

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

**Minutes of Meeting, March 17, 2023**

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

**1. Chair Tomasi: Meeting Opening**

**2. Approval of Minutes from the January 2023 meeting.**

Teri Corsones proposed to strike the statement that the Courthouse News case has been argued because it is incorrect; argument is scheduled for April 2023. The Committee agreed. On motion of Tanya Marshall, seconded by Bob Paolini, the Committee unanimously approved the minutes of the January 27, 2023, meeting, as amended.

**3. Update On PACR 5 and 6 Appendices**

Petra Halsema reported that the appendices to PACR 5 and 6 were updated by Court Administrator Administrative Directive TC-2, which was issued on February 8, 2023.

**4. Update re Public Access to Criminal History Records Obtained through NCIC; Public Access to Such Records from VCIC; status of national negotiations with State Court Administrators and Department of Justice.**

No further updates were available. The Committee agreed to remove this item from the agenda for future meetings. Teri Corsones will notify the Committee if this issue re-arises.

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

Following the Courthouse News case, civil filings are made public without court review. Rule 7 addresses post hoc efforts to correct/redact records that should not have been made publicly accessible. Rule 7(a)(3) seems to require Court Administrator action and the other Rule seems to cabin judicial action to limited circumstances and limited relief. The Courthouse News case is on appeal to the Second Circuit and the Committee decided at its 7/22/22 meeting to wait until the appeal is decided before making changes. The Court Administrator recently received notice that appeal is set for oral argument in April 2023.

**6. Proposed Amendments to Rules 6(b)(9) & 11(c)**

At its last meeting, the Committee voted to send the proposed amendments to the Court for adoption. The amendments were promulgated on February 6, 2023, and will become effective on April 10, 2023.

## **7. Proposed Amendment re: Public Status of Prefiled Exhibits**

The Committee discussed proposed new Rule 6(b)(23), which incorporates comments made by members at the last meeting. At J. Tomasi's suggestion, the Committee agreed to add "proposed" to modify "exhibits." The Committee decided to send this proposed amendment to the Court when it proposes the other Rule 6 amendments.

## **8. Rule 9 Motions to Seal**

At present, Rule 9 appears to require all interested parties to be served with motions to seal. However, courts frequently receive motions to seal search warrants, which don't get served on interested parties. They are treated more like an ex parte motion under Rule 6(b)(20). J. Tomasi thinks we need to revisit that and decide whether we want to clarify how state's attorneys are to proceed in those cases. The Committee discussed whether it should amend Rule 9(a)(3)(E) to clarify or simply make a Reporter's Note. It was agreed that J. Tomasi, J. Dooley, and Petra Halsema will work to draft a fix in advance of the next meeting.

## **9. Possible Amendment to Rule 5(b) & (c)**

As Rule 5 is currently worded, parties and lawyers have access to records that are otherwise exempted from public access under Rule 6(b). This exception to the exception apparently includes judicial work product, which presumably should be accessible only to judges and court staff. J. Tomasi, J. Dooley, Petra Halsema, and Laura LaRosa will work on an amendment to fix this.

## **10. Recommendation to Standardize Effective Dates of New Rules**

Allan Keyes, Chair of the Civil Rules Committee, has circulated a proposal to standardize the effective date of new rules. He states:

"Currently there are no written guidelines, but typically the Court establishes an effective date in its promulgation order on an ad hoc basis at least 60 days in the future to accommodate legislative review. The Advisory Committee on Civil Rules recently voted to recommend that the Court standardize the effective date of new rules. What we are suggesting is that, ordinarily, all rules be promulgated on at least 60 days' notice for effect on January 1 or July 1 of each year.

This recommendation was prompted by concerns expressed by the bar that it has become increasingly difficult for practitioners to know at any given moment what the rules are. If rules regularly took effect only once or twice a year this would alleviate what is a problem for both bench and bar. (In the federal system new rules take effect only once a year, on December 1, and that seems to work.)

To have the intended beneficial effect, this protocol should apply across divisions for all procedural and evidentiary rules. My current thinking is it that either Administrative Order 11 or each of our committee charters could be amended with a common guideline on effective dates.

Before formalizing a recommendation to the Court, I am writing to solicit the views of each of you and your committees. If there is a general consensus to move in this direction, we can work together on the details of the proposed language for a standard that would apply in common.”

J. Dooley noted that Chair Keyes did not propose to eliminate the discretion of committees to engage in emergency rulemaking. Committee members agreed that the proposal makes general sense, as long as we can opt out of the timeline for more urgent amendments. J. Dooley noted that we may have to adjust our meeting schedule to line up with promulgation dates. Petra Halsema suggested that instead of January 1 and July 1, the dates be December 1 and May 1, due to the difficulty of scheduling meetings during the holiday season. J. Tomasi will convey the Committee’s position to Chair Keyes.

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

A subcommittee of J. Dooley, Teri Corsones, Tanya Marshall, Tracy Shriver, and Petra Halsema have developed proposed amendments to update and streamline Rule 6(b) as well as associated rules. The Committee discussed the latest revisions. In general, the Committee approved of the direction of the amendments.

The Committee discussed whether the exception in Rule 6(b)(12) (juvenile records in divorce or parentage cases) should be deleted. The Committee discussed the origin of the rule, which mostly tracks the language in 33 V.S.A. § 5117(c)(3). It was decided to propose that the exception be deleted because the statute expressly makes these records not publicly accessible. At the same time, the appendix reference will need to be made more specific to refer to these records. The Reporter’s Notes will explain in detail why this is deleted.

Regarding 6(b)(14) (judicial work product), at J. Tomasi’s suggestion, it was agreed to add “without limitation” after “including” to avoid an argument that the current list of examples of judicial work product is exclusive. Mike Tarrant asked whether we should also strike “on behalf of a judge?” After some discussion, Committee decided to leave that phrase as is.

In Rule 6(b)(16), J. Tomasi proposed adding “for action” in the new sentence to track language of the first sentence. The Committee agreed.

The Committee decided that the Reporter and subcommittee will work to combine all amendments currently being discussed into one packet for the full Committee to review prior to its next meeting.

#### **12. Any New Business.**

Teri Corsones announced that the Court Administrator’s Office is exploring making civil case records publicly accessible through the Public Portal with Tyler Technologies.

#### **13. Set Next Meeting.**

The next meeting of the Committee will be held remotely on May 12, 2023, at 9 a.m.