

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

**Minutes of Meeting, October 28, 2022**

The meeting of the Advisory Committee on the 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, Judge Mary Morrissey, Laura LaRosa, Mike Tarrant, Tracy Shriver, Tanya Marshall, Amanda Stites, Marcia Schels, Jeannette Eicks, and Petra Halsema. Scott Griffith also attended.

**1. Chair Tomasi: Meeting Opening**

Judge Tomasi indicated that Bob Paolini is the interim committee member from the Vermont Bar Association. He was unable to join today due to a scheduling conflict.

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

On motion from Mike Tarrant, seconded by J. Morrissey, the minutes for the July 22, 2022, meeting were unanimously approved.

**3. Update on Proposed Amendments to Rule 6(b)(9) and 11(c)**

J. Tomasi indicated that the proposed rules were sent out for comment and the comment period ends on November 14. The LCJR will be discussing the proposals on November 1. One comment has been received from Allan Keyes, chair of Civil Rules, who wondered whether we should include reference to stalking complaint process set forth in V.R.C.P. 80.10 in proposed PACR 6(b)(9)(B). J. Dooley noted that this is a civil rule and doesn't generally involve Office of Child Support. He suggested we talk to Court Administrator's Office to see if there is a need to incorporate it. Laura LaRosa asked why new 6(b)(9)(B) and (C) are in rule as opposed to appendix. J. Dooley responded that because these are court-created rules, not inappropriate to put in Rule 6, and CAO staff wanted clarification. The committee discussed the text of V.R.C.P. 80.10(b) and agreed to incorporate reference into (B), to be added at end of comment period. Committee discussed whether to state in Reporter's Notes that the exception in 6(b)(9) doesn't apply to other proceedings; consensus was to not add that statement. J. Morrissey moved to adopt proposed change in response to comment to rule (b)(9). Mike seconded. Committee voted to adopt without objections and agreed to proceed via email after the meeting if no further comments were received.

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

No updates regarding status of national negotiations concerning public access to criminal history records obtained through NCIC/VCIC.

## **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. 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.

Marcia Schels stated that CAO acquired press review tool from Tyler Technologies and will likely put it in PATs and Public Portal. It is a public web application that shows you every case that has been filed but not yet accepted into Odyssey. This fills the gap between filing and acceptance and would let us stop do auto-accepting into Odyssey. Marcia was in the process of writing up a recommendation for the SCA. J. Dooley stated that the E-Filing Committee will be addressing criteria for court staff review at its next meeting.

## **6. Report from Subcommittee on Rule 6(b).**

J. Dooley stated that there were a number of issues that gave rise to the subcommittee or arose during the subcommittee meetings. The initial reasons for the subcommittee were to standardize the wording of the Rule 6(b) exceptions and the definitions and to clarify whether each exception to public access covered a whole record or only specified information within a record to determine when redaction is required. As the subcommittee looked at each exception, proposals arose to modify the language in three additional respects: (a) to reorganize and combine exceptions in the same substantive area – for example, protecting financial information; (b) to reword some exceptions to better implement the purpose of the exceptions; and (c) to change the substance of some of the exceptions. Note that the scope of (a) and (b) is not to change the substance of the exception but to better reflect the substance.

There are 22 court-created exceptions in Rule 6(b)(1) through 6(b)(22). The subcommittee has gone through each of these and tentatively decided for most whether modifications are needed and the general scope of the modifications. For the others, the subcommittee and reporter are doing more research before making initial decisions.

The committee discussed whether to amend Rule 6(b)(2), which governs records of the issuance of a search warrant. J. Morrissey felt the language was sufficiently clear, and Tracy Shriver agreed.

The committee discussed whether Rule(b)(3) was still needed. J. Morrissey says she's never seen anything other than a summary form with a check box stating that person was approved. Tracy Shriver agrees. J. Dooley stated that another wrinkle were reports submitted in connection with Rule 75 appeals. Tanya Marshall suggested that we needed to trace where this came from in statute, as

Parker v. Gorczyk talks about furlough assessments furnished to court. She volunteered to reach out to DOC to get more information.

J. Dooley stated that the subcommittee likely needed two more meetings to review all exceptions and would then bring the results to the full committee. It will probably take a whole meeting to review.

The committee also discussed updating and streamlining the appendices. J. Dooley indicated that the subcommittee would discuss that matter further.

## **7. Proposed Amendment re: Public Status of Prefiled Exhibits**

At 7/22/22 meeting, it was decided that the Reporter would work with J. Tomasi and J. Dooley to draft proposed amendment making prefiled exhibits exempt from public access.

The following language was proposed: “Exhibits filed with the court 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.” The committee discussed this language. J. Tomasi proposed adding: “for the purpose of and” after “the court.” The committee noted that the Reporter’s Note should clarify that if the exhibits were otherwise publicly accessible, they would remain so. For example, if they were offered for summary judgment, they would be publicly accessible.

J. Tomasi proposed moving this forward through email after meeting, and the committee agreed. J. Dooley stated that this topic was supposed to be addressed by standardization committee and asked whether anything had come out of that committee. Scott Griffith reported that the committee finished its work but he was not sure what result was. Laura LaRosa noted that this might require a configuration change in Odyssey to mark prefiled exhibits as confidential.

## **8. 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. 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 of that system (I believe the old rules prior to 2019 referenced VCAS and the old data warehouse).
- b. 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.
- c. 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 reports generated out of the BI platform, then that means the current menu drive reports in Odyssey would need to be maintained.

- d. Rule 3(c) may need modification insofar as clarifying what kind of 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 Schels indicated that nothing needed to be done with these suggestions at the moment, and J. Tomasi indicated we would remove them from the agenda for the next meeting.

## **9. Set Next Meeting**

The committee set its next meeting for January 27, 2023, from 1-4 p.m. and agreed that the meeting would be held remotely.