CRIMINAL RULES ADVISORY COMMITTEE

September 22, 2017 Meeting
1:30 p.m.
Vermont Supreme Court, Montpelier, VT

AGENDA

Meeting opening; Chair Thomas Zonay; announcement of Rules Committees transitions and actions.

I. Old Business:

1. Approve minutes of May 12, 2017 meeting.

2. Report: Legislative Committee on Judicial Rules Meeting, June 8, 2017 (Zonay; Morris)(Rules 17; 32(c); 45; and 5(e), 11.1; 44.2.)

3. 2013-04: Rule 11 procedures and colloquy amendments (general revisions) (Redraft; Morris/Treadwell); Impact of Decision in ***In re: Anthony Bridger,*** 2017 VT 79 (8/25/17) upon Rule 11(f) and plea colloquy (See New Business)

4. 2014-02: Proposed amendment to Rule 24(a)(2)(Disclosure/ Distribution of Juror Questionnaires to Counsel)(Report of Judge Zonay formerly Chair of Committee on Public Access to Court Records)

5 . 2014-06: Proposed new Civil Rule 80.7a (Civil Animal Forfeiture procedures) per Act 201 (2014 Adj.Sess.), S. 237, effective July 1, 2014. (Final redraft to be sent to Advisory Committee on Rules of Civil Procedure)

6. 2016-05: Amendments of Rule 41 following passage of Act. No. 169 (S.155, 2016 Adj. Sess.) Privacy Protection Act; warrants for search of electronic data; warrants for search by use of drones. Protocol for issuance of search warrants by reliable electronic means. Presentation of alternative drafts. (Treadwell).

7. 2015-1: 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). Proposed amendment approved at 11/20/15 meeting. To be transmitted to Courrt for publication and comment. (Morris)

8. 2015--02: Video Arraignment and Other Court Appearances; **Video Testimony**; Administrative Order No. 38 (1998 as amended); Request for consideration of amendments to Rules 3(g); 5; 43 consistent with Video Arraignment and Other Court Appearances in lieu of personal presence. Emergency Amendment of A.O. 38, June 8, 2015; **Proposed V.R.C.P. 43.1 and actions of Civil Rules Committee at meeting on September 23, 2016. (Adoption of any parts of Civil 43.1 for Criminal Rules?)** Report on redraft by Criminal Rules Subcommittee (Saxman; Treadwell; Sedon; Kennedy).

9. 2015-03: Rule 23 Jury Sequestration Issues. Waiver in event of jury separation of more than 48 hrs (life cases) or 30 days (other cases) from voir dire to trial; jury warning/advisement by trial judge; ***State v. Breed,*** 2015 VT 43 (3/12/15); Revised and final draft reflecting Committee actions on 2/10 and 5/12/17 to be presented (Saxman).

10. 2016-06: Rule 43(c); Amendment to expressly permit waiver plea on court approval of waiver of appearance, without colloquy in open court (responds to decision in *In re: Manosh,* 197 Vt. 424 (2014)(McLaughlin/Saxman)[Final draft for publication to be presented] **Discussion of impact of *In re: Bridger,*** 2017 VT 79. (Morris)

11. 2016-02: Amendment of Rule 42, Criminal Contempt (Treadwell)

12. 2016-03: Amendment of Rule 5 (Pre-Trial Screening/Advisements) in consequence of Act No 140 (S. 171, 2016 Adj.Sess.) (Morris/Treadwell) **Comment period closed on 8/7/17; to be recommended for promulgation.**

13. 2016-04: Amendment/Deletion of V.R.Cr.P. 11.1 (Collateral

Consequence Colloquy in certain marijuana cases) after passage of Act No. 133 (H. 858; 2016 Adj. Sess.) (Treadwell) **Comment period closed on 8/7/17; to be recommended for promulgation.**

14. 2017-04: V.R.Cr.P. 44.2(b)—Changes to Rules of Admission and AO 41 re: licensing of attorneys; Attorneys not admitted in Vermont; elimination of 3 month clerkship; necessary revisions of Rule 44.2(b). (Morris) **Comment period closed on 8/7/17; to be recommended for promulgation.**

II. New Business:

15. 2017-03: V.R.Cr.P. 54(a)(2)—Applicability; delete reference to "Traffic Act"; see, V.R.C.P. 80.6 (Judicial Bureau rules) (Morris)

16. 2017-05: Accommodation of Persons with Cognitive Disabilities in Judicial Proceedings (Comments of Rep. Martin LaLonde, Legislative Committee on Judicial Rules)

17. 2017-06: V.R.Cr.P. 43(a)—Amendment In Budget Bill (H. 542; Sec. E. 204.1) which amends Rule 43 (without any apparent legislative deliberation) to prohibit video arraignments without consent of Defendant.

18. 2017-07: V.R.Cr.P. 17 (Subpoenas)—Post Promulgation Review of new Rule 17 procedures for issuance and regulation of subpoenas in criminal cases. Discussion of alternative drafts further amending Rule 17, as well as proposed amendments to V.R.C.P. 45 (Subpoenas) under consideration by Advisory Committee on Civil Rules.

19. 2017-08: V.R.Cr.P. 11(f) (procedure for Factual Basis finding in plea proceedings; impact of decision in ***In re: Bridger,*** 2017 VT 79.)

20. Information Item: Proposed F.R.Cr.P. 16.1 (Discovery Conference; addressed particularly to issues with Electronically Stored Information (ESI)).

21. Confirm dates for next two Committee meetings.

III. Status of Proposed/Promulgated Rules:

22. 2017-02: V.R.C.P. 5(h) (Incorporated by reference, V.R.Cr.P. 49) (Eliminates need for separate certificate of service, provided certificate is incorporated into the document filed). Promulgated by the Court as final on July 14, 2017, effective September 18, 2017.

23. 2014-08: Proposal to add Rule 32(g) to specify procedures for restitution hearings (*State v. Morse,* 2014 VT 84, 7/25/14; *State v. Vezina,* 2015 VT 56). Promulgated by the Court as final on July 14, 2017, effective September 18, 2017. .

24. 2013-05: Rule 45 "Day is a Day" (Time) and related amendments; Comment period completed; final promulgation request is under consideration by the Court. Consolidated promulgation order including criminal, civil, probate, small claims and appellate rules amendments is contemplated. Status report on final draft w/Reporter's Notes. "Day is a Day" bill **(H.4)** conforming applicable statutes to proposed rules amendments has been passed by legislature. Promulgation is on the agenda for the Court's next Administrative Meeting. (Morris).

25. Circulation and submission of Annual Report of Committee to the Supreme Court.

26. Any other business.

27. Adjourn.

[9/9/2017]