

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

**Minutes of Meeting, September 13, 2024**

The meeting of the Advisory Committee on the Rules for Public Access to Court Records commenced at approximately 9:10 a.m. via videoconference. Present were Committee Chair Judge Timothy Tomasi and members Justice (Ret.) John Dooley, Judge Benjamin Battles, Mike Tarrant, Teri Corsones, Tanya Marshall, Laura LaRosa, Amanda Stites, Mark Davis, and Petra Halsema.

**1. Chair Tomasi: Meeting Opening**

Announcements and General Discussion. Tracy Shriver has stepped down from the Committee and the Court is working on a replacement. J. Tomasi will check in with Jeannette Eicks to see if she is still interested in serving on the Committee.

**2. Approval of Minutes from the May 3, 2024 meeting.**

Upon motion by Mike Tarrant, seconded by Laura LaRosa, the minutes of the May 3, 2024 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 the July 2022 meeting to wait until appeal is decided before making changes. The case was argued in April 2023. There are no updates. Teri Corsones spoke with the State's current counsel, who thinks the delay may be attributable to concurring or dissenting opinions.

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

Prior to the May 2024 meeting, J. Dooley met with Rep. LaLonde and legislative counsel to explore addressing this issue through legislation in next session. At the May 2024 meeting, J. Tomasi indicated he would reach out to the Criminal Rules Committee to explore forming a joint committee to discuss a proposed approach to these case types.

The Criminal Rules Committee expressed interest, but the meeting that convened over the summer did not have a quorum. They are meeting again soon and will re-raise the issue. A subcommittee of J. Dooley, J. Tomasi, and Laura LaRosa met over the summer. The subcommittee's preliminary thoughts are that subpoena duces tecum requests should be public. With NTOs, there was a question whether to treat them like search warrants due to concerns about loss of evidence. However, the subcommittee leans in favor of making these public, perhaps with a mechanism for the court to make a particular request nonpublic if justified by circumstances. As for inquests, the subcommittee is still on the fence and would like input from the Criminal Rules Committee. Justice Dooley noted that inquests are the trickiest because the statute is very old and presupposes that there will be a hearing with a transcript. But the use of inquests has changed dramatically. They are now typically used to get individuals/entities to provide information and no hearing ever takes place. J. Battles commented that he received several inquest requests in a week while sitting in Caledonia Criminal Division, and the court staff do not typically schedule a hearing.

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

Any consideration of changes to address such concerns would likely need to address the limited access set out in 12 V.S.A. § 5, 20 V.S.A. § 2056a, and PACR Rule 5. J. Tomasi spoke with the chairs of the Family and Criminal oversight committees about proposing a fix to the Legislature. He subsequently heard from Chief Superior Judge Zonay that the Court and CAO are looking at this themselves and if they believe there should be a modification, they will be the ones to generate it and will seek input from the committees, including this Committee.

J. Dooley noted that the makeup of the Legislature has changed significantly since this law was enacted, so there might be some appetite for revisiting the issue. Teri Corsones stated that the issue had been raised by the New England First Amendment Coalition. Tanya offered to provide legislative history of the statutes to assist with potential updates.

#### **6. New Business; Set Next Meeting (In Person or Remote).**

There was no new business. The next meeting will be held remotely at 9:00 a.m. on November 22, 2024.