

[As approved by Committee on September 20, 2019]

**VERMONT SUPREME COURT
SPECIAL ADVISORY COMMITTEE ON
VERMONT RULES FOR ELECTRONIC FILING
Minutes of Meeting
April 16, 2019**

The meeting of the Special Advisory Committee on Vermont Rules for Electronic Filing (VREF) commenced at approximately noon at the Supreme Court in Montpelier. Present were committee members John Dooley (Chair), Jeff Loewer, Chasity Stoots-Fonberg, Teri Corsones, Esq. (via phone), Judge Kate Hayes, Tari Scott, Dawn Sanborn, and Emily Wetherell, Esq. Also present were Supreme Court liaison Justice Beth Robinson, and Committee Reporter Judge Walt Morris (via phone). Absent were committee members Judges Tom Durkin, David Fenster, and Beth Mann; Eric Avildsen, Esq. and Susan Steckel, Esq.

The draft minutes of the April 12, 2019 Committee meeting, prepared by Teri Corsones, Esq., were distributed to Committee members in advance of the meeting, but there was no discussion, or action taken, with respect to them.

Business Conducted:

The Committee proceeded with its work to conduct section-by-section of the draft of proposed amendments to the VREF, employing the “April 11th” draft document which was the working document referenced at the April 12th meeting.

Committee Chair Dooley indicated that he had sent an email to Kinvin Wroth, Reporter for the Advisory Committee on Rules of Civil Procedure, communicating his views of amendments to the Civil Rules that would be warranted in consideration of the proposed VREF amendments. This email was not shared with VREF Committee members, but anticipated that Chair Dooley would provide a copy to all.

The Chair first quickly noted proposed changes to Rule 4 that had been discussed and agreed upon at the April 12th meeting. These included deletion in 4(e) of the reference in line 1 to “...or court staff in the case of a court generated document” and in line 2 to the phrase “on the website” (of the electronic filing system); in 4(f)(4) (separate or combined filing of memoranda of law, affidavits, exhibits, supporting matter) Judge Fenster will provide the committee with suggested alternative language.

The Committee then reviewed the changes that had been recommended to the Rule 5 (Non-electronic documents) draft. These included deletion of reference in 5(a) to Rule 2(b)(5) (which has been deleted); and addition of the phrase, “, pursuant to Rule 4(d)” at the end of subsection (a). The beginning of subsection 5(e) is edited to read: “After review of the filing for compliance with these rules...”, deleting reference to “Rules 6(c), 7 and 8”. The second sentence of 5(e) is amended to read, “A filer may

submit a corrected filing within seven ~~calendar~~ days...", deleting reference to "calendar" and adding the word "days". (This, to comport with the "Day is a Day" Rules for computation of time promulgated in 2018.) The Committee briefly discussed 5(f) (electronic filing of requests for permission to appeal) and its potential application to appeals from the Judicial Bureau, (which are governed by V.R.C.P. 80.6(i)), but decided to make no change to the text.

Chair Dooley then lead a discussion of draft Rule 6 (Format of Documents). Reference in 6(a)(4) to Rules 4(g) and (h) were revised to the renumbered subsections 4(f) and (g). As to 6(a)(2) (document data size), while it appeared that the Odyssey system has no pertinent data capacity limitations, it was decided to add 6(a)(2) back in, providing a document will not comply with format if it "is larger than that authorized by system instructions." In 5(b), reference in the second line to "Rule 5(e)" is changed to renumbered "5(d)". As to 6(a)(1) (requiring PDF format), a Reporter's Note is to be added clarifying that such would not apply to draft documents, such as findings or proposed orders, submitted by a party in modifiable form at express request of the judge in a specific case. (Routine filing of modifiable documents is otherwise prohibited by the rule). There were no other changes recommended to draft Rule 6.

Rule 6A. The Committee discussed the draft text of 6A, which governs e-filing of proposed exhibits, and the process of their admission and inclusion in the electronic record. There was discussion of exactly when, and by whom, proposed and admitted exhibits would be scanned and filed. Judge Hayes indicated that there were many instances in which the judges were now requiring pre-marking and filing of proposed exhibits, prior to offer or admission, notably in complex cases, such as TPR proceedings and complex civil litigation. The Committee consensus was that this practice was beneficial, and should continue to be recognized. The general view was that scanning and filing of proposed exhibits should be the responsibility of the filer; and that once exhibits were admitted, notation to that effect, and any scanning of admitted exhibits, should be the responsibility of staff in the courtroom. Jeff Loewer indicated that scanners were planned for each courtroom for this purpose. The Committee recommended no change in the draft text of 6A.

Rule 7 (Signatures). The Committee reviewed the draft text, noting pending legislation (S. 105, § 3) that would be of potential impact upon existing subsection 7(c)(Documents under Oath).¹ This legislation would add 4 V.S.A. § 27b, authorizing electronically filed verified documents in the NG-CMS, prescribing the form of verification and exempting such documents from the requirement of approval or verification of a notary. (Search warrant and NTO affidavits/applications are not exempted from required notary verification). The statute also codifies as perjury an offense of false declaration, intended to cover electronic verifications under new 4 V.S.A. § 27b.

¹ S. 105 passed the Senate, and has been referred to the House Judiciary Committee.

There were both general discussion, and specific edits made. As a general matter, Judge Hayes indicated that she had been reviewing the treatment of electronic signatures, and documents filed under oath, in the e-filing systems of other jurisdictions, including Maryland and Rhode Island, and that she would provide excerpts from the rules she has found to the Committee for consideration at next meeting. Ms. Stoots-Fonberg indicated that Rhode Island had captioned a pertinent rule as “Documents Requiring Signature or Opposing Parties”. Other than the suggestion that the rules of other jurisdictions be considered, there were no major changes recommended to Rule 7. The Committee consensus was that in the event that S. 105 passed into law, that would likely be during the publication and comment process, and the Committee would further amend the proposal to comport with any enacted statute.

The Committee discussed the meaning and interpretation of the term “procedural document” as used in subsections 7(a)(3) and (b), and whether these would include stipulations of parties (either as to evidentiary matters, or in proposed resolution/settlement of disputed issues in a case), as opposed to motions and expressly related documents. Justice Robinson noted that the term “procedural document” does not appear to have an independent definition of reference in any of the procedural rules, and that a definition would be advisable. The Chair and Reporter will look into a draft clarifying definition.

Minor changes/Edits to Rule 7 recommended: 7(a)(1), line 4—add reference to “V.R.P.P. 11” to the other cited rules. 7(a)(1), line 6—change reference to “s/” to “/s/”.

The meeting closed with Chair Dooley’s inquiry as to the status of drafting of proposed emergency rules to cover the launch of NG-CMS in the Judicial Bureau. Judge Hayes indicated that she and Judge Fenster were working on a draft for timely submission to the Court.

The meeting was adjourned at approximately 12:55 p.m., to be reconvened on Wednesday, April 17th at noon.

Respectfully submitted,

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