

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

Minutes of Meeting, April 15, 2022

The meeting of the Public Access to Court Records (PACR) Advisory Committee commenced at approximately 9 a.m. via video conference. Present were Committee Chair Judge Timothy Tomasi, and members Justice (Ret.) John Dooley; J. Morrissey; Tanya Marshall; Teri Corsones; Mike Tarrant; Amanda Stites; and Jeannette Eicks. Also present were Pat Gabel, Scott Griffith, Laura LaRosa, and Petra Halsema.

1. Meeting opening; announcements and general discussion

The Committee welcomed Jeannette Eicks as a new member.

Laura LaRosa was present as interim member for TCO.

Scott said new TSC staff member will likely serve as CAO's tech appointment.

Emily Wetherell will follow up on appointment of internal reporter from Court staff.

2. Approval of Minutes

On motion from Tanya Marshall, seconded by J. Morrissey, the meeting minutes for the January 22, 2022, meeting were unanimously approved.

3. Update On PACR 6(b)(Appendix)

Scott Griffith will follow up on status of national negotiations with State Court Administrators and Department of Justice.

4. Update by TBT on Promulgation of Proposed Amended Rules

Proposed PACR 6(b)(20): Exception for Ex Parte Filings, Proposed PACR Rules 6(b)(21), (22): Exceptions for In Camera Filings and Trade Secrets/Confidential Business Information, and PACR Rule 9 Sealing Process: Proposed Revision of Rule 9. Those rules have been promulgated as of 4/11/22. J. Tomasi met with LCJR last night and no concerns.

5. Update by TBT on Comments Concerning Proposed Amendment of Rule 6(b)(14)(v) (determining date of minor in criminal filings)

Proposed amendment to (6)(b)(14) went out for comment and did not receive any comments. LCJR did not have any comments.

Laura LaRosa raised a related issue that has come up in trial courts: should rule be expanded to require initials for minors who are witnesses, in addition to minor victims? After some discussion of issue, J. Tomasi proposed moving forward with promulgation of proposed amendment and addressing issue raised by Laura at next meeting. On motion of J. Morrissey, seconded by Mike Tarrant, committee unanimously votes to ask the Court to adopt the proposed amendment to Rule 6(b)(14)(v).

6. Possible Amendments to Rules 7(a)(3) and 7(a)(4)(B)

Following Courthouse News decision, 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. A subcommittee (JAD, Emily, and J. Tomasi) was formed at last meeting to address potential amendments.

J. Dooley and Pat gave an update on the appeal from the district court's decision. The Judiciary's brief has been filed and amici's brief is due in early May. J. Dooley noted that a temporary amendment was made to the Vt. Rules for Electronic Filing to address the district court ruling.

Scott Griffith explained that the auto-acceptance process we adopted in early December is working ok but not great. Some filers are being charged twice because Odyssey doesn't recognize or associate filers. Tyler Tech. has a solution that may be of use called a "media queue" that would cost extra but help avoid staff having to make refunds. Pat discussed a memo from Chastity addressing the practical impacts of rule changes. As of midday 4/7, there have been 207 refund requests into auto-accepting since December 10. Attorneys have to submit an email containing both envelopes charged. Tyler only allows one refund request a day and it takes two months or longer to process.

J. Dooley recommended against making further amendments to the PACR until the appeal is decided. Committee agreed to wait for now.

7. Review of Possible Electronic Filing Issues & Rule Amendments, per Justice Dooley's Email of April 7, 2021

EF training sessions suggested three areas where PACR rule revisions might be appropriate: (1) more specification of when record redaction is required as opposed to making the whole document nonpublic; (2) treatment of summary judgment exhibits (e.g., do they become public upon filing?); and (3) proposed exhibits not yet formally admitted (are they nonpublic?). Subcommittee of Dooley, J., Corsones and Shriver. (It was decided at last meeting that this project will await appointment of new Reporter.)

8. Public and Attorney/Opposing Party Access to Plaintiff's Address in RFA Cases

CAO requested "guidance" and/or possible Rule amendment(s) re Odyssey treatment of Plaintiff's address, or notice of change of address, in Family Division cases if RFA order has been "entered." Triggered by OCS position that 15 V.S.A. § 788(c) makes all such information automatically confidential (nonpublic). J. Dooley and Emily created a proposed amendment to PACR 6(b)(9) which put a time limit on restriction of access to contact information. However, the Family Rules Committee strongly opposed adding a time limit. J. Dooley noted that it was important to acknowledge this exception to public access. J. Tomasi suggested that a time limit was a policy decision better left to the Family Rules Committee. After some discussion, it was decided that J. Dooley would revise the proposed amendment to remove the sentences beginning "Unless otherwise ordered by the court, the restriction on access . . ." from the proposed amendment. J. Tomasi proposed leaving the Reporter's Note language interpreting 15 V.S.A. § 788(c) to provide guidance to CAO. The Committee agreed that J. Dooley would redraft as suggested and the Committee will vote on the proposed amendment at the next meeting.

9. Next Meeting.

The Committee agreed to set the next meeting for July 22 at 9 AM.