

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

**Minutes of Meeting, December 15, 2023**

The meeting of the Advisory Committee on the Rules for Public Access to Court Records commenced at approximately 9 a.m. via videoconference. Present were Committee Chair Judge Timothy Tomasi and members Justice Cohen, Justice (Ret.) John Dooley, Judge Mary Morrissey, Teri Corsones, Tracy Shriver, Mike Tarrant, Laura LaRosa, Marcia Schels, Tanya Marshall, and Petra Halsema.

**1. Chair Tomasi: Meeting Opening**

**2. Approval of Minutes from the September 2023 meeting.**

Teri Corsones noted a missing “the” at top of page 3. Upon motion by Mike Tarrant, seconded by J. Morrissey, the minutes of the September 26, 2023 meeting were unanimously approved.

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

Following the Courthouse News case, 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. The Courthouse News case is on appeal to the Second Circuit and the Committee decided at 7/22/22 meeting to wait until appeal is decided before making changes. The case was argued in April 2023. Teri Corsones spoke to AAG David Boyd, who reports that there has not yet been a decision.

**4. Update re Proposed Amendments to Rules 2, 5, 6, 7, and 9**

The Court adopted the proposed amendments to Rules 2, 5, 6, 7, and 9 at its October 2023 meeting, with an effective date of January 1, 2024. Chair Tomasi reviewed those amendments with the Legislative Committee on Judicial Rules at their most recent meeting. The Committee raised no substantive concerns, but Representative LaLonde pointed out that the introductory language to Rule 6(b) was confusing and should be revisited. Chair Tomasi agreed. Following the meeting, he proposed a number of options to address his concerns. This Committee took a remote vote endorsing a simple elimination of the problematic sentence, along with a corresponding change to the Reporter’s Notes. The proposed revision was sent to the Court for consideration at its December 11, 2023 administrative meeting, and was promulgated by order on December 11, 2023.

## **5. Recommendation to Standardize Effective Dates of New Rules**

In October 2023, the Court amended A.O. 11 to add new § 9, which provides that ordinarily rules will be adopted with an effective date at least 60 days from the date of promulgation and with an effective date of either July 1 or January 1. Former § 9 is renumbered § 10 and continues to provide that some or all requirements of the administrative order may be dispensed with when the public interest requires. J. Cohen added that this was done basically for clarity purposes and everyone on the Court agreed that it was a good idea.

## **6. Ex Parte/In Camera Motions**

J. Tomasi received a question prior to the last meeting regarding whether ex parte/in camera motions should be visible to the opposing party or others in the electronic filing system. Teri Corsones explained that under the current practice, if someone files an ex parte motion and doesn't serve the other side, it is typically not visible to the opposing party and would not show up on docket entries. Laura LaRosa stated that a question had arisen about the confidentiality of an ex parte motion filed by a state's attorney in a criminal case to interview a witness in jail—should opposing counsel be able to see the motion, or the fact that one was filed? The Committee decided to keep this item on the agenda for next time so that our media representative has an opportunity to weigh in. J. Tomasi will reach out to Mark Davis to make sure he is getting meeting invites.

## **7. Public-Access Status of Inquests, Subpoenas Duces Tecum, and Nontestimonial Orders**

At the September 2023 meeting, a subcommittee of J. Tomasi, J. Morrissey, Tracy Shriver, Laura LaRosa and Petra Halsema was formed to discuss the public-access status of inquests and other investigative requests. The subcommittee discussed the current court practice, which is to treat IRs similarly to search warrants for public-access purposes. A question arose as to whether the “subpoena duces tecum” type actually consists of misfiled inquest requests. Laura LaRosa will provide some examples for the subcommittee. Tracy Shriver will contact other State's attorneys to see how they use the IRs. Justice Dooley agreed to join the subcommittee for further discussion. Justice Dooley noted that after the Court's 2019 decision involving inquests, Rep. LaLonde expressed some interest in examining the issue in the Legislature. The Committee agreed that J. Dooley should contact Rep. LaLonde to see if he would be interested in revisiting that issue. If he is amenable, J. Tomasi, J. Morrissey, and Tracy Shriver volunteered to join the meeting. The subcommittee will meet again prior to the next full Committee meeting to discuss next steps.

## **8. Set Next Meeting.**

The next meeting was scheduled for April 5, 2024, at 9:00 a.m.