

**STATE OF VERMONT
VERMONT SUPREME COURT
FEBRUARY TERM, 2007**

**Emergency Order Promulgating Amendments
to the Rules for Public Access to Court Records**

Pursuant to the Vermont Constitution, Chapter II, Section 37; 12 V.S.A. § 1, it is hereby ordered:

1. That § 2(b) of the Vermont Rules for Public Access to Court Records be amended to read as follows (new matter underlined):

§ 2. Scope

* * *

(b) *Specific Right of Access.* If, based on a statute, judicial rule or other source of law, a person, or an authorized officer or member of the Executive or Legislative Branch, claims a right of access greater than that available to a member of the public, the record custodian shall act in conformity with the applicable statute, rule or other source of law. If a person, or an authorized officer or member of the Executive or Legislative Branch, claims a right of access greater than that available to the public as a whole, but not based on a specific statute or rule, that claim shall be determined by the court administrator for administrative records, ~~or~~ the presiding judge of the court involved for case records, or by the administrative judge for trial courts for a class of judicial branch records found in multiple cases in more than one court. In making that determination, the court administrator, ~~or judge, or administrative judge for trial courts~~ shall be guided by these rules and any other relevant rules or statutes, and shall weigh the special interest of the person or officer or member seeking the record against the interests protected by the restriction on public access. An appeal from any such a determination may be made to the Supreme Court.

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Reporters Notes - 2007 Amendment

Section 2(b) is amended to fill a gap in the current rule. Requests for a greater right of access to administrative records are made to the court administrator; requests for specific access to case records are made to the presiding judge. There is no effective mechanism for claiming a right of access to a class of judicial branch records found in multiple cases in more than one court. Examples of requests include universities conducting research or law enforcement agencies requesting information for valid law enforcement purposes. Rather than requiring persons to go to

multiple presiding judges and potentially receive conflicting decisions, the rule authorizes the administrative judge to make the determination, guided by this rule and other relevant authority.

2. That the emergency amendment to Rule 2(b) of the Vermont Rules for Public Access to Court Records are prescribed and promulgated to become effective immediately. The Reporter's Notes are advisory.

3. The Court finds that these emergency amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11 in order to fill an inadvertent gap in the current rule so that the immediate requests can be determined. The Court's Advisory Committee on the Rules for Public Access to Court Records is directed to consider and report to the Court pursuant to Administrative Order No. 11 by September 15, 2007, on any comments that may be received on this emergency promulgation.

4. That the Chief Justice is authorized to report these rules and amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated at Montpelier, Vermont this 15th day of February, 2007.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice