[As Approved at Committee Meeting on March 24, 2023]

VERMONT SUPREME COURT
SPECIAL ADVISORY COMMITTEE ON
RULES FOR ELECTRONIC FILING
MINUTES OF MEETING, FEBRUARY 3, 2023

The Committee meeting was convened (via Webex video conference) at approximately 9:34 a.m. Present/participating were Committee Chair Justice John Dooley, Judges Tom Durkin, David Fenster, Megan Shafritz and Kate Hayes; Teri Corsones, Su Steckel, Chasity Stoots-Fonberg, Laura LaRosa, David Koeninger, Jordana Levine, Michele McDonald, and Steven Brown. Liaison Justice Nancy Waples, Committee Reporter Walt Morris and Emily Wetherell were also present. Elizabeth Kruska and Marcia Schels were absent.

The February meeting was scheduled with a limited Agenda, to primarily address the issues associated with Rule 5 rejection criteria and process, including establishment of a rejection-appeals process for those limited cases in which dispute as to rejection cannot be resolved at staff reviewer or supervisor stages, and separate, vs. combined, filing of motions.

1. **Approval of the October 28 and December 16, 2022 meeting minutes**.

Subject to minor typographical edits, on motion of Tom Durkin, seconded by Jordana Levine, the minutes of the October 28th and December 16th meetings were unanimously approved by the Committee.

PRIORITY ITEMS OF OLD BUSINESS CONSIDERED:

2. **VREF Rules 12 and 3(b); Proposed amendments of V.R.P.P. 5 and 78—**Exemption from efiling for wills in Probate Division and other original "paper" documents for which non-electronic filing may be mandated or authorized by specific provision of law. (*Review latest draft of proposed amendments for publication and comment; Status report on recent revisions of the proposed amendments)* (Morris)

Reporter Morris indicated that on January 24th he and Emily Wetherell met with Jeff Kilgore, Probate Rules Committee Chair, and Joanne Ertel, incoming Probate Rules Committee Reporter, to review the VREF Committee's actions and recommendations from the December 16th meeting, in consideration of recent Probate Rules Committee review of the draft V.R.P.P. 5 and 78 as well. A revised draft resulting from the January 24th meeting was provided to Committee members in advance of the meeting. Morris and Ms. Wetherell reviewed the changes with the Committee. First, the proposed amendment of V.R.E.F. 3 was substantially pared back, to the addition of the phrase, "a statute" in V.R.E.F. 3(b)(1), the rationale being that paper filing of the probate documents in issue would be fully covered as an exception to efiling under the existing text of the rule. That is, even if paper wills deposited in the Wills Registry per 4 V.S.A. § 2 were to be considered case filings (and that is not clear, at least until an estate is opened), the word "statute" would extend to cover such. Paper filing of the subject documents in open probate cases would be expressly authorized as per "applicable rule of procedure" (as presently stated in

V.R.E.F. 3(b)(1)), and consistent with the amendment of V.R.P.P. 5 and addition of V.R.P.P. 78 (which addresses paper filings in probate in detail). There was no change to the text of proposed V.R.E.F. 12(c), as previously approved by the Committee. As to V.R.P.P. 5 minor amendment was made to the text to conform to recently-amended V.R.C.P. 5. And as to V.R.P.P. 78, subsection (a) was reformatted to separately list each of the documents that would be subject to a paper filing requirement. This section would clarify that the required paper filing is *in addition* to electronic filing of the document, if the filer is otherwise required to efile.

Laura LaRosa brought up an issue related to electronic wills. While Vermont does not presently recognize electronic wills, in a few cases, probate units have received wills electronically executed in jurisdictions which authorize them.[1] After brief discussion of this question, Committee consensus was that since the number were few, the *mode* of filing of an electronically created will in a Vermont estate administration could be handled on a case-by-case basis, and that a brief reference to the issue added to the accompanying Reporter's Note would suffice.

On motion of Tom Durkin, seconded by Su Steckel, the Committee unanimously approved of a joint transmission of the proposed package of amendments to the Court, with request for publication for comment. Judge Morris and Ms. Wetherell will follow up with Jeff Kilgore and Joanne Ertel to facilitate the transmission.

3. **V.R.E.F. 5(d), (e) and (g): Proposed Amendments to Clarify Grounds for Rejection on Court Staff Review; Provide an Administrative Appeal Process from Rejections Not Able to Be Resolved at Unit/Centralized Review Level; and Require Separate eFiling of All Motions.** *(Committee Discussion, and Review of Most Recent Draft Proposed Amendments).*

Referencing a redraft[2] that was provided to Committee members in advance of the meeting, Emily Wetherell outlined the changes that had been made to the proposed amendments of Rule 5, following the Committee discussion at the December 16th meeting:

- **5(d)(2**) would be further amended as follows:

(2) *Accepting or Rejecting a Filing*. Court staff will electronically notify the efiler either that the efiling has been accepted or rejected. A rejection will provide the reason for the rejection. ~~that it cannot be accepted until specified actions required under these rules have been taken.~~ Court staff may reject a filing that does not comply with these rules or Rule 7(a)(1) of the Rules for Public Access to Court Records. Court staff may also reject a filing that contains an error that cannot be corrected by court staff. The Court Administrator will delineate the permissible reasons for rejecting a filing and provide the list in a prominent place on the Judiciary website.

[1] A very early draft of the proposed amendments had attempted to address this issue by a referencing phrase, "…until such time as electronic wills are authorized…". However, the phrase was deleted, as too anticipatory, given that a statutory enactment would first be required, and any reference in the rule would need to be consistent with such future enactment.

[2] This redraft dated from 1/29/23.

These edits incorporate the Committee's December 16th suggestions: (1) that separate sections be provided for rejections upon review, and "failed submissions"; (2) that rejections state "the reason for the rejection" (as opposed to the former language of "…specified actions required…" for acceptance; (3) that text be added to provide that rejections may also be made for "errors that cannot be corrected by court staff: and (4) that the Court Administrator post the list of permissible reasons for rejecting filings employed by court staff prominently, to provide ready user access.

- **A separate 5(d)(3)** would be added to address "failed submissions":

(3) *Failed Submission*. A filing that does not comply with the instructions in the efiling system or the formatting requirements in Rule 7 may not be processed by the electronic filing system and may result in a failed submission.

Committee consensus was that given the primary focus of the rule—process upon staff rejection of a *submitted* efiling--a separate section was warranted, to clarify that a failed submission, as distinct from a rejected submission, may occur when the filing is rejected for noncompliance with basic system instructions for filing, or formatting limitations, without staff review, which occurs after submission is made. While these occur infrequently, and the failed submission is usually evident to the filer, or the system generates a failed submission notification, it was felt necessary to at least address failed submissions, to enable a filer who is unaware of the failure to seek correction.

- **Former 5(d)(3) (Correcting an efiling)** is renumbered as (4), and minor edits are made in the text—"…that a filing resulted in a failed submission or was rejected" is substituted for "that a filing failed to be submitted or was rejected", and " It is the efiler's responsibility to demonstrate the date of rejection or failed submission" is substituted for "It is the efiler's responsibility to demonstrate the date and reason of the original failed submission or rejection."

- **5(d)(7) (Administrative Appeal Process)**

The draft of this section was edited as follows:

(7) *Appeal of Rejected Filing*. The Court Administrator will provide an administrative process for an efiler to appeal the basis for a rejected efiling and specify the process on the Judiciary website. The appeal must be filed within 7 days from the date of the rejection. The time period in (d)(4) for correcting an efiling is tolled until the appeal is decided.

The phase "and specify the process on the Judiciary website" was added at Committee direction on December 16th.

- **5(e) Court Staff Processing in the Supreme Court.**

As applicable, equivalent provisions of the proposed revisions of Rule 5(d) were added to 5(e), which governs staff review, acceptance/rejection, and failed submission process in the Supreme Court. These had inadvertently not been included in the original drafts:

(1) *Court Staff Review.* Court staff will review all electronic filings for compliance with these rules, the Vermont Rules of Appellate Procedure, and Rule 7(a)(1) of the Rules for Public Access to Court Records.
(2) *Accepting or Rejecting a Filing.* Court staff will electronically notify the efiler that the efiling has been accepted or rejected. A rejection will provide the reason for the rejection. Court staff may reject an efiling for noncompliance with Rule 7(a)(1) of the Vermont Rules for Public Access to Court Records, the applicable limit on the number of words in the brief as contained in V.R.A.P. 32(a)(4), the failure to include a word count in a brief as required by V.R.A.P. 32(a)(4)(D), or the failure to sign a document as required by these rules or the Vermont Rules of Appellate Procedure. Court staff may also reject a filing that contains an error that cannot be corrected by court staff.
(3) *Failed Submission*. A filing that does not comply with the instructions in the efiling system or the formatting requirements in Rule 7 may not be processed by the electronic filing system and may result in a failed submission.

- **5(g)** (All Motions to be efiled separately)

(g) Motions. Efilers must submit motions, responses, and supporting materials in a manner consistent with any other applicable rules of procedure and the following:
(1) *Requirements for Motions in the Supreme and Superior Courts.*
~~(A) *Motions Requesting Alternative Forms of Relief.* An efiler may file motions, or responses, requesting alternative forms of relief as a single document.~~
~~(B) *Motions Requesting Independent Forms of Relief.* An efiler must file motions, or responses, requesting independent forms of relief as separate documents.~~
(A) *Motions; Separate Filing.* All motions must be filed as separate lead documents.
~~(C)~~ (B) *Separating Motions and Responses.* An efiler may not respond to a motion and file a new motion in the same document.
(2) *Additional Requirements for Motions in the Superior Court.* Efilers in the superior court must also submit motions in accordance with the following requirements for supporting material.
(A) *Supporting Material ~~Single Motion or Response~~.* A memorandum of law, affidavit, exhibit, or other supporting material or required attachment to a ~~single~~ motion or response ~~may be efiled with the single motion or single response or may~~ must be filed as a separate document.
~~(B) *Multiple Motions or Responses.* A memorandum of law, affidavit, exhibit, or other supporting matter or required attachment for multiple motions or responses must be efiled as a separate document.~~
~~(C) *Separate Document.* If supporting material is efiled as a~~ The separate document~~, it~~ must identify the motions or responses to which it relates and must be referenced in the motions or responses ~~unless it is efiled after them~~.

(~~D~~ B) *Format of Supporting Material.* ~~If supporting material relates to more than a single memorandum of law, it~~ Supporting Material must:

(i) be numbered sequentially so that the electronic and paper page references are consistent; and

(ii) contain a table of contents listing the separate parts of the supporting material included, with references to the page of the document at which each part begins.

These proposed amendment of V.R.E.F. 5(g) were essentially brought forward with only minor edits from the draft considered by the Committee at the December 16th meeting. Even though support was expressed by some, particularly judge members and some attorney members, there were concerns stated by others, and the extensive Committee discussions then had not yielded clear consensus, and further consideration was contemplated.

COMMITTEE CONSIDERATION OF THE MOST RECENT DRAFT AMENDMENTS

Following the overview of the most recent draft of proposed Rule 5 amendments, Justice Dooley indicated that the Committee discussion might also focus upon better understanding of the software related to OFS functions within control of the Judiciary; and system configurations within Tyler Technologies control, as related to the efiling review alternatives available for Committee consideration, such as conditional acceptance of an efiling with no action, pending correction ("accept and correct", vs "reject and correct", our present review model). This comment was in the context of Su Steckel's email sent to the Committee just prior to the meeting, suggesting a number of issues associated with efilings and rejections, which were first brought to the Committee's attention at the December 16th meeting. Justice Dooley acknowledged that the presently proposed Rule 5 amendments were to deal with a more immediate focus, while a systemic change in the mode of efiling review and acceptance process would entail a much longer process of review. Even so, he felt that a current discussion of the concerns reflected in Su's comments would be beneficial.

Reporter Morris indicated that per direction of the Committee at the December 16th meeting, an edited draft of the proposed Rule 5 amendments had been provided to the Odyssey Court Users Group, with Liz Kruska's assistance, for their comments in advance of the present meeting.[3] The only comments received were from Tracy Kelly Shriver, Windham State's Attorney, who stressed the need for a readily-accessible list of permissible reasons for rejecting filings, for filer guidance, as this has been in her view a source of frustration and inconsistencies in staff rejections. She also suggested similar detail as to the 5(d)(7) administrative appeals process for clarity, and urged that provision be made for more expeditious handling of rejection disputes by Court Operations Managers before recourse to the Court Administrator.

[3] VREF Committee members Koeninger, Kruska and Levine are also members of the Users Group. The draft sent to the Users Group was updated with some post-December 16th edits, and was the same draft provided to Committee members for purposes of the February 3rd Committee meeting.

In early comments about the latest redraft, Judge Hayes stated that as to 5(d)(3) (failed submissions), text should be added to provide that no appeal is available, since failed submissions are by definition not subject to staff review for acceptance, nor are they routinely sought for by staff. Judge Fenster agreed, since a failed submission is a system, or "machine" rejection automatically generated. Consensus was to edit the draft 5(d)(3) as suggested by Judge Hayes.

Committee Consideration of Comments Submitted by Su Steckel

Before proceeding to further substantive review of the latest (1/19/23) draft, Justice Dooley directed the Committee focus to the various issues with the draft that Su Steckel presented in her email to Committee members. These stated concerns as to three general issue-areas:

(1) 5(d)(2)'s reference to "an error that cannot be corrected by court staff" is too broad, and could be construed as allowing rejections for mere typographical errors in efiled documents. Su's suggestion is that the errors in issue be spelled out in the rule, to prevent such rejections, which are not contemplated;

(2) 5(g)(1)(A) (Separate filing of all motions) will only continue to discourage self-representers from efiling. The requirement of/standards for separate filing of certain motions has been a huge source of frustration for attorneys and extra work for office staff—a requirement of separate filing of all will only exacerbate the situation, and burden court staff as well. In her area of practice, other procedural rules actually call for requests for ancillary, sequential or incidental relief that are not an appropriate subject for a second motion (e.g., mortgage foreclosures). Separate motion filings frustrate, if not run contrary to the direction of these other procedural rules. Judges have varying preferences for access to and handling of these motions (ex. summary judgment vs. default in foreclosure/eviction), and separate filing may run contrary to judge requests;

(3) 5(g)(2)(B) (Mode of filing of motion attachments and memoranda). Su's comments here went to the additional requirements of the existing rule, and proposed amendments, as to combined filing of memoranda, motion exhibits and attachments, and the requirement of a table of contents and sequential pagination of combined filings.

In her written comments, Su had also commented on the need for more specificity of the administrative appeal process that would be provided by proposed 5(d)(7).

The ensuing Committee discussion veered substantially into whether an "accept and hold in abeyance" or "conditional acceptance" model should be adopted, in contrast to the "rejection and filer cure" model that is reflected in the existing rules. Su was of the view that consideration should be given to the federal (PACER) model of efiling, where efilings are simply accepted, but no action is taken until any required complying corrections are made. She was concerned about inconsistencies resulting from the draft 5(d) phrase "...court staff may also reject a filing *that cannot be corrected by court staff*" is too vague, and could result in rejections for typographic errors, or perceived formatting noncompliance. In her view, the currently proposed language is just too broad. Ms. Steckel also observed that the complexity in navigating OFS to avoid or correct for rejections is seen by some practitioners as so problematic that they may be

considering leaving practice, and discouraging to self-representers who may be considering election to efile.

As to “accept and hold in abeyance”, Chas Stoots-Fonberg explained that under the current system, when a filing is accepted, the reviewer electronically places an “accepted” stamp on it. So, if a filing were automatically accepted without review, and later rejected, the reviewer would have to remove the “accepted” stamp to change the document’s status as “obsolete.” The efiler would then have to resubmit a complying efiling. But these actions are not used in the present system, which is based upon pre-acceptance review.[4] Justice Dooley asked whether Tyler Technologies could provide system ability to affix a post review “obsolete” or similar electronic stamp (in effect create an alternative stamp), and what the timeline for that would be. He asked Chas to explore those issues. Emily Wetherell commented that the measure being discussed did not make sense, given the current structure that had been put in place, and that ultimately it would be the Court Administrator and Court’s decision to adopt a fundamentally different system of electronic filing. In the context of this discussion, Chas stated that there were frustrations on some efilers’ parts, but that the rejection rate was “super low” in relation to number of filings. Judge Durkin concurred that in his experience, there had been only two rejections. He pointed out that according to the January, 2023 data Chas had provided, out of 29,190 efilings, there had been only 919 rejections. Justice Waples commented that as to the federal system and its acceptance model, the number of filings pales in comparison to that of state court filings—90% or all filings are in state court. Michele McDonald was of the view that the proposal of “accept, and hold until cure” would ultimately mean more work for clerk staff, and also for judges who might experience greater difficulty tracking filings in cases.

As the discussion continued, Su Steckel repeated her concern as to perceived vagueness in 5(d)(2)’s reference to “error that cannot be corrected by court staff”. Ms. Wetherell indicated that that language was intended to mean errors resulting from the OFS system processing/ configuration in itself, and not errors that can spotted and corrected by reviewing staff actions; and that it did not contemplate rejection by a reviewer due simply to a typographic or “curable” formatting error. Su stated that she would still feel more comfortable with the “errors” referred to being spelled out in detail. It was suggested that a further revision of the text and the accompanying Reporter’s Note may provide further clarification.

Following Judge Hayes’ earlier comment as to 5(d)(3) (failed submissions) and subsequent discussion it was agreed that it be specified that "no appeal is available", on grounds that Court staff would be unaware of the failed submission at all, making it difficult to reconstruct the attempted filing and provide the "relation back" efiling date, problematic also as to statute of limitations questions. Other than this change, in view of the extensive discussion of Su Steckel's comments, the Committee did not return to specific decision, or polling on any of the 5(d)(2-4) issues. On the question of the basic model, Chas was asked to inquire of Tyler as to whether OFS could be reconfigured to adopt the "accept/hold in abeyance" model, or something akin to it. Justice Dooley did emphasize that movement to an entirely different system of rejection/acceptance would involve a very long-term project, in contrast to the current objective of providing useful clarifications.

[4] The exception being certain new civil filings made under VREF 5(d)(1)(B).

COMMITTEE ACTION--CONSIDERATION OF VREF 5(d) DRAFT

There was Committee consensus that in 5(d)(3) (failed submissions) it should be specified that "no appeal is available", on grounds that Court staff would be unaware of the failed submission at all, making it difficult to reconstruct the attempted filing and provide the "relation back" efiling date, problematic also as to statute of limitations questions. In view of the extensive discussion of Su Steckel's comments, the Committee did not return to specific decision, or polling on any of the other 5(d)(2-4) issues. On the question of the basic model, Chas will inquire of Tyler as to whether OFS could be reconfigured to adopt the "accept/hold in abeyance" model, or something akin to it, and it was suggested that she examine the workings of the federal (PACER) system as well. Justice Dooley did emphasize that movement to an entirely different system of rejection/acceptance would involve a very long-term project, in contrast to the current objective of providing useful clarifications in the near term for filing review and rejections process under Rule 5. The discussion did yield the issue of whether certain documents, given their nature, could be accorded the "accept and hold" treatment, while maintaining the current "review, accept/reject" model for all but a discrete category of filings for which that made sense. This was for longer-term consideration.[5] The "drafters" (Dooley, Wetherell, Morris) will work in consultation with Teri Corsones, Chas and Laura to revise text and/or Reporter's Notes content as to the identified 5(d)(2) and (3) issues for consideration at the next Committee meeting.

COMMITTEE ACTION--CONSIDERATION OF VREF 5(d)(7), 5(e)(7) DRAFT

The least controversial of the three amendments issues--(5(d)(7); 5(e)(7)-Administrative Appeal in event of rejection) had general consensus.

Teri Corsones had provided the original suggested text for this subsection. In the course of the meeting, a minor edit of the text was suggested to explicitly indicate in the rules that appeal would be only if the efiler and staff could not first resolve the issue. This was agreed to, and the following text will be substituted for that in the existing draft: "In the event that an efiler and court staff are unable to resolve a dispute regarding an electronic filing, the efiler may appeal the basis for a rejected filing to the Court Administrator." It was suggested that the Reporter's Note be edited as well to reflect this change, and it is anticipated that just as with the conspicuous posting of the various grounds for rejection under amended Rule 5(d)(2), the Court Administrator will similarly post the details of the appeal process. These measures are also consistent with the comments requesting that preference be accorded to efiler—staff/COM resolution in the first instance, prior to recourse to the Court Administrator, and that there be readily accessible provision of the details of the procedure.

COMMITTEE CONSIDERATION/ACTION--VREF 5(g) DRAFT

[5] In context of the general discussion of the issue, Laura LaRosa noted the different process presently employed for non-efilers--court staff are instructed to keep non-complying paper filings marked as "accepted, not filed". Justice Dooley replied that paper filings are treated differently, since in contrast to submitted and rejected efilings, there is no "e-trail" to memorialize the effort to file. See, VREF 6(b)(2) and (c)(2).

The Committee then continued its extensive discussion, begun on December 16th, of the various issues associated with the present 5(g)(1) (which require separate filing of motions seeking "independent" forms of relief, and permits combined filing of motions seeking "alternative" forms of relief), and the proposal under consideration that would simply require that all motions be separately filed, and 5(g)(2) (Additional Requirements for Motions, including memoranda and supporting material). Rejections based upon the requirements of existing Rule 5(g), while relatively few in number, have proven to be the most contentious category of rejections to resolve, often involve questions of law beyond staff responsibility as to the nature of a motion, status of memoranda and other attachments, and whether a rejection is warranted.

As to proposed 5(g)(1) there were extensive comments, without decision or member poll as to the specific proposed text, which would categorically provide that "All motions must be filed as separate lead documents". From the December 16th meeting, apart from Su Steckel's concerns, there appeared to be general recognition that separate filing of all motions at least provided clarity as to document locating and retrieval. During the current meeting, judge members continued to favor adoption of separate filing of all motions, regardless of relief sought; staff representatives were in agreement, citing (as noted above) that separation of motions is currently the most controversial area of clerk review and rejection, even though most rejections are based upon filer error other than the separate filing issue. Attorney members expressed views both in favor, and of concern. Jordana Levine had no objection to the separate filing of motions, although she expressed some concerns about mode of filing of related memoranda and attachments. Su Steckel felt very strongly that combined motions should be allowed, and that adoption of proposed 5(g)(1) would result in multiple unanticipated rejections. The Committee discussed whether present configuration of OFS even had the capability to sort combined motions, and the process of staff review to assure correctly assigned filing codes for each one, in effect sorting for case record accuracy after a combined motion has been filed. The accuracy of document filing codes is essential to later retrieval; in case of initial filings, to assure that the filing is in the correct unit, and in the intended case where multiple cases involving the same litigant(s) are pending, either in a single unit, or among different units. Jordana Levine remarked that the conversation was becoming somewhat confusing, as the issues of separate filing of motions, vs. attachments should be viewed separately in consideration of the text of the rule (meaning, 5(g)(2)(A) vs. (B)). Ultimately, since there was no clear consensus or poll, as to 5(g)(1), text and Reporters Notes will be reviewed for any edits consistent with meeting comments, and brought forward at the next Committee meeting for better focus and decision.

On 5(g)(2), consensus appeared to emerge on the issue of whether a memo, or certain attachments, could be made in a combined filing (yes, but depending upon the practical consideration of how many attachments were involved). In discussing exhibits, it was emphasized that exhibits submitted for *evidentiary* hearings were not within the intended reach of 5(g).[6]

On motions the suggestion was to adopt a permissive provision, allowing that supporting memoranda may be filed with the lead motion, or separately, in the efiler's discretion. Consensus was in support of amendments that would expressly authorize the efiler's election, as long as a

[6] The filing of exhibits is addressed in VREF 8. Procedure has also been addressed by the Judiciary Standard Practices Committee, in administrative guidance, and unit protocols.

separate document identifies the motion (or response) to which it relates. Judge comment was to the effect that the key consideration would be ease in accessing motion memoranda and attachments, whether combined, or separately filed.

As to proposed 5(g)(2)C)(i) and (ii) (existing 5(g)(2)(D)(i) and(ii)—Format of Supporting Material Filed as a Separate Document), Su Steckel maintained that the sequential pagination requirement is unworkable, in that it could be construed to require removal of page numbering on existing documents, including critical originals such as contracts, deeds or other inchoate instruments of legal significance that are already paginated. Emily Wetherell explained that the existing requirement is based upon appellate practice, and the need to be able to find a particular document in a combined record that may be quite voluminous. Judge Fenster concurred that that was a principal purpose of this subsection, with a view to accessing the appeal volume. Emily said that it should be clear under the present rule and certainly under the proposed amendments that supporting materials can be attached to a motion, as long as a table of contents is provided. Justice Waples emphasized that from an appellate perspective (or any case in which voluminous multiple documents were presented) sequential pagination is critical to ready access to key portions of the record.

COMMITTEE CONSIDERATION OF VREF 5(d) DRAFT—NEXT STEPS:

Next steps for each of the subsections are as referenced above. In the interim until the next Committee meeting, it was expected that the "drafters"--Dooley/Morris/ Wetherell— with meet as necessary with Teri Corsones, Chas Stoots-Fonberg and Laura LaRosa to revise text and Reporters Notes that were a focus of Committee discussion, to again present for Committee consideration a draft with changes that have secured consensus, and revisions that address issues brought forward, in an effort to facilitate consensus on a recommended package of amendments for adoption by the Court.

RELATED ITEM OF NEW BUSINESS:

4. VREF 3(b)(1) and (d)—Amendment to Incrementally Require All Filers, Including Self-Representers, to efile via OFS as the Default; with Self-Representer Ability to Opt Out of efiling via OFS.

At the conclusion of the Committee discussion of the proposed Rule 5 amendments, Justice Dooley noted that since many self-representers are now filing via email under the amended V.R.C.P. 5(e)(3) and (4),[7] consideration might now be given to incremental movement to a system in which efiling (via OFS) is presumptively required for *all* case filers, with an ability for self-representers to "opt-out" of OFS efiling. Presently, under V.R.E.F. 3(b)(1) and (d), self-representers may elect to register and efile via OFS, but they are not required to. In Justice Dooley's view, this alteration as to required OFS filers would serve to relief staff workload associated with the increase in self-representer efiling via *email*, which is a consequence of the V.R.C.P. 5 amendment, and practice under A.O. 49 emergency rules. He stated that statistics as to numbers of self-representing email filers and case types would be helpful to Committee

[7] Amended 5/9/22, effective 9/6/22.

consideration of this issue. Laura LaRosa suggested that Jessica VanBuren, head of the Judiciary's new Access and Resource Program, be invited to join the Committee to contribute when this issue is taken up at a future meeting.

OTHER ITEMS OF OLD BUSINESS CONSIDERED:

5. VREF 10(a); Amendment to Specify Requirement of Payment of Service Costs as a Condition of eFiling, and as Basis for Rejection of Filing.

This request, brought forward by Teri Corsones, was tabled on recommendation of the Trial Court Operations Division upon report that an alternative approach to a rule amendment was being implemented.

6. Standardizing Effective Dates of New Procedural Rules.
(Excepting necessity, all procedural rules would be promulgated on at least 60 days' notice for effect on January 1 or July 1 of each year; Request of Allan Keyes, Civil Rules Committee Chair)(Committee discussion, poll and recommendation).

Reporter Morris explained that this proposal would standardize effective dates of all new procedural rules amendments and new promulgations to January 1 or July 1 of each year, unless an earlier, or immediate effective date is deemed necessary. Ms. Wetherell indicated that "batching" twice a year effective dates for most rules amendments would facilitate greater awareness of procedural rules changes on the part of the bar and public. Amendments would still be promulgated in normal course, and promulgations published when approved by the Court, but effective dates for most rules would be standardized for effect as indicated. With little discussion, the Committee unanimously approved of this change in establishment of effective dates. Civil Rules Chair Keyes will be notified of this action, for report to the Court.

7. **Adjournment.**

The meeting was adjourned at approximately 11:37 a.m. Next meeting will be set after Membership poll, if possible, for an early to mid-March date.[8]

Respectfully submitted,

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

wm/3/21/23

[8] After member poll, the next Committee meeting date was scheduled for Friday, March 24th at 1:30 P.M.