

APPROVED

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

**Minutes of Meeting
October 2, 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 Priscilla Dube, Martin Frank, Jeffery Loewer, Sarah London, Tanya Marshall, Gaye Paquette, and Hon. Timothy Tomasi. Also present were Hon. John Dooley, Supreme Court liaison; Hon. Brian Gearson, Chief Superior Judge; and Professor L. Kinvin Wroth, Reporter.

Justice Dooley announced that Tari Scott, Chief of Trial Court Operations, would be appointed to the Committee as the Court Administrator's designee and that Jeffrey Loewer would be made a regular member of the Committee.

1. Minutes. The minutes of the meeting of May 1, 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 proposed amendment was sent out for comment on June 9, with comments due on August 7, 2015. No comments were received. At a meeting of the Legislative Committee on Judicial Rules on September 24, 2015, there were no comments on the proposed amendment. On motion duly made and seconded, there being no discussion, it was voted unanimously to recommend the rule to the Supreme Court for promulgation as circulated.

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 e-mail of October 2, 2015, with a new draft of an amendment to Rule 4(c) and proposed language for revisions to the Jury Questionnaire form. She noted that the draft required a request for disclosure of information to a member of the public and specified the standard of "interest of justice" as the basis for denial of a request. In discussion, it was suggested that "judge" should be used instead of "court" and that a more specific standard would be desirable. Committee members noted that the present rule was a compromise between the desire of the press and the trial bar to obtain juror information and the jurors' privacy interests. Threats to jurors are not a major current issue but there are complaints about pressures on them to discuss their deliberations. The subcommittee agreed to prepare a further draft of the rule and form language that would provide that the name and town of residence given in the questionnaire would be public but that all other information would be made public only

by court order on request and a showing of good cause, with a clarification of what would be accessible to attorneys and parties.

4. Proposed rule exempting from public access all documents sent to the Court's oversight committees. Chairman Zonay reported that there was no new information on the kind of rule that judges needed and whether it should cover materials received by the oversight committees, materials that the committees produced, or both.

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. The Committee noted that at the last meeting, it had been agreed that categories (2) and (3) of possibly needed amended or new exceptions noted in Professor Wroth's e-mail to the Committee of May 29, 2014, were of the most immediate importance.

Category (2) consisted of exceptions that would require amendment to implement electronic access. Justice Dooley noted that recently adopted amendments to the Minnesota Public Access Rules that he had sent to the Committee in May would be a good model. Professor Wroth agreed to recirculate those amendments for consideration at the next meeting.

Category (3) consisted of amendment or addition of exceptions that might be required as a result of Supreme Court decisions. The Committee considered Professor Wroth's memorandum of September 30, 2015, summarizing recent Vermont Supreme Court decisions on public access issues. He agreed to place on the list and the agenda for the next meeting *State v. F.M.*, 2011 VT 100 (13 V.S.A. § 7401(e) requires all docket entries concerning expunged count to be removed from docket sheet as displayed to clerk's office personnel and public by computer system). After discussion, it was agreed that the issues concerning search warrants and inquest records raised by the dissents in the *Essex* and *Rutland Herald* cases should be considered at the next meeting in light of the 2013 amendments to the exemption provisions of 1 V.S.A. § 317(c)(5).

6. Development of a specialized exception provision for Family Division records. Ms. Racht, as chair of the Family Rules Committee, stated that she would obtain the reactions of that Committee to proposed exceptions at its next meeting.

7. Effect of Act 29 of 2015 (H.18) on disclosure of information about court employees. Professor Wroth reported that H.18, as enacted as Act 29 of 2015, did not affect the Vermont Public Records Act, 1 V.S.A. § 317(c)(7), (10), (25)—provisions that address possible exemptions for personnel information about Judiciary employees. It was agreed that the Court's September 2014 request that the Committee consider a clarifying amendment to the Public Access Rules concerning Judiciary employee records should be placed on the agenda of the next meeting.

8. Disclosure of court records subject to V.R.P.A.C.R 6(b) exceptions. Ms. Marshall raised the question whether a rule was necessary to clarify procedures for sealed

or confidential documents and suggested that Tari Scott be asked to explain the issues at the next meeting. Justice Dooley agreed to define the issues—particularly those regarding responsibility for redaction as they arise with electronic court records—for consideration at the next meeting

9. Next meeting. It was agreed that Professor Wroth would circulate dates for a meeting to be held in December.

There being no further business, the meeting was adjourned at 11::05 a.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter