

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

Meeting Agenda for December 15, 2023

1. Chair Tomasi: Meeting Opening

Announcements and General Discussion.

2. Approval of Minutes from the September 2023 meeting.

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

Following Courthouse News case, civil filings are made public without court review. These Rules address 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. Courthouse News case is on appeal to the Second Circuit and the committee decided at the July 2022 meeting to wait until appeal is decided before making changes. he case was argued in April 2023 – updates?

4. Update re Proposed Amendments to Rules 2, 5, 6, 7, and 9

The Court adopted the proposed amendments to Rules 2, 5, 6, 7, and 9 at its October 2023 meeting, with an effective date of January 1, 2024. Chair Tomasi reviewed those amendments with the Legislative Committee on Judicial Rules at their most recent meeting. he Committee raised no substantive concerns, but Representative LaLonde pointed out that the introductory language to Rule 6(b) was confusing and should be revisited. Chair Tomasi agreed. Following the meeting, he proposed a number of options to address his concerns. This committee took a remote vote endorsing a simple elimination of the problematic sentence, along with a corresponding change to the Reporter’s Notes. The proposed revision was sent to the Court for consideration at its December 11, 2023 administrative meeting.

5. Recommendation to Standardize Effective Dates of New Rules

In October 2023, the Court amended A.O. 11 to add new § 9, which provides that ordinarily rules will be adopted with an effective date at least 60 days from the date of promulgation and with an effective date of either July 1 or January 1. Former § 9 is renumbered § 10 and continues to provide that some or all requirements of the administrative order may be dispensed with when the public interest requires.

6. Ex Parte/In Camera Motions

J. Tomasi received a question prior to the May meeting regarding whether ex parte/in camera motions should be visible to the opposing party or others in the electronic filing system. Currently, if someone files an ex parte motion and doesn't serve the other side, it is not visible to the opposing party and would not show up on docket entries. Laura LaRosa stated that a question had arisen about the confidentiality of an ex parte motion filed by a state's attorney in a criminal case to interview a witness in jail—should opposing counsel be able to see the motion, or the fact that one was filed? The Committee decided to keep this item on the agenda for next time so that our media representative has an opportunity to weigh in.

7. Public-Access Status of Inquests, Subpoenas Duces Tecum, and Nontestimonial Orders

At the September 2023 meeting, a subcommittee of J. Tomasi, J. Morrissey, Tracy Shriver, Laura LaRosa and Petra Halsema was formed to discuss the public-access status of inquests and other investigative requests. Update from subcommittee.

8. Any New Business.

9. Set Next Meeting.