

As Approved by Committee on September 20, 2019

**VERMONT SUPREME COURT
SPECIAL ADVISORY COMMITTEE ON RULES FOR
ELECTRONIC FILING
Minutes of Meeting
April 12, 2019**

The Special Advisory Committee on Rules for Electronic Filing meeting commenced at 9:10 a.m. at the Supreme Court in Montpelier. Present was Committee Chair Justice John Dooley (Ret.), Supreme Court Liaison Justice Beth Robinson, Judge Kate Hayes, Judge David Fenster, Judge Tom Durkin, Teri Corsones, Jeff Loewer, Eric Avildsen, Chasity Stoots-Fonberg, and Tari Scott. Participating in the meeting via telephone was Committee Reporter Judge Walter Morris. Also present were Emily Wetherell and Dawn Sanborn. Absent were members Judge Brian Grearson, Judge Beth Mann and Sue Steckel. Teri took minutes for the meeting at Judge Morris's request.

Justice Dooley opened the Committee meeting. He noted that although the Supreme Court will not be part of the new NGCMS until later in the roll out, it will receive appeals from cases that were e-filed in the meantime. Emily is noting questions that pertain to how the Court should process such cases. She said that the Court is meeting on April 29 to discuss the questions.

1. Review of current VREF draft re service questions.

Justice Dooley referred to a Memorandum regarding Service that he sent members on April 12, 2019. Service of the initial documents in a case will not change with the new Odyssey e-filing system. Service of "post-commencement" documents will change. Justice Dooley asked Chasity for a demonstration on April 11 of how the service function will work with the new system, so that the rules can reflect the new process. Chasity explained that a demo of the service function was not yet available. She is still awaiting answers from Odyssey about the service function, as well as answers to other critical questions. Justice Dooley indicated that because the answers are not yet available, the rules will necessarily need to be general in nature and will likely need modification as the service details become known.

Members discussed the present method for serving post-commencement documents. Parties file a document with the court, deliver a copy of the document to all others entitled to service, and file a certificate of service with the court detailing the recipients of the service and the manner of service. Justice Dooley noted that for the past two years there has been a requirement that a filer's email address be included with every filing. It is unclear whether or how filers' e-mail addresses will be accessible through the new system. Jeff indicated that it's possible that a filer's e-mail address may be considered personal identifying information in the future.

Chasity explained that the Odyssey system anticipates a filer of post-commencement documents to e-file the document in the system, and a “Service” feature will result in an e-mail notification to persons entitled to service. The e-mail tells the recipient that there has been a filing in the case. It doesn’t indicate what the filing is. The recipient is then expected to log on to Odyssey to view and download the filing. Filers consent to this method of service when they register to e-file. Justice Dooley believes that this method of service was developed to avoid filers e-mailing confidential documents to other filers.

Members discussed at length whether the Odyssey service function should be the sole required system for service of post-commencement documents, whether the current system should be the required system, or whether a combination of the two should be permitted. After some discussion, Judge Fenster suggested that the Odyssey system should be the required method of service for e-filed post-commencement documents. Members unanimously agreed. If filers wish to serve documents via other methods as a supplemental method of service, that will be at their discretion. Members also agreed that filers need not include their e-mail addresses on all pleadings when e-filing in the new system.

Justice Dooley indicated that the rules of procedure will need to be amended to reflect the new method of service. In order to meet the roll out deadlines, the Supreme Court may need to propose the rule changes, instead of the Rules Committees. There is precedent for this happening.

Chasity also explained that filers who wish to serve others with documents that aren’t filed with the court, such as discovery, can use the Odyssey serve function for that purpose.

Members discussed how the service rule change would impact Certificates of Service. Chasity indicated that in RI, an option for electronic service through the Odyssey system is included in the Certificate of Service form. Justice Dooley indicated that the Certificate of Service form will also likely need to include the Rule 6 certification that the document being filed is either public or non-public, since the new system will not allow the “check boxes” approach currently available in eCabinet. (Currently in eCabinet, a filer checks the “complies with Rule 6” or “doesn’t comply with Rule 6” box when e-filing a document with the court and follows the prompts for filing a redacted document if a document doesn’t comply with Rule 6.)

2. Review of current VREF draft re Rule 3.

Justice Dooley reviewed Rule 3 in the VREF draft attached to his April 9, 2019 email to members. The April 9 email specified the changes that had been made to the draft as a result of the April 8 committee meeting, including adding a sentence at the end of 3(a) regarding the responsibility of an e-filing party to go to the electronic case file to view filed documents. Justice Dooley suggested, and members agreed, that the new last sentence should be moved to Rule 11, and that the phrase “filer registrant” should be replaced by “recipient”.

With respect to 3(b), Justice Dooley noted that the word “Vermont” was added to the first sentence. Members inquired about and learned that interns and pro hac vice admittees receive a license number. Members agreed to shorten the new second sentence to read:

“Registration must include the information required on the registration screen displayed on the website.” Similarly, members agreed to shorten the new third sentence to provide: “The registration email address is the address to which the e-filing system sends notice of filings by other parties.”

Judge Fenster explained that the new system actually includes two separate “buckets” of information, one for e-filers to file documents with the court, and the second for the court to deliver court-generated documents (notices of hearing, orders, etc.) to parties and others associated with a case. Separate registrations are apparently needed for the two buckets. An e-filer can only view non-court-generated documents in the first bucket (the “file and serve” bucket), but can view all documents associated with a case in the second bucket (the “portal” bucket). Members discussed the question of whether e-filers should be required to use the same e-mail address for the two registrations and agreed that would be the more logical requirement. This should be addressed in the Reporters’ Notes. Members commented at length on this and other cumbersome aspects of the system.

Chasity explained that the question of how the system will notify filers of court-generated documents is still in development. A meeting has been set up for April 24 to view the portal screens. Members expressed concern that the Judicial Bureau “go live” date is June 3, when there appears to be so much uncertainty about processes.

Judge Fenster offered to resurrect a subcommittee of persons to work on draft rules for the Judicial Bureau; he has started a draft. Justice Dooley indicated the draft JB rules will need to be completed by May 10. Judge Fenster will circulate a set of the draft JB rules to members before that date. The Supreme Court will need to issue an emergency order to add the new JB rules to the VREF.

3. Review of current VREF draft re Rule 4.

Justice Dooley reviewed Rule 4 in the VREF draft attached to his April 11, 2019 email to members. The April 11 email specified the changes that had been made to the draft as a result of the April 9 committee meeting, including striking the last sentence of 4(a) regarding payment of a fee, in order to move the sentence to Rule 8. He also re-lettered the subdivisions of Rule 4 to reflect the striking of original 4(d) and made more general what staff will review in new (d). With respect to new (d), members agreed to delete the words “calendar” and “website” from the new third sentence.

With respect to new (e), members agreed to re-word the first sentence to provide: “The filer must follow the instructions of the electronic filing system to provide notice of the filing pursuant to Rule 11 on all parties or persons upon whom service is required by the applicable rules of procedure.”

With respect to new (f)(4) and whether a memorandum of law, affidavit, exhibit, or other supporting matter or required attachment to a motion or response may (or must) be filed as a separate document, Judge Fenster will draft suggested language.

4. Review of current VREF draft re Rule 5.

Justice Dooley reviewed Rule 5 in the VREF draft attached to his April 11, 2019 email to members. In the first sentence of Rule 5(a), the reference to Rule 2(b)(5) will be stricken since that subsection has been removed. In the last sentence of Rule 5(a), “Rule 4(d)” will replace “these rules”.

Judge Hayes suggested removing the first sentence in Rule 5(d) regarding paper filings, and members agreed. Subsections (e) and (f) will be re-lettered (d) and (e).

Emily will work on the logistics regarding the last sentence in new Rule 5(e) regarding requests for permission to appeal. She will also make suggestions about re-formatting the VREF in general, for ease of use.

Justice Dooley was asked to note the latest revision date at the beginning of each new VREF draft, to make it easier to compare drafts. He will do so.

5. Next Committee Dates.

Justice Dooley indicated that lunch time meeting dates appear to be the only option for full committee attendance in the near future. The next committee meeting dates are scheduled for Tuesday, April 16, Wednesday, April 17 and Thursday, April 18 from 12:00 – 1:00 p.m. at the Supreme Court Building in Montpelier. Tari will circulate outlook invites with the location of the meetings and will include a call-in option.

6. Adjournment: The meeting was adjourned at approximately 12:00 p.m.

Respectfully submitted,

Teri Corsones (acting Committee Reporter)

4/14/19