

[As approved at PACR Committee Meeting on February 28, 2018]

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

Minutes of Meeting
December 16, 2015

The meeting was called to order at 9:05 a.m. in the Supreme Court conference room, Montpelier, by Hon. Thomas Zonay, chair. Present were Committee members Martin Frank, Jeffery Loewer, Sarah London, Tanya Marshall, Gaye Paquette, Tari Scott, and Hon. Timothy Tomasi. Also present were Hon. John Dooley, Supreme Court liaison, and Professor L. Kinvin Wroth, Reporter.

1. Minutes. The draft minutes of the meeting of October 2, 2015, were unanimously approved as previously circulated.

2. Status of proposed amendment of V.R.D.E.C.R. 3(c)(1)(B) to eliminate drivers' licenses from list of required redactions. Professor Wroth reported that the amendment, recommended to the Supreme Court on October 2, 2015, for promulgation, was promulgated on October 20, effective December 21, 2015. The amendment was reviewed by the Legislative Committee on Judicial Rules on December 17, 2015, without objection. .

3. Proposed amendment of Rule 4(c) of the Rules Governing Qualification, List, Selection and Summoning of All Jurors concerning confidentiality of juror information. The Committee considered Ms. London's October 27, 2015, revised draft of an amendment to Rule 4(c) and proposed language for revisions to the Jury Questionnaire form, sent to the Committee in Professor Wroth's October 28 e-mail. It was agreed that, in accordance with this draft, the rule should make clear that only jurors' names and towns of residence should be generally accessible to the public, that other components of the jury questionnaire should be publicly accessible only on a showing of good cause, and that the jury questionnaire should be accessible to attorneys and parties, except for a juror's personal disqualification reasons. It was further agreed that, when a final draft is ready for public comment, the Committee will hold a public hearing to solicit comment directly.

4. Proposed rule exempting from public access all documents sent to the Court's Oversight Committees. Chairman Zonay reported that the Oversight Committee chairs had indicated that there was no problem requiring a rule on this point.

5. Amendment of existing exceptions in V.R.P.A.C.R. 6(b), or addition of new exceptions, required as a result of Supreme Court decisions or specific exceptions adopted by the legislature.

A. The Committee reviewed the recently adopted Minnesota Public Access Rules recirculated in Professor Wroth's December 11 and 14 e-mails. Justice Dooley noted that these rules were a good model because they embrace the transition from paper to electronic records in a relatively simple manner rather than simply providing parallel paper and electronic access rules.

Justice Dooley further noted that the commercial availability of electronic record systems in which all documents are tagged ahead of time as public or nonpublic would make it necessary to look closely at each of the present public access exceptions to make sure that elements of each could be identified electronically. For example, Rule 6(b)(15) refers to an identifiable court action (issuance, sealing of return) or the filing of a document (return) that would be reflected in the case management system. Conversely, the provision of Rule 6(b)(19) that a mental health competency determination evaluation was not accessible unless admitted into evidence relies on a triggering event to which the case management system as presently constituted would not apply.

Finally, Justice Dooley raised the question of redaction of personal identifiers. See V.R.C.P. 5(g), V.R.P.A.C.R. 6(b)(29), V.R.D.E.C.R. 3(c)(1). The sensitive data sheet, or reference list, filed as nonpublic with a redacted public filing is most commonly used. See V.R.D.E.C.R. 3(c)(2), F.R.C/P. 5.2(g) (optional). Filing under seal with leave of court is another option. See V.R.P.A.C.R. 7(a), F.R.C.P. 5.2(d). A few states use redaction software, which is both expensive and subject to error. The sensitive data sheet is a preferable approach. Ms. London will provide information on the handing of these data elements by Public Safety. Ms. Marshall will explore archival practice.

It was agreed that at the next meeting the Committee would devise a plan for a section-by-section review of the Public Access Rules to address these concerns.

B. The Committee reviewed Professor Wroth's memorandum of December 14, 2015, summarizing public access issues in three recent Vermont Supreme Court decisions. Justice Dooley suggested that *In re Essex Search Warrants*, 2012 VT 92, requires a conforming change in V.R.P.A.C.R. 7(a), and that *Rutland Herald v. Vermont State Police*, 2012 VT 24, required a clarifying exemption for inquest records. Professor Wroth agreed to provide alternative drafts for the next meeting—one to provide an exemption only when an inquest involved a testimonial hearing, the second to provide an exemption for all inquest records.

6. Joint subcommittee to consider development of a specialized exception provision for Family Division records. Judge Zonay reported that the subcommittee was waiting for further consideration by the Family Rules Committee.

7. Consideration of amendment to Public Access Rules concerning Judicial Branch employee records. Ms. London noted that provisions of the state public access law, 1 V.S.A. § 317(c)(7) (nonpublic contact information) and (25) (security information) were incorporated in V.R.P.A.C.R. 5. After discussion, it was agreed that these

provisions gave adequate protection to Judicial Branch employee records and that this item should be removed from the agenda.

8. Disclosure of court records subject to V.R.P.A.C.R 6(b) exceptions. Tari Scott and Justice Dooley will report at the next meeting.

9. Next meeting. It was agreed that the next meeting would be scheduled after drafts requested for various items above had been completed and that it would be held in conjunction with the public hearing on the juror questionnaire rules proposed under item 3.

There being no further business, the meeting was adjourned at 11:35 a.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter