

STATE OF VERMONT
SUPREME COURT
_____ TERM, 2019

**Order Abrogating and Replacing the
Vermont Rules of Public Access to Court Records and
Abrogating the Rules Governing Dissemination of Electronic Case Records and
Rule 77(e) of the Vermont Rules of Probate Procedure**

Pursuant to the Vermont Constitution, Chapter 11, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That the Vermont Rules of Public Access to Court Records be abrogated and replaced to read as follows:

RULE 1. SCOPE, PURPOSE, AND CONSTRUCTION

These rules govern the release of case and administrative records held by the Vermont Judiciary, or any component, whether in electronic or physical form. These rules cover the complementary responsibilities to provide public access or special access to judicial-branch records and to protect the confidentiality of case information where such confidentiality is required by statute or rule. They must be liberally construed to implement these policies.

Reporter's Notes

These rules amend and replace the Rules for Public Access to Court Records, adopted effective May 1, 2001, and replace the Rules Governing Dissemination of Electronic Case Records, effective June 1, 2002. The order adopting these amendments to the Rules for Public Access to Court Records abrogates the Rules Governing Dissemination of Electronic Case Records. Both underlying sets of rules were amended before their replacement. These rules cover records in both physical and electronic form and their adoption is timed to coincide with the implementation of a new case-management system that will support electronic filing and electronic case files in all dockets and all courts.

In many parts, these rules retain the content of the former rules. In other parts, they amend the prior version or adopt entirely new content because of the shift to electronic case records. The Reporter's Notes explain the relevant antecedent rules, if any, and in some instances repeat the original notes so that the full intent can be derived without going back to the former rules and their Reporter's Notes.

RULE 2. DEFINITIONS

The following definitions apply to these rules:

(a) “Administrative record” means any judicial-branch record pertaining to the administration of the Judicial Branch or any court, board, or committee appointed by the Supreme Court, or any other entity within the Judicial Branch.

(b) “Archives” or “archival records” mean public records that have continuing legal, administrative, or informational value, as referenced at 3 V.S.A. § 117(a)(2).

(c) “Case management system” means an electronic-document-repository database maintained and managed by the Vermont Judiciary and administered by the respective courts to track information used to manage the courts’ caseload, such as case numbers, party names and identifiers, attorneys for the parties, titles of all documents filed in a case, and all scheduled events in a case.

(d) “Case record” means any judicial-branch record pertaining to a case or controversy. Any judicial-branch record that fits both this definition and the definition of an administrative record is a case record.

(e) “Confidential” as applied to a case record means that such information is exempt from public access by law, including a state or federal statute, administrative or court rule, a prior court order placing the information under seal, or precedential decision of the Supreme Court. To the extent reasonably practicable, restriction of access to confidential information is implemented in a manner that does not restrict access to any portion of the record that is not confidential.

(f) “Court-generated document” means any document generated by a judicial officer or other court personnel, or by masters, receivers, guardians ad litem, and neutrals required to file a report, under the applicable rules of procedure in all actions and proceedings entered in the Supreme Court, the Superior Court, or the Judicial Bureau.

(g) “Document” means a related and paginated grouping of information items that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(h) “Electronic case file” means an assemblage of the items pertaining to a single case or matter under a single docket number electronically submitted to the Judiciary’s electronic filing system and stored in its temporary data store by a registered user via the electronic filing system website, sent by interface from another agency, or electronically filed by the court via the electronic filing system website and any paper or fax document that was scanned by the court and electronically stored into the data store.

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(i) “Electronic-case-record compilation” means an electronic record pertaining to more than one electronic case record.

(j) “Electronic-case-record report” means an electronic-case-record compilation that extracts and displays data from more than one electronic case record for the purpose of providing information about the operation of the Vermont Judiciary or any of its components.

(k) “Electronic-data-dissemination contract” means an agreement between the Court Administrator and any entity, except a court or court employee, that provides information which is not publicly accessible under these rules. The data dissemination contract must specify terms and conditions concerning the data including but not limited to restrictions, obligations, and cost recovery.

(l) “Electronic filing” means the process of transmitting a document from a registered filer’s computer, using the Judiciary’s Internet-based electronic-filing system, to file the document in the Court’s case file.

(m) “Electronic means” means any method of direct electronic transmission of a document from the sender’s computer or electronic filing system to the recipient’s computer or electronic filing system.

(n) “Electronic record” means a judicial-branch record that exists in electronic form, irrespective of whether it also exists in physical form.

(o) “Judge” means a Supreme Court Justice; a superior, probate, or assistant judge; a magistrate; or a hearing officer.

(p) “Judicial-branch record” means a record that is in the possession, custody, or control of the Judiciary or was in the possession of the court for purpose of a court decision. All judicial-branch records are either administrative records or case records.

(q) “Judicial officer” for purposes of these rules means a judge, as defined in (o), and a master or parent coordinator to the extent that the appointment order specifies that the master or parent coordinator has access to specified records not accessible by the public.

(r) “Nonelectronic means” is any method of transmitting a document for filing or service by any means (including electronic facsimile transmission) other than by direct electronic transmission from the sender’s computer or electronic filing system to the recipient’s computer or electronic-filing system.

(s) “Physical record” means a judicial-branch record that exists in physical form, irrespective of whether it also exists in electronic form.

(t) “Presiding judge” means the superior or probate judge assigned to the court, and, if more than one such judge is assigned to the court, the judge designated as presiding by the Chief Superior Judge. With respect to the Supreme Court, the “presiding judge” means the Chief Justice or a justice appointed by the Chief Justice to act as a presiding judge. With respect to the judicial bureau, “presiding judge” means a hearing officer of the bureau as designated by the Chief Superior Judge for trial courts. With respect to a board or committee appointed by the Supreme Court, “presiding judge” means the chair of that board or committee.

(u) “Public access” means the right of any person to view or copy a record without providing identification or a reason for access.

(v) “Public” or “member of the public” means any individual, group, or entity, including the print or electronic media or their representatives, who seeks access to any judicial-branch record.

(w) “Public-purpose agency” means an agency or department of state or local government or a nonprofit agency whose principal function is research or to provide services to the public.

(x) “Record” means any paper, letter, map, book, other document, tape, photograph, film, audio or video recording, court reporter’s notes, transcript, data compilation, or other materials, whether in physical or electronic form, made or received pursuant to law or in connection with the transaction of any official business by the court. It includes all evidence received by the court in a case.

(y) “Record custodian” means the person responsible for the safekeeping of a record.

(z) “Seal” or “sealing” means to physically and electronically separate the record in a manner that ensures confidentiality of the record and limits access only to those persons who are authorized by law or court order to view the record. A “sealed” file or record is retained and not destroyed unless a court issues an order to expunge the record.

(aa) “Special right of access” means a specific right of access provided by statute, court rule, or other source of law to an authorized person to obtain a record not accessible by the public or to obtain a record by a means not available to the public.

(bb) “Standardized report” means an electronic case records report which is produced from case management system data by selection from a menu of preprogrammed reports.

(cc) “State records center” or “records center” means the component of the Statewide Records and Information Program which holds inactive analog State public records in accordance with record schedules pursuant to 3 V.S.A. § 117(c)(5).

(dd) “Statistical report” means an electronic-case-record compilation which complies with Rules 6(j), 10, and 11.

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(ee) “Registered filer” means an attorney, a represented party, or any other person who is permitted or required under V.R.E.F. 2 to file documents electronically, or a self-represented party who elects or is ordered under that rule to file electronically and has registered through the electronic-filing system website as provided in V.R.E.F. 3. The term includes any other person authorized to file documents electronically under V.R.E.F. 3.

(ff) “Remote Access” means access over the Internet by a computer or other electronic device that is outside the Judiciary network.

(gg) “Vermont State Archives and Records Administration” means the division within the Office of the Secretary of State which is charged with administering a Statewide Records and Information Management Program pursuant to 3 V.S.A. § 117(b), including but not limited to taking legal custody of state archival records pursuant to 3 V.S.A. § 117(a)(2).

Reporter’s Notes

Definitions now contained in Rule 2 are either new or derived from former Rule 3 of the Rules for Public Access to Court Records and Rule 2 of the former Rules Governing Dissemination of Electronic Case Records.

RULE 3. ACCESS TO JUDICIARY RECORDS GENERALLY; RECORDS CUSTODIAN

(a) *General Policy.* Except as provided in these rules or in statute, the public may inspect or copy all judicial-branch case and administrative records.

(b) *Access.* The rules cover the complementary responsibilities to provide public and special access to case and administrative records and to protect the confidentiality of records where such confidentiality is required by statute or rule. For case records, the rules recognize that it is the responsibility of both filers of case records and the Judiciary to protect confidentiality and privacy where public access is restricted by these requirements. The Judiciary will take reasonable steps to comply with these rules.

(c) *Custodians of Judicial Records.* The Court Administrator is the custodian of judicial-branch paper and electronic administrative records and electronic case records. The Court Administrator is also the custodian of paper case records of adjudicatory bodies other than courts or the judicial bureau, such as hearing panels of the Professional Responsibility Board, the Judicial Conduct Board, and the Character and Fitness Committee. The Court Administrator may delegate responsibility as the record custodian in whole or in part to one or more persons in the Office of the Court Administrator. The superior court clerk in a unit or division is the custodian of the paper case records of that court or those courts, unless the record is in the Vermont State

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Archives. The Deputy Clerk of the Supreme Court is the custodian of the paper records of the Supreme Court. The clerk of the judicial bureau is the custodian of the paper case records of the bureau. The custodian for paper records for the rules advisory committees appointed by the Supreme Court is the Deputy Clerk of the Supreme Court. For all other judiciary committees, the custodian of records is the Court Administrator or designee.

Reporter's Notes

Rule 3(a) is from former Rule 4.

Rule 3(b) sets out the complementary responsibilities to provide public access to court records and to deny public access to records that are not accessible as provided by a statute or court rule, including these rules. It further sets out the joint responsibility on filers and the Judiciary to protect confidentiality and privacy.

Rule 3(c) establishes who is the record custodian for each of the types of records held by the Judiciary. As provided in Rule 2, the record custodian is responsible for the safekeeping of the record. The record custodian is also responsible for implementing the policies in these rules for records under the custodian's control. In general, the Court Administrator is the record custodian with respect to all electronic case records irrespective of the venue of the case in which the record is filed. Also, in general, the record custodian for paper records is the holder of the paper or in the case of archived records, the person with whom the record was originally filed unless the record is in the Vermont State Archives.

RULE 4. MEANS OF ACCESS

(a) **Physical Case Records.** Public access to physical case records is provided by request to the custodian in the court or office where the record was filed. If the record is in the Vermont State Archives, public access is provided by the archives.

(b) **Electronic Case Records.** Public access to electronic case records is provided on a case-by-case basis at display terminals located in courthouses and Judiciary offices as determined by the Court Administrator.

(1) *Public Access Locations.* Each unit that has electronic filing will have at least one public access location. The terminals will provide access to all publicly accessible case records of all courts and adjudicative bodies irrespective of the venue of the proceeding.

(2) *Remote Access.* Remote access may be provided by the Court Administrator to publicly accessible case records in cases from the civil and environmental divisions, the judicial bureau, and judiciary adjudicative bodies other than courts. Remote access may also be provided to publicly accessible case records in cases in the Supreme Court. Remote access

may not be provided to records of the criminal, family, or probate divisions, except as authorized by statute.

(c) **Administrative Records.** The Court Administrator will determine the method of access to judicial-branch paper and electronic administrative records.

Reporter's Notes

Rule 4 provides the means of access to judicial case and administrative records, whether in paper or electronic form. The method of public access to case records was covered in former Rule 6(f). The subject of public access to electronic case records was covered in Rule 3 of the Rules Governing Dissemination of Electronic Case Records, now repealed. Most of the content of this rule is new.

In general, the record custodian is responsible for providing public access pursuant to this rule. See Rule 3(c). To access a paper record, a person must request access from the record custodian. A request to the record custodian is necessary even if the record has been sent to the State Records Center and is no longer in the possession of the record custodian. The record custodian determines that the record is publicly accessible under these rules.

The record custodian for electronic case records is the Court Administrator. Rule 3(c). Rule 4 sets forth the basic method of providing public access to electronic case records—by display terminals in courthouses and judiciary offices. At least one courthouse or judiciary office location in each unit that has electronic filing must provide a terminal or terminals for this purpose. Each terminal must provide statewide access to case records that are accessible to the public for all types of court proceedings and other judiciary adjudicative bodies. This method of providing public access to judicial case records is consistent with 12 V.S.A. § 5(a), which prohibits the Supreme Court from providing “public access via the internet to criminal or family case records.” The display terminals will display records from files in judiciary computers and use the judiciary’s network to retrieve the electronic records. Retrieval will not involve use of the internet.

The Court Administrator may determine the method of providing public access to accessible administrative records.

The rule also addresses the ability to allow remote access to case records. Remote access uses the internet to allow a person to access judiciary records from a location outside of judiciary facilities. 12 V.S.A. § 5(a) prohibits remote access to family and criminal case records unless

one of two exceptions apply. See 12 V.S.A. § 5(a), (b)(2). These are addressed in Rule 5(e) and (f). This rule adds probate case records to the prohibition on remote access because the privacy issues for these records are like those for family case records.

In instances not prohibited by the statute or this rule, the Court Administrator may provide remote access.

Remote access may be given to case records of the Supreme Court, even if remote access to the underlying trial court case would be prohibited by 12 V.S.A. § 5(a). This is because 12 V.S.A. § 5(b)(3) allows remote access to briefs and printed cases in appeals to the Supreme Court without limitation by type of case. Remote access to records in cases of original jurisdiction in the Supreme Court are authorized because these are civil cases.

RULE 5. SPECIFIC RIGHT OF ACCESS

(a) **Judicial Officers and Court Staff.** Unless prohibited by statute, rule, or order, judicial officers and court staff authorized by the Court Administrator have access, including remote access, to all case records where necessary for their employment responsibilities. Judicial officers and court staff may not disclose a case record that is not publicly accessible to any person who does not have a specific right of access to the.

(b) **Parties.** A party in a case has access to records in that case that is not publicly accessible unless a restriction on access specifically applies to the party. A party younger than 18 years old does not have a specific right of access unless the court orders. For good cause, the court may restrict a party's specific right of access. Where a person is a party for only part of a case, the specific right of access applies to records related to the part for which the person is a party and not for other parts of the case..

(c) **Lawyers.** A lawyer who is appearing for a party has access to records in that case that are not publicly accessible. Where the party for whom the lawyer is appearing is a party for only part of a case, the lawyer's specific right of access applies to records related to the part for which the person is a party and not for other parts of the case. This specific right of access extends to lawyers and staff in a law firm or legal organization working for the lawyer who has entered an appearance. A person who has a specific right of access pursuant to this subdivision has a right to remote access.

(d) **Guardian ad Litem.** A guardian ad litem who is participating in a case has access to records in that case that is not publicly accessible for the purpose of discharging the duties of a guardian ad litem.

(e) **Access for Criminal-Justice Agencies or Purposes.** The Court Administrator may provide remote access to publicly accessible criminal case records to criminal justice agencies for criminal justice purposes.

(f) **Access for Public-Purpose Agency.** The Court Administrator may provide remote access to a public-purpose agency pursuant to a data-dissemination contract.

(g) **Remote Access.** The Court Administrator may provide remote access to any person who has a specific right of access for that record.

(h) **Access provided by law.** A person has a right of access to any record that is not publicly accessible if such access is granted by statute, judicial or administrative rule, or other source of law. An appendix to this rule lists all statutes and court rules providing a specific right of access existing on the date of promulgation of this rule, and a summary of the specific right of access. Annually before January 1 of each year the Court Administrator will update the list in the appendix.

**APPENDIX to Rule 5: Statutes and Court Rules Providing
Specific Right of Access to Court Records**

Citation	Description
3 V.S.A. § 164(g)(3)(C)	A special index of criminal cases expunged after completion of diversion is not publicly accessible except by petition of the person who is the subject of the case or permission of the Chief Superior Judge for research purposes pursuant to the Rules for Public Access to Court Records.
13 V.S.A. § 1460(a)	Records in cases seeking an injunction against a juvenile to stop hate-motivated conduct are made nonpublic by incorporation of 33 V.S.A. § 5117, including its specific access provisions.
13 V.S.A. § 4824	A finding that a person is mentally ill and dangerous to himself or others is not publicly accessible under 18 V.S.A. § 7103 but must be provided to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993.
13 V.S.A. § 7606(d)(3)	A special index of criminal cases expunged by court order pursuant to Chapter 230 of Title 13 is not publicly accessible except by petition of the person who is the subject of the case or permission of the Chief Superior Judge for research purposes pursuant the Rules for Public Access to Court Records.
14 V.S.A. § 2	A will filed with the probate division for safekeeping is not publicly accessible but may be accessed by others in accordance with instructions of the testator and by the testator’s duly authorized legal guardian or attorney-in-fact in the presence of the judge or register.

14 V.S.A. § 3067(e)	Professional evaluation of need for guardian is confidential except court may determine that “any other individual, including the proposed guardian” has a “strong interest in the welfare of the respondent” and allow access to that person.
15A V.S.A. § 6-102	Title 15A provides for adoption proceedings, relinquishment proceedings, proceedings to terminate parental rights in certain circumstances and proceedings to gain certain information relating to an adoption. For all these proceedings, the in-court events are closed to the public and the records are nonpublic. However, some statutory provisions allow designated nonparties, and parties in some circumstances, to have access to records that may be possessed by the court in specified circumstances.
18 V.S.A. § 7103	Proceedings under Part 8 of Title 18—generally mental-health and developmental-disabilities related proceedings—are closed to the public and the records of the proceedings are nonpublic. The statute provides that certain persons have a specific right of access generally or to specific records or information.
18 V.S.A. §§ 9306(c), 9309(b)	Records in proceedings to appoint a guardian for a person who is developmentally disabled are not publicly accessible except where the respondent or the representative of the respondent consents to access by a person.
28 V.S.A. §§ 204, 204a; V.R. Cr. P. 32(c)	Generally, presentence investigation reports, including any supervised-community-sentence plan, 28 V.S.A. § 352(c), are nonpublic, 28 V.S.A. § 204(d)(1). The court may allow inspection of the presentence investigation report or parole summary or parts thereof by other persons having a proper interest, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful, 28 V.S.A. § 204(d)(2)(B), or by a state or federal prosecutor conducting a criminal investigation if the court finds that the records may be relevant to the investigation. <u>Id.</u> § 204(f)
33 V.S.A. §§ 5117, 5118 and 5119	Records in juvenile proceedings are generally nonpublic, subject to an extensive list of persons who have a specific right of access to some of or all the information under circumstances described in the statutory sections.
Rules Governing Establishment and Operation of the Professional Responsibility Program, Administrative Order No. 9, Rule 12(F)	Records related to complaints to the lawyer professional responsibility program are not publicly accessible before filing of a formal disciplinary proceeding. The Professional Responsibility Board may provide access to (a) A lawyer or judicial admission or disciplinary agency of this or another jurisdiction or (b) Any agency or person to which the attorney has submitted a waiver of confidentiality.
Rules for the Disciplinary Control of Judges, Rule 6(7), (9)	Records of the Judicial Conduct Board are nonpublic unless a formal disciplinary complaint is filed against a judge. If a disciplinary matter has proceeded beyond the stage of an initial

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	inquiry, the chair may provide information about the proceedings to officers involved in impeachment, retention or judicial appointment proceedings.
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Reporter's Notes

This rule covers what specific rights of access to court records exist for persons beyond the general public and to provide the nature of such rights. The content of this rule was formerly covered in Rule 2(b). The former provision did not attempt to define what specific rights of access existed but required that such access rights be honored. It did provide, however, that when a person claimed a specific right of access not based on a statute or court rule, the decision whether to accept and implement that right involved a balancing of the “special interest of the person or officer or member seeking the record against the interests protected by the restriction on public access.” The Reporter’s Notes added that the balancing should be “guided by this rule and other relevant authority.”

Rule 5 attempts to define what specific access rights currently exist and, where appropriate, explain the nature of such rights. The adoption of electronic case records and electronic filing has made it necessary to provide more specificity of the existing rights and their nature so that they can be implemented in an electronic system. To the extent possible, the electronic system should be capable of allowing specific rights of access as soon as a record is filed.

Rule 5(a) recognizes the specific right of access to court records of judicial officers and court staff. Normally, court staff with responsibilities related to case filings and processing have access to all judicial case records. The Court Administrator may, however, choose to more narrowly provide access related to the specific job responsibilities of a staff person.

Rule 5(b) provides that a party has a specific right of access to records in the party’s case. Parties who are younger than 18 do not have a specific right of access unless the court orders—for example, where a minor is self-represented and conducting the litigation. The court may restrict the specific right of access for other parties—for example, where the court finds it necessary to restrict access to certain information such as the address of a particular witness.

In most cases, a person is a party for the entire case and thus has a specific right of access to records filed at any time and for any purpose

in that case. In some instances, a person is a party for only part of the case. For example, in a juvenile delinquency case a parent-custodian of the juvenile is a party with respect to temporary care of the juvenile and disposition if the juvenile is found to have been delinquent but not for the adjudication of whether the juvenile was delinquent. The parent-custodian does not have a specific right of access to records related to whether the juvenile was delinquent or the adjudication of delinquency.

The specific right of access can be restricted or eliminated by operation of statute.

Rule 5(c) provides a specific right of access to lawyers appearing and representing a party. If the represented person is a party only with respect to part of the proceeding, the lawyer's specific right of access is limited to that part just as the party's specific right of access is limited in subdivision (b). The lawyer's specific right of access includes a right of remote access to enable the lawyer to provide representation efficiently. The specific right of access extends to other lawyers and staff of a law firm or legal organization in which the appearing lawyer works. The specific right of access is essential for the lawyer to provide representation to the client. The lawyer may have certain obligations with respect to disclosure imposed by Rules 1.6 and 3.6 of the Vermont Rules of Professional Conduct. This rule is not intended to either prohibit, or to require, disclosure other than as indicated by the Rules of Professional Conduct or other provisions of law governing privilege and confidentiality.

Rule 5(d) provides a specific right of access to a guardian ad litem (GAL) to records in a case in which the GAL has been appointed. The GAL has the same specific access right as a lawyer for a litigant. This rule enables the GAL to comply with V.R.F.P. 6(e)(2) which provides "The guardian ad litem shall be familiar with all pertinent pleadings, reports, and other documents." See also V.R.F.P. 6.1(e)(2), 7(e)(1).

Rule 5(e) recognizes an exception to the prohibition on remote access to criminal case records set out in Rule 4. See Reporter's Notes to Rule 4. The exception is provided in 12 V.S.A. § 12(a). The statute allows the Supreme Court to grant remote access to criminal case records to "criminal justice agencies," as defined in 20 V.S.A. § 2056a, for "criminal justice purposes," again as defined in 20 V.S.A. § 2056a. The statute defines criminal justice agencies as "all Vermont courts and other governmental agencies or subunits thereof that allocate at least 50 percent of the agency's annual appropriation to criminal justice purposes," *id.* § 2056a(a)(2), and criminal justice purposes such as

investigation, apprehension, detention, adjudication, or correction of persons suspected, charged or convicted of criminal offenses. Criminal justice purpose includes criminal-identification activities, the collection, storage and dissemination of criminal history records, and screening for criminal justice employment. *Id.* § 2056a(a)(3). Note that Rule 5(e) deals only with remote access and does not provide specific access to records that are not accessible by the public.

Rule 5(f) also recognizes an exception to the prohibition on remote access to criminal and family case records set out in Rule 4. The exception is for public-purpose agencies with which the Court Administrator has entered into a data dissemination contract pursuant to Rule 12. As with Rule 12(e), this exception is to the restrictions on remote access and does not provide access to records not otherwise publicly accessible. See Rule 12(d).

Rule 5(g) provides the final exception to the prohibition on remote access in Rule 4, for those with specific access to criminal or family court records. This exception is consistent with the underlying statute, 12 V.S.A. § 5(a), which restricts only “public access via the internet” and does not restrict remote access by a person who has a specific right of access. This rule does not require the Court Administrator to provide remote access to all or any persons with a specific right of access, except to lawyers as provided in Rule 5(b). Especially for those with a specific right of access created by statute, automating the implementation of that right may prove to be difficult or impossible in the case-management system.

Rule 5(h) recognizes the final category of persons with a specific right of access—those with a specific right provided by statute, court rule or other source of law. The rule provides for the creation of an appendix that identifies each statute or court rule, and provides a summary of its content, existing as of the date of the rule’s promulgation. Annually before January 1 of each successive year, the Court Administrator is required to update this list.

As discussed, former Rule 2(b) suggested that there may be instances where other sources of law, including the Vermont and United States Constitution, create specific rights of access to judicial case records. In the years since the adoption of the original Vermont Rules of Public Access to Court Records, no such specific right of access has been recognized by the United States or Vermont Supreme Court and, therefore, none is explicitly recognized in this rule.

RULE 6. CASE RECORDS

(a) **Policy.** The public has access to all case records, in accordance with the provisions of this rule, except as provided in subdivision (b).

(b) **Exceptions.** The public does not have access to the following judicial-branch case records:

(1) Records which by statute, court rule, or other source of law are designated confidential or to which access is prohibited by a similar term. An appendix to this rule lists all statutes and court rules containing a prohibition or restriction on public access, existing on the date of promulgation of this rule, and a summary of the extent and terms of the prohibition or restriction. Annually before January 1 of each year the Court Administrator will update the list in the appendix.

(2) Records of the issuance of a search warrant and the warrant, until the date of the return of the warrant, unless sealed by order of court; and records of the denial of a search warrant, unless opened by order of the court.

(3) Reports prepared by the Department of Corrections and furnished to the court concerning a decision to admit an inmate into a furlough program administered by the Department, except that the public has access to a summary of the contents of the report and the recommendation of the Department. Where the Department has not included a summary and recommendation in a separate section with the report, the report is subject to public access.

(4) Evaluations of competency to stand trial and/or sanity.

(5) The information and supporting affidavits filed to initiate a criminal proceeding if the judicial officer does not find probable cause pursuant to Rule 4(b) or 5(c) of the Rules of Criminal Procedure.

(6) Information obtained from a person during his or her risk assessment or needs screening pursuant to 13 V.S.A. § 7554c.

(7) Records containing financial information furnished to the court in connection with an application to waive filing fees and service costs, not including the affidavit submitted in support of the application.

(8) Any federal, state, or local income tax return.

(9) A complaint and affidavit seeking an order of protection, pursuant to 15 V.S.A. §§ 1103, 1104 or 12 V.S.A. §§ 5133, 5134, until the defendant has an opportunity for a hearing

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pursuant to 15 V.S.A. § 1103(b) or § 1104(b) or 12 V.S.A. § 5133(b) or § 5134(b). A temporary order is publicly accessible.

(10) Analysis of the DNA of a person if filed in connection with a family division proceeding.

(11) Affidavits of income and assets as provided in 15 V.S.A. § 662 and Rules 4.0-4.2 of the Vermont Rules for Family Proceedings.

(12) Records from a juvenile proceeding that are filed with the court or admitted into evidence in a divorce or parentage proceeding.

(13) A record created by a health or mental-health professional that contains a description of a patient's health or mental-health symptoms, the results of an examination or evaluation of the health or mental health of an individual, a descriptive diagnosis of the health or mental health of an individual, or a description of a course of medical or psychological treatment or recommended course of treatment of an individual.

(14) The following personally identifying data elements filed in a case record that is otherwise publicly accessible under these rules: (i) A social security number; (ii) A passport number; (iii) A taxpayer identification number; (iv) A financial account number, including a credit or debit card number; or (v) In a criminal case, the name of a child alleged to be a victim. In lieu of a social security, passport, taxpayer identification or financial account number, the filer may include the last four digits of that number. In lieu of the name of a child victim, the filer may include the initials of the first and last name of the child.

(15) Any records representing judicial work product, including notes, memoranda, research results or drafts prepared by a judge or by other court personnel on behalf of a judge.

(16) Records produced in discovery unless used at trial or in connection with a request for action by the court.

(17) Any transcript, court reporter's notes, or audio or videotape of a proceeding to which the public does not have access. Unless otherwise directed by the presiding judge, data elements specified in Rule 6(b)(14) that appear in a transcript of a public proceeding, or in reporter's notes or an audio or video recording of a public proceeding, need not be redacted from the transcript, notes, or recording before it is disclosed to the public.

(18) Any evidence introduced in a proceeding to which the public does not have access.

(c) **Records Introduced into Evidence.** The exceptions to public access contained in Rule 6(b)(2), (4), (5), (8), (10) or (13) no longer apply if the record covered by the exception is formally admitted into evidence.

(d) **Physical Case Records; Electronic Case Records.** To the extent possible, physical case records that are not subject to public access under these rules must be segregated from records to which the public has access. If a member of the public requests access to a case file, any record excepted from public access must be removed from the file before access is provided. Case records kept in electronic form must be designated as open for public access or closed from public access in whole or in part. This section does not permit remote access to any case record not otherwise provided by these rules.

(e) **RESERVED.**

(f) **Inspection Procedure.** Physical case records and electronic case records to which the public has access via terminal at court premises may be inspected and copied at any time when the office of the clerk of the court is open for business. Requests for access to inspect and copy case records must be acted upon promptly within the time limits set in 1 V.S.A. § 318. If a copy of the case record is requested, 1 V.S.A. § 316(g) and (h) apply. The fees for copying and, if applicable, staff time must be charged in accordance with 1 V.S.A. § 316(b)-(d) and (f). An electronic case record to which the public has remote access may be inspected and copied via the electronic case management system at any time, subject to the terms and conditions established by these rules. Requests for access to inspect and copy case records in possession of the State Records Center must be directed to the clerk of the court from which the case record was transferred to the records center. Requests for access to inspect and copy case records in possession of the Vermont State Archives must be directed to the archives.

(g) **Denial Procedure.** If access to all or part of a requested record is denied, the person requesting the record must be notified of the decision, in the manner and within the time limit specified in 1 V.S.A. § 318(a)(1) or 1 V.S.A. § 318(b)(5) where applicable. The notice must also inform the person requesting the record of the grievance procedure provided by this rule.

(h) **Grievances.** Any person aggrieved by a decision made with respect to a request for access to a physical or electronic case record or a part thereof, including any person about whom information has been requested, has a right to appeal that decision to the presiding judge of the court in which the case is filed within 7 days after the denial. If the decision appealed is to grant access to all or part of a record, the presiding judge may order the decision to be stayed pending a decision on appeal. The presiding judge must give notice of the hearing to the grievant and may give notice to other interested persons. The appeal proceeding must be set for hearing, if any, at the earliest practicable date and must be decided as soon as possible. A decision of the presiding judge may be appealed to the Supreme Court within 30 days after the decision of the presiding judge.

(i) **Access Pending Appeal of Underlying Case.** When a case is appealed, the public-access status of the records in the case remains as it was in the trial court while the case is on appeal absent further order.

(j) **Access to Statistical Reports.** Nothing in this rule prohibits the Court Administrator or a record custodian from providing a statistical abstract of information contained in records not publicly accessible, provided that the abstract does not identify any person or entity described in the records.

APPENDIX to Rule 6: Statutes and Court Rules Providing Restrictions or Prohibitions on Public Access to Judicial-Branch Records

Citation	Description
3 V.S.A. § 164(g)(3)(C)	A special index of criminal cases expunged after completion of diversion and records sealed under a prior version of the statute are not publicly accessible.
9 V.S.A. § 2480ff(8)	In a proceeding for a transfer of structured settlement payment rights, certain documents must be filed under seal automatically making them nonpublic.
13 V.S.A. § 1460(a)	Records in cases seeking an injunction against a juvenile to stop hate-motivated conduct are made nonpublic by incorporation of 33 V.S.A. § 5117.
13 V.S.A. § 5236(f)	Information provided by a defendant pursuant to 13 V.S.A. § 5236(d) & (e) is not publicly accessible in the trial and Supreme Court.
13 V.S.A. § 3256(j)	Records of court proceedings for testing a defendant or offender for infectious diseases, and the test result for the defendant or offender, are nonpublic by virtue of automatic sealing.
13 V.S.A. § 7606(d)(3)	A special index of criminal cases expunged by court order pursuant to Chapter 230 of Title 13 is not publicly accessible.
13 V.S.A. § 7607	Records in cases sealed by court order pursuant to Chapter 230 of Title 13 are not publicly accessible.
14 V.S.A. § 2	A will filed with the probate division for safekeeping is not publicly accessible.
14 V.S.A. § 3067(e)	Professional evaluation of need for guardian is confidential.
14 V.S.A. § 3068(e)	If the court finds after a guardianship proceeding that the person is not in need of guardianship, the records of the proceeding become nonpublic by virtue of automatic sealing.
15A V.S.A. § 6-102	Title 15A provides for adoption proceedings, relinquishment proceedings, proceedings to terminate parental rights in certain circumstances and proceedings to gain certain information relating to an adoption. For all these proceedings, the in-court events are closed to the public and the records are nonpublic.

18 V.S.A. § 5112(c)	Records of a proceeding where the probate division authorizes a new birth certificate because of a change of gender are not publicly accessible.
18 V.S.A. § 7103	Proceedings under Part 8 of Title 18—generally mental-health and developmental-disabilities related proceedings and sterilization—are closed to the public and the records of the proceedings are nonpublic.
18 V.S.A. § 8713	All records of a sterilization proceeding are nonpublic by virtue of being sealed unless requested to be opened by the respondent (note these proceedings are also covered by 18 V.S.A. § 7103).
18 V.S.A. §§ 9306(c), 9309(b)	Records in proceedings to appoint a guardian for a person who is developmentally disabled are not publicly accessible (note these proceedings are also covered by 18 V.S.A. § 7103).
20 V.S.A. § 2056a(c); 28 CFR § 20.33(b)	Criminal History Records obtained through the National Criminal Information Center, as provided in 20 V.S.A. § 2056a(c), are not considered publicly accessible by that agency, 28 CFR § 20.33(b). Disclosure of such records may result in cancellation of access to them.
23 V.S.A. § 1098(b)	The record of certain cases in the Judicial Bureau where defendant admitted or did not contest a violation prior to January 1, 2007 are required to be sealed making them nonpublic.
28 V.S.A. §§ 204, 204a; V.R.Cr. P. 32(c)	A presentence report, pre-parole report, or supervision history, including any supervised community sentence plan, which is part of a presentence report pursuant to 28 V.S.A. § 352(c), is not publicly accessible if a court record, subject to exceptions in § 204 and V.R.Cr.P. 32(c).
32 V.S.A. § 632(b)(1)	A false claim action brought by a relator must be filed under seal and remain under seal for at least 60 days after being served on the attorney general rendering the complaint nonpublic.
33 V.S.A. §§ 5117, 5118 and 5119	Records in juvenile proceedings are generally nonpublic.
V.R.Cr. P. 6(e)	A transcript of proceedings before the grand jury is not publicly accessible and “records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent disclosure of a matter occurring before a grand jury.” V.R.Cr.P. 6(e)(5).
Rules Governing Establishment and Operation of the Professional Responsibility Program, Administrative Order No. 9, Rule 12(F)	Information related to complaints to the lawyer professional responsibility program is not publicly accessible before filing of a formal disciplinary proceeding.

Proposed Order Abrogating and Replacing the V.R.P.A.C.R. and Abrogating V.R.G.D.E.C.R. & V.R.P.P. 77(e)

Rules for the Disciplinary Control of Judges, Rule 6(7)	“All papers, files, transcripts and communications in proceedings before the Board shall be confidential”; however, “after the service of a Formal Complaint upon a judge, the Formal Complaint, all subsequent pleadings, exhibits and rulings of the Board, and any hearing related to the Formal Complaint, shall be public.”
Rules Governing Qualification, List, Selection and Summoning of All Jurors, Rules 4(d) & 11; 4 V.S.A. § 955; V.R.Cr.P. 24(a)(2); V.R.C.P. 47(a)(2)	Certain information about jurors and provided by jurors in response to a questionnaire is not publicly accessible. Any electronic record of questionnaire responses is not publicly accessible.

Reporter’s Notes

With modifications described below, Rule 6 is derived from former Rule 6 and Rule 2 of the Rules Governing Dissemination of Electronic Case Records, now repealed. The presumption of public access is derived in turn from Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978). See In re Sealed Documents, 172 Vt. 152, 160, 772 A.2d 518, 526 (2001) (explaining Nixon contains “classic statement” of common law rule of public access and its exceptions). It is consistent with the general rule of public access to government records as expressed in Matte v. City of Winooski, 129 Vt. 61, 63, 271 A.2d 830, 831 (1970).

Rule 6(a) states the general policy that case records are open to the public unless they fall within a specific exception as described in Rule 6(b) or the appendix to the rule.

Rule 6(b) provides the exceptions to public access whether derived from statute, other court rules, or created in these rules. It carries forward the intent from original Rule 6(b) that the section is comprehensive and covers all known exceptions regardless of whether they are in statute, other rules, or this rule. It specifically carries forward exceptions that were adopted as part of these rules even though they are not otherwise recognized. As the original Reporter’s Notes to Rule 6 stated:

Under the Vermont Constitution, court procedure and administration are areas of shared responsibility between the legislative and judicial branches. Therefore, in areas where the Legislature has not

acted, the Court has acted independently to protect sensitive and personal information in its case records by adopting additional limitations which are also contained in this section.

Although Rule 6(b) carries forward the intent of former Rule 6(b), the revised rule does so by a different method. Former Rule 6(b) contained both a general exception for records made nonpublic by statute in former Rule 6(b)(35) and also listed individual exceptions with cross-references to each statutory exception. The individual cross-reference exceptions became incomplete over time. With the advent of electronic filing and a general responsibility on filers to identify any full or partial filing that is not publicly accessible, it is critical that both the Judiciary and filers have an up-to-date and accurate description of all exceptions to public access, whatever the source of the exception. To implement this need, revised Rule 6(b)(1) contains the general exception for records made nonpublic by statute, but omits the individual cross-reference exceptions in favor of an appendix listing all statutes and rules that provide an exception to public access. An initial up-to-date appendix accompanies this rule and will be updated annually by the Court Administrator.

The appendix contains only summaries of the statutory exceptions. The filer must consult the relevant statute to determine the exact scope of the exception.

Following Rule 6(b)(1) are the exceptions created by these rules. In general, with some amendments described below, these are the same exceptions that were contained in former Rule 6(b) and the exception for personal identifiers previously contained in Rule 3(c)(1) of the Rules Governing Dissemination of Electronic Court Records, now repealed.

Rule 6(b)(2) carries forward exceptions related to search warrants from former Rule 6(b)(15) and (16). There is an exception for records of the issuance of a search warrant until the date of the return of the warrant, and after if sealed, as well as records of the denial of a search warrant, unless opened by the court. These exceptions were added in 2001; the Reporter's Notes indicated that they reflect court practice at that time.

Rule 6(b)(3) carries forward the exception for certain reports of the Department of Corrections in former Rule 6(b)(18), which was added in 2001. For more information see the Reporter's Notes to former Rule 6(b)(18).

Rule 6(b)(4) continues the exception contained in former Rule 6(b)(19) regarding evaluations by a mental-health professional. The

Reporter's Notes to former Rule 6 indicate that the practice had been to deny public access to such evaluations. Former Rule 6(b)(19) made such evaluations publicly accessible if admitted into evidence. That language is omitted because it is covered by new Rule 6(c).

Rule 6(b)(5) continues the exception contained in former Rule 6(b)(24) regarding records filed in criminal cases where the judicial officer finds no probable cause.

Rule 6(b)(6) continues the exception contained in former Rule 6(b)(34) regarding pretrial risk assessment and needs screening as added in 2015 in partial implementation of 13 V.S.A. § 7554c. The exception was added as Rule 6(b)(35), but renumbered as Rule 6(b)(34) in 2017. See the Reporter's Notes to the former Rule.

Rule 6(b)(7) continues the exception formerly in Rule 6(b)(11) regarding financial information submitted as part of an application to waive the filing fee and service costs. As the Reporter's Notes to that rule reflect, the information covered by this exception should be viewed as the same information made confidential by 13 V.S.A. § 5236(f) submitted by a criminal defendant in connection with an application for assignment of counsel. See Appendix to Rule 6: Statutes and Court Rules Providing Restrictions or Prohibitions on Public Access to Judicial-Branch Records.

Rule 6(b)(8) continues the exception formerly in Rule 6(b)(13) for income tax returns. The former rule made the returns publicly accessible if admitted into evidence. That language is omitted because it is covered by new Rule 6(c).

Rule 6(b)(9) continues the exception formerly contained in Rule 6(b)(26) regarding the complaint filed in a relief-from-abuse proceeding. It was originally adopted as Rule 6(b)(27), but was renumbered as part of general renumbering that occurred in 2017. See Reporter's Notes to 2017 Emergency Amendment to Rule 6(b). The Reporter's Notes to the original rule indicate that the intent was that "such records should not be open to the public until the defendant has had an opportunity to contest the allegations in the complaint and affidavit."

Rule 6(b)(10) continues the exception formerly in Rule 6(b)(8) regarding DNA. The Reporter's Notes to that rule indicate that DNA analysis when presented in family proceedings is "extremely personal and sensitive" such that "the balance of interests is clearly on the side of protecting the privacy of the DNA record." Reporter's Notes to original Rule 6. They also state that the term "DNA" is defined in 18 V.S.A. § 9331(2) and 20 V.S.A. § 1932(3). These cross-references are still valid.

Rule 6(b)(11) continues and expands the exception in former Rule 6(b)(32) regarding affidavits of income and assets in family proceedings.

It was added as Rule 6(b)(33) in 2005; the Reporter's Notes indicate it conformed the rules to a statutory exception to public access. It was amended in 2016 to conform the cross-reference to the applicable Vermont Rule of Family Proceedings because those rules were amended to make the former cross-reference inapplicable. It was renumbered as part of a general renumbering that occurred in 2017. See Reporter's Notes to 2017 Emergency Amendment to Rule 6(b).

Apparently, the statute referenced in the 2005 Reporter's Notes is an exception in the Public Records Act, 1 V.S.A. § 317(c)(34). Because the public records act does not generally apply to judicial case records, the exception is based on these rules. The exception is not subject to the rule provision that records become publicly accessible when admitted into evidence. Because the information in the affidavit is, by its nature, available to the court or magistrate for purpose of setting child support, this provision would make it publicly accessible in all cases in which it is filed, nullifying the exception to public access. See V.R.F.P. 4.1(b)(4), 4.2(c).

The former version of the exception covered the affidavit, but not the supporting records required to accompany the affidavit. See V.R.F.P. 4.1(b)(4)(B), 4.2(c)(3). The supporting records are as private as the affidavit and warrant the same protection from public access. Accordingly, the exception has been expanded to cover the supporting records.

Rule 6(b)(13) continues but modifies the exception in former Rule 6(b)(17) regarding medical records. The reporter's notes to the former rule indicate it "reflects the Court's recognition of the uniquely personal nature of medical information, ... [a] recognition [that] is also contained in the public records act, 1 V.S.A. 317(c)(7)." The former exception was stated very broadly, and filers and court staff would have difficulty determining the scope of its language under the time pressures inherent in reviewing records for electronic filing. Its coverage includes all records created as a result of treatment or examination even if they contain no medical information—for example, bills for medical services. The modified version that is contained in Rule 6(b)(13) creates an exception only if the record is created by a health or mental-health professional and contains (a) a description of a patient's health or mental-health symptoms, (b) an evaluation of a person's health or mental health, (c) a descriptive diagnosis of a person's health or mental health, or (d) a description of a course treatment or recommended course of treatment for a person. If the record contains other relevant information, and the private content can be redacted, the filer must do so. By its terms, the exception is not applicable to derivative use of the record and is no longer applicable if the record is admitted into evidence. See Rule 6(c). To prevent disclosure of the content of the record if it is admitted into evidence, the party who seeks to

prevent disclosure must seek that it be sealed and meet the standard of Rule 9.

Rule 6(b)(14) excludes from public access certain personally identifying data elements. It has two antecedents in the preexisting rules. Former Rule 6(b)(28) creates an exception from public access to any record that contains a social security number but only until the social security number is redacted from the record. Promulgation of that rule was accompanied by the addition of V.R.C.P. 5(g), V.R.Cr.P. 49(c), and V.R.P.P. 5(h), which require filers to redact social security numbers unless their presence was required or requested by the court. The Rules Governing Dissemination of Electronic Case Records were adopted and became effective in 2002. Rule 3(a) of those rules allowed for public access to electronic court records on a case by case basis through terminals at judicial facilities or in some instances remotely. Rule 3(b) itemized data elements in electronic case records that were not publicly accessible “with regard to parties or their family members.” The list included “social security numbers; street addresses; telephone numbers; and any personal identification numbers, including motor vehicle operator’s license numbers and financial account numbers.” The rule specified that “In providing access pursuant to subsection (a), the Court Administrator shall ensure that the above information is not provided.”

In 2010, the Court amended Rule 3 of the Rules Governing Dissemination of Electronic Case Records to include any personal identification numbers issued by governmental or nongovernmental entities. Following these broad coverage provisions, the rule listed example numbers in each category. See former V.R.D.E.C.R. 3(c)(1)(A), (B). The Court also amended Rule 3(c) to establish filer and staff responsibility, as discussed more fully below.

Exclusions of personally identifying data elements from public access are among the most important exceptions to the public access right. Many jurisdictions have adopted such exclusions. The exclusion from public access of personally identifying data elements provides several important privacy protections. The most important protection generally is to prevent, to the extent possible, identity theft. Identity theft is defined as “unauthorized use of another person’s personal identifying information to obtain credit, goods, services, money, or property.” 9 V.S.A. § 2480a(4). Identity theft is an independent crime. 13 V.S.A. § 2030(a), (b). The threat of identity theft is pervasive. The most recent national data shows that 17.6 million people are victims of identity theft every year, 7% of the national adult population. E. Harrell, *Victims of Identity Theft*, 2014 (U.S. Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics 2015). Personal identifying information in governmental records has long been identified as a source of identity theft.

The most important personally identifying data element to protect is a person's social security number. Former Rule 6(b)(29), renumbered to Rule 6(b)(28), contained an exception for a record containing a social security number but only until it was redacted. Two Vermont statutes restrict government entities from releasing social security numbers under specified circumstances. The first is the Social Security Number Protection Act, 9 V.S.A. § 2440. Section 2440(d)(5) makes it unlawful for any state agency or employee of a state agency to "[i]ntentionally communicate or otherwise make available to the general public a person's Social Security number." The statute does not, however, apply to a "document filed in the official records of the courts." *Id.* § 2440(e)(9). The second statute is titled "Limitations on use of social security numbers," 9 V.S.A. § 2480m, and applies to any component of the state including a "branch." It provides that "Prior to posting ... of a document in a place of general public circulation, a ... branch ... of the State ... shall take all reasonable steps to redact any social security numbers from the document." Although the statute has not been definitively interpreted, it appears to cover making court records publicly accessible over terminals in a public place in a courthouse, a method of public access under these rules.

As in the original rule, the court and filer can comply by redacting the social security number. This rule provides another option—to include the last four digits of the social security number and to redact the rest.

The rule also covers three types of personally identifying numbers—passport numbers, taxpayer identification numbers from any taxing authority, and financial account numbers including credit card or debit card numbers. These numbers are also associated with identity theft. For each, the number may be redacted or redacted in part to include only the last four numbers. Unlike the broader lists in Rule 3(c)(1) of the Rules Governing Dissemination of Electronic Case Records, now repealed, the list is specific and close-ended. The coverage of the former rule was unclear and would be difficult to implement in the context of electronic filing with enhanced sanctions.

This rule adds one personal identifying data element to those covered in the former rules—the name of a child alleged to be a victim of a crime. There are three requirements that trigger redaction—a person is formally charged with a crime; a minor is alleged to be the victim of the crime; and the proceeding before the court is the criminal proceeding for the crime or is another proceeding involving the consequences of the alleged criminal conduct. The purpose of this exception is to protect the privacy interests of the child to avoid any adverse effects of disclosure of the name. In place of redaction, the record can use the initials of the child. The privacy

interest behind this exception is similar to that behind the statutory exception to public access to records in juvenile proceedings.

Rule 6(b)(15) continues unchanged the exception for judicial work product from former Rule 6(b)(12).

Rule 6(b)(16) continues the exception for discovery records from former Rule 6(b)(9). Without changing the meaning, the language is shortened and simplified. The exception for discovery records used at trial or in connection with a request for judicial action is now contained more generally in Rule 6(c).

Rule 6(b)(17) continues the exception in former Rule 6(b)(30), modernized to change the use of the term “audio or videotape” to the more general phrase “audio or video recording” to include more modern technology. As an exception to the exception, unless otherwise directed by the presiding judge, data elements specified in Rule 6(b)(14) that appear in a transcript of a public proceeding, or in a court reporter’s notes or an audio or video recording of a public proceeding, need not be redacted from the transcript, notes or recording before it is disclosed to the public.

Rule 6(b)(18) continues the exception in former Rule 6(b)(31) that evidence introduced in a proceeding that is not open to the public is not publicly accessible. The same record may exist in a publicly accessible form, and its use in a proceeding that is not open to the public does not change that fact, but it cannot be accessed as a record of the proceeding that is not open to the public.

Rule 6(c) is added to provide some public access to nonpublic records that were admitted into evidence. A fundamental purpose for public access to court records is to allow the public to view judicial decisions and orders and the information on which those orders were based. Exceptions to public access necessarily obstruct this transparency and reduce judicial accountability. In some instances, the privacy interest that is protected by an exception to public access is sufficiently important that the protection must continue even if the information or record is the basis for an important judicial decision. That is the policy choice made, for example, in juvenile cases where the privacy interest of the juvenile overrides the ability of the public to view judicial actions and orders. In other cases, however, the public interest in transparency prevails. Case files contain a great amount of private information, and much of it will never be the basis for a judicial order or decision. If it does become such a basis, however, a balancing becomes necessary to determine whether the privacy interest should override the interest in transparency of the inputs to judicial decisions.

Implementing policy in this area becomes difficult because there are many ways in which information can be the basis for judicial action. It can, for example, be contained in affidavits and discovery materials used in support of a party's position on a motion for summary judgment. The information in support of, or in opposition to, summary judgment has never been introduced into evidence, and it will be difficult to draw a direct path between each item of information and the ultimate judicial decision and conduct to implement a balancing test. Further implementing a new balance at this early stage threatens to consume many of the exceptions to public access.

When records are introduced in a judicial proceeding and admitted by a judicial decision that is on the record, it is possible to decide whether admission into evidence changes the balance in favor of transparency. It is also feasible to implement a new decision electronically in an electronic case file environment.

This rule implements the renewed balancing of interests of privacy and transparency in instances where it is feasible and where the record for it is sufficiently developed. For the specified exceptions, the records become publicly accessible if admitted into evidence in a judicial proceeding. The word "formally" is used to require that there be an on-the-record decision of the court admitting the record into evidence. That decision will be entered into the case-management system to make the record involved automatically accessible to the public. Thereafter, if a party seeks to prevent public access to the record, the party will need to obtain a sealing order pursuant to Rule 9 and meet the standards of that rule.

Rule 6(c) does not apply to any statute that creates an exception to the public right of access to records because no statute recognizes this exception.

Subdivisions (c) and (d) of former Rule 6, generally describing access and segregation of records that are not subject to public access prior to provision of access are combined into a single subdivision (d) and subject to nonsubstantive grammatical editing. References to the term "record custodian" are deleted in favor of describing how to treat the record to which access is requested. In addition, the sentence "The record custodian may deny access to electronic case records" is deleted, and language is added to the last sentence of the former subdivision to clarify that the subdivision does not permit remote access to any case record not otherwise provided by the public-access rules.

Former subdivision (e) remains in “Reserved” status.

Subdivision (f) prescribes modes of access to both physical and electronic case records. There is no substantive change to the circumstances of public access to physical case records. The amendments additionally specify that electronic records as to which the public has access may be inspected and copied via terminals located at court premises when the office of the clerk is open for business. Further, the amendments specify the mode of access to electronic case records to which the public has remote access. These records must be accessed via the court’s electronic case management system, and may be accessed at any time, subject to the terms and conditions established by the public-access rules. The amendments also clarify that access to inspect and copy case records in possession of the State Records Center must be directed to the clerk of the court from which the case record was transferred to the records center, and that requests for access to case records in possession of the State Archives (that is, records that have been transferred to, and are in the legal possession of archives) must be directed to that agency. Finally, the amendments delete references to “records custodian” in the former rules, in favor of functional description of treatment to be made of the records to which access is being requested.

Subdivision (g) addresses denial of access. Again, references to “case record custodian” and “custodian” are deleted in favor of functional description of treatment to be made of the records being requested. The subdivision is amended to correct a statutory cross-reference and to allow the time period to be extended as set forth in 1 V.S.A. § 318(b)(5).

Subdivision (h) specifies a grievance procedure in event of denial of access in whole or in part. Consistent with amendments to the preceding subdivisions, reference to the term “case record custodian” is deleted. An amendment specifies that appeal from denial of access must be made within 7 days and is to the presiding judge of the court in which the case is filed. The rule is also amended to specify that an appeal to the Supreme Court must be made within 30 days after a decision of the presiding judge.

Subdivision (i) specifies that the public-access status of records remains unchanged when a case is on appeal.

Former Rule 8, governing certain statistical reports, is relocated and recaptioned as subdivision (j). This subdivision continues to authorize, but does not require, the Court Administrator to provide access to statistical abstracts to case information not publicly accessible, provided that the

abstract does not identify any persons described in the records. The phrase “or entity” is added to modify the description of persons whose identity is not to be revealed in provision of a statistical abstract.

RULE 7. FILING OF CASE RECORDS; FILER AND JUDICIARY RESPONSIBILITY

(a) Filer and Staff Responsibility.

(1) Filer Responsibility.

(A) In General. It is the responsibility of the filer of a case record, whether in physical or electronic form, to determine whether all or part of the record being filed is not publicly accessible.

(B) Certifying Compliance. The filer must certify that the filer has reviewed the case record, and that the filing specifies the nonpublic records and protects those records from disclosure to the public consistent with these rules. The certificate must detail any actions taken to comply with these rules and the reasons for the actions.

(C) Separating Nonpublic Records in Public Files. If the record is not filed in a type of case that is closed to the public by statute, the filer must separate the part of the record that is subject to public access from the part that is not subject to public access by redaction or other similar method. The filer may separately file the omitted or redacted part of the record or may additionally file a separate complete record.

(D) Identifying Nonpublic Records. The filer of a record that is not publicly accessible under these rules or under statute must identify the record as not publicly accessible at the time of filing. After acceptance of the filing, court staff will place that document, or any other document not publicly accessible, in the section of the electronic or physical file of the case that is not publicly accessible.

(2) Nonpublic Record Filed in Error. A filer who becomes aware that a record that is not publicly accessible has been filed in error by that filer in publicly accessible status must promptly act to correct the error and move the record into not publicly accessible status. If the error is discovered by another person, including one who is a party, a lawyer for a party or a person who is making filings on behalf of a party, the person must promptly notify the other filer, and judiciary staff, so that corrective action may be taken. Any other person may notify judiciary staff of the error.

(3) Responsibility of Court Staff When Document is Filed. The Court Administrator will establish the procedures for staff to discharge the record custodian’s responsibility to provide public and special access to records as provided in these rules and to implement exceptions to public access established by these rules and by statute. If staff determine that a filing does not fully comply with these rules, including with respect to one or more personal identifiers, staff must take an action specified in paragraph (4). If a court staff person or judicial officer discovers that a case record that is publicly accessible may be in that status in violation of these rules, the staff or officer must act to temporarily restrict public access to the record and notify the Court
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Administrator. If the Court Administrator determines that public access to the record is not authorized under these rules, the Court Administrator will direct that the record be removed from public access. The Court Administrator may direct that the record be redacted or otherwise modified to allow public access to parts that are publicly accessible under these rules. If the record was filed by or on behalf of a party or another person who is not court staff or a judicial officer, the Court Administrator may direct that the filer make the record compliant with these rules within a specified time. If the filer provides a compliant filing on or before the specified time limit, the filing date will be the date of the original filing. Otherwise, the filing date will be the date of the compliant filing. The Court Administrator may appoint a designee to discharge the Court Administrator's responsibility under this rule.

(4) Actions When a Filing is Noncompliant with Rules.

(A) The staff person who reviews the filing may:

(i) Change the public-access status or redact the filing to comply with these rules; or

(ii) Reject the filing until it is made compliant with these rules and specify the time limit to do so.

(B) In addition, the staff person may refer the matter to an assigned judge who, after notice and hearing, may:

(i) Impose any sanction authorized by V.R.C.P. 11(c), regardless of whether that rule is otherwise applicable to the proceeding involved;

(ii) Reference the matter to the Professional Responsibility Program if the court finds that there is probable cause to conclude that a lawyer has violated Rule 3.4(c) of the Rules of Professional Conduct; and/or

(iii) If the court finds a violation of these rules occurred and excusable neglect is not present, order that the date of the corrected filing is the date of filing for all purposes; or remedial action appropriate to the circumstances.

(b) **Court Generated Records.** Court staff must identify any court-generated record that is not accessible by the public and must place that record in the section of the electronic case file of the case that is not publicly accessible. Court staff must omit or redact information that is not publicly accessible from any court-generated record that is otherwise accessible to the public as is required by these rules before placing that record in the publicly-accessible section of the electronic case file of the case.

(c) **Motion by a Party.** A party or nonparty who is aggrieved by a filing made in noncompliance with these rules, may move under applicable procedural rules and seek relief as authorized in paragraph (a)(4) of this rule.

Reporter's Notes

New Rule 7 expands on former Rule 3 of the Rules Governing Electronic Case Records, which precluded public access to certain data elements. The obligations now cover all records that fall within an exception to public access.

This rule provides for a filer's certification that it has identified any records that come within an exception to public access and taken the necessary steps to ensure that such records do not become publicly accessible in noncompliance with these rules. It provides specific sanctions for a noncompliance with the rules by a filer. It authorizes the Court Administrator to specify what review of filings will discharge the Judiciary's obligation under Rule 3(b) "to take reasonable steps to ensure compliance with these rules." Further, it requires all persons who find a record in noncompliance with these rules to notify court staff so it can be remedied and authorizes others to give such notice. It authorizes any person aggrieved by noncompliance to seek court action to remedy the noncompliance.

RULE 8. ADMINISTRATIVE RECORDS

The public has access to all administrative records in accordance with the provisions of this rule. The procedures, policies, and exemptions in 1 V.S.A. §§ 316, 317(c), and 318 apply to requests for inspection or to obtain copies of administrative records. The Court Administrator is designated as the "head of the agency" for purpose of appeals from decisions of the administrative-record custodian. The decision is final and a person aggrieved by it may follow the procedures set forth in 1 V.S.A. § 319. The Court Administrator will inform all administrative-record custodians of the fee schedule authorized by 1 V.S.A. § 316(d).

Reporter's Notes

Former Rule 5, which governed access to administrative records, is renumbered as Rule 8. As the Reporter's Notes to the originally promulgated rule indicate, "The judicial branch's administrative records are similar in nature to executive branch records." This section serves to make the relevant sections of the statutory access to public records applicable to administrative records of the Judiciary. See 1 V.S.A. § 317(c) (setting out exceptions to the general rule of open access to public records). Sections 316 and 318 of Title 1 set out the procedures for accessing those records. The rule is amended to specify that the Court Administrator's decision is final and can be challenged by following the procedures in 1 V.S.A. § 319.

RULE 9. EXCEPTIONS

(a) **Case Records; Motion to Grant Access, Seal, or Redact; Temporary Sealing; Procedure and Findings by Court.**

(1) *Power of Court to Grant Access, Seal, or Redact.* Except as provided in this Rule, the presiding judge by order may grant public access to a nonpublic case record, may seal from public access a public record, or may redact information from a public record. All parties to the related case, and other interested persons as the court directs, have a right to notice and hearing before an order issues, except that the court may issue a temporary order to seal or redact information from a record without notice and hearing pending a hearing.

(2) *Motion to Seal.* A motion to seal a public case record, or information contained within a public case record, may be made by a party to a case, an individual about whom information is present in the case record, or the court on its own motion. The motion must:

(A) Identify the particular case record or portions that the movant seeks to seal, with as much specificity as possible and without revealing the information subject to the sealing determination;

(B) Identify the specific interests that are sought to be protected with as much specificity as possible and without revealing the information subject to the sealing determination;

(C) State the authority that supports an order for sealing—that is, the statute, administrative or court rule, court order or precedential decision providing for confidentiality—or the privacy interest or circumstance that requires confidentiality.

(D) Attach a redacted and unredacted copy of the record(s) in issue that clearly identifies the location of the information which the movant seeks to exclude from public access. Upon the filing of the motion, the unredacted version(s) of the record(s) will be kept in sealed status pending a ruling on the motion.

(E) Attach a certificate of service for all parties, those other persons or organizations who have standing in the specific case, and an individual—if other than the movant—about whom the subject information is present in the case record.

(3) *Hearing.* The court must schedule a hearing for as soon as practicable but no later than 14 days after the filing of a motion under this rule. Any hearing on the motion must be open to the public, except that any person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subparagraph (a)(2)(B). Any party or person with standing may request expedited consideration of, and ruling on, the motion. The moving party has the burden of establishing grounds for sealing or redacting by clear and convincing evidence.

(4) *Findings; Orders.* An order may be issued only upon a finding by clear and convincing evidence that good cause and exceptional circumstances establish that the grounds asserted for restriction of access or the sealing of record(s) overcomes the presumption of *Proposed Order Abrogating and Replacing the V.R.P.A.C.R. and Abrogating V.R.G.D.E.C.R. & V.R.P.P. 77(e)*

openness of court records, in accordance with applicable constitutional, common law, or statutory authority. Any order sealing a case record must include specific findings, given on the record or in writing, demonstrating that sealing is supported by clear and convincing evidence, that no reasonable alternative to the sealing exists, and that the least restrictive means have been employed to preserve the presumption of openness and to protect the specific interests found to justify sealing of the record. Once the court seals all or a portion of a case record, the subject information remains under seal for the duration of the sealing order, or until a subsequent order grants access and unseals the information.

(b) **By Agreement.** The parties cannot seal all or a portion of a case record by mere stipulation.

(c) **Motion for Access to Records.** A motion for access to all or part of sealed case records or records in closed proceedings may be filed by any party, or a person or entity not otherwise entitled to access. The motion must specify the case caption and docket number, and state with specificity the record or records to which access is sought. Following notice to parties and opportunity for hearing, the court may issue its order granting or denying the motion for access, in whole or in part, subject to the standards governing proceedings and sealing provided in this Rule.

(d) **Applicability.** If a statute governs the right of public access and does not provide for judicial discretion to allow or prevent public access to the record, this rule does not apply.

(e) **Administrative Records.** The provisions of this rule apply to administrative records, except that the Court Administrator determines the extent of access.

(f) **Appeals.** A party or person required to be served under subparagraph (a)(2)(E) may appeal to the Supreme Court from determinations under this rule.

Reporter's Notes

Former Rule 7 is amended and renumbered as Rule 9. This rule, and its predecessor, set out exceptions to the general access policy stated in Rule 3(a) (former Rule 4), and specify the authority of the court to grant access to nonpublic case records; to seal from public access otherwise public records, or to redact information from public records. The amendments give greater particularity to the procedures for requests for access, sealing or redacting, and the standards guiding the exercise of the court's discretion in granting or denying such requests.

Paragraph (a)(1) restates the former language of the first two sentences of former Rule 7(a) (the general authority of the court, and right to notice and opportunity for hearing on the part of interested parties) without substantive change. As with the former rule, the

amended rule contemplates that records may be temporarily sealed on the court's own motion to protect the interests of a person not before the court at time of a request to seal, or for access, to protect those interests pending notice and opportunity for hearing. The substantive content of the rest of former Rule 7(a) is relocated to other portions of the amended rule. The "good cause and exceptional circumstances" criteria for sealing or granting access in former Rule 7 are moved to and incorporated in paragraph (a)(4). The last sentence of the former Rule 7(a), limiting the court's authority where a statute governing the access in issue does not authorize judicial discretion, is moved to and incorporated in amended subdivision (d), *Applicability*.

Subparagraphs (a)(2)(A)-(C) specify the content of a requisite motion to seal, including identification of: the particular case record or portions in issue, without revealing the content sought to be sealed; the specific interests to be protected; and the authority to seal. Subparagraph (a)(2)(D) provides that both redacted and unredacted copies of the records sought to be sealed be contemporaneously filed, with the unredacted copy held in sealed status pending ruling on the motion. Subparagraph (a)(2)(E) requires that the motion be accompanied by a certificate of service upon all parties, those other persons or organizations having standing in the specific case, and an individual, if any, other than the movant, about whom the subject information is in the case record. The mode of, and options for, service will be governed by the procedural rules governing the court division in which the motion is filed.

Paragraph (a)(3) requires that a hearing be scheduled on the motion as soon as practicable, but no later than 14 days after the motion to seal is filed. Hearing on the motion must be open to the public, subject to the court's authority to conduct all or part of the proceeding in camera, upon request of any person to protect the interests in subparagraph (a)(2)(B). Any party or person with standing may request expedited consideration of and ruling on the motion. The moving party bears the burden of establishing grounds for sealing or redaction by clear and convincing evidence.

Paragraph (a)(4) prescribes the findings that must be given by the court in order to sustain an order for sealing or redacting. Specific findings, which may be in writing or recited on the record, must establish by clear and convincing evidence that no reasonable alternative to the sealing exists and that the least-restrictive means have been employed to preserve the presumption of openness and to

protect the specific interests found to justify the sealing. This paragraph also prescribes the fundamental standards to govern the court's exercise of discretion, beginning with the requirement of good cause and exceptional circumstances articulated in former Rule 7. Such good cause and exceptional circumstances must establish that the ground asserted for sealing or redacting overcomes the presumption of openness of court records, in accordance with applicable constitutional, common law, or statutory authority. A substantial body of opinions serve to establish the essential process, and elements of the constitutional and common law balancing tests, which must be employed by the court in exercising discretion to seal or grant access. E.g., In re Essex Search Warrants, 2012 VT 92, ¶¶ 12-21, 192 Vt. 559, 60 A.3d 707 (discussing interplay of Rules of Public Access and standards established in In re Sealed Documents, 172 Vt. 152, 772 A.2d 518 (2001)); see also In re Search Warrants, 2011 VT 88, 190 Vt. 572, 27 A.3d 345; State v. Whitney, 2005 VT 102, 178 Vt. 435, 885 A.2d 1200 (construing former V.R.P.A.C.R. 6(b)(19) and 7(a) on appeal from denial of motion to seal competency evaluation); State v. Koch, 169 Vt. 109, 730 A.2d 577 (1999); State v. Bacon, 167 Vt. 88, 702 A.2d 116 (1997); State v. LaBounty, 167 Vt. 25, 702 A.2d 82 (1997); State v. Densmore, 160 Vt. 131, 624 A.2d 1138 (1993); State v. Schaefer, 157 Vt. 339, 599 A.2d 337 (1991); Greenwood v. Wolchik, 149 Vt. 441, 544 A.2d 1156 (1988); State v. Tallman, 148 Vt. 465, 537 A.2d 422 (1987). Tallman, Shaefer and Densmore adopt the so-called "Press-Enterprise II" standards for assessment of sealing requests opposed on grounds of First Amendment rights of access. See Press-Enters. Co. v. Super. Ct. of Cal. for Cty. of Riverside, 478 U.S. 1 (1986). As paragraph (a)(4) indicates, once an order seals a case record, the subject information remains under seal until either expiration of the sealing order or the court further orders access and unsealing of the information.

Subdivision (b) directs that the parties may not seal a case record by mere stipulation and without a court order. The court may grant a stipulated request to seal, subject to all other applicable standards established by the Rules for Public Access to Court Records but is not bound to. Otherwise stated, an agreement of the parties and other parties in interest does not suffice in and of itself to supplant lawful standards for sealing or granting access.

Subdivision (c) governs the standards applicable to motions for access to case information that is sealed, as provided in paragraph

(a)(1). The standards applicable to motions for access are the same as for motions to seal or redact.

Subdivision (d) carries forward the provision of former Rule 7 that the rule is inapplicable if a statute governs the right of public access and does not authorize judicial discretion in determining to open or seal a record.

Subdivision (e) provides, as in former Rule 7, that requests related to access to administrative records are governed by Rule 9, except that determinations are to be made by the Court Administrator.

Subdivision (f) provides, as in former Rule 7, that any party or person required to be served under subparagraph (a)(2)(E) may appeal to the Supreme Court.

RULE 10. ELECTRONIC-CASE-RECORD COMPILATIONS

Because these rules provide public access on a case-by-case basis, the Judiciary does not provide electronic-case-record compilations, either in electronic or printed form, unless a compilation is an electronic-case-record report made publicly accessible by Rule 11. In enabling public access to electronic case records pursuant to this policy, the Court Administrator will ensure that no person may obtain an electronic-case-record compilation unless otherwise provided by these rules. The Court Administrator may waive this policy pursuant to a data-dissemination contract governed by Rule 12.

Reporter's Notes

Rule 10 is adopted from Rule 4 of the Rules for Dissemination of Electronic Case Records. The reference in former Rule 4 to section 6 of those rules is edited to reference Rule 12 of the amended rules.

RULE 11. ELECTRONIC-CASE-RECORD REPORTS

(a) **Public Access.** The public has access to any judicial-branch case-management-system standardized report created from electronic case records provided it does not include any information excluded from public access by Rule 6. The information will be provided in electronic or printed form at the option of the person requesting the information but will not be available by remote access.

(b) **Limiting Public Access.** The public does not have access to any other electronic-case-record report unless pursuant to a data-dissemination contract under Rule 12 or subdivision (c).

(c) **Nonstandardized-Case-Record Reports.** The Court Administrator may, on request, provide a nonstandardized-case-record report from electronic case records, in either electronic or printed form, upon a finding that compliance with the request will not be unduly burdensome.
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Compliance is unduly burdensome if it may: strain system capacity through extensive use of computer processing time to locate, aggregate, and download data; cause delay in services provided by the Research and Information Services Division of the Court Administrator's office or other subdivisions of the Judiciary; or require extensive employee work hours to complete the report. Reports provided under this subdivision do not include any information excluded from public access by Rule 6. The Court Administrator must refuse a request based on a finding that the purpose of the request is to obtain personal information about litigants or other persons appearing in court, and not to obtain information about the operation of the Vermont Judiciary. This subdivision applies to statistical reports.

(d) **Designating Content of Standardized Reports.** The Court Administrator will designate the content of standardized reports from the Vermont Judiciary case-management system and make those designations available to all persons who are authorized to create such reports. Subdivision (a) applies to these reports.

Reporter's Notes

Rule 11 is adopted from Rule 5 of the Rules for Dissemination of Electronic Case Records. The amendments consist of nonsubstantive changes to terminology used to describe case-management systems, data/information excluded from public access, and cross-references to other sections of the amended rules.

RULE 12. ELECTRONIC-DATA-DISSEMINATION CONTRACT

(a) **Request for Access.** A public-purpose agency may seek access to nonpublic, judicial-branch, electronic-case-record information. The public-purpose agency must identify the information requested and the proposed use of the information. In reviewing the request, the Court Administrator will consider: (1) the extent to which access will result in efficiencies in the operation of a court or courts; (2) the extent to which access will enable the fulfillment of a legislative mandate; (3) the extent to which access will result in efficiencies in other parts of the justice system or in the delivery of human or educational services; (4) the extent of the need for the information; (5) the risk that the information will be misused for purposes other than those intended; and (6) the methods that will be used to ensure the security and confidentiality of the data.

(b) **Granting of Access; Contract.** If the Court Administrator decides to grant access, it will be authorized only pursuant to an electronic-data-dissemination contract between the Court Administrator and the agency. At a minimum, the contract must: (1) specify the data to which access is granted; (2) specify the uses which the agency may make of the data; and (3) include the agency's agreement that its employees will access the data only for the uses specified and maintain its confidentiality as to third parties. Violation of the terms of a contract, including using data in an unauthorized manner, will be grounds for termination of the agreement.

(c) **Term and Renewal.** Electronic-data-dissemination contracts must have a specific term and a fixed date of expiration, subject to renewal upon the Court Administrator’s consideration of the criteria set forth in subdivision (a).

(d) **Limits.** This section does not authorize exceptions from the exceptions to public access provided in Rule 6. However, the Court Administrator may provide a public-purpose agency access to nonpublic records upon a finding that the agency has a specific right of access under Rule 5.

Reporter’s Notes

Rule 12 is adopted from Rule 6 of the Rules Governing Dissemination of Electronic Case Records. The former rule is reorganized into four subsections.

RULE 13. PROCEDURE FOR REPORTS, COMPILATIONS, AND CONTRACTS

The Court Administrator is the record custodian for implementing Rules 10 through 12. The Court Administrator’s decisions with respect to those rules are final.

Reporter’s Notes

Rule 13 is adopted from Rule 7 of the Rules Governing Dissemination of Electronic Case Records. The provisions of the former Rule 7 are amended to specify that with respect to requests for electronic-case-record compilations, electronic-case-record reports, and entry into and administration of data-dissemination contracts, the Court Administrator serves as the records custodian. References in former Rule 7 to “VCAS” and the “Vermont Judiciary Data Warehouse” are deleted. To the extent that former Rule 7 addressed requests for electronic case records and appeals from denial of requests for access to electronic case records generally, these provisions are now incorporated in the access and grievance/appeal procedures of the new Rules 3 and 6(c)-(i).

2. That the Vermont Rules Governing Dissemination of Electronic Court Records are abrogated, as having been incorporated into the amended Rules for Public Access to Court Records.

3. That Rule 77(e) of the Vermont Rules of Probate Procedure is abrogated.

4. That these rules, as amended, are prescribed and promulgated to become effective _____ . The Reporter’s Notes are advisory.

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

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Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2019.

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

PROPOSED