

State v. Sayers, No. 36-1-07 Wncv (Teachout, J., Mar. 15, 2007)

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**STATE OF VERMONT
WASHINGTON COUNTY**

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| STATE OF VERMONT, |) | |
| Plaintiff, |) | Washington Superior Court |
| |) | Docket No. 36-1-07 Wncv |
| v. |) | |
| |) | |
| ROSANN SAYERS, et al., |) | |
| Defendants. |) | |

**DECISION
Motion to Seal Complaint**

The controversy in this case relates to which of the defendants are entitled to the balance of a deceased state employee’s retirement account, and in what proportion. The State has filed a motion to seal the complaint for interpleader principally because it includes personal financial information.

Ordinarily, the Office of the Vermont State Treasurer would not disclose personal financial information to the public, pursuant to 1 V.S.A. § 317(c)(7). That subsection is part of the Access to Public Records Act, 1 V.S.A. §§ 315–320. It prevents the agency from allowing access to, among other things, “information in any files related to personal finances . . . concerning any individual.”

The Rules for Public Access to Court Records, however, make a distinction between administrative records and case records. With regard to the judiciary’s administrative records, the basic process, as well as the exemptions, of the Access to Public Records Act applies. See Public Access Rule 5; see also 1 V.S.A. § 317(a) (defining the entities subject to the Public Records Act to include any “branch”).

With regard to case records, the process and exemptions of the Rules for Public Access to Court Records apply instead. See Public Access Rule 6. There is no exemption in the Rules that is analogous to the portion of 1 V.S.A. § 317(c)(7) that the State would usually rely on to not disclose the financial information involved in this case. The Rules include a catch-all provision exempting from access “[a]ny other record to which public access is prohibited by statute.” Public Access Rule 6(b)(34). However, reading Rule 6(b)(34) to draw in the exemptions of the Access to Public Records Act would merely cancel the distinction in the Rules between

administrative records and case records in opposition to the obvious purport of the Rules as a whole.

Once the personal information in this case was filed in court, it became a case record subject to the Rules for Public Access to Court Records, not the Access to Public Records Act.

The court has authority to make a case-specific ruling to prevent access in exceptional circumstances notwithstanding the lack of an applicable ordinary exemption. Public Access Rule 7. However, the Reporter's Notes caution that this relief should not be used to create new categories of exceptions. In this case, the financial information appears to be ordinary, personal financial information; the circumstances do not appear to be exceptional. The State argues that concerns regarding identity theft also suggest confidentiality. However, social security numbers and employee identification numbers already have been redacted. The basis for the concern is unclear. There does not appear to be any basis for a Rule 7 exemption.

ORDER

For the foregoing reasons, the motion to seal is denied.

Dated at Montpelier, Vermont this ___ day of March 2007.

Mary Miles Teachout
Superior Court Judge