

VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES  
FOR ELECTRONIC FILING

**MINUTES OF MEETING ON MARCH 24, 2023**

The Advisory Committee on Rules for Electronic Filing met at 1:30p.m. on Friday, March 24, 2023, via Webex video conference.

Committee Attendance:

<b>Committee Members</b>	<b>Attendance</b>
Honorable John A. Dooley	X
Honorable Katherine A. Hayes	Absent
Honorable Thomas S. Durkin	X
Honorable David Fenster	X
Honorable Megan Shafritz	X
Marcia Schels	Absent
Chasity Stoots-Fonberg	X
Laura LaRosa	X
Michelle McDonald	X
Elizabeth Kruska, Esq.	X
Susan J. Steckel, Esq.	X
David Koeninger, Esq.	X
Steven Brown, Esq.	X (left early)
Jordana Levine, Esq.	x

Other attendees:

Teri Corsones, State Court Administrator

Honorable Walter M. Morris, Jr., Outgoing Reporter

Emily Wetherell, Incoming Reporter

J. Dooley noted for the committee that this is last meeting for J. Morris as reporter for the committee and expressed gratitude for J. Morris's hard work for the committee.

**1. Minutes of the February 3, 2023 meeting**

Edit on page 6 adding word "to". Motion to accept minutes, Attorney Levine moved, Attorney Kruska seconded, motion carried unanimously.

**PRIORITY BUSINESS ITEMS:**

- 2. V.R.E.F. 5(d), (e) and (g): Proposed Amendments to Clarify Grounds for Rejection on Court Staff Review and Post-rejection Appeal Process.** (*Committee Discussion, and Approval of Redraft of Proposed Amendments for Publication and Comment/Promulgation, Incorporating Actions at 2/3 Committee Meeting*) (Wetherell/Morris).

Reporter Wetherell provided an overview of the changes made based on the comments from the last meeting.

The committee first discussed the changes to 5(d) and (e) regarding clerk review of efilings. The rule requires the Court Administrator to provide the permissible reasons for rejection and to post the list on the Judiciary website. Teri Corsones provided the committee with what the rejection list will look like.

J. Dooley asked whether failing to flatten a PDF results in a failed submission or in clerk rejection. Chasity Stoots-Fonberg explained that sometimes there may be a failed submission but often the filing ends up in an error queue and then staff have to reject it. J. Dooley pointed out that the list is missing failure to properly flatten PDF and Teri Corsones agreed that it would be added as number 28. It was also explained that the list may change but it would be kept current.

Teri Corsones also provided outline of appeal process and explained that also used 7 days to conform to rule language.

The committee turned to discussion of (g) regarding motions. Emily Wetherell explained that she had revised the prior draft to make it optional whether to file a memo as part of a motion or as a separate filing. It also makes it optional how to file supporting materials—either as separate attachments or as a compiled document. When compiled as one document, the rule requires pagination and a table of contents. Emily Wetherell and Chasity Stoots-Fonberg both met with Su Steckel regarding the wording of the rule on pagination. Su Steckel suggested language to remove reference to a “paper” page number and “separate” in (g)(2)(C). Members agreed with these suggestions.

J. Shafritz commented that it could be very difficult for a judge to use supporting material if filed as one compiled document and that when parties decide how to file, they should consider accessibility for the court reviewing the motion and look for direction from court on how best to file supporting material. Emily Wetherell indicated that this could be addressed in the Reporter’s Notes.

There was a suggestion that supporting material not be allowed to be part of the motion, must be separate document, but maintain choice of whether to compile as one attachment. Several committee members thought the wording “electronic page counter” was confusing but agreed that it made sense in context.

There was a long discussion about how to file and label supporting material that relates to more than one motion or response and what was required by filers to identify the motions or responses to which it relates. There was also discussion about whether supporting material should be filed as an attachment to the motion (lead document) or as its own lead document. Concern also about other parties and clarity of what documents related to each motion. Ultimately, the committee felt that some of these questions would be best addressed by having a good implementation of the changes with training for staff and lawyers.

J. Fenster wondered whether there is a need to actually number compiled document. Emily Wetherell explained that pages need to be numbered in case there is a self-represented litigant that will be served with paper copy and be referencing the paper version.

With the changes agreed to at the meeting regarding filing supporting material separately from the motion and changing the language of regarding pagination, J. Durkin moved to send to Court and recommend that it be sent out for comment. The motion was seconded by J. Fenster. All voted in favor.

4. **VREF Rules 12 and 3(b); Proposed amendments of V.R.P.P. 5 and 78—eFiling/”paper” filing of wills in Probate Division and other original “paper” documents for which non-electronic filing may be authorized by specific provision of statute, or applicable rule of procedure.** (*Final Draft for Publication and Comment; Prepared in collaboration with Jeff Kilgore and Joanne Ertel of Probate Rules Committee; Status Report*) (Morris/Wetherell).

J. Morris reported that there was a change in reporter’s notes to reflect the possibility of electronic wills. The probate rules committee meets on April 3 and will discuss the proposal at that time.

OTHER BUSINESS—FOR CONSIDERATION  
AFTER COMPLETION OF WORK ON PRIORITY ITEMS:

5. **Moving to “accept and correct” system, rather than “reject and correct” system, where possible.** (Dooley; Stoots-Fonberg)

In response to Su Steckel’s suggestion that the Vermont courts move to an “accept and correct” system like PACER used by the federal courts, J. Dooley gathered more information. J. Dooley reported that under PACER the Vermont district court accepts most things but sends notices detailing how filing incorrect. Their caseload is much smaller at only 55 cases. Judges manage the docket and decide what to do about filings. There is no electronic filing for case initiation in the Vermont district court. J. Dooley reported that from his assessment about half of states using Tyler’s electronic filing system, accept more kinds of filings than Vermont. Not all states have a requirement to review for compliance with public-access rules. J. Dooley expressed that it is more transparent to have an accept-and-correct system because all parties can see the attempted filing on the case and the time for correction.

J. Dooley recognized that Vermont needs to have some rejection since there is public-access review. And there is some rejection necessary for failure to comply with formatting or if filing in wrong case or improperly filed as initial or subsequent. J. Dooley invited input from committee on whether to explore this option, particularly from the efiler perspective. Attorney Kruska wondered if there were statistics on the kinds of filings that tend to get rejected more than others or whether there were more rejected filings in certain divisions or dockets. Attorney Kruska was interested in breakdown on most frequent reasons for rejection. Chasity Stoots-Fonberg reported that there are 800-1100 rejections a month (a small percentage of the total filings) and rejections are mostly for missing signatures, missing fees, incorrect filing codes, or selecting the wrong charge in criminal cases. Attorney Koeninger expressed interest in exploring an accept-and-correct model. Attorney Levine expressed no strong feelings either way and noted that most issues can be remedied with education. Michelle McDonald provided that from a clerk’s perspective, having an accept-and-correct model could require more work for clerks if a deficiency notice would have to be tracked by the clerk. She was concerned about properly labeling in case what is accepted and what is deficient.

Attorney Steckel noted that her experience with the federal system was in bankruptcy court where the system works well. She was hesitant to put more work on clerk staff in Vermont to implement this system.

J. Dooley wanted to keep the item on the agenda for further consideration as to whether there were some items that were currently being rejected and could instead be accepted and marked as deficient.

**6. VREF 8-Exhibits; Submitting Exhibits for Trials/Hearings via OFS.**

(Guidance provided in Memo to the Bar, 3/6/23; LaRosa; Wetherell).

Laura LaRosa explained that the Standard Practices committee has issued guidance for court staff and for litigants on filing and processing exhibits for evidentiary hearings. The guidance requires each exhibit to be filed as individual documents. She inquired whether the committee thought it would be helpful to provide guidance to efilers and a rule basis for rejection. J. Morris expressed support for an amendment to have uniformity between the rule and practice.

The committee agreed that Emily Wetherell will prepare a draft amendment to 2020 V.R.E.F. 8 to require filing of exhibits as individual documents.

**7. VREF 3(b)(1); Incremental Movement to Presumption of eFiling by Self Representers, with Option Out; Discussion of Current eFiling Self-Representer Data. (Dooley; LaRosa)**

This item was deferred to the next meeting.

The meeting adjourned at 4:00pm