

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES FOR PUBLIC
ACCESS TO COURT RECORDS

Minutes of Meeting, May 12, 2023

The meeting of the Advisory Committee on the Rules for Public Access to Court Records commenced at approximately 9 a.m. via videoconference. Present were Committee Chair Judge Timothy Tomasi and members Justice (Ret.) John Dooley, Judge Mary Morrissey, Teri Corsones, Tracy Shriver, Mike Tarrant, Amanda Stites, Bob Paolini, and Petra Halsema.

1. Chair Tomasi: Meeting Opening

2. Approval of Minutes from the March 2023 meeting.

On motion of Mike Tarrant, seconded by Petra Halsema, the Committee unanimously approved the minutes of the March 17, 2023, meeting.

3. Possible Amendments to Rules 7(a)(3) and 7(a)(4)(B)

Following Courthouse News case, civil filings are made public without court review. These rules address post hoc efforts to correct/redact records that should not have been made publicly accessible. Rule 7(a)(3) seems to require Court Administrator action and the other rule seems to cabin judicial action to limited circumstances and limited relief. The Courthouse News case is on appeal to the Second Circuit and the Committee decided at the 7/22/22 meeting to wait until the appeal is decided before making changes.

Teri Corsones reported that the April 2023 oral argument went well. AAG David Boyd argued on behalf of the State. It will likely be several months before a decision is issued. A recording of the argument is available online. Teri will inform the Committee when the decision is issued.

4. Proposed Amendments to Rules 5 & 6 (J. Tomasi)

A subcommittee of J. Tomasi, J. Dooley, Laura LaRosa, and Petra Halsema drafted proposed amendments to Rules 5 and 6. The amendment to Rule 5 clarifies that there are certain records exempt from public access that are also not accessible by parties or lawyers on a case, namely, search warrant materials, RFA complaints and contact information, judicial work product, motions for ex parte relief, and motions for in camera review. The amendment to Rule 6(b)(2) clarifies that motions to seal search warrants and related materials are not governed by the procedure set forth in Rule 9, but rather by case law.

The Committee reviewed and discussed the proposed amendments. Mike Tarrant proposed, and the Committee agreed, to add guardians ad litem to the list of individuals who do not have a specific right of access to these records, in acknowledgement of Rule 5(d). The Committee directed the Reporter to update the

Reporter's Note accordingly and to clarify that the person who filed the motion still has access to what they filed. The Reporter will also add a note to Rule 9 reflecting the clarification to Rule 6(b)(2) (i.e., that Rule 9 does not apply to motions to seal search warrants).

The Committee also discussed a pending Supreme Court case, *Phillips v. Phillips*, 22-AP-249, which may potentially impact the public access status of RFA complaints. The Committee decided to proceed with the proposed amendment but to add a note to the transmittal letter alerting the Supreme Court that the amendment may need to be changed, depending on the outcome of that case.

5. Recommendation to Standardize Effective Dates of New Rules

The Committee previously discussed the recommendation from Civil Rules Committee Chairperson Allan Keyes that rules be adopted on a regular schedule, once or twice a year. This and other committees agreed. Chairperson Keyes has sent a letter to the Court indicating our viewpoints and making the recommendation.

6. Proposed Amendments to Rules 2, 6(b), 7, and 9.

A subcommittee of J. Dooley, Teri Corsones, Tanya Marshall, Tracy Shriver, and Petra Halsema have developed proposed amendments to update and streamline Rule 6(b) as well as associated rules. The various proposed amendments have been updated and combined into one version (including the new exception relating to prefiled exhibits, which the Committee discussed separately).

The Committee reviewed and discussed the various proposed changes to Rules 2 and 6. Rules 7 and 9 were reviewed at a previous meeting and no changes have been made since then. Discussion focused on new subsection (17), which addresses proposed prefiled exhibits. The Committee decided to delete the second and third sentence of the current proposed amendment and instead amend the provision to state: "Proposed exhibits prefiled with the court for the purpose of and prior to a trial or hearing. Prefiled proposed exhibits offered or admitted into evidence are publicly accessible unless another exception in these rules applies." The filer's obligation to redact confidential information, and the potential that some records may remain confidential even after admission, are addressed in the Reporter's Note.

Mike Tarrant moved to propose the amendments to Rules 2, 5, 6, 7, and 9 to the Court, and J. Morrissey seconded. The Committee agreed that the Reporter's Notes to Rule 5 need to be amended to reflect discussion at this meeting. Proposed amendments will be circulated by email and, if approved, will be added to the proposal package.

7. Any New Business.

Laura LaRosa requested the Committee discuss the public-access status of inquests, subpoenas duces tecum, and nontestimonial orders. The Committee agreed to add this topic to the agenda for next time.

J. Tomasi also received a question regarding whether ex parte/in camera motions should be visible to the opposing party or others in the electronic filing system. Teri Corsones will investigate the process and get more information for next meeting.

J. Tomasi also received a question about the connection between Criminal Rule 5(c), which says a criminal information and affidavit is filed by the judge after completing arraignment, and PACR Rule 6(b)(5), which says it is a public record once probable cause is found. Related to this are the statutes that make information and affidavits confidential if the person is referred to Diversion after probable cause is found. The Committee agreed to add this as an agenda item for discussion at the next meeting.

8. Set Next Meeting.

9:00 a.m. on September 28 [subsequently amended to September 26].