

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

Minutes of Meeting, November 22, 2024

The meeting of the Advisory Committee on the Rules for Public Access to Court Records commenced at approximately 9:00 a.m. via videoconference. Present were Committee Chair Judge Timothy Tomasi and members Justice Cohen, Justice (Ret.) John Dooley, Judge Benjamin Battles, Andrew Watts, Jeannette Eicks, Bob Paolini, Tanya Marshall, Laura LaRosa, Mike Tarrant, Marcia Schels, and Petra Halsema.

1. Chair Tomasi: Meeting Opening

The Committee welcomed a new member, Deputy State's Attorney Andy Watts, who is replacing Tracy Shriver.

2. Approval of Minutes from the September 13, 2024 meeting.

Upon motion by Mike Tarrant, seconded by Tanya Marshall, the minutes of the September 13, 2024 meeting were approved by all members except Andy Watts, who abstained because he was not present at the previous meeting.

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 the appeal is decided before making changes. The case was argued in April 2023. We continue to wait for a decision.

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

A subcommittee of J. Tomasi, Laura LaRosa, and J. Dooley met to discuss this issue. They had some good discussions and came up with a draft rule to address some of the investigative request types, but have been waiting for the Criminal Rules Committee before taking further action. That Committee recently appointed J. Morrissey as a liaison to our subcommittee. J. Dooley explained that he previously discussed the inquest issue with the Chair of the House Judiciary Committee, who was interested in taking it up. J. Dooley stated we should continue to discuss the issue with them because the question

of whether investigative subpoenas should be considered inquests and whether they need some kind of justification is a matter for the Legislature to decide. Andy Watts agreed to join the subcommittee. He noted that the State's Attorneys have some reservations about making changes to the current process. There is a meeting of the State's Attorneys Executive Committee in December, and he would like to poll them to get their position. Upon motion by Mike Tarrant, seconded by Jeannette Eicks, the Committee unanimously voted to add Andy Watts to the subcommittee.

5. Annual Updates to PACR Appendices 5 & 6

Petra Halsema will work with Tanya Marshall to update the rule appendices and will circulate a draft to the Committee before asking the Court Administrator to adopt changes.

6. New Business

Marcia Schels asked the Committee for input on potential changes to the existing system for remote access to civil case files. The Judiciary's IT department is in the process of a project to replace the Public Portal with new technology called Re:search. The new program can limit the number of searches to eliminate use by nonhumans, which was a concern with the Public Portal. The prior Court Administrator decided not to allow access to public documents for anonymous users through the Public Portal. The Judiciary can allow it now for civil cases without concern about scraping by bots. J. Tomasi explained that the Committee was not previously involved in that decision. After clarifying that the issue is whether to give anonymous access to civil documents that have been reviewed and accepted into the system by court staff, the Committee discussed potential benefits and drawbacks. Some members expressed the view that all documents should be accessible by anonymous users, while others expressed concern about use by commercial or non-legitimate actors. Andy Watts suggested that there be some limitations on access to filings in certain case types such as post-conviction relief petitions, because pro se filers often include information in their filings that is supposed to be confidential. J. Dooley noted that there are already limitations on pro se filings, etc. and those could continue. J. Tomasi expressed that the Committee is in favor of transparency for documents that should be public, but it is ultimately up to the Court Administrator. He suggested waiting for the Second Circuit decision in Courthouse News before making any changes to the process for filings that have not yet been reviewed by court staff.

7. Set Next Meeting (In Person or Remote).

The next meeting will be held remotely at 9:00 a.m. on January 31, 2025.