Vermont Judiciary Committee on Artificial Intelligence and the Courts

First Annual Report

3-1-25

Charge and Designation:

The Vermont Judiciary Committee on Artificial Intelligence and the Courts (hereinafter "Committee" or "VJCAIC") was officially established by the Vermont Supreme Court by Charge and Designation in February 2024. The Introduction to the Charge and Designation provides: "Given the recent upsurge of artificial intelligence ("AI") technologies and their implications for legal practice and the administration of justice, it is advisable to form a committee to examine the issues related to the use of AI in courts and the impact that AI tools could have on court proceedings and court operations." Committee members were to include a broad spectrum of backgrounds including: judicial officers; court administrators; the Vermont Attorney General or a designee; the Vermont Bar Association President or a designee; Vermont Bar Counsel; an individual with expertise regarding AI in the legal arena; and a law clerk. The Charge and Designation is copied in Appendix A. Committee members are listed in Appendix B.

The Charge and Designation tasked the Committee with reporting on its findings and any recommendations regarding the Charge and Designation annually, beginning March 1, 2025. The Charge and Designation also authorized the creation of subcommittees to address issues as needed, to invite stakeholders and subject matter experts to participate in discussion and to include non-Committee members in subcommittees. Three broad areas of study were identified in the Charge and Designation: court rules and whether they are currently adequate to address

generative AI usage; professional rules of conduct and whether they are adequate to address generative AI usage; and the role of AI in improving court operations including policy suggestions regarding judge and court staff AI education and training and the use of new technology products that include generative AI functionality. (References to Artificial Intelligence or AI throughout this Report refer to Generative Artificial Intelligence (GAI) unless otherwise indicated.)

Formation of VJCAIC Subcommittees

At its first meeting held on May 15, 2024, the Committee members formed three subcommittees focused on the three broad areas identified in the Charge and Designation. They also discussed the need to explore a fourth area critical to the Committee's work: Policy and Standards. A Policy and Standards Subcommittee was also formed as a result. Each subcommittee met independently over the course of the next months on a timeline of their choosing and the Committee met periodically to receive subcommittee progress reports. Following is a summary of the individual subcommittee recommendations, offered in the order in which the subcommittees were first identified in the Charge and Designation. A Conclusion summarizes the Committee's recommendations to the Court.

Court Rules Subcommittee

I. Overview

Superior Court Judge Alex Burke chaired the Court Rules Subcommittee. Other Subcommittee members included the chairs or designees of all of the procedural rules committees and are listed in Appendix C. Members discussed in detail whether recent developments in AI technology, particularly Generative AI (GAI) and the use of large language models, necessitate changes to procedural rules. Overall, the Court Rules Subcommittee does not recommend initiating any rule changes at this time but encourages ongoing education for judges, lawyers and self-represented litigants. The

Subcommittee also recommends asking the MCLE Board to consider whether to recommend that the Supreme Court require a technology-specific education credit.

II. Evidence Rules

The Court Rules Subcommittee identified several Vermont Rules of Evidence that might be impacted by the increased use of AI technology. On the issue of relevance and prejudice under V.R.E. 401 – 403, the Subcommittee discussed the need for judges to weigh whether evidence produced by AI is relevant and reliable and if explaining the concept could cause jury confusion or potentially waste jury time. As to expert testimony, judges will have to determine how to verify the authenticity and accuracy of evidence created by AI. The Subcommittee discussed that there is also a burden on lawyers and self-represented litigants to understand whether images, documents or other data has been altered by AI.

The Subcommittee also noted that the Federal Advisory Committee on Evidence Rules has been studying the challenges posed by AI and the impact that it has on the federal rules of evidence. The Federal Advisory Committee has not yet proposed any rule changes. The Subcommittee and the Vermont Rules of Evidence Committee will continue to monitor any proposed changes to the federal rules. The last meeting of the Federal Advisory Committee on Evidence Rules was held on November 8, 2024. Information from the portion of the meeting pertaining to AI is included in Appendix D.

III. Civil Rules and Related Appellate, Criminal and Family Rules

The Subcommittee discussed Vermont Rule of Civil Procedure 11 and its variants: VRCP 11(b); VRCP 26(g); VRSCP 13; VRAP 25(d); VRPP 11; and VRCrP 49(d). VRCP 11 is also incorporated by reference into the Rules for Environmental Court Proceedings and certain matters in the Family Division. These rules all provide that by presenting a document to the court, a lawyer or self-represented litigant certifies, subject to sanctions, that after reasonable inquiry the document is warranted by the law and the evidence. Other jurisdictions have imposed sanctions under Rule 11 in cases involving the filing of briefs and memoranda with fictitious cases or citations generated by artificial intelligence. The Subcommittee concluded that no changes were warranted at the

moment, but that continued education for lawyers and self-represented litigants on the use of AI is essential.

IV. Probate Rules

In addition to VRPP 11 discussed above, the Probate Division is concerned with verifying the authenticity of documents, particularly vital records. Under the probate rules, certain documents must be submitted in hard copy in addition to being submitted electronically to ensure their authenticity.

V. Continuing Legal Education

The Subcommittee noted that some other states have a one-hour technology requirement for continuing legal education. The Subcommittee recommends referring this suggestion to the MCLE Board to improve education of lawyers around technology developments in general, including AI.

The Court Rules Subcommittee complete report is set forth in Appendix E.

Disciplinary Rules Subcommittee:

I. Overview

Bar Counsel Michael Kennedy chaired the Subcommittee on Disciplinary Rules. Other Subcommittee members included trial court judges, a law clerk and private and public service practitioners listed in Appendix F. The Subcommittee was charged with studying whether the emergence of generative AI (GAI) warrants amendments to the Vermont Rules of Professional Conduct or to the Vermont Code of Judicial Conduct. The Subcommittee noted that the rules establish the contours of conduct that is either authorized or prohibited, and that a lawyer's or judge's use or misuse of GAI falls within the confines of those contours. The Subcommittee concluded that amendments to the rules are not warranted as a result, but that guidance for the bar and for judges is appropriate. In sum, lawyers and judges are reminded to use GAI in a manner that comports with their professional obligations. A summary of the recommended guidance

follows; the Disciplinary Rules Subcommittee report in its entirety is set forth in Appendix G.

II. Guidance for Lawyers

A. Competence

The duty of competence "requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Towards that end, "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." The Subcommittee noted that inasmuch as GAI is a form of technology relevant to the practice of law, the duty of competence requires lawyers to be knowledgeable about its risks and benefits. The Subcommittee also noted that the duty of competence informs all of the duties spelled out in the professional conduct rules. Its report highlighted a lawyer's professional obligations most likely to require a competent understanding of the risks and benefits of using GAI.

B. Communication, Objectives and Means

First, the Subcommittee noted a lawyer's duty to explain a matter so as to permit a client to make informed decisions. It recommended a lawyer might consider disclosing to a client the lawyer's intent to use GAI, along with the nature and extent of the use. The Subcommittee also urged caution if a lawyer intends to rely solely on GAI to communicate with a client.

C. Confidentiality

Next, the Subcommittee noted that a lawyer is prohibited from revealing information related to a client's representation and that the duty of confidentiality includes "making reasonable efforts to prevent the inadvertent disclosure of, or unauthorized access to, information relating to the representation of a client." The Subcommittee emphasized that a lawyer should understand that there is a risk that the use of GAI can result in an unauthorized disclosure of confidential information. As such, the guidance includes ways to safeguard against such a risk, especially regarding a careful review of a GAI tool's Terms of Service.

D. Fees and Expenses

The Subcommittee noted that a lawyer is prohibited from charging unreasonable fees and costs. Recognizing that the use or non-use of GAI can have a direct impact on the amount of time spent on a matter, the Subcommittee described different GAI billing considerations. The Subcommittee report also included a reminder of the importance of communicating to the client the extent of a client's responsibility for costs and a written statement concerning the terms of engagement.

E. Miscellaneous

Other aspects of the Vermont Rules of Professional Conduct covered by the report include "Meritorious Claims and Contentions", "Complying with Court Orders", "Supervision of Others", "Using GAI at the Direction of a Supervisor" and "Pro Bono".

II. Guidance for Judges

The Subcommittee explained that it was providing guidance for judges solely in conjunction with its mandate to review the Vermont Code of Judicial Conduct from a GAI perspective.

A. Appearance of Impropriety

The Subcommittee first noted a judge's duty to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." It also noted the potential for improper use of a GAI tool to undermine public confidence.

B. Competence and Diligence

With respect to a judge's duty to perform judicial duties competently and diligently, the Subcommittee noted that, like lawyers, judges should understand the risks and benefits of using GAI when performing judicial responsibilities.

C. Responsibility to Decide

Regarding a judge's duty to hear and decide matters that have been assigned to them, a judge shouldn't substitute their analysis for an AI-generated one.

D. Supervision of Others

Judges are reminded that their duty to supervise others includes supervision of others' use of GAI.

Court Operations Subcommittee:

I. Overview

Chief Superior Judge Tom Zonay and State Court Administrator Teri Corsones co-chaired the Court Operations Subcommittee. Other Subcommittee members included the Chiefs and representatives of the Technology Services Center, Planning and Court Services, Finance and Administration and the designee of the Chief of Trial Court Operations, along with numerous Court Administrator Office managers and key personnel instrumental in Vermont trial court operations. Subcommittee members are listed in Appendix H. The Subcommittee was charged with providing actionable recommendations for integrating AI tools into court operations. A summary of the key recommendations follows; the Court Operations Subcommittee report in its entirety is set forth in Appendix I.

II. Key Recommendations

A. Immediate Guidance on AI Usage

The Court Operations Subcommittee first recommended developing and disseminating clear guidelines for court staff and judicial officers on appropriate use of AI tools including: permitted AI usage; prohibited actions; data privacy; transparency and disclosure; employee training; and monitoring and reporting processes.

B. Establish an AI Advisory Board

The Subcommittee next recommended establishing a standing AI Advisory Board to review and approve AI use cases to provide centralized oversight for AI implementation.

C. Develop a Standard Evaluation Framework

Towards that end, the AI Advisory Board should adopt a robust evaluation framework for selecting AI use cases with criteria including: functionality; user experience; cost efficiency; integration; scalability; security; and vendor accountability and health. With respect to public-facing AI tools, the Subcommittee recommended exercising caution and implementing rigorous multi-phase testing and establishing performance metrics.

III. Examples of AI Use Cases

The Subcommittee offered several examples of potential AI operational enhancements that could be brought forward to the AI Advisory Board for consideration.

A. Internal AI Applications

Examples of internal AI applications include: Electronic Virtual Assistants; Case Processing and Workflow Automation; Document Automation; Document Review; FTR Transcription; and Ad-Hoc Report Generation.

B. Public Interaction Tools

Examples of public interaction tools include: Website Chatbots and Call Center Triage and Routing Processes.

C. Language Access

The Subcommittee noted that current AI-powered translation and interpretation tools lack a level of accuracy to serve court needs, and do not comply with federal guidelines as a result. Racial bias and discrimination within AI tools must also be addressed to ensure access to justice and to maintain public confidence.

Policy and Standards Subcommittee

I. Overview

Vermont Attorney General Charity Clark and Professor David Stein co-chaired the Policy and Standards Subcommittee. Other Subcommittee members include AI Committee Chair Associate Justice Bill Cohen, VBA President Designee Ott Lindstrom, VT Judiciary

General Counsel Leda Moloff, IT Director, Application and Data Services Marie Schonholtz and State Court Administrator Teri Corsones. The Subcommittee divided its efforts into four workstreams: Reliability; Ethics; Deployment; and Education. A summary of the four workstreams follows; the Policy and Standards Subcommittee report in its entirety is set forth in Appendix J.

A. Reliability

The Policy and Standards Subcommittee emphasized that their report presents recommended general policy guidelines for the Vermont Supreme Court to consider with respect to the use of GAI, not to provide specific guidance on usage that is addressed by the other subcommittees. With respect to the reliability workstream, the Subcommittee noted that when considering the use of an AI system, reliability assessments expand beyond the dimensions considered when analyzing traditional IT systems. The Subcommittee provided a framework for assessing whether an AI system is sufficiently reliable for its intended use, including: a definition of reliability; its relationship with other sections; how to assess reliability, establish requirements, identify risks, estimate impacts, and evaluate systems pre-deployment and post-deployment.

B. Ethics

The Subcommittee noted that the Judiciary's adoption of AI technology must account for the potential ethical implications in AI products that it endorses for use, as well as an understanding of the potential for bias and errors in work product generated with AI tools. It spells out a number of ethical considerations with AI use and adoption.

C. Deployment

The Subcommittee provided a detailed framework for technical measurements that should be taken into consideration in the deployment phase. The measurements include core concerns such as what should be measured and how we can measure, as well as how to select tools for Judiciary use. The framework also includes initial measurements and ongoing maintenance and measurement. Steps to be taken prior to deployment are also identified, including a requirement that prior to using AI tools, all

employees would have to sign and adhere to a written policy that outlines AI usage requirements. An example of such a policy is the Judiciary's "Policy and Procedures Regarding Electronic Communication and Internet Use," which is presently being updated to include AI systems. The current working draft is attached as Appendix K.

D. Education

Education surrounding AI use and systems will involve a variety of approaches, including CLE for attorneys, trainings for judges, trainings for court staff through in-service and on-line programs, risk assessment training and information that will be available on the website for self-represented litigants. A resource entitled "Potential AI Uses Related to Self-Represented Parties" is attached as Appendix L. Links to resources currently available through the National Center for State Courts (NCSC) and National Institute of Standards and Technology (NIST) are provided in Appendix M.

Conclusion

Amendments to court rules are not recommended at present, although the Committee is monitoring the work of the Federal Advisory Committee on Evidence Rules to determine if amendments to the Vermont Rules of Evidence will be warranted in the future. The CLE Board is asked to consider whether a technology requirement, including AI, is advisable. Amendments to the Professional Rules of Conduct and the Judicial Conduct Board Rules are not recommended, but lawyers, judges and self-represented litigants are encouraged to review the present rules in light of AI impacts. It is recommended that an AI Advisory Board be established to review and approve AI use cases in the Judiciary, including the development of a standard evaluation framework to inform the Board's work. Lastly, it is recommended that the Policy and Standards Subcommittee provide general policy guidelines to the AI Advisory Board, if established, to guide the AI Advisory Board's work.