

[As approved by Committee, following review and member poll closing on May 19, 2022]<sup>1</sup>

VERMONT SUPREME COURT  
SPECIAL ADVISORY COMMITTEE ON  
RULES FOR ELECTRONIC FILING

**MINUTES OF MEETING, APRIL 22, 2022**

The Committee meeting was convened (via video conference) at approximately 1:30 p.m. Present/participating were Committee Chair Justice John Dooley, Judges Tom Durkin and David Fenster; Scott Griffith, Tari Scott, Teri Corsones, Su Steckel, Chasity Stoots-Fonberg, Eric Avildsen, and Scott Woodward. Committee Reporter Walt Morris was also present. Judges Beth Mann and Kate Hayes, and Laurie Canty, Marcia Schels, and Liaison Justice Bill Cohen were absent, and Emily Wetherell was unable to attend.

**1. Approval of the January 21, 2022 meeting minutes.**

On motion of Tom Durkin (made at the outset of the meeting), and seconded by Teri Corsones (prior to meeting adjournment), the minutes of the January 21st meeting were unanimously approved.

**2. Reports/Announcements:** Reporter Morris indicated that per a memorandum of Laurie Canty, Centralized Review and efile Support were merged under the management of Trial Court Operations effective March 21<sup>st</sup>. Chas Stoots-Fonberg has taken the role of management of this work.

At the Legislative Committee on Judicial Rules meeting on April 14<sup>th</sup>, there was only one proposed amendment of VREF considered—11(c)(efiling of discovery)—and that was favorably reviewed.

Pertinent promulgated or proposed rules amendments of other Advisory Committees were noted, without any specific discussion or action.<sup>2</sup>

**ITEMS OF OLD BUSINESS CONSIDERED:**

**3. VREF 11(c)** (Service of discovery via OFS unless alternative is agreed to; this amendment, previously considered and approved by the Committee at its December 17, 2021 meeting, would conform VREF 11(c) to proposed amendment of VRCP 5(b)(2)(D)).<sup>3</sup> The comment period closed on

---

<sup>1</sup> Nine of the ten members attending the April 22<sup>nd</sup> meeting responded to the poll, affirmatively indicating approval of adoption of the draft minutes of the meeting.

<sup>2</sup> These included promulgated VRPACR 5(c) and (d); 6(b)(20-22) and abrogating and replacing VRPACR 9; and proposed VRAP 25; VRCP 5, 6(a)(4), 29 and 79.1; and VRCP 6(e); VRAP 26(c) & 26(d)(1); VRCrP 45(a)(4)(A). Each of these were the subject of report in greater detail at the January 21<sup>st</sup> meeting. See, Minutes, 1/21/22, pp. 1-3.

<sup>3</sup> The text of the proposed VRCP 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

2/14/22. There were no additional comments or concerns stated by Committee members. Upon motion of Tom Durkin, seconded by Tari Scott, the Committee unanimously approved of the amendment for transmittal with recommendation for promulgation, without change.<sup>4</sup>

#### **4. VREF 3(b) and 12; Proposed amendments of V.R.P.P. 5 and 78—**

Exemption from e-filing for wills and related documents in Probate Division and other original “paper” documents for which non-electronic filing may be mandated by specific provision of statute.<sup>5</sup> This item has been on the Committee’s agenda for almost a year; has been considered at a number of meetings; and rough “concept” drafts have been exchanged with the Probate Rules Committee. A joint subcommittee<sup>6</sup> has now met and prepared a discussion draft of amendments which were provided to and reviewed by the Committee. In the presently recommended draft, the amendments to VREF 3(b) and 12 that have long been considered by the Committee do not have major substantive changes, but some minor edits to conform to companion amendments of the probate rules to clarify which documents must be nonelectronically filed in probate proceedings.<sup>7</sup> After the Committee’s review of the VREF amendments with latest changes, Reporter Morris provided an overview of the companion probate rules amendments that are proposed. These were two: (1) an added VRPP 5(f)(2), which would clarify that there is a category of documents which must be nonelectronically filed as specified in an added VRPP 78, and the treatment of documents, and the treatment of documents that are non-compliantly filed; and (2) an added VRPP 78, which serves to specify in detail those documents and records which must be nonelectronically filed; and their treatment, including storage with and return by the Court. The proposed Rule 78 also contains definitions of the term “original” as related to particular categories of documents, and acknowledges the process of transfer or other disposition of the subject documents per established Records Retention Schedule to State Archives and Records Administration (VSARA).

In discussion of these proposed amendments, Tari Scott pointed out that the probate divisions in each unit possess many years’ worth of original wills, and that there are ongoing discussions with VSARA to establish probate-specific records retention and transfer schedules/protocols. (Similar standing communications exist for many categories of judicial documents that are subject to retention and transfer to archives). Tari indicated that in the longer term, there would be establishment of retention and transfer schedules for probate documents, including wills registry documents, that are subject to present, and any future retention restrictions.

---

parties agree on an alternative method of service. (ii) Service by or on non-e-filers may be made by mailing, by delivery, or by email or other method if the parties agree.”

<sup>4</sup> The proposed amendment was transmitted to the Court with recommendation for promulgation on April 27, 2022.

<sup>5</sup> See, e.g., 14 V.S.A. § 2 (Wills deposited for safe keeping in the Probate Division); also original documents that must be filed upon commencement of certain probate proceedings per V.R.P.P. 3.

<sup>6</sup> Subcommittee for VREF: Tari Scott, Chas Stoots-Fonberg, and Reporter Morris. For Probate: Judges Kilgore and Glover.

<sup>7</sup> The revised text of the proposed VREF 3(b)(4) is as follows: “(4) the filing is required or permitted to be made nonelectronically by other provision of law, including but not limited to documents such as a will in the probate division for safekeeping pursuant to 14 V.S.A. § 2, and other original documents specified by (proposed) V.R.P.P. 5(f)(2).” Similarly, the text of the proposed VREF 12(c) is amended to add the reference “...and other original testamentary documents filed nonelectronically in the probate division per (proposed) V.R.P.P. 5(f)(2) and 78” in clarifying the nonelectronic documents to be retained, even if the document has also been converted to electronic form. (underlined matter is added to the text of these rules).

As to the text of the current draft of proposed amendments, the Committee was unanimous in having no objection to the proposed VREF 3(b)(4) and 12(c) amendments—on motion of Tom Durkin, seconded by Teri Corsones, these were approved for publication and comment. As to the text of the proposed VRPP 5(f)(2) and 78, the Committee had some comments, to be passed on to the Probate Rules Committee:

First, there should be consideration of whether the proposed definitions of “original” documents are consistent with other definitions of “original” and “vital record” that may appear elsewhere in statute or rule. Justice Dooley referenced a statutory definition of “vital record” in 18 V.S.A. § 4999(10) that has a number of sub-references which may not be consistent with the listing in the proposed VRPP 78(d)(4); second, Committee members question whether an “original” vital record could ever be taken by a litigant for purposes of its filing in probate division—aren’t original vital records required to be retained by the original custodial official, with *certified copies* of such records actually being provided and filed? Third, Justice Dooley inquired whether, if the amendments were promulgated the probate units would have sufficient storage capacity to retain the documents as contemplated. Tari Scott indicated that, pending development of records retention and transfer schedules with VSERA, the probate units do have the capacity to retain the documents that would be held per the proposed amendments. The Committee member comments as to the proposed VRPP 5(f)(2) and 78 amendments will be passed on the Probate Rules Chair Jeff Kilgore, for that Committee’s reference in review and approval of a final draft of those rules for publication. Given the interrelationship of the proposed rules, it is anticipated that the Committee will have opportunity for a final review of the complete package prior to publication for comment.

**5. VREF 3(b)(1)—Ongoing issues with exemption from efilings for certain documents filed by governmental agencies** in certain proceedings, notwithstanding requirement of the rule.<sup>8</sup>

Since adoption of the 2020 VREF, there have been ongoing issues as to providing exemption from efilings for certain agencies, for certain filings routinely made. The question has often come down to whether amendment of Rule 3 to specify additional exemption categories is necessary, or whether the issue can be addressed through CAO directive and business process guidance. Most recently, **OCS has requested exemption from efilings of address updates for clients.** The Committee discussed the issue, and the OCS request, again at some length during the January 21<sup>st</sup> meeting.<sup>9</sup> At the time, Ms. Scott stated that a rule amendment was not necessarily expected, but guidance and suggestions of the VREF Committee were sought. For further context, she indicated that Trial Court Operations and OCS were in close communication about a number of issues, as they are a very frequent filer, and efforts have been collaborative as OFS practice evolves, such as in the provision of draft orders for Magistrate review and approval, and a pilot project under which OCS is taking on responsibility for service of initial case filings, notices and orders. The Committee concluded that an administrative remedy, rather than rule amendment, was to be preferred and Marcia Schels indicated that she would communicate with the IT person at OCS to examine whether an administrative/ technological solution could be implemented. Ms. Schels was unable to attend the April 22<sup>nd</sup> meeting to provide a report. However, in view of Tari Scott’s description of current efforts at broader collaborations with OCS that

---

<sup>8</sup> As examples, Tax Department providing tax clearance documents in probate cases; DAIL reports of wards’ status; Lund Home reports in adoption proceedings; OCS filings as a party vs. draft child support orders for convenience of the court; DMV filings; and NGO Court-related filings, such as from Restorative Justice and Diversion programs.

<sup>9</sup> See Minutes, 1/21/22, pp. 4-5.

are in process for assumption of responsibility for service in parentage and child support proceedings, and the fact that OCS continues to efile the address updates at this time, the Committee was of the view that administrative/technological resolutions as to manner of filing involving OCS should proceed, with no rule amendment, and no further Committee action at this time.

#### **6. VREF 8; Filing of Exhibits; Consideration of Draft Amendments to Clarify Uniform Statewide Procedures for Efiling of Proposed Exhibits; Treatment of Admitted Exhibits; and Procedures for Video/Audio Exhibits.**

The Committee continued its discussions of the issue of efilings of exhibits, with focus upon the efforts of the Standard Practices Committee. Judge Fenster, who is a member of both VREF and the Standard Practices Committee, reported that while the Committee has been meeting regularly, there have been other issues to be considered apart from exhibit filing, and that as to exhibit filing, there are additional complexities related to video and audio exhibits that weigh into the consideration of any standard practices. In Judge Fenster's view, there are also competing interests between establishment of unified, single judiciary-wide standards on electronic filing of exhibits, and the advisability, and in some cases, the necessity to provide a certain amount of flexibility among unit practices for filing (and retention) of exhibits in electronic form with OFS and the use of Webex media. Justice Dooley remarked that VREF 8 as originally promulgated was left intentionally general in its terms, in consideration of these very issues and practices that were likely to evolve. The Committee concluded that no further action as to amendment of VREF 8 would be taken at this time; any further action would follow proposals developed by the Standard Practices Committee.

#### **7. VREF 11(f); (Failure of) Notice to Attorneys of Issuance of Court Orders in Odyssey; Judge (In)Ability to Confirm Issuance of Orders in the Case File.<sup>10</sup>**

The Committee resumed its discussions begun at the January 21<sup>st</sup> meeting, of those identified instances in which attorneys have apparently failed to receive transmittal of court-generated documents, in particular orders/decisions that have been entered by a judge via OFS. Some judges have also reported inability to confirm service of orders they have issued and placed in the system queue for court staff review and issuance. This particular issue blends in as well with issues that have been identified with inability to easily confirm service by a party within the OFS system, for example, when a judge wishes to confirm service prior to entering a default of appearance or default judgment. Court staff have this capability by accessing the OFS reviewer's pages. However, attorneys and judges without appropriate authorization are not able to do so.<sup>11</sup> Following from the January 21<sup>st</sup> meeting, Laurie Canty, Chas Stoots-Fonberg and Jim Smith have been examining potential causes of this problem. One of the contributing causes identified has been existence of law firm security firewalls that block the transmission. In other instances, the efiler has changed email accounts without updating service contact information. There are some instances in which neither circumstance features in the transmission failure; Marcia Schels and staff are examining system issues. Chas Stoots-Fonberg suggested that if deemed necessary, it may be possible to add an event to Odyssey such that when a

---

<sup>10</sup> VREF 11(f) provides that "The court will transmit any notice, order or other document issued by the court to electronic filers by electronic means."

<sup>11</sup> In discussion, it was noted that in a given case, a judge seeking assurance of service could request that court staff examine the reviewer's pages for confirmation of transmission of an order. However, to require that this be routinely done in every case would likely present significant additional staff burdens.

particular filing (whether pleading or court order to be served or transmitted) is accepted, a report of service is generated that is accessible. Justice Dooley and Scott Woodward both noted that this issue of confirmation of service in OFS has previously been identified in Committee discussions. Scott indicated that there was no reason that a means of extracting that data for access could not be explored.

The ultimate Committee consensus was that a rules amendment was not warranted to address this particular issue; that in consequence of the identified trouble-shooting, administrative or OFS system remedies would suffice. Scott Griffith indicated that the data system issues are being worked on by Marcia Schels and Jim Smith, and should be resolved, if not are close to being resolved. Su Steckel stated her agreement that this did not appear to be a rules issue; however, she suggested that repeated instances of this problem should continue to be tracked. Teri Corsones added that the Court Users Group would continue discussions as to the issue of attorney receipt of court-generated orders, and seek to identify any recurrences.<sup>12</sup>

**8. Centralized Review/Rejection of Criminal eFilings and Affidavits Containing Information Deemed not Publicly Accessible (Name of child not a victim); Need for Clarity of an Appeal Process in event of Rejection (Request of Judge Zonay, 12/20/21)**

VREF 5(d)(2) or VRPACR 7(a)(4) amendment, or administrative remedy/protocol? (Consideration brought forward from 1/21/22 Agenda) (Morris/Schels/Canty)

The issue presented is whether and what review process should be available when an efiler wishes to appeal rejection of a filing upon Centralized Review. At present, there is no established procedure, and in the case in issue, the Chief Superior Judge was called upon to respond to an attorney complaint.<sup>13</sup> The Committee continued its consideration of the issue at greater length. At the January 21<sup>st</sup> meeting, there was recognition of a difference between rejection for technical noncompliance with a portion of the VREF rules, and rejection for perceived noncompliance with the Rules for Public Access, which can involve serious questions as to preservation of confidentiality of information that is not publicly accessible. While consensus was that some process was due in circumstances of appeal

---

<sup>12</sup> As to the other issue earlier identified by Su Steckel and discussed by the Committee on January 21<sup>st</sup> (delays between submission of a pleading and its acceptance in Centralized Review, and thus “delay” in completion of OFS service from date of submission), a report as to timing, review and acceptance of filings in Centralized Review had been requested. Laurie Canty was unable to attend the April 22<sup>nd</sup> meeting, and the Committee has again requested such a report at the next Committee meeting, in considering an appeals process in event of filing rejection upon review. See, Item # 8, below.

<sup>13</sup> VREF 5(d) prescribes the process for court staff review and acceptance or rejection of an efilings. Review is “for compliance with these rules (the VREF) and Rule 7(a)(1) of the Rules for Public Access. VREF 5(d) continues, prescribing the efiler’s ability to submit a corrected filing within 7 days, with relation back of the filing to date of original attempt. Additional provisions permit extension of the 7 days for good cause, and direct court staff to accept a corrected filing if all requirements of the rules and the instructions for correction have been met. Yet there is no provision for appeal from rejection, apart from the ability to correct (without prejudice as to the timing as indicated).

*PACR Rule 7(a)* does provide for additional court staff responsibilities and authority upon review for compliance of an efilings with the Public Access Rules. PACR 7(a)(4) provides for staff reference of an efilings that does not comply with PACR to “an assigned judge, who after notice and hearing may” impose certain sanctions for noncompliance. But the focus of this provision is upon sanctions for noncompliance with the rules, and not to resolve dispute as to the basis for rejection of an efilings.

from rejection of a filing, the question is what particular process of appeal? And what authority should be identified as having responsibility for an appeal from rejection? Judge Fenster indicated that in the particular case bringing the issue forward, involving a question of compliance with the Public Access rules, judicial involvement should be required. And further, that it made sense to have the judge presiding in the unit and division in which the document is to be filed conduct the review. In discussion, Committee members recognized that options of either permitting any judge to decide an appeal from rejection, or requiring a particular judge (such as the Presiding Judge of the unit be designated) could present unforeseen problems. Justice Dooley thought that it would be helpful in addressing the issue to have more detailed information from Laurie Canty, Chas Stoots-Fonberg, or a designee provide a report to the Committee as to how the Centralized Review process is working now, statistics on rejection of filings and reasons for rejection, and recommendations as to how those (presumably limited numbers of) cases in which rejection cannot be resolved could best be subject to an effective and fair appeal and decision. The Committee consensus was to request such further information and to continue discussion at the next meeting.

## ITEMS OF NEW BUSINESS CONSIDERED

**9. Judge (In)Ability to Effectively Determine Completion of Service/Opening of Served Document in OFS or Portal; Restoration of Requirement of a separate Certificate of Service in lieu of VREF 11(g)(1) “Checkbox”.** Request of judges (Tomasi; Gerety; Mello) for establishment of effective means/link/”short cut” to verify completion of service in OFS. The perception is that this is either impossible, or unduly burdensome to verify at best. Is an administrative/tech remedy available? Does staff ability to access the OFS review pages resolve issue without unreasonable burden?

The discussion of this issue was combined with that of Item # 7 above (confirmation of transmission/service of court orders in the electronic case record/OFS). It relates to the inability of attorneys and judges who are accessing the electronic case record to effectively confirm service, via access to the OFS reviewer’s pages data, which display information on transmission of service, receipt of service, and confirmation of a recipient’s actual opening of the OFS notice of service. If one is viewing the electronic case record, data as to time of service, receipt of service and opening of notice as to service are not available to the viewer. Court staff, though, can access the OFS reviewer’s pages to secure the referenced service information; at least presently, attorneys and judges cannot. In consequence, some judges have resorted to requesting that court staff examine and provide confirmation of service prior to each hearing, or determination of a motion. As Justice Dooley noted in the discussion of the former issue (confirmation of transmission of court orders), this practice is seen as unnecessarily burdensome and time consuming for court staff.

The judges referring this issue to the Committee are suggesting establishment of a “short cut” that would permit judges to more readily confirm service on their own, without recourse to court staff, or restoration of a requirement of filing a separate Certificate of Service in the OFS e filing process.<sup>14</sup>

---

<sup>14</sup> Justice Dooley reminded the Committee that VREF 11(g) was amended (February 22, 2021) to *eliminate* the requirement of a separate certificate of service where the serving party completes the Submission Agreement checkbox, certifying either that all parties to be served are served via “File and Serve”, choosing the service contact from the Public List; or that a certificate of service is filed complying with VREF 11(g)(2); that the general rule is that duplicative certificates of service are unnecessary when OFS is employed as the means of service.

David Fenster added that a separately-filed Certificate of Service does not in itself actually establish that service has occurred, either in efilings or nonfiling circumstances. It shows at best that the serving party has attempted, engaged in the prescribed means to provide service. As with the issue of confirmation of transmission of court orders to attorneys via OFS, the Committee was disinclined to consider a rules amendment that would either restore a general certificate of service requirement. The consensus was that the issue should be subject to administrative or technological remedy. However, no definitive decision was reached as to further Committee action, including monitoring of administrative/technology responses. The issue will be brought forward on the next meeting's Agenda for clarification of status.

#### **10. OFS; Self Representers; Petitions to Expunge or Seal Criminal Records; Waiver to Permit SA Acceptance of Service Via Electronic Means?**

On referral from Criminal Division Oversight; Request of Joanne Charbonneau; Dawn Sanborn; Steven Brown, Windham DSA. (Content of Forms 100-00265-Self Representer Notice of Appearance and 200-00130-Petition to Expunge/Seal Criminal Records). Apart from alteration of the form(s) to permit checkbox authorization for receipt of service via "electronic means", what would be the "means"? Email, per proposed amendments of VRCP 5(e)(4)? Would forms amendment suffice, or is amendment of VREF implicated?

Reporter Morris indicated that with enactment and legislative revision of the statutes pertaining to expungement and sealing of criminal record information, including provisions that both mandate certain expungements and broadly authorize expungements by agreement of State and Defendant, there are increasing numbers of petitions for expungement and sealing filed by self-representers. The suggestion has been made that in connection with petitions for expungement/sealing made by self-representers, a checkbox be added to the standard notice of appearance form which allows the self-representer to elect to receive service of any responsive pleadings (as well as court notices and orders) via email. VRCP 5 and other procedural rules governing filing are in the process of amendment to permit the option of email filing and service by self-representers (who are permitted, but not required to efile via OFS), at the suggestion of the Court in most recent amendments of A.O. 49. Such a form-election for service via email would be consistent with these amendments.

The principal question presented for the efilings Committee was whether any of the VREF rules would be implicated in the adoption of such a checkbox election for email service on the Notice of Appearance form. In very brief discussion, the Committee consensus was since service or filing via *email* by definition does not involve efilers, that there was no such impact, and no VREF amendment would be required.

#### **11. OFS; Issues with Civil Case Auto-Acceptance Process**

On December 20, 2021, Emergency Amendments to V.R.E.F. 5(d)(1) were promulgated by the Court, upon recommendation of the Special Advisory Committee, in response to and to comply with the November 19, 2021 decision and order of the U.S. District Court for the District of Vermont in *Courthouse News Service, et.al. v. Patricia Gabel, et.al.* Following the direction of the federal court, Rule 5 was amended to except initial civil case filings (with some stated exceptions) from pre-acceptance review by court staff for compliance with the VREF and the Vermont Rules for Public

Access to Records. The practical effect of the order, and responsive rule amendment, was to grant public (and of course, media) access to initial civil complaint content, immediately upon the electronic filing of a complaint, without any delay prior to public access associated with court staff review of the filing prior to “acceptance” to assure compliance with VREF and PACR. Staff review under VREF 5(d)(1) prior to acceptance (and thus provision of public access) is intended not only to assure compliance with the technical and procedural requirements for efilings itself, but also to determine whether the filer has complied with obligation under VRAP 7(a)(1) to assure that content of an efile that is not lawfully subject to public access is either filed as redacted, with an unredacted copy filed with nonpublic designation, or filed with a Motion to Seal. Redaction/separation of filed content that is not publicly accessible is in the first instance, the filer’s responsibility. See, V.R.A.P. 7(a)(1).

In advance of the meeting, Chair Justice Dooley provided Committee members with a copy of an April 12, 2022 memorandum from Chas Stoots-Fonberg to Pat Gabel, outlining various issues that had developed in the course of implementation of the amended Rule 5(d)(1) and adoption of a Civil Case Auto Acceptance Process in OFS.<sup>15</sup>

The principal presenting issue is with OFS party verification problems following the auto acceptance process’ “skipping” of the integral step of party verification (OFS-registered efilers are assigned a party ID number; in normal course, a reviewing clerk searches for the filer’s party ID number, to create an entity that is recognized, in connection with each filing, and not newly created each time. However, when a new civil complaint filing is made via auto acceptance, the system recognizes a new/different entity, and if subsequent auto acceptance filings are made by the same filer (and there are a number of businesses and other entities making multiple new civil complaint filings, **multiple efile use fees are charged incorrectly**).<sup>16</sup> The process of securing Tyler Technologies user fee refunds, and verifying refunds to incorrectly charged filers has become extremely time consuming, and burdensome.

Stoots-Fonberg began the Committee discussion of these issues by providing her further overview and assessment of the presenting issues. She confirmed the assertions in her memo, as to multiple charging for OFS user fees, and the lengthy delays in securing credit against these multiple charges from Tyler Technologies.

The Committee engaged in general discussion of all of the issues presented in the memo, with primary focus, though, upon the multiple user fee charging problem. As related to question of court staff authority and ability to make corrections to compliance of filings whether they are reviewed post auto-acceptance or as initially filed prior to acceptance, Justice Dooley repeated an observation that he has previously made in Committee meetings, that there are some distinctions between the scope of

---

<sup>15</sup> A copy of Ms. Stoots-Fonberg’s memorandum is attached hereto, and incorporated herein by reference.

<sup>16</sup> As Ms. Stoots-Fonberg noted in her memorandum, “As a result of the one time per party per case use fee coupled with the auto acceptance process to make new civil cases immediately available upon receipt, which skips the party verification step, many attorney efilers are getting double charged the \$14.00 efile use fee.

This is essentially what occurs: filer files envelope 1 with Payee ID for party 1. Filer pays the fee and everything is good. Then something happens in Odyssey that “changes” the parties (Party Merge). When filer files a second time, OFS get updated case information. Party 1 is no longer on the case, gets marked as deleted, and Party 2 is added to replace it. When filer selects the party responsible for fees, filer selects party 2, the electronic filing manager does not recognize that party (2), so it charges the filer the use fee again.”



authority and responsibility entrusted to court staff in reviewing, and accepting or rejecting efilings in OFS under VREF 5(d)(1), in contrast to review under VRPACR 7, which might be revisited in context of the presently identified issues.<sup>17</sup>

Ms. Stoots-Fonberg said that the most pressing of the auto-acceptance issues identified remains that of the multiple Tyler Technologies OFS user fees being assessed and the unacceptable delays in securing refunds for those filers who have been overcharged in error due to the system problems flowing from apparent inability to track/integrate party ID verification. Justice Dooley asked if the problem would be resolved in a process where immediately prior to or at the time of, “auto” acceptance, party ID could be verified. Ms. Stoots-Fonberg replied that that would work, but she inquired whether Tyler Technologies could, or would be willing to, provide such a reconfiguration. Scott Woodward’s view was that Tyler would perhaps respond to the effect that the Judiciary has chosen the fee structure, both initial and as revised, and that a resolution of the issue would be seen as primarily vested in the Judiciary. He did observe that the contract with Tyler as to fee structure is apparently scheduled for review this Summer, and that may provide opportunity as well to engage constructively with Tyler as to these issues that have been identified with the auto acceptance process for initial civil complaints.

Ultimately, the Committee took no specific action with respect to the issues identified in Ms. Stoots-Fonberg’s memorandum. However, it was the collective consensus and understanding that multiple OFS use fees should not be charged in the circumstances described, and that the issues would be carried forward to the next Committee meeting; and that in the interim, the Court Administrator’s Office via Trial Court Operations and Research and Technology Services Center leadership and staff, will continue to monitor and explore resolution of the OFS auto acceptance issues. Justice Dooley indicated that he, Reporter Morris and Emily Wetherell would as well examine potential rules amendment measures to accompany any technological and administrative measures to address the problems identified.

### **Adjournment.**

Prior to adjournment, approval of the draft minutes of the January 21<sup>st</sup> meeting was again taken up and the minutes were unanimously approved by the Committee.

---

<sup>17</sup> Both rules impose specific “gatekeeping” obligations as to manner and content of filing upon the efiler in the first instance. VREF 5(b); VRPACR 7(a)(1). In review of efilings per VREF 5(d)(1), court staff review all efilings for compliance the VREF rules (including 5(b)) and VRPACR 7(a)(1). Under VREF 5(d), court staff action is limited to acceptance or rejection, and notification to the efiler of acceptance, or that the filing cannot be accepted until specified actions required by those rules are taken.

*In contrast*, under VRPACR 7(a)(3) and (4), reviewing court staff have authority under established procedures to implement the exceptions to public access established by the PACR rules and statute; to temporarily restrict public access to the record while notifying the Court Administrator of that action. In event of non-compliance of an efiling with the public access rules, staff “must” take an action prescribed by VRPACR 7(a)(4), including changing the public access status or redact the filing to comply, or reject the filing until compliance, specifying a time limit for that, or referral of the matter to the presiding judge (essentially, for imposition of sanctions). There is no equivalent scope of reviewing staff actions in VREF 5. While there is no definition of the term “acceptance” in either the VREF or VRPACR, the text of both sets of rules as to court staff authority and responsibility on review of efilings presumes that such review *precedes* “acceptance”—subject to the initial civil complaint exception of VREF 5(d)(1)(B) promulgated on December 20, 2021.

The meeting was adjourned at approximately 3:25 p.m. The next regular meeting of the Committee will be scheduled by the Reporter following results of an availability poll of Committee members.

Respectfully submitted,

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

Attachment; Memorandum of Chasity Stoots-Fonberg to Pat Gabel, April 12, 2022:

To: Pat Gabel  
From: Chasity Stoots-Fonberg  
Date: April 12, 2022  
Re: Summary of Issues with Civil Case Auto Acceptance Process

To comply with the Federal Court Order of November 19, 2021, the Judiciary began auto-accepting new civil cases on December 10, 2021, from Odyssey File and Serve (OFS).

- Civil complaints for designated case types are auto accepted within approximately 1 minute of submission.
- The lead document (i.e., the complaint) and any documents uploaded as attachments to that lead document become immediately viewable in Odyssey and on the Public Portal/PATs (Public Access Terminals) as long as the filer has designated them as public.
- Documents uploaded under other filing codes in the same envelope do not get auto accepted and still must be reviewed and accepted in the OFS review queues. OFS reviewers can see that the complaint was filed and accepted, and can see the case number that was created, but cannot view the actual complaint or attachments in OFS.
- If the filer enters a filer ID for any party in the envelope it will interrupt the auto-acceptance process and envelope will go to the OFS review queue awaiting party verification.
- If eService is used (less common on initial filings), service of the complaint and attachments is sent out immediately when auto accepted. Service of other documents under other filing codes in the envelope is sent out when a clerk manually accepts them.

While continuing to work the queues in OFS for other types of filings, central reviewers also must review newly filed civil complaints in Odyssey. To track these incoming cases, each reviewer set up an event listing report to run automatically (every 15 minutes) and the report is delivered to them by email.

#### Review for Confidential Information

It can take clerks up to 20-30 minutes to review a newly accepted case for confidential information and proper security.

If a new civil case was filed with confidential information, the clerk cannot reject that case or document because it has already been accepted through the automated process. The clerk then must take the time to redact any confidential information in the filing to protect the person's privacy, as rejection is no longer an option post-auto acceptance. Redaction is, in the first instance, the filer's responsibility (see V.R.E.F. 5 Reporter's Note also referencing V.R.P.A.C.R. 7). The Court Administrator also has responsibility under the Rules to ensure confidential information does not enter the public domain.

## Verify Parties

The auto acceptance process skips an integral step of verifying parties. Odyssey is a party-based system and typically clerks are required to search the Odyssey case management system to determine if the party already exists in the system; and, if so, clerk enters a party ID number in OFS before acceptance so that a new entity is not created each time. However, with the auto-acceptance process, cases are accepted without a verification of parties. This creates a new entity each time. Thus, when you have a business plaintiff such as a credit collection entity, for example, that files many cases across the entire state, each time a new case is created a new entity is also created. The system tracks that new entity's party ID number and matches it to the payment of the efile use fee. Clerk then goes into the case in Odyssey and immediately merges the party into an existing entity. When business plaintiff files into that case again, the system notes that it is a different party id number and charges the efile use fee again.

It is important to properly verify parties so that all of the person's cases are connected for internal management by staff and judges. Also, it is crucial for a party to maintain one party ID number, i.e., one entity, because that party ID is connected to their ability to access their cases on the public portal. If a litigant has more than one entity/ID which is then attached to different cases, the litigant will have to apply multiple times for elevated access in order to see all of their cases on the public portal.

## Background on e-filing Use Fee

Due to complaints from the Vermont Bar Association about the \$5.25 per envelope e-filing use fee paid to Tyler Technologies to host and maintain Odyssey File and Serve, the fee structure changed on April 1, 2021, to the fee structure requested by the Vermont Bar Association. As of April 1<sup>st</sup>, the Judiciary introduced a new efile use fee of \$14.00 per party per case. Each case party is required to pay the fee upon that party's first filing. There are a number of exemptions in place which remove the requirement to pay the fee.

## Refund of Duplicate Use Fee Charge to Filers

As a result of the one time per party per case use fee coupled with the auto acceptance process to make new civil cases immediately available upon receipt, which skips the party verification step, many attorney efilers are getting double charged the \$14.00 efile use fee.

This is essentially what occurs: filer files envelope 1 with PayeeID for party 1. Filer pays the fee and everything is good. Then something happens in Odyssey that "changes" the parties (Party Merge). When filer files a second time, OFS get updated case information. Party 1 is no longer on the case, gets marked as deleted, and Party 2 is added to replace it. When filer selects the party responsible for fees, filer selects party 2, the electronic filing manager does not recognize that party (2), so it charges the filer the use fee again.

As of mid-day April 7, 2022, there have been 207 and counting refund requests since auto accepting began on December 10, 2021.

To process the refunds, filers, mostly attorneys, realize that they have been charged the efile use fee of \$14.00 twice. Attorney has to submit an email containing the two envelope numbers charged to [jud.efilesupport@vermont.gov](mailto:jud.efilesupport@vermont.gov). I then look up both envelope numbers in the OFS system to verify the use fee was in fact paid twice. Tyler Technologies requested that Vermont only submit one ticket per day for refunds as a batch, so I track the requests on a spreadsheet. Later in the day, I log into the Tyler Helpdesk and create a ticket that includes all of the refund requests to that point—attorney name, case number, and both envelope numbers.

Tyler Technologies has been known to take up to 2 months or longer to process refund requests. Once the refund is processed by Tyler through Chase bank, I receive an email that the refund is complete. I then log into the Tyler Helpdesk, download and save the receipt for the refund, find the email from the attorney, write a short message back and attach receipt. I mark the email complete and close the Tyler Helpdesk ticket. It is difficult to quantify how many hours have been spent on these issues thus far and continue for the foreseeable future.

DRAFT: wm/5/5/22;

Final edits: wm/5/12/22.