

APPROVED

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

**Minutes of Meeting
May 1, 2015**

The meeting was called to order at 9:00 a.m. in Room 216, Debevoise Hall, Vermont Law School, by Hon. Thomas Zonay, chair. Present were Committee members Priscilla Dube, Martin Frank, Jeffery Loewer, Sarah London (by telephone), Gaye Paquette, and Hon. Timothy Tomasi. Also present were Steven Dibelius, Chief Records Officer, Vermont State Archives, representing Tanya Marshall, who was unavoidably absent; Hon. John Dooley, Supreme Court liaison; and Professor L. Kinvin Wroth, Reporter.

1. Minutes. The minutes of the meeting of February 26, 2015, were unanimously approved as previously circulated.

2. Proposed amendment of Rule 4(c) of the Rules Governing Qualification, List, Selection and Summoning of All Jurors concerning confidentiality of juror information. The Committee considered a draft prepared by the subcommittee (Mr. Frank, Ms. London, and Ms. Paquette), distributed at the meeting, which proposed an amendment of Rule 4(c) of the Juror Selection Rules. Ms. London said that the purpose was to update the rule as a basis for conformity with the juror Questionnaire forms. The draft required a written request and proposed two access standards: Parties and their counsel would have access to all information contained in a juror's questionnaire except supplemental information pertaining to physical or mental health. Other members of the public would have access only on a showing of a "public interest" in the information, subject to judicial discretion and not including personal contact information, date of birth, and supplemental information pertaining to physical or mental health.

In discussion, it was noted that a request would be necessary to obtain the names of jurors in the pool but that the names of jurors seated for the trial were a matter of court record. It was also noted that some judges used additional supplemental questionnaires that should be covered as well. Discussion centered on the potential and indeterminate scope of "public interest" and the resulting broad judicial discretion it would provide, leading to the suggestion that a bright-line test might be preferable. Concerns were expressed for the burden on individual jurors who were participating involuntarily in the process. The subcommittee agreed to prepare a new draft for the next meeting addressing some of the questions raised. Justice Dooley stated that he would ask a law clerk or staff attorney to prepare a memo on the practice in the federal and other state courts for the subcommittee.

3. Proposed rule exempting from public access all documents sent to the Court's oversight committees. Chairman Zonay reported that the principal concern of the oversight committee chairs was with materials prepared by the committees for court use, such as bench books and training materials. There was little information available on the practice in other states. Neither present V.R.P.A.C.R. 5 governing administrative records by incorporation of 1 V.S.A § 317(c) nor that statute addressed the issues. After further discussion, Chairman Zonay and Justice Dooley agreed to ask the judges what kind of rule they needed and whether it should cover materials received by the oversight committees, materials that they produced, or both.

4. Amendment of V.R.D.E.C.R. 3(c)(1)(B) to eliminate drivers' licenses from list of required redactions. The Committee considered drafts of proposed amendments dated March 25, 2011, and May 27, 2014, presented by Professor Wroth. After discussion, it was agreed to add "publicly issued personal identifiers" to Rule 3(c)(1)(A) and "other personal identifiers" to Rule 3(c)(1)(B), to delete "motor vehicle operators' license numbers" from Rule 3(c)(1)(B), and to add "passport and military serial numbers, but not including motor vehicle operators' license numbers" to 3(c)(1)(A). Professor Wroth agreed to circulate a draft by e-mail.

5. Amendment of existing exceptions in V.R.P.A.C.R. 6(b), or addition of new exceptions, required as a result of Supreme Court decisions or specific exceptions adopted by the legislature. The Committee considered Professor Wroth's e-mail to the Committee of May 29, 2014, that reviewed all the exceptions listed in Rule 6(b) and its currently proposed amendments and divided them into four categories to focus discussion: (1) Exceptions that do not require amendment at present. (2) Exceptions that will require amendment to implement electronic access. (3) Amendment or addition of exceptions that may be required as a result of Supreme Court decisions. (4) Amendments or additions that may be necessary to incorporate specific exceptions newly adopted by the legislature that would otherwise be applicable under the general catch-all language of Rule 6(b)(37). In addition, the e-mail noted the past effort to develop a specialized exception provision for Family Division records.

Professor Wroth noted that the Family Division exception would be addressed under agenda item 6. The Committee agreed with Justice Dooley's observation that categories (2) and (3) were of the most immediate importance. He noted that a very recently adopted Minnesota rule would provide a good model for beginning to consider category (2) and undertook to send the Minnesota material to Professor Wroth for distribution to the Committee. Professor Wroth agreed to prepare a memo summarizing potential cases under category (3), for consideration at the next meeting.

6. Development of a specialized exception provision for Family Division records. Professor Wroth reported that the Family Rules Committee had agreed to participate in a joint subcommittee to address this question. Chairman Zonay stated that he, Judge Tomasi, and Ms. Dube would represent the Public Access Committee on the joint subcommittee, and that he would discuss next steps with Jody Racht, chair of the

Family Rules Committee. Professor Wroth agreed to send materials describing the past history of this issue to members of the joint subcommittee.

7. Other Business. Justice Dooley noted that at its February 26 meeting, the Committee had decided to defer action on Professor Wroth's November 5, 2014, draft amendment to V.R.P.A.C.R. 5 or any other rules change addressing public access to information about court employees, including judges, until the Legislature had acted on amendments to 1 V.S.A. § 317(c) pending in H.18. Justice Dooley indicated that the Court Administrator would seek further action from the Committee if H.18 did not provide sufficient detail to address the issues from the Judiciary's perspective.

8. Next meeting. It was agreed that the next meeting would be held in September on a date and at a location to be determined after Professor Wroth had presented alternatives to Committee members and that, in the meanwhile, comments on the Minnesota rules described in item 5 would be obtained through e-mail responses or a special telephone meeting.

There being no further business, the meeting was adjourned at 11::00 a.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter