

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

MEETING AGENDA FOR OCTOBER 6th, 2020

The Public Access Rules Committee will meet at 1:30 p.m. on Tuesday, October 6th, 2020, via video conference to consider the following agenda:

1. Meeting opening; Chair Tomasi; Announcements.
2. Approval of Minutes for July 31, 2020 meeting.

I. REPORTS

3. **Status Report on Implementation of 2020 Vermont Rules for Electronic Filing.** Planned September “roll out” of electronic filing in the “BRACE” Units. Identification of PACR and e-filing rules issues in roll out; any specific issues identified, and potential responses to be implemented. (Scott/Morris)

4. **Emergency Amendments of 2020 VREF 3 and 4(b), effective July 15, 2020.** Recommended following VREF Committee meeting on July 10th. Comment period closed 9/15/20. (Morris)

5. **Meeting of Legislative Committee on Judicial Rules, August 3, 2020.** (Dooley; Morris)

6. **Amendment of PACR Rule 6(b)(5)** (Bars access to Information and Supporting Affidavit(s) if Judicial Officer Does Not Find Probable Cause) (Redraft amends rule to state no public access if judge finds no PC for all counts, for consistency with 13 V.S.A. §§ 7606(c) and 7607(d)¹ and *In re: Affidavit of Probable Cause*, 2019 VT 43). Favorable review by LCJR; promulgated as final by the Court on September 16th, effective November 16th.

7. **Proposed PACR 6(b)(19); Confidentiality of Juror Questionnaire Responses; Consolidated amendments reconciling provisions of Rules 4(c) and 10 of the Rules Governing Qualification, List, Selection and Summoning of All Jurors, with V.R.C.P. 47(a)(2) and V.R.Cr.P. 24(a)(2)** (Final Draft approved by Committee on 7/31 has been published for comment; comment period closes on November 16th. **Public hearing (by video)** on proposed amendments is scheduled for October 28th, at 3:00 p.m.). (Report and discussion of hearing procedures/ Morris)

II. OLD BUSINESS

8. **Proposed PACR Rule 6(b)(21-22): Exceptions to Avert Need for**

¹ “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). H. 460(Act No. 32; 2019 Adj.Sess.) Formerly, the rule was read to preclude public access to *any* of multiple counts for which no probable cause had been found.

Unnecessary Recourse to Formal Rule 9 Sealing Process.

(Trade Secrets; Confidential Business Information; Review of redrafts from July 31st meeting)

9. **Proposed PACR 6(b)(20): Exception for Ex Parte and In Camera Filings** (Review of redraft of new exception for such filings, from 7/31/20 meeting)

10. **PACR Rule 9 Sealing Process: Proposed Revisions of Rule 9.**
(Review of redraft with edits from 5/8 and 7/31 meetings)

11. **PACR 7(a)(4)(A)(i): Actions When Filing is Noncompliant** (Draft amendment to preclude staff change in public access status or redaction to comply with rules if the filing is “under seal, ex parte, or for in camera review.” (Deferred from 7/31/20 meeting)

12. **PACR 6(b)(Appendix)² Public Access to Criminal History Records Obtained through NCIC; Public Access to Such Records from VCIC; Status of “Sorting” Requirement in E-Filing of 2020 VREF 5(g).**

VREF 5(g) requires that criminal history information be separately efiled in three categories: (1) Convictions, felony or misdemeanor, in Vermont courts and resulting sentences; (2) Convictions, felony or misdemeanor, in courts of other jurisdictions, including federal, and resulting sentences; and (3) Any other criminal history information (arrest/custody reports and bail information; criminal charge information and law enforcement incident reports from Vermont and other jurisdictions). Report on status of such filings from the e-filing roll-out in the WOW Criminal Divisions. Proposed “work around” to facilitate prosecuting attorneys’ compliance for BRACE roll out. (Loewer/Scott). Status of national negotiations, State Court Administrators and Department of Justice.

III. NEW BUSINESS

13. **PACR 6(b)(9) and 5(c):** (“Opponent” attorney access to complaint and affidavit in RFA cases where request for relief has been *denied* and no hearing requested by Plaintiff; Is amendment of (b)(9) necessary to clarify no access?)(Inquiry of Judge Schoonover).

14. **Additions to Rule 6(b) Appendix to be made by Court Administrator** (Per 6(b)(1): 8 V.S.A. § 7043 (Records in Insurer Supervision Hearings); 9 V.S.A. § 4605 (Trade Secrets).

15. **Resumption of Jury Trials; Any Issues re Public Access to Court Records.**

16. Next Steps – Date(s) and objectives for next meeting(s).

17. Any other business.

18. Adjourn.

² 2019-20 pocket part, p. 155.