

**SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR**

SCOTT GRIFFITH

Interim State Court Administrator
Scott.Griffith@vermont.gov



www.vermontjudiciary.org

Mailing Address

Office of the Court Administrator
109 State Street
Montpelier, VT 05609-0701

Telephone (802) 828-3278
FAX: 802 828-3457

TO: Members of the Vermont Bar

FROM: Scott Griffith, Interim State Court Administrator

RE: Notice Regarding Refund for Duplicative Efilng Fee

DATE: May 6, 2022

**ODYSSEY FILE & SERVE—NOTICE TO LAWYERS FOR FINANCIAL INSTITUTIONS
AND OTHER PLAINTIFFS WITH MULTIPLE CASES IN THE CIVIL DIVISION**

Background

Lawyers who represent financial institutions and other plaintiffs with multiple cases in the civil division should be aware of a potential duplicative efilng use fee charge (“efiling fee”) that was discussed by the Supreme Court’s Special Advisory Committee on the Rules for Electronic Filing at its most recent meeting on April 22, 2022. This issue has arisen following the implementation of an Emergency Rule temporarily amending Rule 5(d) of the 2020 Vermont Rules for Electronic Filing (“Emergency Order”) in response to the 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., No. 2:21-cv-00132 on November 19, 2021 (“Federal Court Order”).

Under the 2020 Vermont Rules for Electronic Filing and the Vermont Rules for Public Access to Court Records, electronic filings undergo court staff review for compliance with rules and statutes. The Federal Court Order prohibits the Judiciary in certain kinds of civil cases from conducting this compliance review of complaints or other initiating documents submitted by lawyers (or self-represented litigants) to the Tyler Technologies File & Serve (“OFS”) electronic service before the filings are accessible publicly. Therefore, under the emergency rule and new protocol, the Judiciary reviews the initiating document(s) for compliance with law and rules after the electronic filing has already been entered into the Judiciary’s case management system and become a publicly available judicial record. This prohibition is only applicable to specific kinds of civil cases that are the subject of the CNS lawsuit.

Implementation of the emergency rule has been accomplished by using an “auto accept” protocol which makes electronic filings available immediately, prior to staff review for compliance with applicable rules and statutes.

In some cases, lawyers and self-represented litigants using the Tyler service are automatically and unintentionally being charged duplicate efiling fees by Tyler due to the way the computer software operates under the “auto accept” process without the planned human review and verification of party information. This efiling fee goes directly to Tyler for the use of OFS and is not part of the fee that litigants pay to initiate a case in the Judiciary’s case management system (“entry fee”).

Problem

The auto accept process implemented to comply with the Federal Order does not involve the integral step of verifying parties. It is important for court staff to properly verify parties so that all of a party’s cases are connected for efficient and proper management by judges and staff. Also, it is crucial for a party to be recognized in the system as a single entity and have a single party ID number since a party ID is connected to the party’s ability to access its cases on the public portal. If a litigant has more than one entity/ID which is then attached to different cases, the litigant will need to apply multiple times for elevated access to see all of its cases on the public portal. The combination of the one-time per party per case efiling fee and the auto acceptance process, that skips the party verification step and creates an additional entity, has resulted in many efilers getting double charged the \$14.00 efiling fee paid to Tyler for the use of its OFS electronic system.

Current Remedy

While awaiting a permanent resolution of these issues, the Judiciary is working with Tyler to ensure that Tyler pays refunds for the duplicate charges.

Efilers charged by Tyler’s service multiple times for the same initial case filing should submit an email containing the two (or more) envelope numbers charged to jud.efilesupport@vermont.gov. Judiciary personnel will then look up the envelope numbers in Tyler’s OFS electronic system to verify that the efiling fee was in fact paid more than once to Tyler. Tyler has requested that the Judiciary only submit one ticket per day for refunds as a batch, so the Judiciary tracks the requests on a spreadsheet. Judiciary personnel log into the Tyler Helpdesk at the end of each day to create a ticket that includes all of the refund requests to that point—attorney name, case number, and envelope numbers. At the current level of refunds, it is taking about ten hours per week of court staff time to manage refund applications.

Each refund is processed by Tyler through Chase bank and it is currently taking up to two months for each refund to be received. The Court Administrator’s Office will continue to monitor and explore resolution of the OFS auto acceptance issues. The agenda for the next meeting of the Supreme Court’s Special Advisory Committee on the Rules for Electronic Filing will include this issue, and Committee leadership may examine whether there should be additional potential rules amendment measures to accompany any technological and administrative measures to address the problems identified.

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