

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES
FOR ELECTRONIC FILING

MINUTES, October 20, 2023, 9:00am

Meeting held via Webex

Committee Attendance:

Committee Members	Attendance
Honorable John A. Dooley	Present
Vacant (Judge member)	-
Honorable Thomas S. Durkin	Present
Honorable David Fenster	Absent
Honorable Megan Shafritz	Absent
Marcia Schels	Absent
Chasity Stoots-Fonberg	Present
Laura LaRosa	Present
Michelle McDonald	Absent
Elizabeth Kruska, Esq.	Present
Susan J. Steckel, Esq.	Present
David Koeninger, Esq.	Absent
Steven Brown, Esq.	Present
Jordana Levine, Esq.	Present

Others in attendance: J. Waples (Supreme Court liaison), Teri Corsones (State Court Administrator), Emily Wetherell (Reporter)

1. Approval of Minutes of the March 24, 2023 Minutes

Attorney Kruska moved to adopt minutes, Attorney Brown second.
The minutes were approved unanimously.

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.** (*Sent out for comment; Comments Due 6/12/23*).

[PROPOSED--VREF-5--FORCOMMENT.pdf](https://www.vermontjudiciary.org/PROPOSED--VREF-5--FORCOMMENT.pdf) ([vermontjudiciary.org](https://www.vermontjudiciary.org))

J. Dooley reported that no comments were received on the proposal.

By email, David Koeninger provided the following suggestion: In Rule 5(g)(2)(A), add “or responses” to the end of the second sentence to read: “The same memorandum may be filed in support of multiple motions or responses but must identify the motions or responses to which it relates and be referenced in the motions or responses.” The committee agreed unanimously to make this change.

David Koeninger also asked whether a filing that is rejected because of a problem with the credit card can be corrected within 7 days. A discussion followed on this question. Chasity Stoots-Fonberg indicated that if there is a problem with payment, then the filing may experience an error and end up in an error queue, resulting in rejection or there might be a failed submission. In either case, the 7 days would apply under the rule. Attorney Steckel commented that sometimes there is an “internal error” on the screen and the efiler cannot proceed past that point. Chasity Stoots-Fonberg indicated that the judiciary does not know that the e-filing was attempted in this situation. J. Dooley questioned whether the 7 days should apply if there is not even a submission. The committee voted unanimously that the 7 days does not apply in this situation. J. Dooley asked if the Reporter’s Notes should be amended to explain that an internal error is not a rejection or failed submission. J. Waples agreed that language should be added. Reporter Wetherell agreed to make an addition to Reporter’s Notes.

J. Dooley invited a motion on sending the proposed amendments to the Supreme Court with a recommendation that they be promulgated. J. Durkin moved to recommend promulgation with the two changes noted above. Attorney Levine seconded. The committee voted unanimously to recommend the rule amendments for promulgation.

J. Dooley asked about effective dates for rules. Reporter Wetherell explained that starting 1/1/24 there will be regularized effective dates of January 1 and July 1. The committee expressed that it would prefer that these changes go into effect January 1. Reporter Wetherell will present to the Court for January 1 promulgation.

3. V.R.E.F. 8 Proposed Amendment

Reporter Wetherell presented a draft amendment to 2020 V.R.E.F. 8 to require filing of exhibits as individual documents. This was made in response to the discussion at the committee’s last meeting to incorporate this requirement into the rules so that it is clear to filers and items can be rejected for failure to comply. The rule allows each exhibit to be tracked separately and for the system to accurately indicate which exhibits were offered and admitted. Laura LaRosa also indicated that it would help to provide the appropriate security for each document.

J. Dooley asked about whether exhibit pre-filing is required in a rule. J. Waples indicated that there is no rule but many judges do require pre-filing in many instances and that the time to file in advance of the hearing varies. J. Durkin added that the environmental division has a standing rule requiring exhibits to be filed 5 business days before an evidentiary hearing.

Attorney Steckel asked for clarification in the reporter’s notes that this amendment does not apply to motions or exhibits attached to complaints. The committee agreed that there should be language indicating that the rule does not apply to “motions or other pleadings.”

Laura LaRosa moved to send out for comment, and J. Durkin seconded. All committee members voted in favor.

4. V.R.E.F. 3(b)(1); Email Filing by Self-Represented Parties (SRP); OFS Filing by Self-Represented Parties.

(Dooley; LaRosa)

J. Dooley provided some background on this item. Self-represented parties are not required to efile and therefore most do not. J. Dooley initiated discussion on this with judiciary employees Laura LaRosa,

Jessica Van Buren (ARC), and Emily Wetherell. There are not currently reliable statistics on the number of SRPs or how they are filing with the courts. SRPs can file by email, mail, delivery, or through OFS. Anecdotally, many use email to file. Staff thought requiring efilings by SRPs would not alleviate burdens on staff because the process can be complicated. There would also be financial considerations. J. Dooley will ask Teri Corsones about getting better statistics on how many SRPs there are and how they file and serve.

J. Waples indicated that the DEI committee has a subcommittee on data collection chaired by J. Cohen. J. Waples suggested touching base with J. Cohen regarding data collection.

J. Dooley also shared that there are some jurisdictions that require efilings by self-represented parties. J. Dooley will follow up with New Hampshire to understand their experience. Teri Corsones offered to communicate with her contact in NH and to get the best person to ask about this. Teri Corsones also said that she can get anecdotal information about filing by SRPs from COMs.

No action at the moment needed by Efilings Committee.

5. Future Business

J. Dooley asked if there were issues that efilings committee should look at?

- Attorney Brown mentioned the new VDEP (Vermont Digital Evidence Portal) system and wondered if the efilings committee wanted to look at it.

[Vermont Digital Evidence Portal | Vermont Judiciary](#)

- o - Attorney Kruska indicated that she used VDEP and the issues related to it were not about rules but were infrastructure-related. Attorney Kruska thought that V.R.E.F. 8 includes multimedia exhibits but wondered whether the definition of “Electronic Case File” needed to be amended to clarify.
 - o Chasity Stoots-Fonberg explained that although media exhibits are not in the Odyssey case management system, the exhibit list must include them, and the status of the exhibits is tracked there.
 - o Teri Corsones indicated that there may be rule changes required in the future, but the process is in a pilot stage now. J. Waples and Teri Corsones shared that the experience with poor WiFi should improve as the Judiciary’s independent network is installed throughout the state.
 - o - J. Dooley said the committee will track this and if there is more needed from efilings rules, the committee can evaluate.
- Laura LaRosa asked about how attorneys generally educate themselves about changes to the efilings rules.
 - o J. Dooley shared that typically court staff have cooperated with the VBA to provide education or done trainings independently. Other committee members confirmed that trainings occur at VBA meetings. Attorney Kruska mentioned that the monthly memo to the bar provides a lot of information and wondered if efilings information could be highlighted.
 - o J. Durkin thought that bench-bar meetings are good ways to give out information.
 - o Teri Corsones noted the importance of judge training as well and will communicate with J. Zonay about that. Teri Corsones thought that with regularized effective dates of July 1 and January, there could be a webinar before each group of rules goes into effect.
 - As to the open judge seat on the committee Teri Corsones indicated that J. Zonay has a few judges in mind to replace J. Hayes.

Next meeting- Reporter Wetherell will plan the next meeting for February 2024.