

VERMONT SUPREME COURT
SPECIAL ADVISORY COMMITTEE ON
RULES FOR ELECTRONIC FILING

MINUTES OF MEETING, FEBRUARY 17, 2021

The Committee meeting was convened (via “Teams” video conference) at the call of the Chair at approximately 4:30 p.m. Present/participating were Chair Justice John Dooley, Judges Kate Hayes, Tom Durkin, Beth Mann and David Fenster; Tari Scott, Teri Corsones, Su Steckel, Eric Avildsen, Chasity Stoots-Fonberg and Scott Woodward. Liaison Justice Beth Robinson, Committee Reporter Walt Morris, Emily Wetherell and Andy Stone were also present. None were absent.

With the presence of a quorum, Chair Justice Dooley opened the meeting, noting that the sole item of business was the Committee’s consideration and approval of the final draft of the proposed emergency amendments of V.R.E.F. 2, 4(b) and 11 that had been the subject of extensive discussion, and suggested editing, at the Committee’s February 5th regularly scheduled meeting. Justice Dooley described the process intervening—he, Committee Reporter Morris, and Emily Wetherell had engaged in redrafting, and circulation, of redrafts of the proposed amendments and Reporter’s Notes to incorporate the Committee’s last recommended editing of the proposals. Scott Woodward had been consulted as to certain aspects of the amendments, to verify whether they would be compatible with Tyler/Odyssey terminology and functioning. The written comments submitted by Teri Corsones on behalf of the VBA had each been considered, and Ms. Corsones had been involved in review of the redrafts, right up to the period preceding the meeting. Judge Mann had also submitted written comments in advance of the February 5th meeting, which were briefly discussed at that meeting, and considered in the final drafting as well. Justice Dooley reminded the Committee that time was of the essence, given the final roll out of Odyssey efilings in the Franklin/Grand Isle/Lamoille/ Washington/ Caledonia/ Orleans/Essex Units (“ICEWOLF” region) on March 15th, and a Court-Administrator sponsored Odyssey training event scheduled for March 4th.

Before proceeding with Committee review of the final draft of the proposed amendments, Chair Dooley invited Teri Corsones to speak to her request for participation in VBA CLE events planned for the Mid-Year Meeting, to include VREF topics, and Odyssey efilings best practices and skills sessions. These would be presented remotely, during the final week of March. Several members volunteered to join in these presentations.

Consideration of Final Draft of Proposed Emergency Amendments

The final draft of the proposed amendments had been circulated to Committee members in advance of the meeting. The text of the draft, including last-minute edits, was displayed in the Teams “share screen” mode, as Reporter Morris described each of the sections amended, and changes made. As to Rule 2 (Definitions), he indicated that as to proposed 2(k) (Definitions of “Public Service Contact” and “Public Service List”) the word “service” had been deleted, and Reporter’s Notes accordingly amended, to provide consistency with the terms “Public Contact” and “Public List” as they appear to the user on the Odyssey File and Serve screens. As to 2(l), a sentence was added to clarify that “the submission agreement is part of the efilings process and efilers indicate compliance using a checkbox.”

In proposed 4(b)(3), text was added to make the efiler’s service contact obligations more explicit: “An efiler must create a service contact after registering, must check the “Make This Contact Public” box, and must immediately update the efiler’s service contact information when changes occur.”

A minor change was made to the previously reviewed subparagraph 11(d)(1), adding "...and selecting the party from the Public List...". The word "service" was deleted where it previously appeared in 11(d)(1) and (2), consistent with the edits made in the 2(k) definitions.

A number of changes were made in the text of subparagraphs of proposed 11(g):

(g)(1) was recaptioned—"Certifying Service Using Submission Agreement", and the text recommended by Teri Corsones was adopted: "All filers must certify compliance with service requirements by completing the submission agreement described in paragraph (g)(3) and contained within the efilings screens. Failure to certify compliance accordingly will prevent completion of the efilings process."

A minor addition was made to the text of (g)(2), further clarifying the circumstance in which an additional certificate of service is required (beyond the "checkbox" certification where all parties are efilers), when another party is not an efiler. In such instances, a certificate of service complying with V.R.C.P. 5(h) or V.R.P.P. 5(e) must also be filed, "describing and certifying service on any of the following persons:" (the text of the subparagraph goes on to list the three categories of parties for whom an additional certificate of service is required). There were no other changes to (g)(2).

(g)(3) describes the content of the Submission Agreement for Service. The subparagraph was divided into two subsections to further clarify the efilers' service options and responsibilities:

"The submission agreement must provide that for any filing that needs to be served, the efiler has either

- (A) completed service by using "File and Serve" and choosing the service contact from the Public List, or
- (B) filed a certificate of service complying with paragraph (2) of this subdivision. Completion of the submission agreement is subject to the obligations of V.R.C.P. 11."

After review of this draft of the proposed amendments as edited following the February 5th meeting, Chair Dooley invited Committee members to offer any comments or suggested further edits.

Eric Avildsen pointed out the need for one edit to the text (removal of the word "approved" from proposed subparagraph 11(d)(1), addressing agreements of parties for alternative means of service) and this was unanimously agreed to as consistent with the Committee's prior determination that the court's approval would no longer be required for alternative service agreements, provided that the requirements of 11(d)(2) were met.

Other than Mr. Avildsen's edit, there were no other suggestions for edits, or objections voiced by any Committee member. The Committee consensus was to move forward with recommendation for approval of the proposed promulgation by the Court.

On motion of Eric Avildsen, seconded by Scott Woodward, the Committee unanimously approved the text of the final proposal of amendments for promulgation.

In a separate motion of Judge Durkin, seconded by Judge Fenster, the Committee unanimously approved of its recommendation that the rules be promulgated by the Court as Emergency Amendments effective March 15, 2021, subject to a post-promulgation comment period and subsequent review. A letter of transmittal will be prepared, and the final proposal with recommendation for emergency promulgation will be sent to the Court.

Discussion of Submission Agreement (“Checkbox”) Content and Functionality

Draft text of the component of the Submission Agreement as to Service was circulated in advance of the meeting.¹ Chair Dooley indicated that the text of this certification would be driven by Odyssey functionality, as well as the final version of the proposed amendments ultimately promulgated by the Court. The proposed text covered either service scenario (all efilers were served through OFS, *or* if parties other than efilers, an additional certificate of service describing method of service per Rule 11(g)(2) is attached), thus providing for checking a single “box”, to enable completion of the filing. Adding several alternatives, some to be checked and some not, is problematic given Odyssey capabilities. Chas Stoots-Fonberg indicated that a “ticket” (configuration request) had already gone in to Tyler, and the Submission Agreements checkboxes were ready to load, and use. Scott Woodward stated that in response to his inquiry, Tyler had confirmed the need for a week’s notice to activate the submission agreement function. He also pointed out that prior to the meeting he had provided an example from Tyler of a “double” check box, from Minnesota, for public access compliance acknowledgments.² Su Steckel expressed the view that the submission agreement as to service needs to

¹“I certify that for any document that must be served:

- (1) I have served all efilers with service contacts through File and Serve; and
- (2) If there are other parties to be served, I have attached to my filing a certificate of service describing service on these persons in compliance with V.R.E.F. 11(g)(2).”

² This had not apparently been circulated to Committee members, but was described to them:

The screenshot displays the 'Submission Agreements' form within the Odyssey system. The form is set against a light blue background. At the top right, it shows 'Total Filing Fee' as \$0.00 and 'Envelope Total' as \$0.00, with a note 'Waiver selected'. Below this, there are two dropdown menus: 'Payment Account' with 'Waiver' selected, and 'Filing Attorney' with 'test attorney' selected. At the bottom right of this section are 'Undo' and 'Save Changes' buttons. A dark grey header bar contains the text 'Submission Agreements' and a 'Need Help?' link. The main content area contains two sections, each with an unchecked checkbox and a paragraph of text. The first section is titled 'IMPORTANT NOTICE OF RESPONSIBILITY TO DESIGNATE CONFIDENTIAL AND SEALED DOCUMENTS' and mentions 'Minn. Gen. R. Prac. 14.06'. The second section is titled 'IMPORTANT NOTICE OF REDACTION RESPONSIBILITY' and mentions 'Minn. Gen. R. Prac. 11'. At the bottom of the form are 'Save as Draft' and 'Summary' buttons. The footer includes the copyright notice '© 2021 Tyler Technologies' and 'Version: 2019.1.6.115', along with the 'EMPOWERED BY TYLER TECHNOLOGIES' logo.

Total Filing Fee \$0.00
Envelope Total: \$0.00
Waiver selected

Payment Account
Waiver

Filing Attorney
test attorney

Undo Save Changes

Submission Agreements Need Help?

☐ IMPORTANT NOTICE OF RESPONSIBILITY TO DESIGNATE CONFIDENTIAL AND SEALED DOCUMENTS: All filers are responsible for designating confidential or sealed documents prior to transmitting the documents for filing to the court, in compliance with [Minn. Gen. R. Prac. 14.06](#). The designation is made in the Comment Field. This requirement applies to all documents submitted for filing, including attachments. I understand that, when I file, I must comply with court rules requiring filers to designate confidential or sealed documents, or face sanctions. I may also need to request permission from the court to file a document as confidential or sealed. I have read this notice.

☐ IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact full and partial Social Security or taxpayer-identification numbers and all except the last four digits of financial account numbers in compliance with [Minn. Gen. R. Prac. 11](#). This requirement applies to all documents, including attachments. I understand that, if I file, I must comply with the redaction rules or face possible sanctions. I have read this notice.

Save as Draft Summary

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be more detailed, containing four parts (which she did not specify).³ Scott Woodward suggested that a specific reference to Rule 11(g)(3) be added to the checkbox text. Judge Hayes indicated that she had suggestions as to Submission Agreement as to service content and would share them with the Committee. Chair Dooley indicated that there was still time to consider content, but subject to the limitations of the Tyler technology as to multiple alternative checkbox entries, and the particular text would in the end not likely be up to the Committee to direct.

Judge Mann repeated her concerns that the judges are not able to view either the service detail pages that are available to efilers parties, or the Review History section available to clerks on the OFS reviewer site (which provides confirmation as to whether electronic service was completed, as well as whether the recipient has opened the notice of service of the particular document). It is critical to have confirmation as to service (or not) when a party has apparently defaulted in a pleading response. Reporter Morris indicated that efforts to address this concern were continuing, through communication with Tyler as to provision of a link between OFS service details, and the electronic case record. Tari Scott indicated that in those few cases in which verification of service would be necessary (and not as a routine matter in every single case), the clerk could retrieve and provide to the judge the service completion data from the OFS Review History section. There was no Committee decision, or specific recommendation as to content of the Submission Agreement checkbox as to service.

Next meeting: The next meeting was scheduled for Friday, March 5, 2021 at 1:30 p.m. Tari Scott will send the Teams meeting invitation and link.

On motion of Teri Corsones, seconded by Tari Scott, the meeting was adjourned at approximately 5:16 p.m.

Respectfully submitted,

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

³Prior to the meeting, Ms. Steckel had submitted an example of a Certificate of Service that she employs in the federal PACER electronic case filing system in bankruptcy cases:

Caption

C E R T I F I C A T E O F S E R V I C E

NOW COMES Susan J. Steckel, Esquire, of Steckel Law Office, attorney for Big Bad Bank, and hereby certifies that Big Bad Bank's revised Notice of Postpetition Fees filed February 15, 2021 through the ECF system will be sent electronically through the ECF system to the registered participants as identified on the Notice of Electronic Filing (NEF) generated in connection with this document and that paper copies will be sent to those interested parties indicated as non-registered participants on February 15, 2021 by first class mail, postage prepaid, at the following addresses:

Debbie Debtor
13 Bankrupt Way
Rutland, VT 05702
Dated at Cabot, Vermont, this 15th day of February, 2021
Steckel Law Office