

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

Minutes of Meeting, January 14, 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; Teri Corsones; Tracy Shriver; Mike Tarrant; Tanya Marshall; and J. Morrissey. Also present were Supreme Court liaison J. Cohen, Laura LaRosa, and Emily Wetherell.

1. Meeting opening; announcements and general discussion, including identification of replacement Committee members (ACLU, CAO/tech, Tari, Reporter).

Laura LaRosa was present as interim member for TCO

No response from CTIO yet on a technology member.

Emily Wetherell will follow up on appointments.

2. Approval of Minutes for the October 12, 2021. On motion from Teri Corsones, seconded by Tanya Marshall, the meeting minutes were unanimously approved.

3. Courthouse News Case Resolution. Emily Wetherell provided an update on the litigation and the emergency amendment to the 2020 Vermont Rules for Electronic Filing. Later in the meeting, J. Dooley provided an overview of the litigation by CNS. Per the injunction, there is no public-access review before a complaint becomes public but court staff do review the complaint after it is accessible.

VRPACR 7(a)(3) currently provides a process to correct records that were incorrectly made public. J. Dooley suggests an amendment to eliminate need for Court Administrator to be involved.

“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.”

J. Tomasi suggested that 7(a)(4)(B) should also be looked at to expand options available when a filing is noncompliant with rules to provide less severe outcomes than Rule 11 sanctions.

The reporter will work on some proposed amendments for the committee’s consideration in consultation with J. Tomasi and J. Dooley.

4. PACR 6(b)(Appendix) - Public Access to Criminal History Records Obtained through NCIC; Public Access to Such Records from VCIC; Status of “Sorting” Requirement in 2020 V.R.E.F. 5(g)

No further information from CAO on this.

5. Update and Vote to Recommend 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

PACR Rule 9 Sealing Process: Proposed Revision of Rule 9.

J. Tomasi reported that no comments were received.

J. Tomasi explained that LCJR had reviewed the proposed changes and there was a comment on the language of VRPACR 9(a)(4), which reads “Hearing. Any person, including a party or nonparty, may request a hearing on a motion to seal or redact a case record.” The group of people identified in 9(a)(4) is slightly different than those who get service under (a)(3)(E) and who may file a motion to seal or redact under (a)(3). The question was whether there an intention to limit who could request a hearing.

There was discussion and the committee concurred that who can request a hearing is meant to be broader than those required to be served. The committee agreed to add “not limited to those required to be served under (a)(3)(E).”

There was also a suggestion to delete the final sentence of (a)(4) as redundant but add that court must resolve motion as soon as practicable in second sentence. “If a hearing is requested, or otherwise ordered by the court, the court must schedule a hearing and resolve the motion as soon as practicable after the motion has been fully briefed.”

Suggestion to change Reporter’s Notes as follows:

“Revised subparagraph (a)(3)(E) deletes reference to standing, in favor of a practical description of persons other than parties who are entitled to notice ~~and opportunity for hearing; any individual other than the movant about whom the subject information is present in the documents that are the subject of the motion.~~”

The committee agreed to put all Rule 6 changes into one section of the order.

Teri Corsones moved to send package as amended at the meeting to Court for promulgation, and the motion passed unanimously.

6. 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.

J. Tomasi explained that this will be a large project and J. Dooley indicated he wants to wait until there is a permanent reporter to assist with this project.

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 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). *See* proposed amended Rule 6(b)(9). Dooley, J., to update re Family Rules process.

Family Rules is meeting on January 21. J. Dooley reported that may take some time for Family Rules to fully consider.

Emily Wetherell report back on where that process is with family rules.

8. Rule 9 and Motions at the Supreme Court. Consider amendment to make clear how motions under Rule 9 are to proceed at the Supreme Court. (Draft amendment sent in advance to committee to clarify 9(e) applies to motion to the superior court and add 9(f) regarding the Supreme Court).

There was a discussion on how to amend 9(e) to better identify who is entitled to appeal. Discussion of whether right to appeal should be limited to those who participated already. Committee agreed to amend as follows: “A party, a person, or entity filing or opposing a motion”

There was also a discussion of how to refer to motions filed for the first instance in the Supreme Court and committee agreed the section should read:

(f) **Motions to Limit or Grant Access to Records in Supreme Court.** A motion to seal, redact, or obtain access to records in the Supreme Court filed under Rule 9(a)-(d) is governed by the process provided in V.R.A.P. 27.

The committee agreed that the Reporter’s Notes should explain that under V.R.A.P. 27, motions will go to a single Justice and that in general documents retain their public access status when the case is on appeal. See V.R.P.A.C.R. 6(i) and V.R.A.P. 25.

With the discussed edits to Rules 9(e) and (f), the committee voted unanimously to recommend V.R.P.A.C.R. 9 for promulgation.

9. Date for Determining Records of a Minor – Rule 6(b)(14)(v). There was a question of whether the provision in V.R.P.A.C.R. 6(b)(14)(v) stating that “in a criminal case, the name of a child alleged to be a victim” was exempt from public access referred to a victim who was a child at the time of the offense or to the victim’s age currently.

Following a discussion, the committee agreed that the exception should apply if the victim was a child at the time of the offense, regardless of current age.

Suggestion to amend as follows “in a criminal case, the name of a child alleged victim who was a minor on the date of the offense” and make a similar change in final sentence. The committee agreed that the Reporter’s Notes could refer to the definition of minor in 1 V.S.A. § 173.

Mike Tarrant moved to ask the Court to send out for comment. J. Morrissey seconded and the committee voted unanimously.

10. Authority for Judicial Action in Rule 7(a)(4). Should avenue for judicial action short of those listed be available? This was discussed in item 3 above.

11. V.S.A. Pocket Part Error. Lexis is redoing the paper pocket part to correct an error that resulted in the notes for V.R.P.A.C.R. 6 and the text of V.R.P.A.C.R. 7 being omitted.

12. Next Steps – Date(s) and objectives for next meeting(s). The committee agreed to schedule the next meeting for April 15 at 9 a.m.