[As approved at meeting on December 10, 2018]

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PUBLIC ACCESS TO COURT RECORDS (PACR)
Minutes of Meeting
October 5, 2018

The Public Access to Court Records (PACR) Committee meeting commenced at approximately 1:36 p.m. at the Supreme Court in Montpelier. Present were Chair Judge Tim Tomasi; members Justice John Dooley (Ret.), Marty Frank, Judge Mary Morrissey, Teri Corsones, Jeff Loewer, Gaye Paquette, Sarah London, State Archivist Tanya Marshall and Tari Scott; and Committee Reporter Judge Walt Morris. Supreme Court liaison Justice Marilyn Skoglund and Committee members Judge Mary Morrissey and James Duff-Lyall, Esq. were absent. Judge Kate Hayes, who serves as Chair of the Next Generation Case Management Services (NG-CMS) Configuration Architecture Task Force, and Court Administrator Pat Gabel were also present.

1. Chair Tomasi opened the Committee meeting. The minutes of the June 29, 2018 meeting were unanimously approved on motion of Gaye Paquette, seconded by Sarah London, with revisions on pp. 3, 5 and 7. The minutes of the August 10, 2018 meeting were unanimously approved on motion of Teri Corsones, seconded by Marty Frank, with a revision on p. 4.

2. **Committee Membership and Recommendations for Replacement Member**. At the June 29th meeting, the Committee decided to recommend that the Court appoint a new member familiar with Family Division practice to take the place of Katie Pohl, Esq. After the August 10th meeting, Chair Tomasi forwarded the names of three possible appointees to the Court for consideration. After meeting on September 5th, the Court indicated that it was willing to appoint Linda Reis, Esq. to the PACR Committee, upon further confirmation of her willingness to serve. As of October 5th, Ms. Reis had apparently not provided confirmation of her acceptance. Teri Corsones will undertake to communicate with Ms. Reis on behalf of the Committee as to her appointment, in an effort to confirm acceptance.

Ongoing Business

3. **Review Rule 6(b) Exceptions; Text and Scope of "Derivative Use" Exception**[1]

[1] In the draft considered at the meeting, derivative use was recommended for application only as to the 6(b)(13)("health/mental health" records) exception.

Working with the subcommittee on Rule 6(b) exceptions, Justice Dooley had prepared a current draft of the exceptions, incorporating changes discussed and recommended at the June 29th and August 10th meetings. This draft of the exceptions was taken up for Committee discussion. As noted by Chair Tomasi, notwithstanding prior discussions, and general agreement as to format, and text of a number of the exceptions, formal approval had not been given by the Committee.

Justice Dooley began by once again outlining the format chosen by Justice Skoglund's subcommittee (with consensus of the Committee), to reduce the number of exceptions explicitly stated in 6(b), while referencing most of the exceptions resulting from statute or rule in an Appendix that would be incorporated, and provided electronically for reference associated with filing in the new case management system. Consistent with the Committee discussions at the August 10th meeting, Justice Dooley stated that exceptions 13 (health/mental health records) and 14 (personal identifiers) were in need of discussion and consensus.[2]

Exception 6(b)(14) was addressed first. The draft, previously discussed by the Committee, contains five categories of personal identifier information that are excepted from public access: social security numbers; passport numbers; taxpayer ID numbers; financial account numbers, including debit or credit card; and the name of a child alleged to be a victim of a crime. Chair Tomasi noted that these had all been previously considered, with consensus, but noted that there was a need for clarification of the "child victim" exception, to reference that non-disclosure of a child victim's name was intended to extend only to an actual criminal proceeding, and not be more broadly interpreted. After discussion, Committee consensus was to amend the language of this exception to read: "(v) in a criminal case, the name of a child alleged to be a victim ~~of a crime~~" (underlined matter added; stricken matter indicated).[3]

Returning to the 6(b)(13) exception (health/mental health records), discussion focused upon the specific language of the redraft, as well as the scope of the "derivative use" exception previously agreed upon by the Committee. The draft presented made no

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[2] At the conclusion of discussions, in addition to those exceptions highlighted by Justice Dooley, the Committee returned to consideration and approval of each of the 6(b) exceptions in numeric order. See minutes, *infra.*

[3] Later in the discussion of exceptions, Tanya Marshall asked to return to consideration of 14 to point out that the list of personal identifiers proposed was different than that contained in the "Data Brokers" bill enacted in the last legislative session. This issue had been mentioned by Jeff Loewer in prior meetings. Justice Dooley indicated that the present effort was to limit the number of personal identifiers, to make reasonable and manageable the task of sorting out and protecting the specified identifiers from public disclosure. He again indicated that the broader the list or definitions of personal identifiers, the greater the difficulty in keeping the information from public disclosures. See, Act No. 171 (2018 Adj.Sess.; eff. 5/22/18); 9 V.S.A. §§ 2430 (1)(A) ("Brokered Personal Information") and 9(A)("Personally Identifiable Information"). In further discussions, it was also noted that the Committee should be mindful of the interaction of the Rules for Electronic Filing, and for Dissemination of Electronic Case Records, and the PACR rules. ECR 3 governs public access to electronic case records. ECR 3(b) has its own list of data elements to which public access is not given, and prescribes means of, and limitations upon, public access to electronic case records. ECR 1 indicates that the ECR rules supplement the PACR rules, and that in case of conflict, the PACR rules control.

substantive change to the exception previously discussed by the Committee. Beyond that, the "derivative use" exception was styled as follows:

> "The above exception does not extend to statements by a party, lawyer or witness made in open court or in an otherwise publicly accessible document where such statements are necessary and relevant to particular issues or legal argument being addressed in the proceeding."

Chair Tomasi indicated that consideration should be given to whether the "derivative use" exception should be extended to various other categories of information and records excepted from public access, indicating that lawyers and parties in proceedings should be permitted to make necessary reference to other records, not publicly-accessible, that is made in normal course in judicial proceedings. Justice Dooley indicated that the derivative use language in the health/mental health records exception is taken from Minnesota, which is the only other jurisdiction that articulates a derivative use exception in its public access rules. Further, that to his knowledge, no other jurisdiction has a generally applicable derivative use exception, and that opening up circumstances of derivative use could result in significant "leakage" of document content that is clearly intended by the rules to be kept in non-public status. Chair Tomasi stated that there is a need for clarity in establishing bounds of derivative use, using as an example a lawyer's discussion of tax return contents in open court ("not sure how you put a Genie back in the bottle after it's talked about in Court"). Marty Frank concurred that in his assessment, any information revealed in open court must certainly be considered to have public status. Justice Dooley indicated that while occasions for a derivative use exception might apply to certain of the other Rule 6(b) exceptions, the primary area of concern has been and is as to health/mental health records. Among the concerns being in-court reference to content of physician reports and evaluations that are not public in civil tort cases. That was the basis for Minnesota's promulgation of its derivative use rule, restricted to such records. Chair Tomasi pointed out that the Minnesota derivative use rule is stated generally, followed by specific limitations (reference "as necessary and relevant" to particular issues or argument). The rule also provides for according public status to an entire health/mental health record where redaction can protect non-public information from disclosure and yet accord lawful public access to the remainder.

Justice Dooley again cautioned against stating a generally-applicable derivative use exception too broadly, which would serve to defeat otherwise non-public status to be accorded to the specified records. He did suggest that an option might be to retain the language of the existing draft—permitting references in court as "necessary and relevant" to particular issues or argument in a case--and to extend derivative use to exhibits admitted in evidence in proceedings. Even then he stated, there are certain proceedings in which exhibits admitted in evidence are not publicly accessible. The particular problem is with broad references to content of evaluations that have not been admitted in evidence, and difficulty on the part of the judge in preventing an attorney's tactical recitation of non-public evaluation content in open court.

Committee members continued with discussion of the various issues associated with a derivative use exception, whether confined to health/mental health records, or included in the text of certain of the other 6(b) exceptions, or stated as a general exception/qualification to all of the 6(b) exceptions. Chair Tomasi observed that control of access to document content was much easier to manage, but that in electronic filings, such as for memoranda, parties would be expected to observe established rules as to sorting public and non-public content, and inclusion of redacted versions of documents publicly filed that have non-public content. Using the example of a negligence case, Kate Hayes stated that in her view, the public should be able to know the basis for a decision as to liability or damages. She agreed with the suggestion that a trigger for access—admission of a document into evidence--would be an important clarification in setting bounds for derivative use. Justice Dooley posited an auto accident case in which Plaintiff has AIDs and does not want that diagnosis to be revealed. What would prevent opposing counsel from referencing that diagnosis under the guise of derivative use? Ms. Hayes indicated that that would be where motions in limine; to seal, and protective orders would be employed to protect non-public information from derivative disclosure.[4] Committee comment returned generally to the observation that if an exhibit had been admitted in evidence, it was difficult to contend that its content would *not* be publicly accessible.

Tanya Marshall observed that as a matter of styling, providing "exceptions to exceptions" can result in confusion. In her view, if there is to be a general derivative use exception it should be phrased in "universal" language and placed earlier in the text of an amended Rule 6. Sarah London pointed out that there remains an issue of treatment of attachments made to summary judgment filings (which are relied upon by the court in its decision). Chair Tomasi agreed that attachments such as those provided in summary judgment can be troublesome. Gaye Paquette asked how such filings were treated presently in the e-Cabinet courts. Teri Corsones indicated that such can be treated as sealed. Justice Dooley stated that the e-Cabinet courts are not actually "paperless"; there are always accompanying documents. That is an important distinction as non-public information can still be "intercepted" by the court staff and segregated in a "red" file.

The Committee then returned to consideration of specific 6(b) exceptions that might warrant a derivative use exception, or treatment of non-public information as in public status, triggered by "admission into evidence". Certain of the exceptions, such as (1) records which by law are confidential and "categorically" not subject to disclosure, or disclosure subject to conditions otherwise established by law; (2) search warrant documents prior to return (unless sealed); and (15) judicial work product, were not considered to be subject to a derivative use or "admitted in evidence" exception. Others, such as (11) financial affidavits in child support proceedings in family court; (13) the health/mental health records exception; (14) personal identifiers; and (16) records or information produced in discovery, were considered to be subject to the derivative use, or "admitted in evidence" trigger for reference and/or public disclosure. As to (11), Sarah

[4] Proposed PACR Rule 9 (formerly Rule 7), approved by the Committee at its August 10, 2018 meeting, does contain revised procedures for requests to seal case records. These procedures would be in addition to the trial court's authority to exclude certain proffered evidence from admission at trial in evidentiary rulings on motions in limine, per V.R.E. 104-106.

London indicated that she would research the issue of treatment of financial records in bankruptcy cases in the federal PACER system, to see if any useful model is provided there.

Returning briefly to a separate Rule 6(b) issue, Reporter Morris asked if it was necessary to revisit the inclusion of specific "probate records" exceptions, and whether the exceptions included were adequate to address the expanding role of the probate division in minor guardianship cases in consequence of parental substance abuse.[5] Justice Dooley pointed out that a variety of the statutory exceptions to access for probate records are moved from the text of the rule to the Appendix of authorities referenced at the end of the redraft of 6(b).[6] He also indicated that probate rule, V.R.P.P. 77(e), which predates adoption of the Rules for Public Access to Court Records, sets forth five exceptions of records from public access, all of which are now addressed in statutory provisions that are reference in the Appendix to the redrafted P.A.C.R. 6(b). In his assessment, V.R.P.P. 77(e) no longer has any purpose, except as an additional reference vested in the probate rules. [7]

Ultimately, on the subject of derivative use, the Committee requested that Justice Dooley again examine each of the 6(b) exceptions, and consider revisions which add the qualifying phrase, "unless admitted into evidence" where appropriate, to acknowledge generally that once a non-public document or portion thereof has been admitted into evidence, such cannot be considered excepted from public access. The derivative use exception in proposed (13)(health/mental health records) was approved as drafted, with minor revisions.[8]

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[5] Presently, Rule 6 has four stated probate exceptions: (b)(1) adoption records, unless disclosure is authorized by statute; (b)(22) records in 14 V.S.A. § 3068 guardianship proceedings, "if the court finds that the respondent is not mentally disabled"; (b)(23) evaluations in guardianship proceedings submitted under 14 V.S.A. § 3067; and (b)(25) wills deposited with the probate court for safekeeping.

[6] See draft, Appendix, Nos. 8-12.

[7] At this point in the discussion, Tari Scott brought up an issue associated with expungements. The Division for Trial Court Administration has been working to implement a variety of legislative measures mandating or authorizing expungement of criminal records. Ms. Scott posited a recent request for expungement of the record of a civil action under 12 V.S.A. § 5134, in which a temporary order for protection had issued ex parte, yet resulted in no final order after opportunity for hearing. The requestor asked that the entire record of the proceeding be expunged. Ms. Scott indicated that there did not appear to be any authority for this. Justice Dooley mentioned that expungement is uniquely a creature of statute, citing a case (*Ohio v. V.M.D.,* 148 Ohio St.3d 450, 71 N.E.3d 274 (2014)) that had surfaced during the course of research on issues of sealing and expungement. Jeff Loewer indicated that even where case records have been subject to authorized expungement, "screen scraping" of court records by internet services such as Google results in maintenance of case record information on line, even when there has been official expungement. Marty Frank observed that the media receive requests all the time for "expungement" of references that have appeared in publications all the time, and that apart from published corrections there are many circumstances in which there is simply no way to "undo history". The general consensus was that in the absence of express statutory authority, such expungement could not occur.

[8] The changes to the text of the draft exception 13 were as follows: the word "the" is added between the words "contains" and "results" in the first line; in line 7, the phrase, "This exception does not extend.." was edited to read, "The above exceptions do not extend…"; in line 10, the phrase "…or legal argument being addressed in the proceeding." was amended to read "…or legal argument or exhibit being addressed in a judicial proceeding." (emphasis added).

Upon conclusion of the discussion of Rule 6(b) exceptions in the draft, on motion of Tari Scott, seconded by Teri Corsones, the Committee unanimously approved of the current Dooley draft, with the minor changes to text which had been discussed and agreed upon. Excepted from this motion were the particular changes to be made by Justice Dooley articulating the "admitted in evidence" trigger to public access in those exceptions deemed appropriate for such. These would be subject to Committee review of a redraft, and further decision.

4. **Amendment of PACR Rules 6(c), (d), (f), (g) and (h)—(Maintenance of Physical and Electronic Case Records; Segregation of Non-Public Case Information; Procedures for Inspection and Copying; Denial of Access and Grievance Process)**

The subcommittee appointed at the August 10th meeting (Tari Scott; Tanya Marshall; Judge Morris and Andy Stone) met on September 19th, and provided the Committee with a proposed redraft of these rules in advance of the meeting. The proposal generally deletes references to the term "records custodian" in favor of focus upon a "functional" approach to treatment of case records and requests for access to them. The subcommittee recommended merger subsections (c) and (d) into one, addressing both physical and electronic case records together. Minor stylistic, non-substantive changes are proposed as to the text of subsection (f) (Inspection Procedure). Clarifying language is added to (f) to specify that access to electronic case records will be via the court's electronic case management system. The distinctions between the authority and functions of both the State Records Center and the Vermont State Archives and Records Administration as pertains to records possession and access were clarified by amendments to text suggested in the course of the meeting. There was extensive discussion of the differences between state Records Center and Vt. State Archives as to the status of case records, access to them, transfer of case records to archives, and authority over requests for access in the course of approving those clarifications.[9] In discussion of subsection (h)(Grievances), the Committee consensus was to provide that while grievance for denial of access to physical case records would be to the presiding judge of the court in which the case is filed, grievance for denial of access to electronic case records would be to the Chief Superior Judge. At the conclusion of the discussion of the proposed amendments to 6(c)-(h), on motion of Teri Corsones seconded by Tanya Marshall, the Committee unanimously approved of them, with the following changes: (1) merger of subsections (c) and (d); (2) clarifying references to "state records center" and "Vermont State Archives and Records Administration" to be added to lines 12, 14 and 15 of the draft; (3) requests for access to … case records in the Vermont State Archives and Records Administration must be directed by court staff to the Archives and Records

[9] In consequence of this discussion, the Committee unanimously decided to add definitions of the terms "State Records Center" and "Vermont State Archives and Records Administration" to the general definitions section of the proposed amended rules.

Administration; and (4) in proposed (h), at line 5, the following language added: For electronic case records, the right of appeal shall be to the Chief Superior Judge.[10]

5. Committee Review and Approval of Other Provisions of the Proposed Rules.

At the suggestion of Committee Chair Tomasi, the Committee then took up the following sections of the proposed rules that had been the subject of prior Committee discussion, consensus or approval, seriatim, for motion, second, discussion and vote. The following proposed rules were approved upon unanimous committee vote, as indicated:

Rule 1: Scope, Purpose and Construction—approved as written, upon motion of Teri Corsones, seconded by Gaye Paquette.

Rule 2: Definitions—unanimously approved as written, with the addition of definitions of "Vermont Archives and Records Administration"; "State Records Center"; "Presiding Judge"; "Public Purpose Agency"; and "Remote Access", upon motion of Tanya Marshall, seconded by Gaye Paquette.

Rule 4: Means of Access—unanimously approved as written, with the addition of the word "criminal," to line 9, prior to the phrase "…family or probate divisions" to clarify that remote access to such electronic case records is precluded by statute, 12 V.S.A. § 5. Upon motion of Teri Corsones, seconded by Gaye Paquette.

Rule 5: Specific Rights of Access—the proposed amendment as drafted specifies 7 categories ((a)-(g)) of persons, including litigants and attorneys, criminal justice and other state agencies, who have or may be granted specific rights of access to case records that are not publicly accessible, beyond those of the general public. Specific rights of access are addressed only very generally in existing PACR Rule 2(b). The amendments seek to clarify scope and purpose of access, and limitations upon disclosure, for each of the categories of those with specific right of access. As is the case with the amended Rule 6(b) exceptions, proposed Rule 5(g) would incorporate by reference an appendix of statutory provisions according rights of special access, which is to be updated by the Court Administrator annually before January 1. Upon review, the Committee made several edits to the text of the draft. These were as follows: In lines 1 and 7, adding the phrase, "rule, or order" following the word "statute": "Unless prohibited by statute, rule, or order". In lines 10 and 14, changing reference to "special right of access" to "specific right of access". In line 13, adding the phrase "…that is not publicly accessible", after the word "case" and before the word "to", to correct its omission.

A substantive issue identified in discussion was the apparent **restriction of subsection 5(c) upon attorney disclosure** of nonpublic information received in the course of a specific right of access, when pursuant to subsection 5(b), a litigant (unless prohibited by statute) is free to disclose the information to a person who does not have a

[10] In consequence of the latter amendment, the word "presiding", modifying "judge" will be deleted from lines 6 and 7 of the subsection. The reference to "presiding" is retained in line 4.

right of access. If the litigant can disclose, why can't her attorney? Under the current rules there is no such prohibition. Justice Dooley indicated that a litigant certainly has a right of access to their own case information; the "target" of the attorney non-disclosure provision is nonpublic information that the attorney may have attained in course of representing other clients in other cases. The Committee was of the view that on this issue, Bar Counsel Michael Kennedy should be consulted as to the ethical implications of barring attorney disclosure, while permitting litigant disclosure.[11] Teri Corsones volunteered to communicate with Mr. Kennedy and seek his views, and any clarifying language that might be considered. Upon completion of the discussion of draft Rule 5, with the changes noted (and subject to any 5(b) changes following consultation with Mr. Kennedy), upon motion of Marty Frank and second by Jeff Loewer, the Committee unanimously approved of the redraft of proposed Rule 5.

[Rule 6: Case Records (Public Access; Exceptions to Access; Physical and Electronic Case Records; Inspection and Copying; Denial and Grievances)—approved as noted, *supra.* p. 6.]

The following group of proposed rules were all unanimously approved as written (including redrafted Rule 9, as previously approved), upon motion of Tari Scott, seconded by Teri Corsones:

Rule 8: Administrative Records
Rule 9: Exceptions (Sealing; Access; Redaction)[12]
Rule 10: Electronic Case Record Compilations
Rule 11: Electronic Case Record Reports
Rule 12: Electronic Data Dissemination Contracts
Rule 13: Procedure for Rules 10 through 12

6. Proposed Rule 3; Access to Judicial Records Generally; Records Custodian.

Proposed Rule 3 is derived from the existing PACR Rule 4. Its first subsection, prescribing general public access to case and administrative records for inspection and copying, is identical to existing Rule 4. No Committee concern was expressed as to that. However, proposed subsection 3(b) contains language that is duplicative to the content of proposed Rule 1.[13] The proposed subsection also contains reference to allocation of responsibilities between filers of case information and the judiciary to protect confidentiality and privacy where public access is restricted, and provides that ultimate responsibility for this is borne by the judiciary. The Committee

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[11] See, e.g. V.R.P.C. 1.6 Confidentiality of Information; 1.9 Duties to Former Clients; and 1.18 Duties to Prospective Client.

[12] Previously approved on unanimous Committee vote at August 10, 2018 meeting, upon motion of Tari Scott seconded by Teri Corsones. See 8/10/18 minutes, p. 6.

[13] "The rules cover the complementary responsibilities to provide public and special access to case and administrative records and information and to protect the confidentiality of records and information where such confidentiality is required by statute or rule."

has not at this juncture reached final decisions as to allocation of these responsibilities for purposes of proposed Rule 7, which would allocate responsibility for screening of documents filed or to be filed, to sort public from nonpublic content in order to preserve lawful confidentiality and privacy. For these reasons, the Committee deferred further consideration of proposed Rule 3 to after final decision on proposed Rule 7 at the next scheduled meeting.

Proposed Rule 3(c) also identifies several categories of records custodians by type (paper case records; electronic case records; administrative records; Supreme Court; judicial bureau; rules advisory and other judiciary rules committees; and adjudicative bodies other than courts, such as the JCB and PCB). No objections were expressed as to this subsection; however, the Committee took no final action on this subsection in the course of the October 5 meeting. Further consideration of the entire rule will be noticed on the next meeting agenda.

7. Proposed Rule 7: Filing of Case Records or Information; Filer and Judiciary Responsibility.

As noted, the Committee did not revisit its discussions of April 27, 2018 as to competing versions of allocation of responsibilities for "gatekeeping"/review and redaction of electronic filings reflected in the proposed Rule 7. (Remaining issue being scope of review of filings by court staff beyond "basics" to assure minimum requirements of filing, and whether any review would extend beyond pleadings themselves, to any attachments or exhibits, to assure non-public filing of required content.) [14]

8. Jurisdiction of PACR Committee to Serve as Proponent of Proposed Rules Addressed to Electronic Filing and Dissemination of Electronic Case Records.

Chair Tomasi again raised the issue of the PACR Committee's jurisdiction to serve as proponent of rules proposals that would serve to amend other procedural rules, such as those for Electronic Filing. As concerns the amendments under consideration, this issue is of particular pertinence to proposed Rule 7, governing allocation of responsibility for screening of filings to sort non-public content between electronic filers and court staff, and establishing procedures for correction of non-public filings erroneously filed as public. Pat Gabel indicated that there should be no question about PACR jurisdiction, given the PACR Committee's historic and current charge and designation, the work that has been undertaken to date by the Committee, and clear intent on the part of the Court and those involved in NG-CMS that there be timely launch of the new electronic case management system. Ms. Gabel indicated that she would bring the topic up, for response and guidance, at the next Administrative Meeting of the Court.[15]

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[14] See Minutes of PACR Committee meeting, 4/27/18, pp. 3-6.

[15] The existing Rules for Electronic Filing principally govern filing in the so-called "e-Cabinet" courts. These rules were last amended and made permanent in 2011. Further amendments were anticipated in consequence of system-wide adoption of an "e-Case" system in 2013, which did not occur. See, Reporter's Note, pp. 665-66. The PACR charge and designation, adopted in 2000, and amended in April 2018, specifically empowers the Committee to make recommendations for amendment of rules dealing with

9. Action Steps Going Forward:

--Justice Dooley and Reporter Morris will prepare a comprehensive final draft of all of the proposed rules that have been approved by the Committee in consequence of motion, second, discussion and vote (**excepting** the proposals for Rules 3, and 7, for which there has not been committee consensus or approval at this juncture) for final review at the next scheduled meeting.

--Tari Scott will follow up with Court Administrator Pat Gabel (who was present at the meeting) to secure, or clarify, the Court's authorization for the Committee to serve as proponent of the proposed NG-CMS rules, including any pertinent provisions of the Rules for Electronic Filing and Rules for Dissemination of Electronic Case Records, per an administrative order or amendment of the PACR Committee's charge and designation, in response to the issue raised as to the Committee's jurisdiction to do so
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--Teri Corsones will communicate with Bar Counsel Michael Kennedy, to discuss the language of proposed Rule 5(c) that would preclude lawyers and staff from disclosure of a case record or information in the case that is not publicly accessible to any person who does not have a specific right of access to the record or information. In the course of Committee discussion of this provision, it was noted that proposed Rule 5(b) does not impose such a restriction upon litigants; and that there may be lawful basis provided for such disclosure, consistent with a lawyer's obligations to client.

--As pertains to proposed Rule 6(b)(11) (financial affidavits and documents in child support proceedings), Sarah London will examine treatment of financial records filed in bankruptcy proceedings in the federal PACER system and provide a report to the Committee.

--A final promulgation timetable, including provision for public hearing(s) as part of public notice and comment process, must be discussed and established, in coordination with the Configuration Architecture Task Force (NG-CMS Administrative and Tech team).

10. Agenda Items not reached at meeting on October 5th.

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public access to court records that are committed to the jurisdiction of another standing committee of the Court. The proviso is that any such proposals of amendment must first be reported to the respective standing committee, following which PACR may forward its proposed amendments to the Court, to include any comments of the other standing committee.

The committee-proponent of the Rules for Electronic Filing had the status of a Special Advisory Committee, originally limited by time and task in an amended charge and designation dated February 24, 2010. Per entry of October 20, 2010, both PACR and the Special Advisory committee were jointly directed "to report to the Court on a continuing basis concerning any changes to these rules (i.e., the Rules for Electronic Filing) and amendments made necessary by experience in practice under them." The Special Committee has not actively engaged in consideration of the proposed public access amendments. It apparently last met to consider any of the Rules for Electronic Filing on September 30, 2015.

Proposed Amendment of Rules 4(c) and 10 of the Rules Governing Qualification, List, Selection and Summoning of All Jurors concerning confidentiality of juror information.

Reporter Morris informed the Committee at the June 29th and August 3rd meetings of his efforts to convene a meeting with the Committee Chairs of Civil and Criminal Rules Committees and the Reporter for Civil Rules in an effort to resolve the apparent conflict between the juror rules and the provisions of V.R.Cr.P. 24(a)(2) and V.R.C.P. 47(a)(2).[16] In the interim, the three component parts of the existing juror questionnaire will be reviewed to provide accurate advisement to potential jurors as to public or non public status of information they may provide in response to each section. Members Scott and Corsones, with Reporter Morris will work on the questionnaire issue, and seek to participate in the civil and criminal rules Chairs meeting, providing further report to the Committee.

"Gatekeeping" Review of E-Filings; Allocation of Responsibility. As noted, the Committee did not revisit its discussions of April 27, 2018 as to competing versions of allocation of responsibilities for "gatekeeping"/review and redaction of electronic filings reflected in the proposed Rule 7. (Remaining issue being scope of review of filings by court staff beyond "basics" to assure minimum requirements of filing, and whether any review would extend beyond pleadings themselves, to any attachments or exhibits, to assure non-public filing of required content.) [17]

11. Next full Committee Meeting date:

The next full Committee Meeting was scheduled for Friday October 26, 2018 at 1:30 p.m., Supreme Court Building, Montpelier.[18]

12. Adjournment: The meeting was adjourned at approximately 4:25 p.m.

Respectfully submitted,

Walter M. Morris, Jr.
Superior Court Judge (Ret.)
Committee Reporter

Final revised-12/11/18

[16] See Minutes of PACR Committee meeting, 6/29/18, p. 2; 8/10/18, p. 7-8.

[17] See Minutes of PACR Committee meeting, 4/27/18, pp. 3-6.

[18] The records of the Committee will indicate that this meeting was rescheduled, to Monday, December 10, 2018 at 1:30 pm, due to member scheduling issues depleting attendance for October 26th.