

[As approved by Committee on September 20, 2019]

**VERMONT SUPREME COURT
SPECIAL ADVISORY COMMITTEE ON
VERMONT RULES FOR ELECTRONIC FILING
Minutes of Meeting
April 17, 2019**

The meeting of the Special Advisory Committee on Vermont Rules for Electronic Filing (VREF) commenced at approximately noon at the Supreme Court in Montpelier. Present were committee members John Dooley (Chair), Judge Tom Durkin, Jeff Loewer, Chasity Stoots-Fonberg, Teri Corsones, Esq. (via phone), Judge Kate Hayes, Tari Scott, Dawn Sanborn, and Emily Wetherell, Esq. Also present were Supreme Court liaison Justice Beth Robinson, and Committee Reporter Judge Walt Morris (via phone). Absent were committee members Judges David Fenster, and Beth Mann; Eric Avildsen, Esq. and Susan Steckel, Esq.

The draft minutes of the April 16, 2019 Committee meeting were distributed to Committee members in advance of the meeting, but there was no discussion, or action taken, with respect to them.

Business Conducted:

The Committee continued its review of amendments to the VREF, employing a revised April 17 “B” draft document prepared by Chair Dooley incorporating changes from the April 12 and 16 meetings.

The Chair began with a revisiting of the provisions of Rule 3 (Registered Filers) for “viewing only” public access. After the Chair’s discussions with members of the project team as to capabilities of Odyssey, the recommendation was made to delete references to the phrase “that are not remotely accessible” as it appears in Rule 3(a)(line 2) and 3(d)(lines 2-3). The Committee discussed the distinctions (filing vs. viewing) and the system’s capabilities and requirements. While there will be a separate “login” procedure for viewing only, registration requirements for e-filing will differ. There was a return to the related discussion of the use of email addresses in the context of registration for e-filing, and Teri Corsones’ previously expressed concerns as to law firm ability to use multiple email addresses; it appears to be the case that Odyssey will require a single email address, and not authorize multiple email addresses in the e-filing system. As previously noted, the caption of Rule 3 is to be changed from “Registered Filers” to “Required Electronic Filings; Exceptions”.

Rule 4 edits/changes: The Chair quickly noted additional proposed changes to Rule 4, which has been the subject of extensive prior committee discussions. In addition to changes noted in the minutes of April 16, these included deletion of reference to fee payment in 4(a), last sentence (payment of fees to be address in the revision of proposed Rule 8); and the substitution of “these rules” for the specific citation to “subdivision (g)”;

Rules 6(b), 7 and 8” in the second line of subsection (d). The Chair noted that changes to Rule 4(f)(4) (separate or combined filing of memoranda of law, affidavits, exhibits, supporting matter) would have to be revisited in consideration of an alternative proposal to be prepared by Judge Fenster.

The Committee then turned to the principal item of discussion for the April 17th meeting, proposed amendments to Rule 11 (Service). As to Rule 11(a) “original” notice, the Committee decided to delete reference to the term “original”, in favor of a clarifying description of “notice of commencement” of an action or proceeding in line 1. The Committee agreed that all process/notice required for the commencement of an action must continue to be via non-electronic means, and consistent with applicable rules of procedure (which do include provision for waiver of notice/service, such as in V.R.C.P. 4(l)). The Committee previously agreed to include express reference to waiver or acceptance of service as reflected in the last sentence of the draft of Rule 11(a).

A minor, typographical change was made to Rule 11(b) (reference to “register” filers at the end of line 5 is changed to “registered”.) 11(b) addresses post-commencement service. There was discussion of issues related to this. First, it was noted that a requirement of electronic service only applies with respect to service between registered filers. A self-representing party, opting not to e-file, would not be subject to the provisions of post commencement e-service, the rules of procedure applicable to service in the type of proceeding would apply. It was noted that a non-registered party could certainly opt to e-file and be subject to e-filing service requirements in the course of a proceeding if not initially. Also, that based upon e-Cabinet experience, there may be more self-representing parties electing to engage in e-filing than anticipated. As to Odyssey capabilities, the Committee considered the distinctions between the “File and Serve” and “Service only” functions. While “File and Serve” is accomplished with payment of the single registration fee, there is an additional fee for “Service Only” (for such documents as discovery requests and answers and the like) of approximately \$5-6.00 per use. Parties may, or may not, choose to use the “Service Only” function, incurring the additional fee. One advantage to the “Service Only” function would be seen in cases with multiple parties, as an unlimited number of parties may be served using “Service Only”, in contrast to the cumulative expense of alternative means of service. After discussion, the Committee decided that a clarifying Reporter’s Note as to these issues, the “Service Only” function, and alternative means of post-commencement service, should be added.

No change has been recommended to subsection 11(c); as to subsection 11(d)(documents filed by the court; particular service required upon registered filers), the Committee agreed to clarify the existing text as follows:

“(d) Any notice, order or other document filed by the court and required to be served on parties shall be served on registered filers ~~by the method specified through the electronic filing system with which will provide~~ notice stating how the recipient may view the notice, order or document.”

Again, it was noted that subsection 11(d) only applies to registered filers, requiring service upon non-registered filers in the manner required by applicable rules of procedure.

“New” proposed subsection 11(e) (Certificates of Service). The Chair reviewed an added subsection, providing as follows:

“(e). When service is made pursuant to subdivisions (b) or (c), the filing shall be accompanied by a certificate of service complying with V.R.C.P. 5(h) or V.R.P.P. 5€, as applicable. The filer may combine a certificate of service with a certificate of compliance with the Rules of Public Access to Court Records and may incorporate both into the final page of a document being served, provided that each document being filed and served must contain a separate certificate of compliance with the Rules for Public Access to Court Records.”

It was noted that while the “separate certificate” requirement could prove cumbersome in a given case, such a certification is clearly required in electronic filing by PACR Rule 7(a)(1), in an effort to assure sorting of non-public information from publicly accessible information by filers. The text does serve to authorize the combination of the certificate of service and the certificate of compliance with PACR. Beyond this observation, there was no objection to the addition of the 11(e) certificate of service provision to the draft.

The meeting closed with Chair Dooley’s indication that the focus of the Thursday, April 18th meeting would be on completion of review of any remaining rules, to include Rules 8 (Fees); 9 (Redaction); 10 (Access to Electronic Case Files); and 12 (Definitions).

The meeting was adjourned at approximately 1:00 p.m., to be reconvened on Thursday, April 18th at noon.

Respectfully submitted,

Walter M. Morris, Jr.
Superior Court Judge (Ret.)
Committee Reporter