

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

**Minutes of Meeting, July 22, 2022**

The meeting of the Advisory Committee on Rules for Public Access to Court Records commenced at approximately 9 a.m. via videoconference. Present were Committee Chair Judge Timothy Tomasi, and members Justice (Ret.) John Dooley; Tanya Marshall, Teri Corsones, Tracy Shriver, Laura LaRosa, Mike Tarrant, Mark Davis, Marcia Schels, Amanda Stites, and Petra Halsema.

**1. Chair Tomasi: Meeting Opening**

J. Tomasi inquired whether Teri Corsones had a successor at the VBA. Committee charge says that one member is Chair of VBA standing committee, if one exists. Historically, it has been the executive director. Teri offered to reach out to Bob Paolini, who is acting as interim director.

Tanya Marshall questioned whether Jeannette Eicks will continue to serve as a member on the Committee given her recent job change.

**2. Approval of Minutes from the April 2022 meeting.**

On motion from Mike Tarrant, seconded by Tanya, the minutes for the April 15, 2022 meeting were unanimously approved.

**3. Update by TBT on Promulgation of Proposed Amended Rules:**

Proposed PACR 6(b)(14)(v) (determining date of minor in criminal filings) was promulgated on 6/6/22 and will be effective on 8/8/22.

**4. Update On PACR 6(b)(Appendix)**

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 did not have any updates.

**5. 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. A subcommittee (J. Dooley, J. Tomasi, and Emily Wetherell) was formed at January 2022 meeting to address potential amendments.

The case is still awaiting decision on appeal. Teri stated that CAO met with Tyler and they gave more information about workaround to deal with technical issues caused by auto-accept function, which was causing some parties to be charged twice for filings. Jim Smith at TSC was going to look at it to decide whether to use Tyler product or create fix in-house. Needs to be fixed because it has been time consuming to deal with double billing. Marcia Schels reported that TSC was hoping to make decision next week.

To the extent we need to make other changes to Rules 7(a)(3) and (a)(4)(B), Committee decided to wait to see if outcome of lawsuit requires changes as well and do them all at once. Committee discussed review process currently required by Rule 7. J. Tomasi noted that the process outlined when a clerk identifies an issue is cumbersome and requires SCA to get involved, and does not allow judge to review. Changes might be intertwined with anything the Second Circuit might say so will wait to make changes.

## **6. Review of Possible Electronic Filing Issues & Rule Amendments, per Justice Dooley's Email of April 7, 2021.**

EF training sessions suggested three areas where PACR rule revisions might be appropriate: (1) more specification of when record redaction is required as opposed to making the whole document nonpublic; (2) treatment of summary judgment exhibits (e.g., do they become public upon filing?); and (3) proposed exhibits not yet formally admitted (are they nonpublic?). A subcommittee of J. Dooley, Teri, and Tracy Shriver was formed at January meeting to address this.

J. Dooley, Tanya, and Petra met the week of July 13, 2022, to discuss first steps. Tanya added to subcommittee above. The meeting was centered on Rule 6(b) exceptions to public access. The subcommittee needs to get history/story about each one and figure out if about information or records, and tinker with language to ensure not overbroad. Tanya, Petra, and Andrew (staff person in archives) will meet on 7/26. The first phase will be running through what information we have available. J. Dooley predicts that subcommittee will need to meet a few times with goal of getting draft before next full committee meeting.

J. Tomasi asked what issue was with treatment of summary judgment exhibits. J. Dooley explained that question arose about whether submitting exhibits as part of summary judgment is same as “formally admitting into evidence” under Rule 6(c). Mike noted that there is often not a ruling on admissibility in summary judgment context. J. Dooley noted that VRCP 56 limits what you can submit. J. Tomasi felt that if you are relying on it for summary judgment, it’s about as close as you can get to formal admission, but can see countervailing considerations. J. Dooley noted that if submitting for SJ makes it public, you’d have to move to seal under Rule 9. Mark Davis stated that there was strong public interest in making exhibits supporting SJ publicly available. J. Dooley suggested Committee ask Petra to research what other states do in this situation. Laura LaRosa indicated support for making SJ exhibits public. J. Dooley will work with Petra to draft proposed amendment.

## **7. Public Status of Prefiled Exhibits**

J. Tomasi explained that most courts have been requiring parties to prefile exhibits before evidentiary hearings, because it is time consuming to file them on the day of the hearing. The question is whether we should make prefiled exhibits nonpublic until admitted. Mike says it has not come up as an issue for him personally, but could see it being an issue. Prefiling system has impacted how attorneys plan their hearing. Tracy indicated that in Windham, they were not required to prefile exhibits for criminal jury trial. She could see a huge issue if required to file before jury even empaneled. In juvenile court, her practice is to just mark everything and file it, since everything is confidential. She felt that in criminal cases, nothing should be public until admitted by judge. J. Tomasi asked whether Mark could see any public interest issue if prefiled exhibits nonpublic until admitted. Mark stated it would be consistent with prior practice and did not see any significant harm. Mike asked whether there were public records requests for pretrial materials. Mark indicated that such requests are typically made to law enforcement. J. Tomasi indicated proposal would be that they would be public once offered. Mike asked how prefiled exhibits were different from summary judgment exhibits, which litigants would expect to be public. J. Tomasi noted that parties are being asked to file exhibits for administrative convenience, and might upload things they won’t use just to have them available at trial. Tracy indicated that making prefiled exhibits public before hearing could lead to issues with information being revealed in news before trial starts and possibly lead to jury taint. Laura indicated that staff have questioned internally when exhibits become public. Making all prefiled exhibits nonpublic would be helpful and streamline

things. Teri stated that this concern was raised among bar and her understanding of the bar's general preference was that exhibits would be nonpublic before admitted. J. Tomasi expressed concern that we would create a giant digital backlog of confidential materials that were never offered. Teri suggested that non-admitted prefiled exhibits could expire after a certain time if not used. Laura indicated the standards committee is working on exhibits policy that would have preference for prefilng but also have court staff delete non-offered exhibits. Teri noted that attorneys hesitant to prefile something they would use for impeachment. She thought protocol was that attorneys could ask for things to be sealed. J. Tomasi asked whether we should wait for standards committee to make recommendation.

J. Dooley, with caveat that he hasn't spoken to any trial judges about issue, felt we should say that prefiled exhibits should be made nonpublic. Mike indicated his concern was culling previously filed exhibits, but not objecting to new rule going forward. J. Dooley indicated we could say whether new rule was retroactive. On motion by Tracy, seconded by Mike, Committee unanimously recommended reporter propose amendment as suggested to discuss at next meeting. J. Dooley and J. Tomasi will work with Petra to draft proposed amendment.

## **8. Proposed Amendments to Rule 6(b)(9)**

A proposal to amend Rule 6(b)(9), to govern public and attorney/opposing party access to plaintiff's (and in some situations, defendant's) contact information in RFA cases, was circulated to Committee members prior to the meeting. J. Dooley described proposed revisions to rule, which contains new subsections (i), (ii), and (iii). Originated with request from TCO that confidentiality of contact information be time limited. J. Dooley made proposal to Family Rules Committee but they rejected idea of time limitation.

The proposed amendment incorporates existing language into (i) and updates it to reflect actual practice: plaintiff files complaint and affidavit, which is nonpublic until defendant is notified and there is a hearing. In most cases there is a temporary order issued ex parte or an order denying temporary relief. Staff practice is to keep denial nonpublic, so we put that in (i) to reflect what is actually occurring.

Parts (ii) and (iii) protect information submitted under VRFP 9(b) and (g). Email address is added because we now have email service allowed. The proposal also clarifies that the restriction applies to defendant and defendant's lawyer. We think this is consistent with practice in family

court. Part (iii) is identical to (ii) except that it applies to the defendant under VRFP 9(g).

J. Dooley also proposes to amend VRFP 9(b) and (g) to reflect actual court practice, which is to ask for parties' email addresses. Reporter's Note also clarifies that this section doesn't cover info provided under 15 VSA 788.

Some members questioned what exactly is made nonpublic. J. Dooley indicates that notice of hearing would be public. J. Tomasi questioned what "opportunity for hearing" means. How do we deal with service on other parties when addresses are confidential? J. Dooley notes that service on Secretary of State statute still exists and is used occasionally, but typically court staff serve parties.

On motion by Mike, seconded by Laura, Committee voted to move to recommend Court adopt proposed amendment to Rule 6(b)(9) and refer changes to VRFP to Family Rules Committee. J. Tomasi and Petra will work on transmittal.

#### **9. TCO Question re: PACR 7(a)(1)(C)**

Rule 7(a)(1)(C) directs a filer to separate a nonpublic part of an otherwise public document—meaning the filer must submit a redacted version of their filing. Laura explained that question had arisen within Trial Court Operations team regarding whether the rule requires the filer to also file an unredacted copy. This issue has come up in different scenarios but one common one is when OCS files Voluntary Acknowledgment of Parentage forms on parentage cases. These forms (which appear to originate from the Dept of Health and not the judiciary) include social security numbers. OCS has been filing redacted versions of these forms, and electing not to file unredacted copies. This begs the question whether court staff should reject those filings for not complying with VRPACR.

J. Tomasi opined that judge or opposing counsel would probably ask for unredacted copy if material to case, but doesn't seem necessary for filer to always file unredacted copy. Mike agreed. No one objected to this interpretation.

#### **10. Proposed Amendments from Data Quality Workgroup**

J. Tomasi received the following suggestions from Scott Woodward, who was leading a reporting and data quality project and identified some potential rule changes:

- a. Rule 11(c) references RIS; perhaps should be updated to the Technology Services Center (TSC)
- b. With the advent of the data warehouse and the bi platform, there may need to be references to that platform and any reports that would come out that system (I believe the old rules prior to 2019 referenced VCAS and the old data warehouse)
- c. The new BI platform could take over as the main reporting tool, which may (I emphasize “may”) mean that the definition of “standardized report” in Rule 2 could change since these may not be selected from a “menu,” which is a term associated with static reports
- d. Under Rule 11(a) would the public also have access to reports from the new business intelligence platform? That would be a logical conclusion if the goal of the BI platform is to replace the current menu driven standardized reports. On the other hand, if the public wouldn’t have access to report generated out of the BI platform, then that means the current menu drive reports in Odyssey would need to be maintained
- e. Rule 3(c) may need modification insofar as clarifying what kind custodianship applies to paper and electronic records. As it reads, custodianship of paper records appears to be “physical” custodianship while custodianship of electronic records is “legal” custodianship with the Court Administrator holding that role; there’s a larger question here whether local staff or the person closest to the data should also be the custodian of electronic records or whether requests for electronic information will always flow through a centralized process and therefore there might be a single custodian.

Marcia reported that TSC is working on platform for creating reports, but at very early stages. No need to make changes at this time. She suggested we revise Rule 11(c) to change name from RIS to TSC but felt the other rules are still correct at the moment. On motion by Marcia, seconded by Laura, Committee unanimously decided to amend Rule 11(c) to change reference to TSC. J. Tomasi and Petra will add to transmittal of other amendment.

## **11. Any New Business.**

J. Dooley noted that legislative session has ended so we should check to see if there are any changes that need to be reflected in Rule 6 appendix. There may have been further edits to expungement statute. Petra will check with Emily to see if she has any updates.

**12. Set Next Meeting.**

The Committee agreed to set the next meeting for October 28 at 9 a.m.