

**STATE OF VERMONT
VERMONT SUPREME COURT
OCTOBER TERM, 2023**

**Order Promulgating Amendments to Rules 2, 5(i), 6(a)(b)(c), 7(a) and 9(a)(b) of the Vermont
Rules for Public Access to Court Records**

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 2 of the Vermont Rules for Public Access to Court Records be amended as follows (new matter underlined; deleted matter struck through):

RULE 2. DEFINITIONS

The following definitions apply to these rules:

(a) “Administrative record” means any judicial-branch record pertaining to the administration of the Judicial Branch or any court, board, or committee appointed by the Supreme Court, or any other entity within the Judicial Branch.

(b) “Archives” or “archival records” mean public records that have continuing legal, administrative, or informational value, as referenced at 3 V.S.A. § 117(a)(2).

(c) “Case management system” means an electronic- ~~document~~ record-repository database maintained and managed by the Vermont Judiciary and administered by the respective courts to track information used to manage the courts’ caseload, such as case numbers, party names and identifiers, attorneys for the parties, titles of all ~~documents~~ records filed in a case, and all scheduled events in a case.

(d) “Case record” means any judicial-branch record pertaining to a case or controversy. Any judicial-branch record that fits both this definition and the definition of an administrative record is a case record.

(e) “Confidential” as applied to a case record means that such information is exempt from public access by law, including a state or federal statute, administrative or court rule, a prior court order placing the information under seal, or precedential decision of the Supreme Court. To the extent reasonably practicable, restriction of access to confidential information is implemented in a manner that does not restrict access to any portion of the record that is not confidential.

(f) “Court-generated ~~document~~ record” means any ~~document~~ record generated by a judicial officer or other court personnel, or by masters, receivers, guardians ad litem, and neutrals required to file a report, under the applicable rules of procedure in all actions and proceedings entered in the Supreme Court, the Superior Court, or the Judicial Bureau.

~~(g) “Document” means a related and paginated grouping of information items that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~

(~~h~~ g) “Electronic case file” means an assemblage of the items pertaining to a single case or matter under a single docket number electronically submitted to the Judiciary’s electronic filing system and stored in its temporary data store by a registered user via the electronic filing system,

sent by interface from another agency, or electronically filed by the court via the electronic filing system and any paper or fax ~~document~~ record that was scanned by the court and electronically stored in the data store.

(~~h~~ h) “Electronic-case-record compilation” means an electronic record pertaining to more than one electronic case record.

(~~i~~ i) “Electronic-case-record report” means an electronic-case-record compilation that extracts and displays data from more than one electronic case record for the purpose of providing information about the operation of the Vermont Judiciary or any of its components.

(~~j~~ j) “Electronic-data-dissemination contract” means an agreement between the Court Administrator and any entity, except a court or court employee, that provides information which is not publicly accessible under these rules. The data dissemination contract must specify terms and conditions concerning the data including but not limited to restrictions, obligations, and cost recovery.

(~~k~~ k) “Electronic filing” means the process of transmitting a ~~document~~ record from a registered filer’s computer, using the Judiciary’s Internet-based electronic-filing system, to file the ~~document~~ record in the court’s case file.

(~~l~~ l) “Electronic means” means any method of direct electronic transmission of a ~~document~~ record from the sender’s computer or electronic filing system to the recipient’s computer or electronic filing system.

(~~m~~ m) “Electronic record” means a judicial-branch record that exists in electronic form, irrespective of whether it also exists in physical form.

(~~n~~ n) “Judge” means a Supreme Court Justice; a superior, probate, or assistant judge; a magistrate; or a hearing officer.

(~~o~~ o) “Judicial-branch record” means a record that is in the possession, custody, or control of the Judiciary or was in the possession of the court for purposes of a court decision. All judicial-branch records are either administrative records or case records.

(~~p~~ p) “Judicial officer” for purposes of these rules means a judge, as defined in (~~n~~ n), and a master or parent coordinator to the extent that the appointment order specifies that the master or parent coordinator has access to specified records not accessible by the public.

(~~q~~ q) “Nonelectronic means” is any method of transmitting a ~~document~~ record for filing or service by any means (including electronic facsimile transmission) other than by direct electronic transmission from the sender’s computer or electronic filing system to the recipient’s computer or electronic-filing system.

(~~r~~ r) “Physical record” means a judicial-branch record that exists in physical form, irrespective of whether it also exists in electronic form.

(~~s~~ s) “Presiding judge” means the superior or probate judge assigned to the court, and, if more than one such judge is assigned to the court, the judge designated as presiding by the Chief Superior Judge. With respect to the Supreme Court, the “presiding judge” means the Chief Justice or a justice appointed by the Chief Justice to act as a presiding judge. With respect to the judicial bureau, “presiding judge” means a hearing officer of the bureau as designated by the Chief Superior Judge for trial courts. With respect to a board or committee appointed by the Supreme Court, “presiding judge” means the chair of that board or committee.

(~~u~~ t) “Public access” means the right of any person to view or copy a record without providing identification or a reason for access.

(~~v~~ u) “Public” or “member of the public” means any individual, group, or entity, including the print or electronic media or their representatives, who seeks access to any judicial-branch record.

(~~w~~ v) “Public-purpose agency” means an agency or department of state or local government or a nonprofit agency whose principal function is research or to provide services to the public.

(~~x~~ w) “Record” means any written or recorded information, regardless of physical form or characteristics, ~~paper, letter, map, book, other document, tape, photograph, film, audio or video recording, court reporter’s notes, transcript, data compilation, or other materials, whether in physical or electronic form~~, made or received pursuant to law or in connection with the transaction of any official business by the court. It includes all evidence received by the court in a case.

(~~y~~ x) “Record custodian” means the person responsible for the safekeeping of a record.

(~~z~~ y) “Seal” or “sealing” means to physically and electronically separate the record in a manner that ensures confidentiality of the record and limits access only to those persons who are authorized by law or court order to view the record. A “sealed” file or record is retained and not destroyed unless a court issues an order to expunge the record.

(~~aa~~ z) “Special right of access” means a specific right of access provided by statute, court rule, or other source of law to an authorized person to obtain a record not accessible by the public or to obtain a record by a means not available to the public.

(~~bb~~ aa) “Standardized report” means an electronic case records report which is produced from case management system data by selection from a menu of preprogrammed reports.

(~~cc~~ bb) “State records center” or “records center” means the component of the Statewide Records and Information Program which holds inactive analog State public records in accordance with record schedules pursuant to 3 V.S.A. § 117(c)(5).

(~~dd~~ cc) “Statistical report” means an electronic-case-record compilation which complies with Rules 6(j), 10, and 11.

(~~ee~~ dd) “Registered filer” means an attorney, a represented party, or any other person who is permitted or required under the Vermont Rules for Electronic Filing to file documents electronically, or a self-represented party who elects or is ordered under that rule to file electronically and has registered through the electronic-filing system as provided in the Vermont Rules for Electronic Filing. The term includes any other person authorized to file documents electronically under the Vermont Rules for Electronic Filing.

(~~ff~~ ee) “Remote Access” means access over the Internet by a computer or other electronic device that is outside the Judiciary network.

(~~gg~~ ff) “Vermont State Archives and Records Administration” means the division within the Office of the Secretary of State which is charged with administering a Statewide Records and Information Management Program pursuant to 3 V.S.A. § 117(b), including but not limited to taking legal custody of state archival records pursuant to 3 V.S.A. § 117(a)(2).

Reporter’s Notes—2024 Amendment

Rule 2 is amended to modernize and simplify the definition of “record” and to omit the use of the word “document.” Subdivision (g), which defined document, is deleted and the subdivisions that follow it are renumbered accordingly. The word “document” is replaced with “record” in most places where it appears in the rule. The exception is subdivision (dd) (formerly (ee)), which defines a registered filer. That definition is based on the Vermont Rules for Electronic Filing, which continue to use the term document to refer to a record. The new definition of “record” is modeled on the definition of “public record” in Title 1 of the Vermont Statutes.

2. That Rule 5 of the Vermont Rules for Public Access to Court Records be amended as follows (new matter underlined):

RULE 5. SPECIFIC RIGHT TO ACCESS

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(i) Restrictions on Specific Right of Access to Case Records. Notwithstanding the foregoing, where the public would not have access, parties, their lawyers, and guardians ad litem also do not have a right of access to the records listed in Rule 6(b)(2), (7), (9), (14), and (15).

Reporter’s Notes—2024 Amendment

Rule 5 is amended to add new subdivision (i), which identifies records that are not publicly accessible under Rule 6(b) and to which parties, their lawyers, and guardians ad litem participating in the case do not have a specific right of access. The provision clarifies that, notwithstanding the other provisions in the rule, parties, their lawyers, and guardians ad litem do not have access to judicial work product. Parties, their lawyers, and guardians ad litem do not have access to motions for ex parte relief and supporting materials until the court issues a decision on the motion. However, the court may restrict access to such materials in its order. Similarly, parties, their lawyers, and guardians ad litem do not have access to records that are the subject of any motion made for purposes of in camera review until the court issues its order on the motion. Access at that point is subject to any restrictions set by the court in its order. Finally, parties, their lawyers, and guardians ad litem in proceedings seeking orders of protection under 15 V.S.A. §§ 1103, 1104, 12 V.S.A. §§ 5133, 5134, or 33 V.S.A. § 6931 do not have a specific right of access to information that is exempt from public access. This includes the complaint and affidavit, and, if applicable, an order denying temporary relief, until the defendant has an opportunity for a hearing. It also includes confidential contact information provided to the court pursuant to V.R.F.P. 9(b) or (g) or V.R.C.P. 80.10(b), regardless of when such information is provided, unless the person who provides the contact information consents to public access to that information. Subdivision (i) is not intended to prevent access to the party or attorney who filed the motion or complaint. The new provision codifies existing practice, and

does not represent a change in the law. See Phillips v. Phillips, 2023 VT 44, ___ Vt. ___, ___ A.3d ___.

3. That Rules 6(a), (b), and (c) of the Vermont Rules for Public Access to Court Records be amended as follows (new matter underlined; deleted matter struck through):

RULE 6. CASE RECORDS

(a) **Policy.** The public has access to all judicial-branch case records, in accordance with the provisions of this rule, except as provided in subdivision (b).

(b) **Exceptions.** The public does not have access to the following judicial-branch case records: The exceptions to public access involve a type of case, a record, information, or a record and part of the information within it, as specified in each of the exceptions.

(1) Records and information which by statute, court rule, or other source of law, including by order of the court, are designated confidential, sealed, or expunged, or to which access is prohibited by a similar term. An appendix to this rule lists all statutes and court rules containing a prohibition or restriction on public access, existing on the date of promulgation of this rule, and a summary of the extent and terms of the prohibition or restriction. Annually before January 1 of each year the Court Administrator will update the list in the appendix.

(2) Records of the issuance of a search warrant and the warrant, including but not limited to the application, supporting affidavit(s), any testimony, and inventory, until the date filing of the return of the warrant, unless sealed by order of court pursuant to a motion filed under this rule; and records of the denial of a search warrant, unless opened. If a search warrant is denied, access is only by order of the court.

~~(3) Reports prepared by the Department of Corrections and furnished to the court concerning a decision to admit an inmate into a furlough program administered by the Department, except that the public has access to a summary of the contents of the report and the recommendation of the Department. Where the Department has not included a summary and recommendation in a separate section with the report, the report is subject to public access.~~

(4 ~~3~~) Any information collected from an individual that is created or received by a health-care provider, health plan, employer, or health-care clearinghouse, as defined in 42 U.S.C. § 1320d, that relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual; any ~~Evaluations~~ evaluations of competency to stand trial and/or sanity; and any reports of genetic testing filed in connection with a family division proceeding. If a record contains other relevant information and the individually identifiable health information can be redacted, the filer must do so.

(~~5~~ 4) The information and supporting affidavits filed to initiate a criminal proceeding if the judicial officer does not find probable cause for all charges joined in the information pursuant to Rule 4(b) or 5(c) of the Rules of Criminal Procedure.

~~(6 5) Information obtained from a person during his or her risk assessment or needs screening pursuant to 13 V.S.A. § 7554c.~~

~~(7 6) The following financial information: any federal, state, or local income tax return; Records containing financial information furnished to the court in connection with an application to waive filing fees and service costs, not including the affidavit submitted in support of the application; and affidavits of income and assets as provided in 15 V.S.A. § 662 and Rules 4.0-4.2 of the Vermont Rules for Family Proceedings.~~

~~(8) Any federal, state, or local income tax return.~~

~~(9 7) In a proceeding seeking an order of protection pursuant to 15 V.S.A §§ 1103, 1104, 12 V.S.A. §§ 5133, 5134, or 33 V.S.A. § 6931:~~

~~(A) a complaint and affidavit filed by plaintiff until the defendant has an opportunity for a hearing pursuant to 15 V.S.A. § 1103(b) or § 1104(b) or 12 V.S.A. § 5133(b) or § 5134(b). A temporary order of protection is publicly accessible. If the court denies temporary relief, and the plaintiff does not pursue the case, the complaint, affidavit, and order denying relief remain not publicly accessible. If the court denies temporary relief and the plaintiff files a notice of intent to pursue the case, the order denying temporary relief is not publicly accessible until the defendant has an opportunity for a hearing;~~

~~(B) information provided to the court for notification purposes including an address, telephone number, email address, or other contact information as provided by the plaintiff pursuant to V.R.F.P. 9(b) or V.R.C.P. 80.10(b), whenever provided, unless plaintiff has consented to public access to the information. For purposes of this subparagraph, public access includes access by the defendant or the defendant's lawyer;~~

~~(C) information provided to the court for notification purposes including an address, telephone number, or email address as provided by an unrepresented defendant pursuant to V.R.F.P. 9(g), whenever provided, unless defendant has consented to public access to the information. For purposes of this subparagraph, public access includes access by the plaintiff or the plaintiff's lawyer.~~

~~(10) Analysis of the DNA of a person if filed in connection with a family division proceeding.~~

~~(11) Affidavits of income and assets as provided in 15 V.S.A. § 662 and Rules 4.0-4.2 of the Vermont Rules for Family Proceedings.~~

~~(12) Records from a juvenile proceeding that are filed with the court or admitted into evidence in a divorce or parentage proceeding.~~

~~(13) A record created by a health or mental health professional that contains a description of a patient's health or mental health symptoms, the results of an examination or evaluation of the health or mental health of an individual, a descriptive diagnosis of the health or mental health of an individual, or a description of a course of medical or psychological treatment or recommended course of treatment of an individual.~~

(14 ~~8~~) The following personally identifying ~~data elements~~ information filed in a case record that is otherwise publicly accessible under these rules: (i) A social security number; (ii) A passport number; (iii) A taxpayer identification number; (iv) A financial account number, including a credit or debit card number; or (v) In a criminal case, the name of an alleged victim, who was a minor on the date of the offense. In lieu of a social security, passport, taxpayer identification or financial account number, the filer may include the last four digits of that number. In lieu of the name of an alleged minor victim, the filer may include the initials of the first and last name of the minor.

(15 ~~9~~) ~~Any records representing judicial~~ Judicial work product, including without limitation notes, memoranda, research results or drafts prepared by a judge or by other court personnel on behalf of a judge.

(16 ~~10~~) Records produced in discovery unless used at trial or in connection with a request for action by the court. Only the portion of the record used at trial or in connection with the request for action by the court is publicly accessible.

(17 ~~11~~) Any transcript, court reporter's notes, or audio or ~~videotape~~ video recording of a proceeding to which the public does not have access. Unless otherwise directed by the presiding judge, ~~data elements~~ information specified in Rule 6(b)(14 ~~8~~) that appears in a transcript of a public proceeding, or in reporter's notes or an audio or video recording of a public proceeding, need not be redacted from the transcript, notes, or recording before it is disclosed to the public.

(18 ~~12~~) Any evidence offered or admitted in a proceeding to which the public does not have access.

(19 ~~13~~) Any information provided in a potential juror's written responses to questionnaires related to jury service other than a juror's name and town of residence, absent a finding of good cause for disclosure of further information by the court. In assessing good cause, the court must weigh the public interest in the release of the information sought against any harm as a result of disclosure. All information contained in a juror questionnaire is available to the parties in a case in which the juror is being considered for service, except for supplemental information supplied to determine whether the individual meets the mental and physical demands of jury service for any individual who has been excused based upon that information. Attorneys and self-represented parties may make record reference to information contained in a juror questionnaire during jury selection and in the exercise of challenges, whether in open court or in individual and segregated circumstances. Disclosure may occur in such other aspects of proceedings as authorized by the court. Upon disclosure, such information becomes publicly accessible.

(20 ~~14~~) Motions for ex parte relief, including supporting materials and attachments, until issuance of, and in accordance with, the court's decision and order on the motion. Such records become public upon the court's decision and order unless all or some portion thereof is specifically designated by the court to remain publicly inaccessible consistent with Rule 9.

(21 ~~15~~) Records that are the subject of any motion made for purposes of seeking in camera review until issuance of, and in accordance with, the court's decision and order on the motion. Such records become public upon the court's decision and order unless all or some portion thereof is specifically designated by the court to remain publicly inaccessible consistent with Rule 9.

~~(22 16) Records containing trade~~ Trade secrets and other confidential business information, as defined in 1 V.S.A. § 317(c)(9) and 9 V.S.A. § 4601(3), and as required by 9 V.S.A. § 4605.

(17) Proposed exhibits prefiled with the court for the purpose of and prior to a trial or evidentiary hearing. Prefiled proposed exhibits offered or admitted into evidence are publicly accessible unless another exception in these rules applies.

(c) **Records Introduced into Evidence.** The exceptions to public access contained in Rule 6(b)(2), (4 ~~3~~), and (~~5 4~~), (~~8~~), (~~10~~) or (~~13~~) and the exception to public access for federal, state, and local income tax returns contained in Rule 6(b)(6), no longer apply if the record covered by the exception is admitted into evidence by the court.

Reporter's Notes—2024 Amendment

The amendments discussed herein are the result of a comprehensive review of the exceptions to public access contained in Rule 6. Certain exceptions were deleted because they did not reflect actual practice. Other exceptions have been combined by type. A general purpose of the amendments is to assist filers in determining whether a particular record must be redacted or filed separately pursuant to V.R.P.A.C.R. 7.

Rule 6(a) is amended to clarify that the rule applies to judicial-branch case records, as that term is defined in Rule 2.

The introductory language in Rule 6(b) is amended to identify the three main categories of exceptions to public access to court records: case types that are not publicly accessible by statute, specified records that are exempted from public access by statute or other law, and information within a case record that is exempted from public access by statute or other law. Individual exceptions have been amended where necessary to clarify whether an exception is based on case type, or is targeted at certain types of records or information within records.

Rule 6(b)(1) is amended to reflect that in some cases, it is information within a record, as opposed to the entire record, that is designated as confidential or otherwise exempt from public access. The provision is also amended to clarify that a record may be exempted by court order or through the process of sealing or expungement.

Rule 6(b)(2) is amended to clarify that records of the issuance of a search warrant include “related materials, such as the application, supporting affidavit and inventory.” In re Essex Search Warrants, 2012 VT 92, ¶ 16, 192 Vt. 559, 60 A.3d 707. The exception is also amended to clarify that motions to seal search warrants and related material are governed by the procedures and standards set forth in In re Sealed Documents, 172 Vt. 152, 772 A.2d 518 (2001), and related cases. Such motions are not subject to the procedure set forth in V.R.P.A.C.R. 9.

Former subdivision (b)(3) is deleted because it appears that the Department of Corrections does not provide furlough reports to the court. The remaining exceptions are renumbered to reflect this deletion and the other deletions discussed below.

Former paragraphs (b)(4), (10), and (13) all contained exceptions for individual medical or mental-health records or information. To simplify the rule, these health-related exceptions are combined into new paragraph (b)(3). New paragraph (b)(3) contains the provisions formerly listed in (b)(4), (10), and (13). The phrase “analysis of the DNA of a person” is amended to “reports of genetic testing,” consistent with the wording of the parentage statute. See 15C V.S.A. § 614 (stating that “[a] report of genetic testing for parentage is exempt from public inspection and copying under the Public Records Act”). In place of the court-created exception in former (b)(13), which addressed confidentiality of health and mental-health records, new paragraph (b)(3) incorporates the definition of “individually identifiable health information” from the federal Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320(d)(6), to make the exception consistent with existing laws protecting patient privacy that are broadly applicable and well known to practitioners. The provision clarifies that if the record contains relevant information other than the individually identifiable health information, the filer should redact the individually identifiable health information. As previously, the exception to public access contained in this provision no longer applies if the record is formally admitted into evidence. See V.R.P.A.C.R. 6(c).

Former paragraphs (b)(7), (8), and (11) all contained exceptions for certain financial information concerning an individual or corporation that may be submitted to the court. To simplify the rule, these exceptions are combined into new paragraph (b)(6), which contains all the provisions formerly listed in (7), (8), and (11). The removal of the words “[r]ecords containing” from the provision related to financial information submitted in support of applications to waive filing fees is not intended to alter existing law. Consistent with current practice, both the application and the affidavit remain publicly accessible.

Because the substance of former paragraphs (8), (10), (11), and (13) are incorporated into new paragraphs (b)(3) and (6), these paragraphs are deleted.

Former (b)(12), which made records of juvenile proceedings that are filed with the court or admitted into evidence in a divorce or parentage proceeding exempt from public access, is deleted as unnecessary because the Legislature has made such records not publicly accessible by statute. See 33 V.S.A. § 5117(c)(3) (“The public shall not have access to records from a juvenile proceeding that are filed with the court or admitted into evidence in the divorce or parentage proceeding or in the probate proceeding.”).

Former (b)(14) is renumbered as (b)(8). The term “data elements” is replaced with “information” to make the language consistent with other provisions of the rule.

Former (b)(15) is renumbered as (b)(9). The words “Any records representing” are removed to simplify the wording of the exception. The phrase “without limitation” is added to the definition of judicial work product to clarify that the listed examples are not exclusive.

Former (b)(16) is renumbered as (b)(10). The provision is amended to clarify that the use of a portion of a discovery record at trial does not make the entire record or records publicly accessible. Only the record or portion of a discovery record that is actually used at trial becomes accessible to the public. For example, the use of one interrogatory answer at trial does not make all interrogatory answers publicly accessible.

Former (b)(17) is renumbered as (b)(11). The phrase “audio or videotape” is amended to “audio or video recording” to reflect updates in courtroom technology. The phrase “data element” is replaced with “information” for consistency with wording throughout the rules.

Former (b)(18) is renumbered as (b)(12). The term “introduced” is amended to “offered or admitted” for clarity and to be consistent with the wording of new paragraph (b)(17).

Former paragraphs (b)(19) to (b)(21) are renumbered as (b)(13) to (15).

Former (b)(22) is renumbered as (b)(16). The phrase “Records containing” is deleted because the purpose of the exception is to target specific information. A record may contain both trade secrets and information that is otherwise publicly accessible. If a record contains otherwise publicly accessible information, the trade-secret information must be redacted if practicable.

New Rule (b)(17), exempting proposed prefiled exhibits from public access, is added. With the advent of the Judiciary’s electronic-case-records-management system and the increased use of remote hearings, many courts now require parties to electronically file proposed exhibits before the trial or evidentiary hearing at which the exhibits may be used. New Rule 6(b)(17) is added to clarify that prefiled exhibits are not publicly accessible until they are offered into evidence at the trial or evidentiary hearing. The rule does not change the status of records that are otherwise publicly accessible and does not apply to records attached in support of motions. For example, a record filed in support of a motion for summary judgment is ordinarily publicly accessible and remains so even if the same exhibit is later prefiled in anticipation of trial. Once a prefiled exhibit is offered or admitted into evidence, it is publicly accessible, unless some or all of it is separately made confidential by another provision in this rule or another source of law. If a prefiled exhibit contains information that must be redacted under this rule or another source of law, it is the filer’s responsibility to redact the information prior to filing the exhibit.

Rule 6(c) is amended to reflect that the exceptions contained in former

paragraphs (b)(10) and (13) are now found within Rule 6(b)(3), and the exception contained in former (b)(8) is now found within (b)(6). The effect and scope of this provision are unchanged.

Former Location	Subject Matter	New Location
(1)	Records designated confidential by law	(1)
(2)	Search warrant records	(2)
(3)	Department of Corrections furlough reports	Deleted
(4)	Competency and sanity evaluations	Renumbered as (3)
(5)	Information and supporting affidavits filed to initiate criminal proceeding	Renumbered as (4)
(6)	Risk assessment/needs screening information obtained under 13 V.S.A. § 7554c	Renumbered as (5)
(7)	Financial information in application to waive filing fees and costs	Renumbered as (6)
(8)	Federal, state, or local income tax returns	Deleted and incorporated into new (6)
(9)	Complaint and affidavit seeking order of protection	Renumbered as (7)
(10)	DNA analysis in family division proceedings	Deleted and incorporated into new (3)
(11)	Affidavits of income and assets as provided in 15 V.S.A. § 662 and V.R.F.P. 4.0-4.2	Deleted and incorporated into new (6)
(12)	Juvenile proceeding records filed or admitted in divorce or parentage proceeding	Deleted
(13)	Health or mental health records	Deleted and incorporated into new (3)
(14)	Personally identifying information	Renumbered as (8)
(15)	Judicial work product	Renumbered as (9)
(16)	Records produced in discovery	Renumbered as (10)
(17)	Transcripts and other records of confidential proceedings	Renumbered as (11)
(18)	Evidence introduced in confidential proceedings	Renumbered as (12)
(19)	Information in juror questionnaires	Renumbered as (13)

(20)	Motions for ex parte relief	Renumbered as (14)
(21)	Records subject to in camera review	Renumbered as (15)
(22)	Trade secrets	Renumbered as (16)

Note: New (17), governing prefiled exhibits, is added as part of these amendments.

4. That Rule 7(a) of the Vermont Rules for Public Access to Court Records be amended as follows (new matter underlined; deleted matter struck through):

RULE 7. FILING OF CASE RECORDS; FILER AND JUDICIARY RESPONSIBILITY

(a) Filer and Staff Responsibility.

(1) Filer Responsibility.

(A) In General. It is the responsibility of the filer of a case record, whether in physical or electronic form, to determine whether all or part of the record being filed is not publicly accessible.

(B) Certifying Compliance. The filer must certify that the filer has reviewed the case record, and that the filing specifies the ~~nonpublic~~ records that are not publicly accessible in whole or in part and protects those records or information within a record from disclosure to the public consistent with these rules. The certificate must detail any actions taken to comply with these rules and the reasons for the actions.

(C) Separating ~~Nonpublic~~ Information Not Publicly Accessible Records in Publicly Accessible Records ~~Public Files~~. If the record is ~~not~~ filed in a type of case that is not closed to the public by statute, and contains information that is not publicly accessible, the filer must separate to the extent reasonably practicable the part of the record that is subject to public access from the part that is not subject to public access by redaction or other similar method. The filer may separately file the omitted or redacted part of the record or may additionally file a separate complete record.

(D) Identifying ~~Nonpublic~~ Records That Are Not Publicly Accessible. The filer of a record that is not publicly accessible under these rules or under statute must identify the record as not publicly accessible at the time of filing. After acceptance of the filing, court staff will place that ~~document~~ record, or any other ~~document~~ record not publicly accessible, in the section of the electronic or physical file of the case that is not publicly accessible.

(2) Record Designated in Error. A filer who becomes aware that a record that is not properly designated as ~~public or nonpublic~~ to its public-access status must promptly act to correct the error. If the error is discovered by another person, including one who is a party, a lawyer for a party or a person who is making filings on behalf of a party, the person must promptly notify the other filer, and judiciary staff, so that corrective action may be taken. Any other person may notify judiciary staff of the error.

(3) Responsibility of Court Staff When ~~Document~~ Record is Filed. The Court Administrator will establish the procedures for staff to discharge the record custodian’s responsibility to provide

public and special access to records as provided in these rules and to implement exceptions to public access established by these rules and by statute. If staff determine that a filing does not fully comply with these rules, including with respect to one or more personal identifiers, staff must take an action specified in paragraph (4). If a court staff person or judicial officer discovers that a case record that is publicly accessible may be in that status in violation of these rules, the staff or officer must act to temporarily restrict public access to the record and notify the Court Administrator. If the Court Administrator determines that public access to the record is not authorized under these rules, the Court Administrator will direct that the record be removed from public access. The Court Administrator may direct that the record be redacted or otherwise modified to allow public access to parts that are publicly accessible under these rules. If the record was filed by or on behalf of a party or another person who is not court staff or a judicial officer, the Court Administrator may direct that the filer make the record compliant with these rules within a specified time. If the filer provides a compliant filing on or before the specified time limit, the filing date will be the date of the original filing. Otherwise, the filing date will be the date of the compliant filing. The Court Administrator may appoint a designee to discharge the Court Administrator's responsibility under this rule.

(4) Actions When a Filing is Noncompliant with Rules.

(A) The staff person who reviews the filing may:

- (i) Change the public-access status or redact the filing to comply with these rules;
or
- (ii) Reject the filing until it is made compliant with these rules and specify the time limit to do so.

(B) In addition, the staff person may refer the matter to an assigned judge who, after notice and hearing, may:

- (i) Impose any sanction authorized by V.R.C.P. 11(c), regardless of whether that rule is otherwise applicable to the proceeding involved;
- (ii) Refer~~ence~~ the matter to the Professional Responsibility Program if the court finds that there is probable cause to conclude that a lawyer has violated Rule 3.4(c) of the Rules of Professional Conduct; and/or
- (iii) If the court finds a violation of these rules occurred and excusable neglect is not present, order that the date of the corrected filing is the date of filing for all purposes; or remedial action appropriate to the circumstances.

Reporter's Notes—2024 Amendment

Rule 7(a) is amended to clarify the procedure that filers must follow when filing a record that is not publicly accessible, or contains information that is not publicly accessible, under these rules. The word "nonpublic" is replaced with "not publicly accessible" throughout the rule because court records are always "public" in the sense that they are produced or acquired in the course of the business of the Judiciary, even if some records or information within records are exempt from

public access. The rules control public access to records; they do not purport to make the records themselves private. The word “document” is replaced with “record” consistent with concurrent amendments to Rules 2, 6, and 9.

Rule 7(a)(1)(C) is amended to clarify language and to state that redaction is required when it is reasonably practicable. Otherwise, the filer may file a separate record under seal or use some other method to ensure that information that is not publicly accessible remains confidential.

Subdivision (a)(2) is amended to remove the word “nonpublic.”

Subdivision (a)(4)(B)(ii) is amended to fix a grammatical error.

5. That Rules 9(a) and (b) of the Vermont Rules for Public Access to Court Records be amended as follows (new matter underlined; deleted matter struck through):

RULE 9. LIMITING OR GRANTING ACCESS TO COURT RECORDS

(a) Motion to Seal or Redact Case Records; Temporary Sealing; Procedure and Findings by Court.

(1) *Power of Court to Seal or Redact.* As provided in this rule, the court may in a particular case seal from public access an otherwise public court record, or may redact information from or seal a portion of a public record.

(2) *Motion to Seal or Redact.* A motion to seal or redact a new court filing and materials associated therewith, whether made by a party or initiated by the court, and any responsive filings thereto, shall not be publicly accessible until the court issues its decision and order on the motion. Existing court records already publicly accessible shall remain so until the court’s ruling on any motion to seal or redact such a record, unless a temporary sealing order is issued. The court may issue a temporary order to seal or redact information from a filing or other court record prior to issuing a ruling on a motion to seal or redact.

(3) *Procedure.* A motion to seal or redact a new court filing and materials associated therewith, or an existing public case record, or information contained within the filing or in the public case record, may be made by a party to a case, an individual about whom information is present in the case record, or the court on its own motion. The motion must:

(A) Identify the particular filing, case record or portions that the movant seeks to seal or redact, with as much specificity as possible;

(B) Identify the particular interest(s) that are sought to be protected with as much specificity as possible;

(C) State any authority that supports an order for sealing or redaction, that is, the statute, administrative or court rule, court order or precedential decision providing for confidentiality with respect to the identified privacy interest(s);

(D) If appropriate, attach redacted and unredacted copies of the record(s) in issue that clearly identify the information which the movant seeks to exclude from public access; and

(E) Confirm that service has been made on all parties and on any other individual or entity, if other than the movant, who is the subject of the information contained in the filing, court record, or other ~~documents~~ records that are the subject of the motion.

(4) *Hearing.* Any person, including a party or nonparty, may request a hearing on a motion to seal or redact a case record. If a hearing is requested, or otherwise ordered by the court, the court must schedule a hearing as soon as practicable after the motion has been fully briefed.

(A) Any hearing on the motion must be open to the public, except that any person may request that the court conduct all or part of the hearing in camera to protect the interests identified in accordance with Rule 9(a)(3)(B) above.

(B) The moving party has the burden of establishing the required grounds for sealing or redacting any new filing, or existing court record, by clear and convincing evidence.

(5) *Findings; Orders.* If any party or nonparty has requested a hearing or opposes sealing or redaction of any filing or court record, a decision and order by the court sealing or redacting any filing or court record may be issued only upon specific findings, by clear and convincing evidence, that good cause and exceptional circumstances exist for the restriction of public access to, or the sealing or redaction of the subject record(s), in accordance with applicable constitutional, common law, or statutory authority. Motions must be resolved as soon as practicable.

(A) Any decision and order sealing a new filing or case record over objection of a party or nonparty must not only include such specific findings, given on the record or in writing, but also find that no reasonable alternative to the sealing or redaction exists, and that the least restrictive means have been employed to preserve maximum public access and to protect the specific interests found to justify sealing or redaction of the filing or case record.

(B) Once the court seals all or a portion of a filing or case record, the record remains under seal for the duration of the sealing order, or until a subsequent order grants access and unseals the record.

(b) **Sealing or Redaction by Stipulation or Agreement.** If all parties to a case stipulate to the sealing or redaction of a ~~document~~ record or ~~documents~~ records—by filing a joint motion, by the nonmovant(s) filing no opposition to the motion to seal or redact, or by the nonmovant(s) responding that they have no opposition to the motion—the court may for good cause shown grant the motion without hearing and seal or redact the designated case record(s) ~~or document(s)~~. A finding of good cause includes the court’s own determination that the ~~subject documents~~ record(s) ~~or information~~ should not be publicly accessible, and that sealing or redaction is necessary and consistent with applicable authority.

(1) *Hearing.* If the court is unable to make the required determination of good cause upon filing of the motion, the court shall give notice thereof and the motion shall be set for hearing in accordance with subsections (a)(4)-(5) above, notwithstanding the parties’ agreement, unless the motion is then withdrawn.

(2) *Reconsideration.* Any stipulated order for sealing or redaction shall be subject to reconsideration de novo if thereafter any motion to unseal or for access, by any party or nonparty, is filed pursuant to Rule 9(c). A ruling on any such motion for reconsideration shall be subject to the requirements and standards set forth in Rule 9(a)(4)-(5).

(3) *Protective Orders*. This subdivision also applies to applications to the court for a protective order with respect to any ~~document record or information~~ record or information which is, or is claimed should be, exempt from public access.

Reporter's Notes—2024 Amendment

Rule 9 is amended to change the terms “document” or “document or information” to “record” consistent with concurrent amendments to Rule 2.

Rule 6(b)(2) is amended concurrently with this amendment to clarify that the process set forth in Rule 9 does not apply to motions to seal search warrants and related materials. See Reporter's Notes—2024 Amendment, V.R.P.A.C.R. 6.

6. That these amendments be prescribed and promulgated, effective on January 1, 2024. The Reporter's Notes are advisory.

7. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 10th day of October, 2023.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice