

APPROVED

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

**Minutes of Meeting
February 26, 2015**

The meeting was called to order at 1:35 p.m. in the third-floor conference room, Supreme Court building, Montpelier, Vermont, by Hon. Thomas Zonay, chair. Present were Committee members Priscilla Dube, Martin Frank, Jeffery Loewer, Sarah London, Gaye Paquette, and Mitchell Pearl. Also present were Hon. John Dooley, Supreme Court liaison, and Professor L. Kinvin Wroth, Reporter.

1. Minutes. The minutes of the meeting of November 7, 2014, were unanimously approved as previously circulated, with a punctuation correction in item 4.

2. Recommended amendments of V.R.P.A.C.R. 6(b) to implement confidentiality requirements of 13 V.S.A. § 7554c. Professor Wroth reported that the recommended amendments were promulgated on November 23, 2014, effective January 1, 2015. They were reviewed without comment by the Legislative Committee on Judicial Rules at a meeting on December 2, 2014.

3. Proposal for a rule addressing public access to information about court employees, including judges. The Committee considered 1 V.S.A. § 317(c)(7); H.18, a proposed amendment of that section being considered by the House Committee on Government Operations; and a report prepared for Justice Dooley by the Court Administrator's office listing Judiciary employee information collected and held by the Judicial Branch and by the state of Vermont, and indicating whether it was accessible and the rationale for its status. Justice Dooley noted that V.R.P.A.C.R. 5 provided that access to administrative records of the Judicial Branch was governed by 1 V.S.A. § 317(c). After discussion, it was agreed that the compilation of employee information provided useful guidance but that Committee would take no action on it. It was further agreed to defer action on any Rules amendment pertaining to these issues until the Legislature's action on H.18 was known.

4. 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 the report of the subcommittee (Mr. Frank, Ms. London, and Ms. Paquette), distributed at the meeting, which proposed amended language for both Rule 4(c) of the Juror Selection Rules and Parts 1 and 3 of the Juror Qualification form. Justice Dooley noted that V.R.C.P. 47(a), and the comparable provisions of V.R.Cr.P. 24(a), provided for an additional questionnaire prepared by the Court Administrator to be distributed to the jurors to aid in voir dire. The information provided was available to the parties and, after redaction of jurors' names and addresses,

to the public in physical, but not electronic, form. It was noted that Rules 4-6 of the Rules Governing Dissemination of Electronic Case Records would prohibit provision of compilations of case records containing protected information to data aggregators.

It was moved and seconded to adopt proposed Rule 4(c) as drafted. In discussion, it was noted that the affidavit supporting a public request for juror questionnaire content should set forth reasons for the request and that references to mailing and postage costs should be eliminated from the final sentence of the draft. There was agreement on the items to which neither the public nor the parties should have access, though it was noted that adoption of that language should be consistent with, or replace present Rule 10. On motion duly made and seconded, it was voted unanimously to table the motion until the next meeting. The subcommittee was asked to consider comments made in the discussion and to make a further proposal on the rule and questionnaire. Professor Wroth agreed to send a copy of the current questionnaire to the Committee.

5. Proposal for a rule exempting from public access all documents sent to the Court's oversight committees. Chairman Zonay reported that in discussion Judges Teachout and Carroll had raised the question about access to training materials sent to judges. After discussion, it was agreed to defer consideration of this item until the next meeting.

6. Amendment of V.R.D.E.C.R. 3(c)(1)(B) to eliminate drivers' licenses from list of required redactions. The Committee considered Judge Davenport's February 22 e-mail concerning the difficulty of redacting drivers' license numbers in many situations. In discussion, it was suggested that it was the personal information on the license itself, rather than the number, that required protection from disclosure. It was also noted that 9 V.S.A. § 2430(5(A) included drivers' licenses in the definition of "personally identifiable information" that the statute protected from disclosure and that an individual could require a court clerk to remove or redact from a publicly accessible internet website under 9 V.S.A. § 2440(f). On motion duly made and seconded, there being no further discussion, it was voted, five in favor, one opposed, to propose an amendment of V.R.D.E.C.R. 3(c)(1)(B) to remove motor vehicle operators' license numbers from the section. Professor Wroth agreed to prepare a draft amendment for the next meeting.

7. 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. It was agreed to defer consideration of this item until the next meeting.

8. The necessity for and scope of a new exception to V.R.P.A.C.R. 6(b) for inquest records. In discussion, it was noted that 13 V.S.A. § 5134 bound the transcriber of a testimonial inquest to secrecy and stated that the transcript became the property of the state to be held by the prosecuting attorney, that subpoenas issued pursuant to an inquest were also executive branch records subject to protection under 1 V.S.A. § 317(c)(5), and that the catchall provision of V.R.P.A.C.R. 6(b)(36) would protect any

such documents in the court's hands. Accordingly, it was agreed to remove this item from the agenda.

9. Development of a specialized exception provision for Family Division records. Professor Wroth reported that the Family Rules Committee had not yet addressed this question. It was agreed to defer consideration of this item pending action by that Committee.

10. Next meeting. It was agreed that the next meeting would be held in late May on a date and at a location to be determined after Professor Wroth presented alternatives to Committee members.

There being no further business, the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter