

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

MINUTES OF MEETING, August 2, 2021

The meeting of the Public Access to Court Records (PACR) Advisory Committee commenced at approximately 1:55 p.m. via video conference. Present were Committee Chair Judge Tim Tomasi, and members Justice (Ret.) John Dooley; Tari Scott; Teri Corsones; Tanya Marshall; Mark Davis and Judge Mary Morrisey.

Numbered paragraphs below correspond to the August 2nd agenda.

1. **Meeting Opening; Announcements & General Discussion:** The meeting was called to order by Chair Tomasi once a quorum was present.
2. **Approval of Minutes of Prior Meeting.** On motion by Tari Scott, seconded by Tanya Marshall, the draft minutes for the meeting of May 10, 2021, were approved by unanimous consent.
3. **Status Report(s) on Continued Implementation of E-File Rules & Odyssey “Roll-Out.”** Justice Dooley reported that the VRAP have been modified in light of the expansion of e-filing to the Supreme Court docket. The effective date for the rules and the implementation of e-filing in the Supreme Court is August 17, 2021. A question arose regarding public access to PRB matters in the Supreme Court. In the paper world, PRB documents are publicly available on the Judiciary website pending completion of the disciplinary proceedings. Another question concerns the burden on staff scanning documents into the Odyssey system, although there are typically very few PRB cases in the Supreme Court. The PRB question about the treatment of PRB documents is discussed in section 10 below. The OCS question about the treatment of a plaintiff’s address in RFA cases is discussed in section 9A below.
4. **PACR 6(b)(Appendix) - Public Access to Criminal History Records.** Chair Tomasi will ask Pat Gabel to report at the next meeting on the status of the state/federal “settlement group” that is supposed to address the protocol issues surrounding access to FBI and NCIC data.
5. **Proposed PACR 6(b)(20): Exception for Ex Parte Filings.** Chair Tomasi inquired whether the proposed amendments to PACR Rules 6 and 9 can be sent to the Court. He noted that the Committee voted to send the proposed amendments to the Court but delayed the transmission until the RFA question Tari Scott raised could be addressed. There was no objection to sending the proposed amendments to PACR 6 and 9 to the Court at this time. The RFA question is discussed in Section 9A below.
6. **Proposed PACR Rule 6(b)(21-22): Exceptions to Avert Need for Unnecessary Recourse to Formal Rule 9 Sealing Process.** Same information as in section 5 above, to also include the amendments to PACR 5(c) and (d). There was no objection to sending the proposed amendments to the Court at this time.
7. **Review of Possible Electronic Filing Issues & Rule Amendments, per Justice Dooley’s Email of April 7, 2021.** At the May 10, 2021 meeting, it was decided that the issue of Odyssey treatment of certain motion exhibits and the issue of Rule 6(b) exceptions to distinguish between types of documents that are confidential versus content of a document that’s confidential should be referred to a subcommittee for further study. Justice Dooley reported that the subcommittee that was formed has not yet met.

8. PACR Rule 9 Sealing Process: Proposed Revisions of Rule 9. Same information as in section 5 above. There was no objection to sending the proposed amendments to at this time. The proposed amendments include PACR Rules 6(b)(20-22), 5(c) and (d) and 9, along with a draft promulgated order and Reporter's Notes.

9. PACR 6(b)(9) and 5(c). Opponent/attorney access in RFA cases. Chair Tomasi clarified that this issue concerns an "opponent" attorney accessing the complaint and affidavit in RFA and stalking cases where an initial request for relief has been denied and no hearing has been requested by Plaintiff. It was decided that an amendment is not necessary to define the meaning of "no access" and that Committee action is not needed. Tari Scott will follow up to confirm that staff is treating any requests for access correctly.

9A. Public and Attorney/Opposing Party Access to Plaintiff's Address in RFA Cases. The issue concerns what should be the Odyssey treatment of a Plaintiff's address (or change of address) in RFA cases after a RFA order has been entered. The OCS has taken the position that 15 VSA 788(c) makes such information automatically confidential. It was noted that the Secretary of State's Office is also involved with housing the addresses. Judge Morrissey inquired as to the length of time that confidentiality extends; only during the period of the order, or indefinitely? Tari Scott inquired as to the effect on a party's contact information in a related case in a different division. Justice Dooley noted that the confidentiality of RFA matters was done by rule and not by statute. Tanya Marshall offered to forward a list of all state statutes and rules that reference the collection of addresses by the Judiciary, as compiled in the state records management system. Chair Tomasi suggested adding an RFA plaintiff's address to the list of exceptions, but recommended that the rules committees be involved in the decision. Tari Scott indicated that Family Oversight had looked at the question and referred it to the PACR Committee. Judge Morrissey suggested that another option could be for the confidentiality of an address to be included in the order, and an indication that the address would no longer be confidential at the expiration of the order unless noted otherwise. This would be in keeping with similar provisions in the UICSA, which allows for confidentiality in perpetuity. Chair Tomasi also noted the need for clarification regarding the meaning of "has been entered"; whether that refers to orders ever having been entered or entered only with respect to the instant matter. After considerable discussion, Justice Dooley asked that a small working group including him, Tari Scott and Dawn Sanborn meet to draft suggested language to address the various concerns and circulate it for the Committee's review.

10. AO 9 and Rules Governing Professional Responsibility Program. With the expansion of e-filing to the Supreme Court, questions have arisen as to the confidentiality of PRB cases that are within the Court's jurisdiction. Justice Dooley circulated an email that summarizes the issues in detail. The issues include a requirement that the PRB prepare a summary of each decision, but if the decision doesn't result in a finding of misconduct, the parties and witnesses are not to be identified. This is inconsistent with the fact that the full decision is publicly accessible, and that proceedings and documents were publicly accessible before the decision was made. The other issue has to do with what should be publicly accessible when a private admonition is imposed. After discussion, Justice Dooley recommended asking the PRB E-Filing Subcommittee to further study the issues.

Agenda items (11 – 13) were not reached and deferred to the next meeting.

11. Additions to Rule 6(b) Appendix to be made by Court Administrator. (Per 6(b)(1): 8 V.S.A. 7043 (Records in Insurer Supervision Hearings); 9 V.S.A. 4605 (Trade Secrets). Update? Committee action needed?

12. **Resumption of Jury Trials.** Any issues for PACR?

13. **New Business.**

14. **Next meeting.** The next meeting of the Committee was scheduled for Tuesday, October 12, 2021 at 1:15 pm, to be held virtually by video conference. Tari Scott will email the Teams meeting invitation. [The meeting time was later changed to 1:30 pm at the Chair's request.]

15. The meeting adjourned, by unanimous consent, at approximately 4:00 pm.

Respectfully Submitted,

Teri Corsones
(Acting Reporter)