

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

Minutes of Meeting, January 27, 2023

The meeting of the Advisory Committee on the Rules for Public Access to Court Records commenced at approximately 1 p.m. via videoconference. Present were Committee Chair Judge Timothy Tomasi and members Justice (Ret.) John Dooley, Judge Mary Morrissey, Teri Corsones, Laura LaRosa, Mike Tarrant, Tanya Marshall, Amanda Stites, Marcia Schels, Jeannette Eicks, Mark Davis, Bob Paolini, and Petra Halsema.

1. Chair Tomasi: Meeting Opening

Welcome to Bob Paolini, Executive Director of the VT Bar Association. He will be the committee representative from the VBA.

2. Approval of Minutes from the October 2022 meeting.

On motion of Tanya Marshall, seconded by Laura LaRosa, minutes for the October 28, 2022, meeting were unanimously approved. Teri Corsones found two typos that she will forward to the Reporter.

3. Update On PACR 5 and 6 Appendices (Petra)

Petra Halsema and Teri Corsones are working to update the appendices.

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.

Teri Corsones contacted the State's liaison on this issue but there are no updates. In December, the liaison indicated there were few if any audits happening so DOJ was not actively pursuing this issue.

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. 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 7/22/22 meeting to wait until appeal is decided before making changes.

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

The comment period for the proposed amendment to Rule 6(b)(9), governing public and attorney/opposing party access to plaintiff's (and in some cases, defendant's) contact information in RFA cases, has closed. J. Tomasi appeared before the Legislative Committee on Judicial Rules, which did not have any comments. The only comment received was from Allan Keyes on the Civil Rules

Committee, who suggested adding a reference in proposed Rule 6(b)(9)(B) to Civil Rule 80.10. This Committee agreed to amend the proposed amended rule to add that reference. On motion of Mike Tarrant, seconded by J. Morrissey, the Committee unanimously voted to pass the proposed changes and recommend the amendment to the Court for adoption.

7. Proposed Amendment re: Public Status of Prefiled Exhibits

The Committee discussed adding the following exception to PACR 6(b): “Exhibits filed with the court for the purpose of and prior to a trial or hearing are not publicly accessible until they are offered into evidence. Prefiled exhibits that are not offered or admitted into evidence are not publicly accessible.”

At the last meeting, the Committee discussed whether prefiled exhibits should be withheld from other side. J. Tomasi asked for feedback from trial judges but did not receive a strong response.

Mike Tarrant asked whether it was worth clarifying the rule to state that the prefiled exhibits are available to the parties. He also asked whether PACR 6(c) should be amended to reflect the new exception.

J. Dooley and J. Tomasi opined that proposed exception, which refers to exhibits being offered or admitted, was sufficiently different from the other exceptions listed in (c) that it should not be listed. Rule 6(c) just talks about admission.

Laura LaRosa noted that prefiled exhibits contain otherwise confidential information and expressed concern about whether court staff would be expected to redact such information. Jeannette Eicks stated that the rule should be clear that such material has to be redacted before it ever gets filed.

Mike Tarrant proposed amending the above language to clarify that prefiled exhibits are publicly accessible unless another exception applies. Laura LaRosa asked that the rule be clarified to state who is expected to redact the prefiled exhibits now that they are going to be confidential initially.

The Committee agreed that the reporter would redraft the proposed language to address these concerns.

8. Questions Regarding Access to Documents Through Public Portal

Marcia Schels and Teri Corsones reported that the New England First Amendment Coalition reached out to the Court Administrator’s Office, which met with them in January. NEFAC had lots of questions about decisions made during the Odyssey project regarding public access to cases. One question was about the rationale for not putting all information permitted by law into the Odyssey public portal, which is for anonymous public users and currently only permits you to see case information and not documents. NEFAC argued that this information was otherwise public and available at the courthouse, so why doesn’t CAO allow people to view it through the public portal?

J. Dooley explained that the difference is remote access. By statute, the Court Administrator has discretion to give remote access to civil case records, but is prohibited from giving access to criminal, family, or probate records. Teri stated that the CAO wanted to check with this Committee to see if anyone can recall what the policy rationale was for not making civil case information accessible via the Portal.

J. Dooley recommended that CAO consult with Pat Gabel. He recalled that there was concern that we were sharing personal information, so the public should have to go to courthouse to get the records. There was extra concern after the Courthouse News decision, which says we have to make filings public before staff can review. J. Tomasi added that there were concerns about bots overwhelming the system, data harvesting, etc., and therefore this Committee left it to the Court Administrator's discretion.

Mark Davis commented that the lack of public accessibility was a real problem with Odyssey, given that it was a publicly funded project and the records are public. He was glad that NEFAC was asking these questions. Mike Tarrant also asked why we wouldn't make the civil case records accessible.

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

Subcommittee of Dooley, J., Corsones, Marshall, Shriver, and Halsema have developed proposed amendments to update and streamline Rule 6(b) as well as associated rules. J. Dooley summarized the proposed amendments to Rule 6(b). The subcommittee decided not to amend the appendix.

The Committee discussed several of the proposed amendments in detail. In general, the Committee supported the direction of the proposed amendments. There were several questions and suggestions regarding specific amendments. It was decided that the subcommittee would continue to meet to address these issues and would return to the Committee with a new draft and contextual information.

10. Next Meeting.

The next meeting of the Committee will be held remotely on March 17, 2023 at 9:00 a.m.