

VERMONT SUPREME COURT  
SPECIAL ADVISORY COMMITTEE ON  
RULES FOR ELECTRONIC FILING

**MINUTES OF MEETING, July 10, 2020**

The Committee meeting was convened (via “Teams” video conference) at approximately 1:03 p.m. Present/participating were Chair Justice John Dooley, Judges Kate Hayes, Tom Durkin and David Fenster; Tari Scott; Jeff Loewer; Teri Corsones; and Eric Avildsen. Liaison Justice Beth Robinson, Court Administrator Pat Gabel, Committee Reporter Walt Morris, Emily Wetherell and Andy Stone were also present. Su Steckel, Chasity Stoots-Fonberg and Judge Beth Mann were absent.

Noting the presence of a quorum, Chair Justice Dooley opened the meeting, stating that the principal item of business would be a review of proposed amendments of the 2020 VREF as promulgated, based upon the Committee’s comments and recommended redrafting of revisions following from the June 26, 2020 meeting.

Upon Motion of Judge Hayes, seconded by Judge Durkin, the minutes of the June 5, 2020 Committee meeting were unanimously approved.

**ACTION ITEM: REVIEW OF PROPOSED AMENDMENTS**

The principal item of business was Committee consideration of final draft revisions of VREF Rules 3(b) and 4, following from the June 5<sup>th</sup> and June 26<sup>th</sup> meetings. Redrafts were circulated to Committee members in advance of the meeting. These were taken up, with Committee action on each as follows:

Rule 3 (Required Electronic Filing; Exceptions-Amendment of Three Subsections):

Rule 3(b)(1) (Governmental Agencies)

On June 26<sup>th</sup>, the Committee approved of revised text which clarifies that filers on behalf of government agencies, including non-attorney filers, must efile. The revised text provides that “A document may be filed nonelectronically when: ...(1) the filer, who is not filing on behalf of a government agency, is a self-represented litigant who has not elected to file electronically consistent with subdivision 3(d) and has not filed electronically in the specific case.”<sup>1</sup> There was no substantive discussion on July 10<sup>th</sup>, and the amendment remains in the final version of the amendments for promulgation.

Rule 3(d)(2)-Self Representer Discontinuance of Efiling (Three options considered)

On June 26<sup>th</sup>, the Committee had determined not to make any change in the existing rule, to either categorically prohibit a self-representing efiler from discontinuing that status, or to broaden the rule to permit self-representer discontinuance simply on provision of notice to the court and parties, and not subject to court permission to do so. The existing rule provides that having elected to efile, a self-representer must continue in efiler status throughout the duration of the case, and may discontinue efilings only after obtaining a court order of discontinuance issued for good cause shown, and after

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<sup>1</sup> The latter phrase, “...and has not filed electronically” was subsequently deleted in the redrafting, as duplicative of the preceding reference to 3(d).

prescribed notice to all other parties. On inquiry by Chair Dooley if it remained the consensus of the Committee that there be no amendment, the clear indication was that that was the case—keep this provision of Rule 3(d)(2) as promulgated, without amendment.

#### Rule 3(b)(4) (Exceptions to Efiling; “Courthouse” Stipulations)

This amendment, which had been approved at the June 5<sup>th</sup> meeting, would expressly permit the non-electronic filing of stipulations, agreements, or other case documents created or finalized while parties and or counsel are present at court premises in or related to proceedings, subject to permission of the court. In review on July 10<sup>th</sup>, only one change was made, to delete the word “judicial” in modifying “proceedings”, as the Committee consensus was that the meaning of the term “proceedings” was clear enough, and sufficient to cover stipulations reach in or related to a case manager conference at court premises as well as in a proceeding literally before a judge. No other change was made to the amendment to add subsection 3(b)(4), which is to be included in the final version for promulgation.

#### Rule 4(a) (Registration to Efile; Choosing “role” or filing status)

On June 5<sup>th</sup>, the Committee decided to add a requirement of choice of role or user status to this subsection in response to a written comment of Andy Stone. The text of the redraft under consideration was: “A person must register to file electronically and serve documents through the electronic filing system and choose the appropriate role [filing status]—individual user or “firm” (which includes solo practitioners, agencies and organizational filers)”. After discussion, on June 26<sup>th</sup>, the Committee decided to delete the text following the word “role”. In the July 10<sup>th</sup> redraft, “type of registration” was substituted for “role”, and this latter phrase was adopted by the Committee for the final version of the proposed amendment of 4(a) for promulgation.

#### Rule 4(b)(4) (Efilings by others “on the attorney’s behalf”)

The amendment substitutes the above phrase for the reference in the promulgated rule to “under the attorney’s efile account.” It was approved by the Committee for inclusion in the final version for promulgation.

#### Rule 4(c) (Registration to View Documents that are not Publicly Accessible; Addition of Clarification as to “documents not accessible over the internet”).

The Committee approved of this amendment to add the referenced phrase on June 26<sup>th</sup>, with little discussion. The Reporters Note to the amendment explains its significance, clarifying that in addition to registering in the Odyssey system to *efile* documents, a party must separately register in the judiciary Portal, and receive authorization to *view* all case documents, including those filed by another party. There was no change in the text of the amendment or Reporters Note, both to be included in the final version for promulgation.

#### Rule 2: Add a definition of “firm”?

The Committee had initially considered adding a definition of “firm” as would relate to the efile registration process. At the June 26<sup>th</sup> meeting, it was decided that such a definition was not necessary. Again on July 10<sup>th</sup>, the Committee conclusion was not altered—as a term of art in Odyssey electronic filing, sufficient definition is provided in system user manuals and Court Operations tutorials. No definition in the rules of the term “firm”, other than a brief reference to this manner of registration that will appear in the Reporters Note to the amendment of Rule 4(a).

Promulgation Recommendation: Emergency, or “Normal Course” Promulgation

The Committee discussed whether “normal course” promulgation (publication and comment preceding promulgation) would be appropriate, in consideration of roll out and next phase implementation needs. Pat Gabel indicated that in view of current experience in the WOW units roll out, and next phase implementation in the “BRACE” units (electronic case management, September 1; electronic filing October 15), it was important that the proposed amendments of VREF 3 and 4 be promulgated without delay. The Committee unanimously agreed that emergency promulgation (which would provide for post-promulgation publication and comment in any event) be recommended, and that will be the nature of the transmittal to be sent to the Court. Chair Dooley and Reporter Morris will attend to the transmittal on behalf of the Committee.<sup>2</sup>

Upon completion of the referenced items of business, on motion of Tari Scott seconded by Judge Tom Durkin, the meeting was adjourned at approximately 1:54 p.m. No next meeting date of the Committee was scheduled.

Respectfully submitted,

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

[Approved: 12/18/2020]

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<sup>2</sup> The Court promulgated the Emergency Amendments on July 15, 2020, effective immediately, with comment period closing on September 15<sup>th</sup>.