

VERMONT SUPREME COURT
SPECIAL ADVISORY COMMITTEE ON
RULES FOR ELECTRONIC FILING

MINUTES OF MEETING, December 17, 2021

The Committee meeting was convened (via video conference) at approximately 12:15 p.m. Present/participating were Chair Justice John Dooley, Judges Kate Hayes, Tom Durkin and David Fenster; Tari Scott, Su Steckel, Chasity Stoots-Fonberg, Eric Avildsen, Marcia Schels and Scott Woodward. Committee Reporter Walt Morris, and Emily Wetherell were also present. Judge Beth Mann and Teri Corsones were absent.

There were only two business items noticed for this meeting, called at the request of the Chair:

1. Review/approval of amendments to V.R.E.F. 5 re: post-entry review of certain initial civil complaints (amendments in compliance with federal District Court injunction in *Courthouse News Service v. Gabel, et.al.*); and
2. Amendment of V.R.E.F. 11(c) re: service of discovery (review/approval for publication and comment.)

V.R.E.F. 5(d) Amendment.

Chair Dooley described the process leading up to the final draft that had been circulated to Committee members in advance of the meeting. The amendment is aimed to comply with Judge Reiss' November 19th order which enjoins the Vermont Judiciary from prohibiting public access to newly filed civil complaints which have not been designated confidential by the filer until the court completes a pre-access review process (otherwise prescribed by V.R.E.F. 5(d)). The same order provides that public access may continue to be restricted post-filing, where a potential violation of the (V.R.E.F.) filing rules has been found. (parenthetical matter is added here). Emily Wetherell indicated that administrative action had already been taken by the Court Administrator to provide the access ordered beginning on December 10th, per directive to Superior Court staff and a memorandum to the bar published on December 9th, but that an amendment of Rule 5(d) was deemed necessary as well.

As described by Justice Dooley, promulgation of the proposed amendment would be sought on an emergency basis to secure compliance with the court's order. The amendment would in sum, except initial civil complaints from pre-entry review by court staff (subject to corrective and remedial actions authorized by P.A.C.R. 7(a)(3) and (4). However, complaints in actions for orders against stalking or sexual assault, and in small claims actions, as well as in any civil action within the original jurisdiction of the Supreme Court, and in the divisions of the Superior Court other than civil, would still be subject to pre-entry review.

In the ensuing Committee discussion of the draft, there were some suggestions as to reformatting, but not substantive concerns were expressed by Committee members. As to format, the Committee agreed that the Reporter and Ms. Wetherell would work on any reformatting of the final version of the amendment sent to the Court for promulgation. No changes were suggested as to the draft Reporter's Notes.

Chair Dooley called for a vote of approval of the proposed amendment of V.R.E.F. 5(d) with recommendation for promulgation. The vote of the Committee was unanimous in favor of approval, with recommendation for adoption of the proposed amendment for emergency promulgation by the Court.¹

V.R.E.F. 11(c) re: Service of Discovery.

Chair Dooley indicated that this amendment—which would now require efilers to serve discovery requests or responses using the electronic filing system, unless an alternative method of service has been agreed to by the parties—was suggested by the Advisory Committee on Rules of Civil Procedure in conjunction with proposed amendment of V.R.C.P. 5(b)(2)(D).² He stated that it would be advisable to have the accompanying V.R.E.F. 11(c) amendment be published for comment on the same or similar time line, to permit both V.R.E.F. and Civil Rules committees to review a final version of the related amendments for promulgation contemporaneously.

The Committee engaged in a very brief discussion as to the substance of the amendment, without any adverse comment, or suggestion for pre-publication edit or amendment. The Committee then unanimously approved of the draft presented for publication and comment, subject to post-comment period review as to promulgation recommendation.³

Adjournment.

After completion of the two referenced business items, the meeting was adjourned. The next regular meeting of the Committee was established for Friday, January 21, 2022, at 1:30 p.m. via Teams videoconference.

Respectfully submitted,

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

¹ The reformatted version, as sent to the Court, reorganized some of the text of V.R.E.F. 5(d)(1)(B), to provide greater clarity and eliminate one redundancy—use of the word “civil” twice in the last line of the subsection. As indicated, there was no substantive change in the final draft approved by the Committee.

² The comprehensive amendments of V.R.C.P. 5, including proposed V.R.C.P. 5(b)(2)(D), were published for comment, with comment period closing on 2/14/22. The text of the proposed V.R.C.P. 5(b)(2)(D) explicitly addresses and refers to service of discovery documents by efilers via the electronic filing system unless the parties agree to an alternative method of service. The amendment also prescribes the process of service of discovery documents by non-efilers: “(D) Service of Discovery Documents. (i) An efiler must serve discovery requests or responses on an efiler using the service function of the electronic filing system unless the parties agree on an alternative method of service. (ii) Service by or on non-efilers may be made by mailing, by delivery, or by email or other method if the parties agree.”

³ Prior to the meeting, Teri Corsones (who was unable to attend) sent a suggestion as to revision of both the text of the amendment (to add the reference “in accordance with (V.R.E.F.) 11(d)(2)”, and the accompanying Reporter’s Note, to incorporate pertinent text from the draft Reporter’s Note for proposed V.R.C.P. 5(b)(2)(D) to clarify operation for both Rules. The specific additions were not included in either the text of the proposed V.R.E.F. 11(c) sent for publication or accompanying Reporter’s Note, but a more general reference to the civil rule as to alternatives and agreements authorized for discovery service under that rule was added to the published Reporter’s Note. The content of the references in issue, including Ms. Corsones’ suggestions, will again be on the Committee’s Agenda for consideration and recommendation after closure of the comment period.

