

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

Minutes of Meeting, May 3, 2024

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, Amanda Stites, Marcia Schels, Mike Tarrant, Laura LaRosa, Bob Paolini, Tracy Shriver, and Petra Halsema.

1. Chair Tomasi: Meeting Opening

Justice Cohen agreed to contact Mark Davis, and Judge Tomasi agreed to contact Jeannette Eicks, to see if they are still interested in being on the Committee.

2. Approval of Minutes from the December 2023 meeting

Upon motion by Mike Tarrant, seconded by Marcia Schels, the minutes of the December 15, 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. There are no updates at this time.

4. Ex Parte/In Camera Motions

Judge Tomasi received a question prior to a previous meeting regarding whether ex parte/in camera motions should be visible to the opposing party or others in the electronic filing system. 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. No Committee members had any objections to CAO continuing this approach.

5. Public-Access Status of Inquests, Subpoenas Duces Tecum, and Nontestimonial Orders

A subcommittee of J. Tomasi, J. Morrissey, J. Dooley, Tracy Shriver, Laura LaRosa, and Petra Halsema previously formed to discuss the public-access status of inquests and other investigative requests. The current court practice is to treat IRs similarly to search

warrants for public-access purposes; however, this is not covered by existing statutes or rules.

J. Dooley contacted Rep. LaLonde to get his input. They were not able to discuss the issue until after the deadline to introduce regular new legislation. They had a significant conversation, and J. Dooley also discussed the issue with the legislative counsel assigned to Judiciary. Rep. LaLonde expressed interest in addressing the issue through legislation in the 2025 session.

In the meantime, J. Tomasi will reach out to the Criminal Rules Committee to explore forming a joint committee to discuss a proposed approach to these case types. J. Dooley, Laura LaRosa, and Tracy Shriver indicated they would be willing to serve on said committee.

6. Public Access Status of Appeals from Denials of Requests for Case Records

CAO is in the process of adopting a new process for handling case record requests by members of the public. Under the proposed procedure, if a request is denied, and the requestor appeals, a new administrative case will be created in Odyssey for the appeal. The Standards Practice Committee has asked this Committee to consider whether these appeal cases should be treated as publicly accessible.

The Committee discussed the issue and agreed that the appeal cases should be publicly accessible and subject to the existing rules (i.e., PACR 7 & 9) regarding redaction/sealing of confidential material.

7. Consideration of Expanding Remote Access for Criminal Defense Counsel (at least)

An attorney has asked that the Judiciary consider taking steps to expand remote access to cases other than those for which the attorney is counsel of record. He notes such access is given to the DG and DG conflict counsel, that he is disadvantaged compared to them by not being able to check other cases involving witnesses or his client, that the judge and prosecutor and conflict counsel can see decisions and info from other cases while he cannot, that he cannot access potentially exculpatory info from other cases, that he cannot access cases of co-defendants, and that he is unable to check the status of cases and background info to determine whether to take on a new case before entering an appearance.

While he can access public records at the courthouse kiosks, he maintains he is disadvantaged by the system.

Access to criminal records is limited by 12 V.S.A. § 5, 20 V.S.A. § 2056a, and PACR Rule 5. The Committee discussed the history of the statutes and rule. A legislative fix appears to be necessary. J. Tomasi indicated that he would contact the Civil, Family, and Criminal Oversight committees about proposing a fix to the Legislature for next session.

8. Continuation of Remote Meetings?

The Committee agreed to begin meeting occasionally in person, with most meetings continuing to be held remotely.

9. Set Next Meeting.

The next meeting was scheduled for September 6, 2024 at 9:00 a.m.