

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

[Revised] **MEETING AGENDA FOR OCTOBER 4, 2019**

The Public Access Rules Committee will meet at 9:00 a.m. on Friday, October 4, 2019, in the Supreme Court conference room, Montpelier, to consider the following agenda:

1. Meeting opening; Chair Tomasi; Announcements—Committee Appointments; Amendments promulgated as final on May 1, 2019, effective July 1, 2019, Abrogating and Replacing VRPACR and Abrogating the Rules Governing Dissemination of Electronic Case Records.
2. Approval of minutes of December 10, 2018 and April 19, 2019 meetings.
3. Report on Meeting of Joint Legislative Committee on Judicial Rules, June 6, 2019; LCJR questions and comments as to PACR final promulgation on May 1, 2019. (John Dooley)

4. Ongoing Business: Post-promulgation Issues Associated with Rules for Public Access to Court Records and Implementation of New (“Next Generation”) Electronic Case Management System (NG-CMS).

a. **PACR Rule 6(b)(5)** (Bars access to Information and Supporting Affidavit(s) if Judicial Officer Does Not Find Probable Cause) (Inquiry of Laura LaRosa, CAO).

H. 460 (Act No. 32; 2019 Adj.Sess.) amends the expungement and sealing statutes. Questions presented:

(1) 13 V.S.A. §§ 7603(a) and (e) direct specific procedures and timelines for sealing, and expungement of criminal history records related to citation or arrest if: there is no determination of probable cause or; if charges are dismissed without prejudice by the court or; upon stipulation of the state and the defendant; or if there is an acquittal. Do these amendments render the provisions of PACR 6(b)(5) no longer necessary?

(2) §§ 7606(c) and 7607(d) provide that “until all charges on a docket are (expunged, or sealed as the case may be) the case file shall remain publicly accessible.” (parenthetical matter added). How are these provisions to be interpreted where some of the charges initiated have no pc found; or are dismissed; or result in acquittal, but others in the same docket are not?

(3) Do the referenced provisions of Act 32 mean that parties can stipulate to sealing and/or expungement, even without Court approval and even when PACR Rule 9(b) provides that parties cannot seal all or a portion of a case record by mere stipulation? (A court order is required.)

b. **PACR Rule 6(b)(7)** (Financial Information in Application to Waive Filing and Service Fees *not* Including Affidavit Contents)—(Inquiry of VLA, Erik Avildsen, Esq. as to Ambiguity of this Amended Rule and Its Intent). Seeking clarification—does the new language “filing and service fees” mean any change in non-public status of financial information covered in former Rule 6(b)(11), which referenced “application to proceed in forma pauperis”? His assumption is that no change was intended.

c. **PACR Rule 6(b)(1) Appendix** (Criminal History Records)—Current Issues; Treatment; Status of Efforts to Clarify Public or Non-Public Status.¹ (Report by Justice Dooley; Court Administrator Gabel)

d. **Abrogation of V.R.P.P. 77(e)(Confidentiality of Probate Records, including wills filed and indices of wills)**

Abrogation of this rule was included in the PACR promulgation package, but not ultimately included in the final promulgation due to request of the Advisory Committee on Rules of Probate Procedure. The Probate Advisory Committee had published for comment its own proposed amendments to this rule at the time. Inclusion of the content of these amendments in the PACR rules is for consideration by the PACR Committee, working with the Probate Advisory Committee. (Status report by Judge Morris)

e. Special Committee to Review (related) Amendments to the Vermont Rules for Electronic Filing; Report of VREF Committee Meeting on September 20, 2019, public comments received and Committee responses; status of transmittal of 2019 VREF amendments recommended for promulgation to the Supreme Court (for information purposes of PACR Committee).

f. Discussion of any other post-promulgation issues.

5. **Old Business: Rules 4(c) and 10 of the Rules Governing Qualification, List, Selection and Summoning of All Jurors; Confidentiality of Juror Information; Reconciling with provisions with V.R.C.P. 47(a)(2) and V.R.Cr.P. 24(a)(2)** (status report and discussion of amendments to PACR Rule 6 to more specifically address public access to content of juror responses to written questionnaires). (Morris; Corsones)

6. **New Business: Report on CAO Implementation of Statutory Enactments Mandating Sealing and Expungements—Act No. 8 (2018 Spec.Sess.) (Adult Diversion Records); Act No. 32 (2019 Adj.Sess.)(Expungement of Criminal History Records); Other expungement and sealing issues.** (T. Scott). Discussion of whether any further PACR amendments are warranted in consequence of expungement and sealing legislation.

¹ See also, 20 V.S.A. § 2056a(c); 20 C.F.R. § 20.33(b); and proposed 2019 VREF Rule 5(g).

7. **New Business: Discussion Item,** Decisions in *Oblak v. UVM Police Services*, 2019 VT 56 (8/23/19) (Distinctions between Rules for Public Access to Court Records and Public Records Act as pertains to public access to affidavits of probable cause where no probable cause is found); and *Doyle v. City of Burlington Police Dept.*, 2019 VT 66 (9/13/19)(Agency cannot charge its redaction expenses for Public Records Act “inspection” of a video recording that must be redacted prior to disclosure. (PRA would authorize assessment of redaction expenses when delivery of a “copy” is requested, in contrast to a request for “inspection”).

8. **Next Steps**-Dates and objectives for next meetings.

9. Any other business.

10. Adjourn.

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