[AS APPROVED ON APRIL 14, 2023]

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE

MINUTES OF MEETING
December 2, 2022

The Criminal Rules Committee meeting commenced at approximately 9:00 a.m. via Zoom video conference. Present were Committee Chair Judge John Treadwell, Judge Alison Arms, Dan Sedon, Devin McLaughlin, Mimi Brill, Domenica Padula, Rebecca Turner, Mary Kay Lanthier, Laurie Canty, Dickson Corbett, and Committee Reporter Judge Walt Morris was also present. Judge Marty Maley, Frank Twarog, Kelly Woodward and Supreme Court Liaison Justice Karen Carroll were absent.

Chair Treadwell opened the meeting, after presence of a quorum was noted. He welcomed new Committee member Dickson Corbett, Orange County State's Attorney, who replaces Rosemary Kennedy.

1. **Approval of September 9, 2022 Meeting Minutes.**

On motion of Devin McLaughlin, seconded by Mimi Brill, the minutes of the September 9th, 2022 meeting were unanimously approved, with two minor edits.[1]

Items of Old Business addressed:

2. **Report on Status of Various Rules Amendments.**

Reporter Morris provided an update on the status of various procedural rules amendments relevant to the work of the Committee. He indicated that at the November 1st meeting of the Legislative Committee on Judicial Rules (LCJR) the promulgated amendment of V.R.Cr.P. 11(a)(4) (preservation of post-conviction challenge to predicate conviction when entering guilty/nolo plea to enhanced offense without plea agreement) and proposed amendment adding V.R.Cr.P. 26.2 (video testimony by agreement of parties) were favorably reviewed, with no suggestions for modification made by the LCJR members. Testimony was provided on behalf of the States Attorneys and Sheriffs going generally to how 26.2 would work in practice, and a minor Reporter's Note was suggested (See discussion, # 8 below). Morris indicated that he sought to clarify for the Committee the very limited intended scope of the proposed 26.2, and that questions as to remote *participation*, and remote testimony in non-criminal proceedings, were being addressed by proposed rules amendments under consideration by the Special Advisory Committee on Remote Hearings.

No comments were received in response to the emergency promulgation of amendments to V.R.Cr.P. 24(d) on 8/9/22, effective 9/6/22 in the comment period that closed on 10/17/22 (the Committee consensus was thus that no further recommendation to the Court as to the promulgation was warranted). The proposed amendment of V.R.Cr.P. 44.2 (pro hac vice appearance in criminal division) remained pending before the Court, with identical amendments to other pertinent procedural rules—civil, family, probate.[2] Finally, Morris indicated that the Federal Criminal Rule-16 (Discovery and Inspection) had been amended effective

[1] Names of those attending or absent at September meeting (p.1); correct spelling of Carol Callea's name (p. 2, ¶ 4)(commentor on proposed V.R.Cr.P. 26.2)

[2] Orders Amending Rule 79.1(e) of the Vermont Rules of Civil Procedure and Rule 44.2(b) of the Vermont Rules of Criminal Procedure, Rule 79.1(d) of the Vermont Rules of Probate Procedure and Rule 15(a) of the Vermont Rules for Family Proceedings were promulgated on 12/12/21, effective 2/13/23.

December 1, 2022; these amendments would be subject to discussion on a future meeting agenda to consider whether any amendment of V.R.Cr.P. 16 would be warranted, given the existing distinctions between federal and state discovery rules.

3. **2021-04: V.R.Cr.P. 48(b)(1); A.O. 5/Administrative Directive 24—Prompt Disposition of Criminal Cases; Report on Efforts of Joint Criminal Rules/Oversight Subcommittee Reviewing Existing Speedy Trial Standards**.

Alison Arms reported that the joint Criminal Rules/Oversight subcommittee has continued to meet, most recently on November 18th, with Scott Griffith, Judiciary Chief of Planning and Court Services and Brian Ostrom of the National Center for State Courts, to discuss models of Speedy Trial rules and policies, and in particular, how to best secure reliable data in support of establishment of specific deadlines that might be established for commencement of trial. Judge Arms first noted that in discussion with them and reference to a 2011 NCSC Report,[3] most time standards for case disposition appeared to be arbitrary or anecdotal, rather than firmly based upon case age data. One of the problems with securing reliable data lies in the many factors that contribute to case age, and the variety and reliability of case management systems and accuracy of available data. A particular problem in Vermont is a significant number of inactive cases (ex. defendant missing on outstanding warrants) that are still to be found in active status, which serve to inflate case ages. Some published standards (ABA, and Model Standards recommended in the NSCS report) do not contain fixed deadlines for case disposition, but speak in percentage terms (ex., 75% within 90 days; 90% within 180 days; 98% within 365 days). Of course, standards addressed to "case disposition" are not addressed to the particular relevant target for the subcommittee focus, which is commencement of speedy *trial.* As to speedy trial, the systemic administrative, case management issues and standards for case disposition, certainly relate to, but are distinct from the Constitutional Speedy Trial imperative, which necessarily focuses on a particular Defendant's circumstances in consideration of the factors established in *Barker v. Wingo.*[4]

As to relevant data, Laurie Canty indicated that Trial Court Operations has recently added new case reports for staff to use that include entries for cases that are "inactive" and cases that are "inactive—evaluation pending", in an effort to cull out unrepresentative case age data going forward. In addition, there are active efforts by technology staff to implement a core tool that will greatly improve access to specific case data sets, either on a standing "reports" basis or upon specific inquiries.

Judge Arms stated that the goal of the joint subcommittee is to prepare a report with recommendations as to updated and realistic Speedy Trial timelines, as well as proposed amendments to existing Criminal Rules, and administrative orders that would serve to facilitate more efficient and prompt readiness for trial, while recognizing case complexities and unit capacities to provide trials.

Rebecca Turner shared her comments. In her assessment, data alone should not drive the establishment of timelines to trial; due focus should remain on factors which make certain cases complex, thus requiring greater time to trial readiness. Even so, key focus should remain on pre-trial custodial status as a primary criterion. She indicated that referencing the data sheet that had been circulated to the Committee, some cases would appear to be 29 years pending, certainly not an accurate showing of case status, notwithstanding that there are significant numbers of cases of incarcerated Defendants long delayed and awaiting trial. She suggested that an area of inquiry should be on delay/age of cases in relation to maximum potential penalty—for example, misdemeanors with maximum time to serve of 2 years or less—and whether depending upon case type, a stricter requirement warranting dismissal if the case has been pending for longer than maximum authorized punishment should be among the recommendations.

[3] "Model Time Standards for State Trial Courts".
[4] 407 U.S. 514 (1972); also, *State v. Turner,* 2013 VT 26.

Judge Arms replied that many if not most of Ms. Turner's concerns are addressed in the NCSC Report and will be considered by the subcommittee. She urged the Committee to send any examples of cases with unreasonable delay to her or other subcommittee members for consideration. Laurie Canty indicated that TCO would continue its efforts to cull cases that are, or should be in inactive status from active case age data. Judge Morris noted that the joint Speedy Trial subcommittee is scheduled to meet again on January 27th. He also indicated that any report and recommendations of the joint subcommittee would be coming first to the Criminal Rules and Oversight Committees for their consideration and recommendations before being sent on to the Court. An update as to the continued work of the subcommittee will be provided at the next Committee meeting.

4. **2022-14: Promulgated A.O. 38 Amendments (Remote Proceedings in Criminal Division** (Promulgated, effective 9/6/22*;* Published for comment, comment period closed on October 17, 2022); ***and***

   2022-13: Special Advisory Committee on Remote Hearings; Proposals of Amendment of V.R.C.P. 43.1; A.O. 47; V.R.F.P. 17. (Distributed to Procedural Rules Advisory Committee Chairs and Reporters on August 18, 2022; published for comment on December 13, 2022, comment period closed on February 13, 2023).

At the December 2nd meeting, the Committee continued its extensive discussions of this group of promulgated and proposed amendments, begun at the September 22nd meeting.[5] The A.O. 38 amendments (which had actually been promulgated, with a post-promulgation comment period) provided a primary focus, as on September 22nd. In addition, the Committee had the pre-publication drafts of V.R.C.P. 43.1, A.O. 47 and 17 for further consideration. Reporter Morris indicated that at the Committee's direction, on October 4th, a letter was sent to Scott Griffith, Remote Hearings Committee Chair, outlining in detail the Committee's concerns as to the promulgated and draft proposed amendments of A.O. 38, V.R.C.P. 43.1, V.R.F.P. 17 and V.R.Cr.P. 26 (a)(ii).[6] This letter stated that at the least, a sunset provision should be added to the promulgated A.O. 38 to enable the Criminal Rules Committee to review the remote procedures rules for adoption of criminal-division specific procedures appropriate to necessary constraints of criminal practice.[7]

A post-promulgation comment period ending on October 17th was provided for the A.O. 38 amendments. Comments were received from the Office of the Defender General in a letter dated October 17, 2022. While action on post-promulgation amendments of A.O. 38 are within the province of the Criminal Rules Committee for recommendations to the Court, Reporter Morris indicated that a copy of the ODG letter will be provided to the Special Committee on Rules for Remote Hearings as well.

In discussion on December 2nd, Committee members were in agreement that references in the currently available draft of V.R.C.P. 43.1, and the promulgated A.O. 38, using the terms "evidentiary" and "nonevidentiary", and 43.1(b)(2)'s defining "nonevidentiary" as a proceeding "in which the Rules of Evidence do not apply" were problematic, in that there are many criminal proceedings that would be considered "evidentiary", and invoking a right of presence, in which the Rules of Evidence either do not apply, or only apply with modifications driven by appellate decisions. Difficulty emerged in attempting to define and distinguish those proceedings, whether "evidentiary" or not, for which a defendant has a right of presence, versus those for which remote participation could be authorized. Dan Sedon stated that there

[5] See meeting minutes, 9/22/22, pp. 2-5.

[6] Copies of this letter were provided to the Committee in advance of the meeting.

[7] When V.R.C.P. 43.1 was promulgated in 2019, it was of no application to criminal division proceedings, with the extant A.O. 38 covering video and audio conferencing there.

appeared to be a lack of understanding (in the "incorporation of 43.1 by reference proposals) as to the scope of a defendant's right of (physical) presence, and when that is required. Mimi Brill commented that we already have a working structure provided by V.R.Cr.P. 43(a) and (c), which clearly states when a defendant's presence is required and when not—the A.O. 38 and 43.1 amendments may result in conflict with that established criminal rule; albeit there may be unspecified proceedings circumstances not directly referenced in Rule 43 when a right of presence as a function of Due Process may be mandated.

John Treadwell remarked that as to the rules proposals, and the "incorporation of 43.1 by reference" approach, very complicated questions were presented: apart from the Sixth Amendment/Article 10 rights of presence and Confrontation of witnesses, what is the reach of Due Process rights of presence, and confrontation where necessary to assure a fair proceeding? Judge Arms stated that ultimately, regardless of rules amendment, these very difficult issues may only achieve resolution in the context of litigation.

Rebecca Turner had three central comments: at the very least, a better definition of "evidentiary" vs. "nonevidentiary", apt for criminal proceedings and practice, must be provided; the issue of a judge presiding remotely from other participants (proposed in both 43.1 and A.O. 38, and especially in any fact-finding proceeding associated with a defendant's constitutional guarantees), was highly problematic, and presented relatively uncharted territory; and it appears that due consideration has not been given to a defendant's right to a "Public Trial" as related to actual presence of participants and public, under the variable structures of in-person, or remote-or hybrid participation of judge, parties, witnesses, jury, and public. In her view, these issues required thoughtful consideration on the part of the Committee. Alison Arms added that there had been considerable discussion among judges as to the dimensions of a defendant's right to a Public Trial in the context of Covid era and resumption of jury trials with modified procedures with impact upon public right of presence, and alternative means of providing for that.

There were divergent opinions as to whether A.O. 38 or proposed 43.1's provisions for remote participation in clearly-recognized non-evidentiary proceedings should continue to be authorized either by incorporation by reference, or free-standing criminal rules. During the Covid emergency, and the period of the A.O. 49 orders, attorneys and parties became accustomed to appearing in many short matters remotely. This was seen as beneficial by a number of Committee members, saving attorney time, and clients from billables for personal appearances in court, and parties, for the convenience of not having to lose work, or incur child care expenses, that results from suitable, brief appearances remotely which would not be considered to be in the "evidentiary" category.

Devin McLaughlin recommended that the Committee examine closely keeping the option for remote participation available where appropriate, and consider rules amendments to facilitate that, to see how that could ultimately constructed to fit with criminal division practice. His comments were consistent with those that he, Judge Arms and others had provided at the September 22nd meeting.

There was brief mention again by Chair Treadwell that perhaps a subcommittee should be comprised to better focus the work and recommendations of the Committee. But there was no further discussion, or decision on taking that approach.

In view of the length of the discussion, and the fact that published proposals of the package of amendments by the Special Committee on Remote Proceedings were not yet available, the Committee did not reach detailed recommendations as to the draft 43.1, or expressly consider the proposed amendments to V.R.F.P. 17 (remote proceedings in delinquency and Youthful Offender cases) or the technical requirements for remote proceedings of A.O. 47, other than those comments and recommendations already provided in writing to Committee Chair Griffith in October.

As to A.O. 38, the unanimous view was to again request that the promulgated order be at least amended to establish a sunset provision, to enable the Criminal Rules Committee to further consider and provide recommended amendments as A.O. 38, and to other rules that are appropriate to remote participation in the Criminal Division, consistent with constitutional rights of confrontation and presence. The Committee consensus was that its work on this body of proposed amendments would continue at next meetings.

5. **2015-02: Proposed V.R.Cr.P. 26.2; Video Testimony by Consent/Agreement of Parties**. (*Published for Comment, Comment period closed on August 8, 2022; considered without objection by the Legislative Committee on Judicial Rules on November 1, 2022).*

A final draft of this long-worked proposal was circulated to Committee members in advance of the meeting. Reporter Morris indicated that a minor edit had been made in the Reporters Notes, based upon comment at the last committee meeting. He also related some additional comments that had been provided by Judge Tomasi on October 31st as to the amendments since the Committee's approval at the last meeting. Judge Tomasi's concerns went to whether the rule would apply strictly to trial, or to what are considered non-evidentiary proceedings such as bail hearings, or arraignments; whether requests needed to be in writing; and whether telephone testimony should also be permitted on agreement and waiver.

In addition, Morris provided a summary of points raised by Tim Lueders-Dumont, Esq. on behalf of the States Attorneys and Sheriffs on November 1st in the course of the LCJR review of the proposed 26.2. Mr. Lueder's-Dumont's comments went to whether there should be consideration of whether a victim's advocate would have an express right of presence with an alleged victim testifying remotely, for purposes of the amendment's subsection (f)(2)'s reference to "another person" who may be present in the court's discretion with the witness testifying remotely; he asked what subsection (f)(1)'s reference to "courtroom, government office, law office, or other suitable place" would look like as the venue for the testimony. As to criteria for court approval of remote witness testimony by agreement, he suggested that consideration might be given to a witness who is "bed ridden" (i.e., physically incapable of attending court) as a factor supporting remote testimony. And, he suggested that the draft Reporter's Note should be edited in the first paragraph to clarify that while consistent with Sixth Amendment and Article 10 Confrontation rights, the rule makes no provision for receipt of video testimony over a defendant's objection, there is a limited exception embodied in V.R.E. 807 (Video Testimony of a Minor upon specified court findings), per Confrontation case authority.

In addition, comments had been received earlier from Carol Callea of the Inmate Assistance Program (and previously discussed by the Committee) that were directed at perceived inadequacies in remote participation technologies (and not actually addressed to substantive provisions of the proposed Rule 26.2). Given the limited scope of 26.2, the Committee noted all of these points for future reference, but did not make any changes based upon them in the current draft.

After discussion of the current text of the draft, and the comments that had been received, on motion of Dan Sedon, seconded by Mimi Brill, the Committee unanimously approved of transmittal with promulgation recommendation of the proposed amendment to add V.R.Cr.P. 26.2, with one minor Reporters Note addition.[8]

[8] To add text to the note for subdivision (f)(criteria to be considered by the Court) noting, but distinguishing, the factors prescribed in V.R.C.P. 43.1(c)(6) in determining whether to permit, require, or deny testimony by video conference. The latter rule authorizes the Court to order video testimony on motion, even over a party's objection, in consideration of whether good cause for such is established in consideration of those factors. Testimony cannot generally be ordered over a Defendant's objection, and without agreement, and waiver of Sixth Amendment (and more limited Fifth Amendment) Confrontation rights to the physical presence of the witness.

6. **2022-12: VRCrP 26(c); VRE 404(b) Other Crimes, Acts Disclosures; Amendment of 26(c) to Comport with Current 404(b) Disclosure Requirements.** *(Request of Mimi Brill, on behalf of Evidence Rules Committee)*

After brief discussion, on motion of Dickson Corbett, seconded by Rebecca Turner, the Committee unanimously approved of a revised draft of these amendments, which incorporate recommendation of the Rules of Evidence Committee establishing more specific notice requirements for intended use of "other acts" evidence under V.R.E. 404(b) and evidence of prior convictions under V.R.E. 609. In contrast to the federal rules, the "notice" requirement on proffer of such evidence is housed in our V.R.Cr.P. 26(c). It was also agreed that amendment of V.R.Cr.P. 26(d) was warranted to update terminology appearing in a proposed amendment of V.R.E. 807.[9] The proposed amendments will be transmitted to the Court with request for publication for comment, and again considered by the Committee for promulgation at closure of the comment period.

7. **2020-03: Collateral Consequence advisement in Fish and Game matters prosecuted as criminal offenses, and in Youthful Offender proceedings per proposed V.R.F.P. 1.1.** (Twarog). *Continued discussion—As to Fish and Game, Amendment of Complaint Form to Include CC advisements. As to Y.O. proceedings, note* ***promulgation of amended V.R.F.P. 1.1 on September 13th, effective November 14, 2022.***

Laurie Canty reported that the issues have been resolved through two measures: a final proof of the amended Fish and Wildlife complaint form has been approved to go into print and use, containing the collateral consequences advisement; and, V.R.F.P. 1.1, procedure in Youthful Offender cases, has been promulgated, and Subsection 1.1(d) prescribes the advisements.[10] No further Committee action required.

8. **2022-11: V.R.Cr.P. 24(a)(2), VRPACR 6(b)(Appendix) and Juror Selection Rule 10(b)(2); Provision of Copies of Juror Questionnaires *Electronically* to Attorneys and Parties.** *(Request of Laurie Canty)*

Laurie Canty reported that the Judiciary will not be moving to a new Tyler Technologies jury management system; work is ongoing to provide adaptations to the existing Jury Plus system. The plan is to ultimately provide electronic access to completed juror questionnaires by counsel, and self-representers, with incorporated security features. Laurie will advise as to developments on the technology/administrative side when appropriate to facilitate rules amendment when needed.[11] No rule amendment is suggested at this time.

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[9] The V.R.E. 807 terminology was ultimately amended as proposed in a promulgation of November 7, 2022, effective January 9, 2023.

[10] The YO advisement form was available in Odyssey effective April 3, 2023.

[11] Juror Rule 10(a)(2) as amended provides that: "Copies of completed juror questionnaires and information contained therein shall be made available to the parties and their attorneys. The court may make such additional orders as appropriate to protect against unauthorized disclosure or distribution of copies provided, either to attorneys or self-represented parties." The Reporters Note to the 2021 amendments states that "Current practice is that nonelectronic copies of completed juror questionnaires are provided to counsel and parties under Rule 10, but policy questions are presented as to whether such information may be provided to counsel and parties in electronic form as well; whether the electronic versions of the completed questionnaires can be securely provided via the Odyssey case-management system or the Judiciary efiling portal; and what means exist to prevent unauthorized disclosure of any electronic version once transmitted to counsel or parties. Those issues are left to further development in light of the resumption of jury trials and continued implementation of electronic filing and the Odyssey case management system." Hence the need for clarification of the Rule at such time as the appropriate technology, including security measures, are in place.

9. **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. (*Further discussion of report of subcommittee*-Arms, Turner, Kennedy, Sedon, Lanthier).

Judge Arms provided a summary of the subcommittee's review of these Rules for concerns, and suggestion for further amendment.[12] Ms. Turner added more historical background. The particular issue initially considered by the Committee was brought forward in consequence of two trial court decisions, (*Colehamer; Alvarez)* as to the existing "good cause" standard for participant video recording in the rules, interpreted by the court (Judge Treadwell) as not authorizing the requested recordings. In first bringing the issue forward, Ms. Turner had suggested two short amendments to the text of the rule that would clarify the court's discretion to grant such requests.[13] The Committee did not engage in a full discussion of all of the points presented in the subcommittee report. Ms. Turner suggested that at the least, proposed amendments to clarify the court's discretion to permit participant recording be considered and recommended. Consensus was to renew consideration of the suggested amendments at next Committee meeting.

10. **2022-03: Proposed Amendment of V.R.A.P. 3(e) (To make docketing statements optional for Appellees)** *(Referral from Eleanor Spottswood, Esq.)*

Ms. Spottswood asked that the Committee (and the Civil Rules Committee) review, and offer comment, on a potential amendment of V.R.A.P. 3(e) that would eliminate the present requirement of filing a Docketing Statement by an Appellee, to make such optional.[14] Rebecca Turner provided background as to the purposes of the docketing statement from perspective of Appellant or Appellee, and indicated that in her view, there would be no concerns with the amendment for purposes of criminal appellate practice, as long as it remained optional for the Appellee. Devin McLaughlin asked whether the Docketing Statement had any connection to placement of an appeal on the "rocket" calendar, or full hearing status. Ms. Turner indicated that the Docketing Statement does serve as a screening tool in that regard, but that an Appellee, would always have the option to file their own responsive Docketing Statement under the proposed amendment, should they consider that necessary. After brief further discussion, no objection or edits were suggested to the proposed amendment, and the Reporter will advise Ms. Spottswood, and the Civil Rules Committee to that effect.

11. **2022-08: V.R.Cr.P. 47(b)(1) (Motions; Memoranda); V.R.C.P. 78(b)(1); Amendment to Permit Reply Memoranda)** *(Proposal by John Treadwell)*

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[12] V.R.Cr.P. 53 defaults to V.R.C.P. 79.2 for provisions related to possession and use of recording devices in the courtroom. Amendments to the existing rules were promulgated on May 1, 2019, effective September 3, 2019, with a sunset provision, which dictates current review. The subcommittee provided a report dated May 6, 2022, which was circulated to Committee members, and discussed by the Committee at length at the May meeting, without apparent consensus, in part due to uncertainty as to the scope of pending work by the Special Committee on Remote Hearings. See, meeting minutes, 5/6/22, pp. 3-5. Given the priority accorded at the September 22nd meeting to review of the package of remote proceedings amendments proposed by the Special Advisory Committee on Remote Hearings (which did not deal with recording), the further amendment of 53/79.2 was not considered by the Committee at that time.

[13] In the particular cases, the defense requests were to permit video recording of the layout of the courtroom, and positions of participants, including jurors during trial, given that Covid health restrictions and concerns dictated significant rearrangement of traditional physical locations of participants.

[14] The proposed amendment: "(e). Docketing Statements. Within 14 days of ~~After~~ taking an appeal, appellant ~~the parties~~ must ~~each~~ file with the Supreme Court clerk and serve on the other parties a docketing statement ~~with the Supreme Court Clerk~~ using a form prescribed by the clerk. ~~Appellant's docketing statement must be filed and served within 14 days of taking the appeal.~~ Appellee~~'s~~ may file and serve a docketing statement ~~must be filed and served~~ within 14 days thereafter."

This item was carried over from the September Agenda. Committee Chair Treadwell indicated that the two referenced rules, which address filing of memoranda on motions, and disposition of written motions with or without hearing, are virtually identical, but Rule 47(b)(1) makes no provision for the filing of any reply memoranda. He suggests a proposed amendment to add a sentence to the criminal rule, consistent with the text of civil 78(b)(1): "Any party may file a reply to a memorandum in opposition within 14 days after service of the memorandum." Beyond this report, the Committee took no action, and a draft proposed amendment will be provided for next meeting, for discussion, and approval for publication and comment.

12. 2020-04: VRCrP 35; 13 V.S.A. § 7042. (Sentence Reconsideration; Stipulations to Modify at Any Time) (Brill).

While not on the meeting Agenda, there was brief discussion of the status of this issue, which has previously been tabled. Mimi Brill reported that the Sentencing Commission had taken some action with respect to recommendations for stipulations to modify sentences, and the matter considered by the Racial Equity panel, but that certain State's Attorneys were expressing reservations. Rebecca Turner suggested two options: wait until further determinative action by the Commission, if any, or restore the issue to the Agenda for further monitoring and discussion. Dickson Corbett indicated that he serves on the executive board of the State's Attorneys, and was unaware of the history of the issue and its consideration by the Commission. Consensus was to place the issue on next meeting agenda, to decide its status—active or inactive—with the Committee.[15]

13. Next Committee Meeting:

The next Committee meeting will be scheduled after poll of the membership.[16]

On Motion of Dan Sedon, seconded by Rebecca Turner, the meeting was adjourned at approximately 11:22 a.m.

Respectfully submitted,

Walter M. Morris, Jr.
Superior Court Judge (Ret.)
Committee Reporter

[4/12/2023]

[15] Motions for sentence review/reconsideration are time limited under the existing statute. Committee consensus has been that a statutory amendment is necessary prior to any amendment of V.R.Cr.P. 35.
[16] After poll, the next Committee meeting was scheduled for April 14, 2023 at 9:30 a.m.