

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE**

**MINUTES OF MEETING
November 1, 2024**

The Criminal Rules Committee meeting commenced at approximately 9:40 a.m. via video conference. Present were Committee Chair Judge John Treadwell, Judges Mary Morrissey and Heather Gray, Jessica Burke, Rebecca Turner, Meghan Place, Mimi Brill, Mary Mossey, Jordana Levine, Ian Sullivan, and Domenica Padula. Supreme Court Liaison Justice Karen Carroll was also present. The following members were absent: Andrew Schmidt and Frank Twarog. Also absent was Committee Reporter Professor Shannon Heery.

1. Committee Transitions

Judge Treadwell opened the meeting, introducing and welcoming our new members.

2. Approval of April 12, 2024 and August 2, 2024 Meeting Minutes

On motion of Rebecca Turner and seconded by Ian Sullivan, the minutes of the April 12, 2024 meeting was unanimously approved. The Committee also reviewed the minutes of the meeting of August 2, 2024 for which there was no quorum.

3. Reports

Judge Treadwell reviewed the legislative reports with the committee members regarding the meetings of the Legislative Committee on Judicial Rules meetings on June 19, 2024, and October 16, 2024.

OLD BUSINESS:

4. Promulgated V.R.C.P. 43.1; Further Committee Review and Provision of Comments/Suggested Further Amendments to Comport with Criminal Division Practice and Imperatives.

In its July 10, 2023 order promulgating amendments to Administrative Order 38 (which, with V.R.Cr.P. 26.2 and 43, governs remote participation and testimony in criminal proceedings), the Court directed the Criminal Rules Committee to engage in a review of V.R.C.P. 43.1 and related rules of other court divisions, to determine if any provisions of Rule 43.1 should be adopted as to Criminal Division practice.¹ At the time, the Committee consensus was to defer any review until at least a six month period of experience in implementing Rule 43.1 and the other recently promulgated remote

¹ The text of the order: “That the Advisory Committee on Rules of Criminal Procedure is directed to review the operation of the provisions of this Order, in relation to V.R.C.P. 43.1, V.R.F.P. 17, and V.R.P.P. 43.1, as they exist and as may be amended, to consider adoption of any provisions of the same related to remote or hybrid participation in criminal proceedings, and to advise the Court no later than June 30, 2025 whether this Order should be further amended.”

participation/testimony amendments. The status of the review was thus brought forward for consideration again at the November 1st meeting.²

Rebecca Turner and Ian Sullivan provided an update on the results of surveys conducted of the prosecution and defense bars at annual training events and beyond. The surveys were a mode to gather comments and suggestions as to what alteration of current remote proceedings rules and practices would be helpful, and what aspects of remote proceedings are working well or should not be changed. Both Rebecca Turner and Ian Sullivan expressed substantial concerns about remote hearings, a major concern being attorney access to clients before and after remote arraignments.

The committee will hear updates from Rebecca Turner and Ian Sullivan at our next meeting, with a particular focus on what, if any, solutions can be implemented through the Rules of Criminal Procedure.

5. **2021-04: (Speedy Trial Standards) V.R.Cr.P. 48(b)(1); A.O. 5 Review Joint Subcommittee;** *(Report of Progress in Subcommittee Meetings, and Discussion of Data Needs and Alternative Recommendations. Case Age and Disposition Data Update; Proposed Amendments of Rule 48(b)(1)). See also, Administrative Directive 24 (2010). (Subcommittee members: Arms; Lanthier; Padula; Sullivan; for Crim.Oversight, Sally Adams; Josh O’Hara; Arms) (Consideration of Final Subcommittee Report for Transmission to the Court).*

Justice Carroll provided an update to the Committee that this item had been discussed at two AO meetings since our last Committee meeting in April, and that it was again on the agenda for next week’s AO meeting.

6. **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.** *(Discussion/Approval of Redrafted Proposal of Amendment, for Publication and Comment) (Treadwell) (Subcommittee: Treadwell, Turner, Sullivan, Lanthier, Arms).*

The Committee passed over this issue. It will be addressed at a future meeting by the Committee.

7. **2023-04: V.R.Cr.P. 41.1(m)&(n): Non-Testimonial Identification Orders; “Minors”; “Offense”; Application in Delinquency and YO Cases; Revision for Currency of Terms and Consistency with Current Practices and Statutory Expansion of Jurisdiction.** *(Treadwell) (Discussion of Joint Committee of Family Rules Committee Members and Criminal Rules Committee Members to discuss. Family Rules Committee Chair, Judge McDonald-Cady, Marshall Pahl, Kristin Gozzi, and Judge Amy Davenport have agreed to represent Family Rules; Consideration of a revised draft of further amendments to the rule for recommendation by Criminal Rules Committee; Other jurisdiction approaches to the issue).*³

² See, Minutes of Committee Meeting, 4/12/24, for prior Committee discussions.

³ See, *Beyond the Davis Dictum: Reforming Nontestimonial Identification Evidence and Rules and Statutes*, 79 U.Colo.L.Rev. 189 (Winter 2008) and Columbia Justice Lab, Emerging Adult Justice Project, *Update on the Implementation of Vermont’s “Raise the Age” Law*, Report, January 2024. Note: Since the proposed amendments implicate

The Committee appointed Judge Heather Gray, Jordana Levine, and Domenica Padula to serve on the joint committee with family rules to consider further amendments to this rule.⁴

8. **2024-02: V.R.Cr.P. 3(k); Court May Add Required Contents for Affidavits/Sworn Statements Submitted per V.R.Cr.P. 5(b) for After-Hours Bail Calls, to Determine Hold without Bail/Bail/Conditions of Release.** *(Amendment would authorize requiring statement of SA's intended charges and SA's Request as to Bail/Conditions, or HWO Bail See, Agenda Item # 2018-05, Emergency Amendment of Rule 3(k), later amended by Legislature to abrogate requirements of prosecuting attorney participation in bail call, and that affidavit/sworn statement indicate "the charges that the prosecuting attorney intends to file" and substituting the phrase the "crimes to be charged" by the arresting officer. Act 40 (H. 512) § 7 (2019 Adj. Sess.))*⁵

After an initial discussion among committee members, this issue will be discussed again at the February 7, 2025 meeting.

9. **Joint subcommittee with Committee on Rules for Public Access to Court Records to address access status of inquests, subpoenas duces tecum, and nontestimonial orders.** *(From the Public Access committee, J. Dooley, Laura LaRosa, and Tracy Shriver expressed interest in joining this committee.)*

The Committee appointed Judge Morrissey to serve as our representative on the joint subcommittee.

10. **Recent Court Decisions of Note**

Judge Treadwell noted that the language of V.R.Cr.P. 32.1 regarding procedures for revocation and modification of probation did not fully reflect practices in the Criminal Division regarding such proceedings. Judge Treadwell will prepare a proposal for consideration at a future meeting.

The next Criminal Rules Committee meeting will be held on Friday, February 7, 2025 at 9:30 a.m. Upon motion the meeting was adjourned.

Respectfully submitted,

Shannon Heery
Committee Reporter
[2/5/25]

procedure in delinquency cases, if approved by Criminal Rules Committee they should be sent to Family Rules Committee for comment prior to request for publication.

⁴ See, Minutes of Committee Meeting, 4/12/24, for more on the history and discussion of this rule.

⁵ See, Minutes of Committee Meetings, 9/20/19; 1/25/19; 10/12/18; and 8/3/18, (pp. 1-6--lengthy substantive consideration).