

[As approved by Committee on September 20, 2019]

**VERMONT SUPREME COURT
SPECIAL ADVISORY COMMITTEE ON RULES FOR
ELECTRONIC FILING
Minutes of May 17, 2019 Meeting**

The Special Advisory Committee on Rules for Electronic Filing meeting commenced at 8:05 a.m. at the Supreme Court in Montpelier. Present and participating in the meeting via telephone were Committee Chair Justice John Dooley (Ret.), Supreme Court Liaison Justice Beth Robinson, Judge David Fenster, Judge Tom Durkin, Jeff Loewer, and Su Steckel. Present and participating in the meeting in person were Judge Kate Hayes and Teri Corsones. Also present were Emily Wetherell and Andy Stone. Absent were members Judge Brian Gearson, Judge Beth Mann, Tari Scott, Eric Avildsen, Chasity Stoots-Fonberg and Judge Walter Morris (Reporter). Teri took minutes for the meeting at Judge Morris's request.

Justice Dooley opened the Committee meeting. He referred to a draft agenda that Emily sent on May 16 listing items for the Committee to discuss and noted that he would be taking up the items in a slightly different order. Below are the items, listed in the order in which they were discussed.

1. Rule 11, Service

Justice Dooley referred to a document Emily sent on May 16 entitled "Certificate of Compliance", which includes "Language for Public Access", and separate "Language for Certificate of Service". The language for public access provides: "I certify that I have reviewed the documents I am efiled for compliance with Vermont Rule for Public Access to Court Records 7(a)(1) and, if necessary, have identified nonpublic records and filed a certificate detailing any actions taken to comply with the public access rules."

The language for certificate of service provides: "I certify that when filing this document, I served all efilers using the electronic filing system or through an alternate service agreement that has been electronically filed, and that I have efiled a certificate of service if any parties in the case are not efilers."

Justice Dooley asked whether Committee members agreed or disagreed in concept with the suggested language, with the understanding that the actual language may differ once the details for the submission agreements and the informational checkboxes are known. He will also prepare Reporter's Notes which explain the distinction between the public access certification, which will be necessary before a filer progresses through the efiled process, and the certificate of service certification, the terms of which will vary depending on the method of service. The Civil Rules Committee will also need to be involved in the certificate of service certification and any VRCP 5 modifications. The certificate of service will also require a check (or waiver) before submitting and may also require submission of an actual certificate of service.

The Committee agreed in concept with the suggested language in the “Certificate of Compliance” document.

2. Rule 7

Rule 7(b) verbiage regarding “Required PDF format” has been added, based largely on a similar rule in Idaho. Because of issues concerning direct conversion versus OCR conversion to text searchable documents, it’s unclear whether all PDF’s can be converted to text searchable documents. Justice Dooley will check with the Idaho courts as to what their experience has been with this issue. The Reporter’s Notes will indicate that direct conversion is encouraged but may not be feasible with all documents or systems. Jeff confirmed that the “Guide and File” documents are text searchable. The Committee agreed that Rule 7(b) can stay, subject to Justice Dooley learning anything new from the Idaho courts that impacts the suggested language, and subject to public comments that address issues with the Rule 7(b) language, and subject to Justice Dooley removing the references to Idaho in the draft.

3. Use of term “personal service”

Members discussed the fact that the use of the term “personal service” is sometimes complicated by the different methods of service that can establish personal jurisdiction. The current definition is based on the language of a 1958 VSC case. Members determined that the definition of “Personal Service” in the Rule 2 definitions should be modified to provide: “Personal service” means actual delivery of the notice or process to the person to whom it is directed or any other method of service that is required to establish personal jurisdiction over the person being served.”

4. Use of term “Court-Generated Document”

Judge Fenster is concerned that the present definition of “court generated document” in Rule 2 could preclude a judge from signing a proposed order or adding “so noted” on a filing. After discussion that anything signed by a judge is considered to be issued by the court, it was decided that the Reporter’s Notes can make clear that the documents Judge Fenster describes are considered court-generated documents.

5. Rule 1 – documents added through alternate electronic transmission

Members noted that Odyssey doesn’t presently allow criminal e-filing. Judge Hayes indicated that Tyler is in the process of hiring someone to develop a process for SA-type bulk filings. Judge Fenster indicated that the goal is to develop an API that will integrate the SA and PD filings with the CMS software. He wants to ensure that the filings in the meantime qualify as a form of efilng even though they will not enter the CMS through the efilng portal. The added Reporter’s Notes are intended to do so.

6. Rule 3 – whether to add exceptions for rfa type filers who use Guide and File

The rule presently states that any srl who e-files in a case is required to continue efiling unless excused by the court. Members discussed whether there should be exceptions for rfa filers, including a discussion as to whether DV advocates could permit rfa plaintiffs to use their accounts to file. Judge Fenster indicated that the Committee should address concerns as to whether this could constitute practicing law without a license. The issue about exceptions for rfa filers was tabled until later.

7. Rule 10, Payment

Andy noted that there needs to be a distinction between court filing fees paid to the Judiciary and and efiling fees paid to Tyler. The present rule is based on the Tyler contract as to who pays efiling fees. The only exceptions are Vermont Judiciary employees who are authorized users, government agencies, indigent filers and filers in criminal cases. Notably missing are masters, GALs and rfa plaintiffs. Justice Dooley will attempt to address the issue in the Reporter's Notes.

8. Rule 4, Registration

Rule 4 has been substantially re-vamped to explain the responsibilities of an efiler and to indicate the need to separately register to remotely view documents not accessible to the public. Andy suggested identifying the Vermont Judiciary Public portal as the place to register separately, for clarification. Rule 4 (a) and (b) were approved and (c) was approved with Andy's suggestion. The amended language in Rule 4(c) is: "To view the electronic case file, including documents that are not publicly accessible, a person, including those with specific rights of access pursuant to Rule 5 of the Rules for Public Access to Court Records, must separately register with the public-access portal, providing verification of their specific right of access."

9. Rule 6, Nonelectronic filing

Rule 6(b) was approved after substituting the word "Impermissible" for the word "Incorrect", to distinguish the applicability of Rule 6(b) from Rule 6(c)(2), and after deleting the second sentence of Rule 6(b) so that there is no reference to resubmitting the document or having the benefit of the original date and filing time.

Members voted unanimously to send the draft rules, with the changes noted above, to the Vermont Supreme Court for its review.

10. Next Committee Dates.

No new committee dates were set.

11. Adjournment: The meeting was adjourned at approximately 12:00 p.m.

Respectfully submitted,

Teri Corsones (acting Committee Reporter)

5/19/19; 9/23/19