

VERMONT LAW SCHOOL

November 16, 2020

Honorable Walter Morris (Ret.)
Reporter
Vermont Supreme Court Advisory Committee on Rules
for Public Access to Court Records
Vermont Supreme Court
Montpelier, VT 05609

Sent by e-mail to Walter.Morris@vermont.gov

Dear Judge Morris,

On behalf of the Vermont Supreme Court's Advisory Committee on Rules of Civil Procedure, I transmit to you the following comment on the Proposed Amendments to Rule 6(b) of the Vermont Rules for Public Access to Court Records, Rules 4(c) and 10 of the Vermont Rules Governing Qualifications, List, Selection and Summoning of All Jurors, Rule 24(a)(2) of the Vermont Rules of Criminal Procedure, and Rule 47(a)(2) of the Vermont Rules of Civil Procedure, sent out for comment on September 16, with comments due on November 16, 2020.

At its meeting on November 6, 2020, The Civil Rules Committee voted unanimously to submit a comment asking that the proposed amendment adding Rule 10(b)(1) to the Rules Governing Qualifications, List, Selection and Summoning of All Jurors Rules governing access to juror questionnaires be revised to make clear that law firms are permitted to circulate multiple copies of juror questionnaires internally to enable them to prepare for voir dire and to avoid conflicts of interest.

Committee members were concerned that proposed Rule 10(b)(1) may be read to prohibit the duplication of individual jurors' questionnaires for internal circulation within a law firm for those purposes.. Specifically, the last sentence of proposed Rule 10(b)(1) provides that "Except in preparation for, and in the conduct of voir dire, jury selection and the exercise of challenges, the parties and their attorneys must keep juror questionnaire information in confidence, and must not duplicate, distribute, or publish the information."

Law firms regularly have multiple copies of the questionnaires circulating in their offices as lawyers and staff review them to obtain information helpful for effective voir dire. That review is also necessary to identify and avoid conflicts of interest between all attorneys in a firm and the firm's clients. Without seeing all of the identifying information for potential jurors, attorneys in larger firms may have difficulty recognizing individuals that work for institutional clients, especially for potential jurors with more common names. The remainder of the last sentence prohibits distribution and publishing. The word "duplicate" serves no independent

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function. An appropriate solution might be to amend the last sentence of Rule 10(b)(1) to read as shown by strikeouts and underlining as follows:

Except in preparation for, and in the conduct of voir dire, jury selection and the exercise of challenges, and to identify conflicts of interest, the parties and their attorneys must keep juror questionnaire information in confidence, and must not ~~duplicate, distribute, or~~ publish the information except as necessary for communication within the attorneys' law firm regarding those purposes. .

The Reporter's Notes could spell out the practice needs and conflict issues in more detail.

I or members of the Civil Rules Committee will be glad to answer any questions that you may have.

Sincerely yours,

Kinvin

L. Kinvin Wroth
Professor of Law Emeritus
Reporter, Advisory Committee on Rules of Civil Procedure

cc: Members of the Civil Rules Committee