

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2022

**Order Promulgating Amendments to Rules 6(b)(9) and 11(c) of the Vermont Rules for
Public Access to Court Records**

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

1. That Rule 6(b)(9) of the Vermont Rules for Public Access to Court Records be amended to read as follows (new matter underlined; deleted matter struck through):

§ 6. Case Records

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

(9) In a proceeding ~~A complaint and affidavit~~ seeking an order of protection; pursuant to 15 V.S.A §§ 1103, 1104, 12 V.S.A. §§ 5133, 5134, or 33 V.S.A. § 6931

(A) a complaint and affidavit filed by plaintiff until the defendant has an opportunity for a hearing pursuant to 15 V.S.A. § 1103(b) or § 1104(b) or 12 V.S.A. § 5133(b) or § 5134(b). A temporary order of protection is publicly accessible. If the court denies temporary relief, and the plaintiff does not pursue the case, the complaint, affidavit, and order denying relief remain nonpublic. If the court denies temporary relief and the plaintiff files a notice of intent to pursue the case, the order denying temporary relief is not publicly accessible until the defendant has an opportunity for a hearing;

(B) information provided to the court containing an address, telephone number, or email address for notification purposes as provided by the plaintiff pursuant to V.R.F.P. 9(b), whenever provided, unless plaintiff has consented to public access to the information. For purposes of this subparagraph, public access includes access by the defendant or the defendant's lawyer;

(C) information provided to the court containing an address, telephone number, or email address for notification purposes as provided by an unrepresented defendant pursuant to V.R.F.P. 9(g), whenever provided, unless defendant has consented to public access to the information. For purposes of this subparagraph, public access includes access by the plaintiff or the plaintiff's lawyer.

Reporter's Notes—2022 Amendment

Rule 6(b)(9)(A) is amended to clarify the existing provision that exempts the complaint and affidavit from public access until defendant has an opportunity for a hearing. The revised rule provides that temporary orders granting relief are publicly accessible. The amended rule clarifies the public access status of

the complaint, affidavit, and resulting order when relief is denied. Where temporary relief is denied and plaintiff does not pursue the case, the complaint, affidavit, and order denying relief remain nonpublic. Where temporary relief is denied and plaintiff does pursue the case, the order denying relief is not publicly accessible until the defendant has the opportunity for a hearing pursuant to statute.

Rule 6(b)(9)(B) and (C) implement the restrictions of public access created by V.R.F.P. 9(b) and (g)(1). The purpose of the family proceeding rules is to protect location and access information of the abuse-prevention proceeding plaintiff, and in a limited circumstance the defendant, from being accessible to the other party, the other party's lawyer, or the public. A plaintiff in an abuse-prevention proceeding typically provides contact information to the court on a standard form, which requires the plaintiff to indicate whether the plaintiff consents to release of the contact information on the form. If the plaintiff does not consent to release of the information, both the form itself and the information provided on the form are not accessible by the other party, the other party's lawyer, or the public. Because V.R.F.P. 9(b) states that information provided for notification purposes shall not be disclosed without written consent, such information is nonpublic even if the plaintiff does not use the standard form. For the same reason, when a party who has previously denied consent to release that party's contact information under V.R.F.P. 9(b) or (g) provides updated contact information to the court, that updated information will be kept nonpublic unless the party provides written consent to release it. Furthermore, contact information such as an email address that would otherwise be publicly accessible is not publicly accessible if it was provided under V.F.R.P. 9(b) or (g).

The exception to public, party, and lawyer access created by this rule and V.R.F.P. 9(b) and (g) is separate from the restriction contained in 15 V.S.A. § 788, which applies only to information "provided under this section." 15 V.S.A. § 788(c). The contact information collected by V.R.F.P. 9(b) and (g) was not collected pursuant to § 788. The restriction created by § 788 is recognized in the Appendix to this rule.

2. That Rule 11(c) of the Vermont Rules for Public Access to Court Records be amended to read as follows (new matter underlined; deleted matter struck through):

§ 11. Electronic-Case-Record Reports

(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. 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~~ Technology Services Center 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.

Reporter's Notes—2022 Amendment

Rule 11(c) is amended to reflect the fact that the Research and Information Services Division of the Court Administrator's office has been reorganized and renamed as the Technology Services Center.

3. That these amendments be prescribed and promulgated, effective on _____.
The Reporter's Notes are advisory.

4. 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.

Dated in Chambers at Montpelier, Vermont, this _____ day of _____, 2022.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice