

[As Approved at Committee Meeting on June 5, 2020]

VERMONT SUPREME COURT  
SPECIAL ADVISORY COMMITTEE ON  
RULES FOR ELECTRONIC FILING

**MINUTES OF MEETING, November 8, 2019**

The meeting commenced at approximately 1:30 p.m., with members both present and participating by phone. Present were Judge Kate Hayes, serving as acting Committee Chair at Justice Dooley's request; Chasity Stoots-Fonberg; and Tari Scott. Participating by phone were Teri Corsones; Su Steckel; Andy Stone; and Judges Tom Durkin, Beth Mann and David Fenster. Judge Walt Morris, Committee Reporter was also present. Absent were Justice Dooley, Jeff Loewer, Eric Avildsen and liaison Justice Beth Robinson.

1. Opening; Announcements. Judge Hayes opened the meeting by noting that the principal items of business were Committee review of revisions of Rule 6(c), to address concerns and incorporate the revisions directed by the Committee at the October 16<sup>th</sup> meeting; approval of the final draft text of the proposed 2020 VREF; and approval of transmittal of the proposed rules to the Supreme Court with recommendation for promulgation.

2. Approval of Meeting Minutes. On Motion of Tari Scott, seconded by Beth Mann, the meeting minutes of September 20<sup>th</sup> were unanimously approved.

3. Review, Discussion, and Decision re: Revisions of Rule 6(c).

At its October 16<sup>th</sup> meeting, Committee members revisited the draft text of Rule 6(c), which addresses procedure for court staff processing of nonelectronic filings, acceptance or rejection of these filings, and opportunity to cure a filing rejected for noncompliance with applicable rules. In response to public comment, the Committee had determined at its September 20<sup>th</sup> meeting to add language to the rule to require that upon rejection of a filing, court staff would provide notice of the rejection to the filer, as well as a statement of the reasons for rejection. An explanatory addition was also made to the draft Reporters Note for this subparagraph of the rule. At the October meeting, members expressed concern that nonelectronic filers should have opportunity to cure, or correct a defective filing equivalent to that accorded to electronic filers under proposed Rule 5(d)(3), and upon timely correction, to have the initial attempt to file be established as the filing date. While initially, it was felt that having the same days correction period for correction of both paper and electronic filings might actually serve to prejudice nonelectronic filers (who would be given more time for correction and "relation back"), in view of the lack of uniform standards throughout the units for treatment of rejected paper filings, the Committee concluded that there was a need for more specific standards and protections for nonelectronic filers who are seeking to correct rejected filings. As a result of those discussions, a subcommittee of Chair Dooley, Reporter Morris and Emily Wetherell was directed to present revisions of Rule 6(c) that would accord the same "relation back" period for correction of nonelectronic filings that is provided to electronic filers under Rule 5(d)(3), and address any related issues associated with modes of paper filing and the process of rejection, notice, correction, acceptance and relation back of time of filing upon timely correction.

The subcommittee produced a redraft of Rule 6(c) which was provided to Committee members in advance of the meeting. Reporter Morris provided a review of the text of the redrafted rule, and the

accompanying Reporters Notes, with explanation of how the redraft addressed the concerns expressed by the Committee at its October 16<sup>th</sup> meeting.

To address the disparity concern, the following option was proposed for Committee consideration, consistent with the discussions of September 20 and October 16. This proposal changed two things about the existing version of Rule 6. First, it provided that nonelectronically filed documents are scanned by court staff when they are received. This is now possible because most of the filing requirements that precluded scanning were removed. Second, it incorporated the 7-day provision applicable to electronically filed documents.

Reporter Morris emphasized that with the substantial reduction in formatting requirements for nonelectronic documents under Rule 7 as approved by the Committee, Note that as to corrections for noncompliance with V.R.P.A.C.R. 7(a)(1), the provisions of V.R.P.A.C.R. 7(a)(3) and (4) control (the Court Administrator/reviewer determines date for correction as to public access compliance). The acceptance-and-correction provision relates solely to the electronic filing requirements. Following is a version of the rule showing the proposed changes. The Reporter's Notes were revised to reflect the changes in the rule. See particularly the notes on 6(c):

## **“RULE 6. NONELECTRONIC FILINGS**

(a) **In General.** If nonelectronic filing of a document is permitted or required by these rules, ~~once accepted,~~ court staff will scan the document in PDF format, or other format specified by the Court Administrator, and include it in the electronic file.

(b) **Impermissible Nonelectronic Filing.** If a document that is required to be filed electronically is filed nonelectronically, it will not be accepted or scanned.

### **(c) Court Staff Processing.**

(1) *Court Staff Review.* After scanning, ~~C~~ourt staff will review filings for compliance with these rules and Rule 7(a)(1) of the Rules for Public Access to Court Records.

(2) *Accepting or Rejecting a Filing.* If a filing is rejected because it does not comply with these rules or the Rules for Public Access to Court Records, court staff will provide the filer with notice and the reason for rejection.

(23) *Need for Correcting a Filing* ~~on.~~ If a filing is rejected, ~~does not comply with these rules or the Rules for Public Access to Court Records, the document will not be scanned, and the filer will have an opportunity to correct the filing in a manner provided for other conventionally filed documents~~ the filer may submit a corrected filing within 7 days after receiving notice of the rejection. The court may extend the time for correction for good cause. If the filing is rejected for noncompliance with V.R.P.A.C.R. 7(a)(1), the procedure and time limits for correction will be determined in accordance with V.R.P.A.C.R. 7(a)(3) and (4).

(4) *Filing Date.* When an original or corrected filing has been accepted, the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the original filing was submitted if the corrected filing complied with the time limits in (c)(3).

(5) *Assigning a Case Number.* Court staff will provide a case number for a new filing that has been accepted. The assigned case number must appear on all subsequent filings pertaining to the case.

(d) **Existing Nonelectronic Filings.** When electronic filing is commenced in accordance with a Court Administrator’s directive under Rule 1, the Court Administrator may direct that court staff scan all or part of existing paper filings into the electronic case file.

### **Reporter’s Notes—2019**

Rule 6 sets forth the circumstances and conditions under which nonelectronic documents will be received by the Court generally and treated in relation to the electronic filing system. Subparagraph 6(a) establishes that if a nonelectronic filing is either permitted or required by the rules for electronic filing, it will be scanned in PDF or other format designated by the Court Administrator and included in the electronic case file.

Rule 6(b) is addressed to circumstances in which a filer seeks to file a nonelectronic document which is required to be filed electronically. For example, a self-represented person, who has already electronically filed in a case, may appear at the court seeking to have nonelectronic documents received and filed, either as a matter of convenience, or perceived necessity. Subdivision 6(b) generally provides that a nonelectronic filing that is required to be electronically filed will not be scanned or accepted. Rule 3(b)(3) and (4) allow nonelectronic filing of particular documents or for particular cases for good cause or exceptional circumstances. Of course, an electronic filer’s routine disregard of the requirements for electronic filing may result in appropriate court orders or sanctions, including but not limited to, a requirement that the person must engage exclusively in nonelectronic filing, in a manner consistent with the provisions of Rule 3(c).

Rule 6(c) outlines the procedures for court staff processing of nonelectronic filings. Under paragraph 6(c)(1), court staff scan and then review filings for compliance with the electronic filing rules and V.R.P.A.C.R. 7(a)(1). Under paragraph 6(c)(2), if the filing does not comply, the court will provide the filer with notice and the reasons for the rejection. For nonelectronic filers, this notice will necessarily be sent by nonelectronic means. The scanned filing will be retained electronically pending correction.

Under paragraph 6(c)(3), the filer may submit a corrected filing within 7 days of receiving notice of the rejection. The court may extend the time for good cause. Because the filer’s time to correct is triggered by service of the notice of rejection, under V.R.C.P. 6(e), V.R.P.P. 6(d), and V.R.Cr.P. 45(e), an additional 3 days are added to the time a party must act if service is made by specified means, including by mail. The civil rule is incorporated by reference in V.R.F.P. 4.0(a)(2)(A) and V.R.E.C.P. 3, 4(a)(2), and 5(a)(2). If service is made by mailing, then it is complete upon filing under V.R.C.P. 5(b)(2) and V.R.P.P. 5(b). The civil rule is incorporated by reference in V.R.Cr.P. 49(b), V.R.F.P. 4.0(a)(2)(A), and V.R.E.C.P. 3, 4(a)(2), and

5(a)(2). Note that as to corrections for noncompliance with V.R.P.A.C.R. 7(a)(1), the provisions of V.R.P.A.C.R. 7(a)(3) and (4) control (the Court Administrator/reviewer determines date for correction as to public access compliance). The acceptance-and-correction provision relates solely to the electronic filing requirements. A filing that does not comply with other rule requirements may be subject to different time provisions. For example, the allowance of thirty days to submit an entry fee when a motion to proceed in forma pauperis is denied under V.R.C.P. 3.1(d).

Paragraph (c)(4) provides that when an original or corrected filing has been accepted, the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the original filing was submitted and scanned into the electronic system. Finally, paragraph 6(c)(5) establishes that court staff will assign a case number for a new filing that has been accepted, and that the assigned case number must appear on all subsequent filings pertaining to the case. Where an action may be commenced either by filing, or by service, such as is provided by V.R.C.P. 3, a responsive pleading may be filed prior to filing of the summons and complaint. In this and in like cases, the pleading will be scanned and retained electronically until the corresponding summons and complaint are filed, and the clerk will then open the case and assign a case number.

Rule 6(d) clarifies the status of existing nonelectronic filings when electronic filing begins. The rule contemplates that while conversion of all existing nonelectronic case files to electronic format is not required, the Court Administrator may direct that court staff scan all or part of existing paper filings into the electronic case file. It is anticipated that the decision as to such scanning would consider such factors as the age, volume, and complexities of a given existing paper case file.”

After brief discussion, the unanimous conclusion of the Committee was that the modifications made to the text of the proposed rule, and the draft Reporters Notes, addressed the concerns that had been raised as to perceived disparate treatment of rejected nonelectronic filings. There were no further comments, suggested edits, or objections raised as to the proposed redraft of Rule 6.

#### 4. Review and Approval of Final Text of Proposed Rules to be Recommended for Promulgation; Approval of Transmittal with Recommendation for Promulgation.

After completion of discussion and decision as to the revised text of Rule 6(c), Judge Hayes asked whether there was any other part of the draft proposal that should be revisited. There was no such indication on the part of any Committee member. On motion of Tari Scott, seconded by Beth Mann, the Committee unanimously approved of the final text of proposed rules 1-6, including the last revised text of Rule 6(c). After brief overview of the final text of proposed rules 7-12 (no changes were indicated), on motion of Tari Scott, seconded by Chas Stoots-Fonberg, the Committee unanimously approved of the final text of proposed rules 7-12. Then, on motion of Tom Durkin, seconded by Beth Mann, the Committee unanimously approved of transmittal of the final text of the proposed rules to the Court.

The final draft, incorporating all changes directed in the course of the meeting, will be transmitted to the Court on behalf of the Committee with recommendation for promulgation.<sup>1</sup>

Upon completion of the referenced items of business, the meeting was adjourned at approximately 2:20 p.m. A next meeting date of the Committee was not established.

Respectfully submitted,

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

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<sup>1</sup> The final draft incorporating all changes was circulated to Committee members for last review on November 11<sup>th</sup>. No additional comments or suggested changes were presented by members, and the final draft, with accompanying memorandum detailing public comments received and Committee responses, was transmitted to the Court on November 15, 2019.