

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

MINUTES OF MEETING, October 12, 2021

The meeting of the Public Access to Court Records (PACR) Advisory Committee commenced at approximately 1:40 p.m. via video conference. Present were Committee Chair Judge Tim Tomasi, and members Justice (Ret.) John Dooley; Tari Scott; Teri Corsones; Tracy Shriver; Mike Tarrant; Mark Davis; and J. Morrissey. Also present were Laura LaRosa and Emily Wetherell.

Numbered paragraphs below correspond to the agenda.

1. **Meeting Opening; Announcements & General Discussion:** The meeting was called to order by Chair Tomasi once a quorum was present.
 - a. There are some openings on the committee-
 - i. The seat formerly held by the ACLU- the ACLU has not expressed an interest in having a staff person on the committee. The committee will continue to think about an appropriate replacement.
 - ii. CAO/tech- There is a new CTIO and so it would be either her or her designee. Tari will reach out about this appointment.
 - iii. Tari Scott- Tari has retired and she will get back with a recommendation for a replacement.
 - b. Reporter- J. Pearson has resigned from his position as reporter and a new reporter is being sought. J. Dooley will check with J. Morris.

2. **Approval of Minutes of Prior Meeting.** On motion by Mark Davis, seconded by Tari Scott, the draft minutes for the meeting of August 2, 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 Supreme Court went live with efilings on August 17, 2021. There have not been major challenges related to public access. Teri provided an update on the efilings court users group. They have prioritized issues and will meet with a subcommittee of the Judiciary’s standard practices committee.

4. **PACR 6(b) (Appendix) - Public Access to Criminal History Records.** Pat Gabel was not present. Tari reported that she was not aware of any updates on this. Ms. Shriver reported that practice has been the same as at the beginning of Odyssey.

5. **Status of Proposed Amendments Submitted to Supreme Court:** Chair Tomasi reported that the following rules are out for comment, comments due November 14, 2021. They will be considered at LCJR meeting on October 21, 2021.

- Proposed PACR 5(c) and (d)
- Proposed PACR 6(b)(20): Exception for Ex Parte Filings
- Proposed PACR Rules 6(b)(21), (22): Exceptions for In Camera Filings
- Trade Secrets/Confidential Business Information
- PACR Rule 9 Sealing Process: Proposed Revision of Rule 9.

6. **Review of Possible Electronic Filing Issues & Rule Amendments, per Justice Dooley’s Email of April 7, 2021.** J. Dooley reported that there has not yet been a meeting of the subcommittee on this. J. Dooley wanted to wait for a new reporter. Teri Corsones had already volunteered for the subcommittee. Attorney Shriver also volunteered for subcommittee.

7. Public and Attorney/Opposing Party Access to Plaintiff's Address in RFA Cases. CAO request for "guidance" and/or possible Rule amendment(s) (both PACR and EF Committees) re Odyssey treatment of Plaintiff's contact information (and in limited circumstance defendant's contact information), 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). See forwarded email from Dawn Sanborn.

The RFA form currently includes contact information of name, address, and telephone number, and the information is not available to other parties in the case unless waived. Mostly related to plaintiff, V.R.F.P. 9(b), but for defendant if defendant moves to modify temporary order, V.R.F.P. 9(g)(1). The question has arisen about the application of the confidentiality to closed cases.

J. Dooley met with Dawn Sanborn and J. Davenport (reporter for family rules) on this issue and prepared a draft of amendments to V.R.P.A.C.R. 6(b)(9), V.R.F.P. 9(b), and (g), and V.R.F.P. 4.3(a)(7). The draft explicitly recognizes the contact information an exception to public access and makes it time limited. The Reporter's Notes explain that the confidentiality provision in 15 V.S.A. § 788 and part of the Appendix to Rule 6 is a separate provision relating solely to child support. The draft then contains a time limitation on the confidentiality of the contact information, generally making it public when the order was no longer in effect. There was discussion around one option in the original draft providing that the information would cease to be confidential if the court declined to grant a temporary order and plaintiff did not seek a hearing. J. Tomasi and J. Morrissey expressed that it did not make sense to make the contact information public in this situation because the application itself was nonpublic. The committee discussed and agreed to remove this ending trigger. Emily suggested adding "and appeal period expired" from the second ending trigger. There was a discussion around whether there should be some buffer time after an order expires given that an extension could be filed even after the order expires. See Forrett v. Stone, 2021 VT 17. J. Dooley indicated this could be dealt with in the Reporter's Notes. Teri Corsones suggested some drafting edits. J. Dooley will provide the edited draft to J. Davenport for circulation to family rules committee.

8. AO 9 and Rules Governing Professional Responsibility Program. J. Dooley reported that there is a subcommittee looking at amending AO 9 and the e-filing rules for the use of e-filing in PRB hearing panel cases. Although some public access issues have been raised during that rule drafting, the subcommittee's work is on hold at the moment. The subcommittee decided to submit some policy questions to the Supreme Court before continuing with rule drafting.

9. Additions to Rule 6(b) Appendix to be made by Court Administrator. (Per Rule 6(b)(1): 8 V.S.A. § 7043 (Records in Insurer Supervision Hearings); 9 V.S.A. § 4605 (Trade Secrets). Update on completion. The updated appendix contains these exceptions.

10. Resumption of Jury Trials - Any issues for Committee re Public Access to Court Records?

11. Any other/new business.

Emily raised issue of how Rule 9 would apply to the Supreme Court. Process doesn't directly apply to Supreme Court. J. Tomasi, J. Dooley and Emily will meet to discuss.

12. Next Steps – Date(s) and objectives for next meeting(s). January 14 in the morning, 9-12

13. Adjourn. The meeting adjourned, by unanimous consent, at approximately 3:30 pm.