STATE OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR

Administrative Directive No. PG-16

State Court Administrator

2021 UPDATE TO APPENDICES TO RULES 5 AND 6 OF THE RULES FOR PUBLIC ACCESS TO COURT RECORDS

The State Court Administrator directs as follows:

1. Pursuant to Vermont Rule for Public Access to Court Records 5(h), the appendix to Rule 5 is amended as follows (new matter underlined; deleted matter struck through):

Note: Listed below are provisions of statutes and court rules that may grant a specific right of access to judicial branch case records for which public access otherwise is limited, along with a summary of each. The summaries are provided for reader convenience and are not legally binding. Readers should review the text of the statutes and court rules before applying them. This list may not include all such specific rights of access.

APPENDIX to Rule 5: Statutes and Court Rules Providing Specific Right of Access to Court Records

Citation	Description
3 V.S.A. § 163(e)(3)	A special index of juvenile cases expunged after completion of diversion together with expungement orders is confidential except by petition of the person who is the subject of the case or permission of the Chief Superior Judge for research purposes pursuant to the Rules for Public Access to Court Records.
3 V.S.A. § 164(g)(3)(C)	A special index of criminal cases expunged after completion of diversion is not publicly accessible except by petition of the person who is the subject of the case or permission of the Chief Superior Judge for research purposes pursuant to the Rules for Public Access to Court Records.
12 V.S.A. § 1705	Any document bearing true name of subject of proceeding as to disclosure of HIV counseling and testing information may be disclosed only to parties with a compelling need to know and then sealed at conclusion of the proceedings.
13 V.S.A. § 1460(a)	Records in cases seeking an injunction against a juvenile to stop hate-motivated conduct are made nonpublic by incorporation of 33 V.S.A. § 5117, including its specific access provisions.
13 V.S.A. § 4824	A finding that a person is mentally ill and dangerous to himself or others is not publicly accessible under

	18 V.S.A. § 7103 but must be provided to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993.
13 V.S.A. § 5236(f)	Financial information provided by a defendant pursuant to 13 V.S.A. § 5236(d), (e) is not publicly accessible in the trial and Supreme Court but is available for review by the person who submitted it.
13 V.S.A. § 5566(c)	DNA profile information related to a petition for postconviction DNA testing is confidential. except for use and dissemination consistent with 13 V.S.A. § chapter 182 and 20 V.S.A. chapter 113.
13 V.S.A. § 7606(d)(3)	A special index of criminal cases expunged by court order pursuant to Chapter 230 of Title 13 is not publicly accessible except by petition of the person who is the subject of the case or permission of the Chief Superior Judge for research purposes pursuant to the Rules for Public Access to Court Records.
13 V.S.A. § 7607	A special index of criminal cases sealed by court order pursuant to Chapter 230 of Title 13 is not publicly accessible except by petition of the person who is the subject of the case or permission of the Chief Superior Judge for research purposes pursuant to the Rules for Public Access to Court Records.
14 V.S.A. § 2	A will filed with the probate division for safekeeping is not publicly accessible during the life of the testator but may be accessed by others in accordance with instructions of the testator and by the testator's duly authorized legal guardian or attorney-in-fact in the presence of the judge or register.
14 V.S.A. § 3067(e)	Professional evaluation of the need for a guardian is confidential except that it will be provided to the respondent, the respondent's attorney, the petitioner, and the guardian upon appointment, and the court may determine that "any other individual, including the proposed guardian" has a "strong interest in the welfare of the respondent" and allow access to that person.
14 V.S.A. § 3098(c)	Information regarding a child's immigration status related to a petition for classification as a special immigrant juvenile is confidential, provided that it is available for inspection by the court, the subject child, the parties, their attorneys, and the child's counsel and guardian.
15A V.S.A. §§ 3-203, 3-208, 6-102, 6-104	Title 15A provides for adoption proceedings, relinquishment proceedings, proceedings to terminate parental rights in certain circumstances and proceedings to gain certain information relating to an adoption. For all these proceedings, the in-court

	events are closed to the public and the records are nonpublic. However, some statutory provisions allow designated nonparties, and parties in some circumstances, to have access to records that may be possessed by the court in specified circumstances.
18 V.S.A. § 5112(c)	Records of a proceeding where the probate division authorizes a new birth certificate because of a change of sex are not publicly accessible; however, one may have access to one's own records.
18 V.S.A. § 7103	Proceedings under Part 8 of Title 18—generally mental-health and developmental-disabilities related proceedings—are closed to the public and the records of the proceedings are nonpublic. The statute provides that certain persons have a specific right of access generally or to specific records or information.
18 V.S.A. §§ 9306(c), 9309(b)	Records in proceedings to appoint a guardian for a person who is developmentally disabled are not publicly accessible except where the respondent or the representative of the respondent consents to access by a person.
28 V.S.A. §§ 204, 204a; V.R.Cr.P. 32(c)	Generally, presentence investigation reports, including any supervised-community-sentence plan, 28 V.S.A. § 352(c), are nonpublic, 28 V.S.A. § 204(d)(1). The court may allow inspection of the presentence investigation report or parole summary or parts thereof by other persons having a proper interest, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful, 28 V.S.A. § 204(d)(2)(B), or by a state or federal prosecutor conducting a criminal investigation if the court finds that the records may be relevant to the investigation. Id. § 204(f).
33 V.S.A. §§ 5110, 5117, 5118, ~~and~~ 5119, 5122	Records in juvenile proceedings are generally nonpublic, subject to an extensive list of persons who have a specific right of access to some of or all the information under circumstances described in the statutory sections.
V.R.Cr.P. 6(e)	A transcript of proceedings before the grand jury is not publicly accessible and "records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent disclosure of a matter occurring before a grand jury." V.R.Cr.P. 6(e)(5). Limited exceptions apply to other prosecuting attorneys and on court order.
Rules Governing Establishment and Operation of the Professional Responsibility Program,	Records related to complaints to the lawyer professional responsibility program are not publicly accessible before the filing of a formal disciplinary proceeding. The Professional Responsibility Board

Administrative Order No. 9, Rule 12~~(F)~~	may provide access to (a) A lawyer or judicial admission or disciplinary agency of this or another jurisdiction or (b) Any agency or person to which the attorney has submitted a waiver of confidentiality. Deliberations and work product of the Board, hearing panel, and their counsel remain confidential. Proceedings related to disability inactive status are confidential. Effective April 1, 2021, Rule 12 is renumbered Rule 16. New Rules 7(D) and 8 make the operations of the Bar Assistance Program confidential, subject to limited disclosure exceptions.
Rules for the Disciplinary Control of Judges, Rule 6(7), (9)	Records of the Judicial Conduct Board are nonpublic unless a formal disciplinary complaint is filed against a judge. If a disciplinary matter has proceeded beyond the stage of an initial inquiry, the chair may provide information about the proceedings to officers involved in impeachment, retention, or judicial appointment proceedings.
Rules Governing the Assignment and Payment Therefore by the Defender General, Administrative Order No. 4 § 5	Any proof of income furnished in support of eligibility for public defender services is confidential, but available for review by the clerk, judicial officer, and person who submitted.
Rules Governing Qualification, List, Selection and Summoning of All Jurors, Rules 4(c) & 10; 4 V.S.A. § 955; V.R.Cr.P. 24(a)(2); V.R.C.P. 47(a)(2)	Certain information about jurors and provided by jurors in response to a questionnaire is not publicly accessible. Any electronic record of questionnaire responses is not publicly accessible. The information is available to the parties, and the "physical record" of the information is publicly available with names and addresses redacted.

2. Pursuant to Vermont Rule for Public Access to Court Records 6(b)(1), the appendix to Rule 6 is amended as follows (new matter underlined; deleted matter struck through):

Note: Listed below are provisions of statutes and court rules that may limit access to judicial branch case records, along with a summary of each. The summaries are provided for reader convenience and are not legally binding. Readers should review the text of the statutes and court rules before applying them. This list may not include all such limitations on access.

APPENDIX to Rule 6: Statutes and Court Rules Providing Restrictions or Prohibitions on Public Access to Judicial-Branch Records

Citation	Description
2019, No. 167 (Adj. Sess.), § 31(f) (uncodified)	A special index of expunged marijuana criminal history records, and related materials, is confidential.
3 V.S.A. § 163(e)(3)	A special index of juvenile cases expunged after completion of diversion together with expungement orders is confidential.
3 V.S.A.§ 164(g)(3)(C)	A special index of criminal cases expunged after completion of diversion and records sealed under a prior version of the statute are not publicly accessible.
8 V.S.A. § 7043	Summary proceedings related to the seizure of delinquent insurers are confidential.
9 V.S.A. § 2480ff(8), (9)	In a proceeding for a transfer of structured settlement payment rights, certain documents may or must be filed under seal automatically making them nonpublic.
9 V.S.A. § 4605	In an action under the Trade Secrets Act, 9 V.S.A. §§ 4601–4609, the secrecy of the alleged trade secret shall be preserved.
12 V.S.A. § 522(b)	Civil complaint alleging childhood sexual abuse sealed until answer is served or court rules on motion to dismiss. If dismissed, complaint remains sealed.
12 V.S.A. § 1646(b)	In a civil action arising from alleged wrongful sexual activity, court determines admissibility of evidence of sexual conduct at in camera hearing, at which all objections are raised.
12 V.S.A. § 1705	Proceeding as to disclosure of HIV counseling and testing information held in camera unless court orders otherwise. Subject referred to in pleadings by pseudonym. Any documents with true name not disclosed other than to parties with a compelling need to know and then sealed at conclusion of the proceedings.
13 V.S.A. § 1460(a)	Records in cases seeking an injunction against a juvenile to stop hate-motivated conduct are made nonpublic by incorporation of 33 V.S.A. § 5117.
13 V.S.A. § 3255(b)	In a prosecution for a sexual assault, lewd and lascivious conduct, human trafficking, or for abuse or exploitation of a vulnerable adult, if a defendant proposes to offer evidence of prior sexual conduct, the defendant must notice of such intent, and the court determines admissibility at in camera hearing, at which all objections are raised.
13 V.S.A. § 3256(j)	Records of court proceedings for testing a defendant or offender for infectious diseases, and the test result for the defendant or offender, are nonpublic by virtue of automatic sealing.
13 V.S.A. § 5236(f)	Financial ~~Information~~ information provided by a defendant pursuant to 13 V.S.A. § 5236(d), ~~&~~ (e) is not publicly accessible in the trial and Supreme Court.

13 V.S.A. § 5566(c)	DNA profile information related to a petition for postconviction DNA testing is confidential.
13 V.S.A. § 7043(c)(3)	If defendant seeks, for purposes of restitution hearing, to view medical and mental health records submitted to the Victims Compensation Board, the prosecuting attorney shall file the records with the court under seal, and the court will determine in camera whether to order disclosure.
13 V.S.A. § 7606(d)(3)	A special index of criminal cases expunged by court order pursuant to Chapter 230 of Title 13 is not publicly accessible.
13 V.S.A. § 7607	Records in cases sealed by court order pursuant to Chapter 230 of Title 13 are not publicly accessible. A special index of criminal cases sealed by court order pursuant to Chapter 230 of Title 13 is not publicly accessible.
14 V.S.A. § 2; V.R.P.P. 77(e)(1), (2), V.R.P.P. 80.4	A will filed with the probate division for safekeeping, and the index entry of such a will, are not publicly accessible during the life of the testator, as provided in 14 V.S.A. 2(e). The register may reveal the existence of a will as provided in V.R.P.P. 80.4(b).
14 V.S.A. § 3067(e)	Professional evaluation of need for guardian is confidential.
14 V.S.A. § 3068(e)	If the court finds after a guardianship proceeding that the person is not in need of guardianship, the records of the proceeding become nonpublic by virtue of automatic sealing.
14 V.S.A. § 3098(c)	Information regarding a child's immigration status related to a petition for classification as a special immigrant juvenile is confidential.
15 V.S.A. § 788(c)	In all cases in which an order for relief from abuse has been entered, address and employment information provided to the court for child support purposes is confidential.
15 V.S.A. § 1079(e)	Information provided about child under UCCJEA is confidential (filed under sealed) if party alleges that the information would jeopardize child's health, safety, or liberty.
15A V.S.A. §§ 3-203, 6-102, 9-101(h)	Title 15A provides for adoption proceedings, relinquishment proceedings, proceedings to terminate parental rights in certain circumstances and proceedings to gain certain information relating to an adoption. For all these proceedings, the in-court events are closed to the public and the records are nonpublic.
18 V.S.A. § 5112(c)	Records of a proceeding where the probate division authorizes a new birth certificate because of a change of ~~gender~~ sex are not publicly accessible.
18 V.S.A. § 7103	Proceedings under Part 8 of Title 18--generally mental-health and developmental-disabilities related proceedings and sterilization--are closed to the public and the records of the proceedings are nonpublic.
18 V.S.A. § 8713	All records of a sterilization proceeding are nonpublic by virtue of being sealed unless requested to be opened by the

	respondent (note these proceedings are also covered by 18 V.S.A. § 7103).
18 V.S.A. §§ 9306(c), 9309(b)	Records in proceedings to appoint a guardian for a person who is developmentally disabled are not publicly accessible (note these proceedings are also covered by 18 V.S.A. § 7103).
18 V.S.A. § 9472(c)(1)(A), (c)(5)(A)	Health insurer seeking to disclose, without consent, financial and utilization information, or financial arrangements with drug manufacturers, designated confidential by a pharmacy benefit manager, in a case under the Consumer Protection Act, must file that information with the court under seal.
20 V.S.A. § 2056a(c); 28 CFR § 20.33(b)	Criminal History Records obtained through the National Criminal Information Center, as provided in 20 V.S.A. § 2056a(c), are not considered publicly accessible by that agency, 28 CFR § 20.33(b). Disclosure of such records may result in cancellation of access to them.
23 V.S.A. § 1098(b)	The record of certain cases in the Judicial Bureau where defendant admitted or did not contest a violation prior to January 1, 2007 are required to be sealed making them nonpublic.
28 V.S.A. §§ 204, 204a; V.R.Cr. P. 32(c)	A presentence report, pre-parole report, or supervision history, including any supervised community sentence plan, which is part of a presentence report pursuant to 28 V.S.A. § 352(c), is not publicly accessible as a court record, subject to exceptions in § 204 and V.R.Cr.P. 32(c).
32 V.S.A. § 632(b)(1)	A false claim action brought by a relator must be filed under seal and remain under seal for at least 60 days after being served on the attorney general rendering the complaint nonpublic.
33 V.S.A. §§ 5110, 5117, 5118, ~~and~~ 5119, 5122, 5281, 5283; V.R.F.P 1(i)(3)	Records in juvenile proceedings are generally nonpublic.
V.R.Cr. P. 6(e), 13 V.S.A. § 4134	A transcript of proceedings before the grand jury is not publicly accessible and "records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent disclosure of a matter occurring before a grand jury." V.R.Cr.P. 6(e)(5).
Judicial Ethics Committee, Administrative Order No. 35 § 6	Unless otherwise ordered by the Supreme Court, all records are confidential but for redacted advisory opinions approved for publication.
Rules Governing Establishment and Operation of the Professional Responsibility Program, Administrative Order No. 9, Rule 12~~(F)~~	Information related to complaints to the lawyer professional responsibility program is not publicly accessible before filing of a formal disciplinary proceeding. Deliberations and work product of the Board, hearing panel, and their counsel remain confidential. Proceedings related to disability inactive status are confidential. Effective April 1, 2021, Rule 12 is renumbered Rule 16. New Rules 7(D)

	and 8 make the operations of the Bar Assistance Program confidential.
Rules for the Disciplinary Control of Judges, Rules 6(7), 6(11), 8, 11	"All papers, files, transcripts and communications in proceedings before the Board shall be confidential"; however, "after the service of a Formal Complaint upon a judge, the Formal Complaint, all subsequent pleadings, exhibits and rulings of the Board, and any hearing related to the Formal Complaint, shall be public." Annual reports to the Supreme Court and closure reports are publicly accessible.
Rules Governing the Assignment and Payment Therefore by the Defender General, Administrative Order No. 4 § 5	Any proof of income furnished in support of eligibility for public defender services is confidential.
Rules Governing Qualification, List, Selection and Summoning of All Jurors, Rules 4(c ~~d~~) & 10 ~~11~~; 4 V.S.A. § 955; V.R.Cr.P. 24(a)(2); V.R.C.P. 47(a)(2)	Certain information about jurors and provided by jurors in response to a questionnaire is not publicly accessible. Any electronic record of questionnaire responses is not publicly accessible. The information is available to the parties, and the "physical record" of the information is publicly available with names and addresses redacted.
Rules of Civil Procedure, Rule 39(e)	"Any notes taken by jurors during a trial shall remain confidential to the jury and shall not be admissible in evidence for any purpose."
Rules of Professional Conduct, Rule 1.17(c)(3)	Certain information about representation of a client provided to court in relation to sale of law practice is nonpublic due to in camera submission.

3. The revised appendices will be published with the rules.

This directive is effective immediately.

Dated this 1st day of February, 2021

Patricia Gabel, Esq.
State Court Administrator