACR Committee and Advisory Committee on Rules for Electronic Filing, in conjunction with implementation of new case management system by judiciary ("Next Generation-Case Management System").

2014-02: Proposed Amendment to Rule 24(a)(2) (Disclosure/Distribution of Completed Juror Questionnaires to Counsel); see also V.R.C.P. 47(a)(2).

This proposal remained in deferred status pending action on the part of the Advisory Committee on Public Access to Court Records (PACR). The Reporter indicated that a "summit" meeting of the Chairs and Reporters of the Civil and Criminal Rules committees would be convened to discuss apparent conflicts as to disclosure of juror information between the civil and criminal rules, and Rule 10 of the Rules Governing Qualification and Selection of Jurors.

2014-06: Proposed new Civil Rule 80.7a (Civil Animal Forfeiture procedures) per Act 201 (2014 Adj.Sess.), S. 237, effective July 1, 2014.

The proposed amendments would add V.R.C.P. 80.7a, establishing specific procedures for conduct of civil animal forfeiture cases in matters of animal cruelty or neglect (which are conducted in the criminal division per 13 V.S.A. § 354(d)). The proposed amendments have been reviewed at a number of past Committee meetings and unanimously approved. The Reporter will transmit the proposal to the Advisory Committee on Rules of Civil Procedure for that committee's consideration and response.

10. Next Meeting Date(s)

Contemplated for a date in September. A poll will be circulated by the Reporter to establish the date. Time: 9:30am. Location: Vermont Supreme Court Building.

11. **Adjournment**

The meeting was adjourned by the Chair at approximately 12:20 p.m.

Respectfully submitted,

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Walter M. Morris, Jr.
Committee Reporter