

VERMONT SUPREME COURT
SPECIAL ADVISORY COMMITTEE ON
RULES FOR ELECTRONIC FILING

MINUTES OF MEETING, MARCH 5, 2021

The Committee meeting was convened (via “Teams” video conference) at approximately 1:33 p.m. Present/participating were Chair Justice John Dooley, Judge Tom Durkin; Tari Scott, Teri Corsones, Su Steckel, Eric Avildsen, and Scott Woodward. Liaison Justice Beth Robinson, Court Administrator Pat Gabel, Committee Reporter Walt Morris, Emily Wetherell and Andy Stone were also present. Chasity Stoots-Fonberg and Judge David Fenster were absent.

With the presence of a quorum, Chair Justice Dooley opened the meeting. Announcements included the Supreme Court’s March 4th appointment of a “Standard Practices” Committee, charged (among other responsibilities) to consider recommendations for standard statewide business practices and processes for use by court staff and judicial officers related to Odyssey Case Management System, consistent with applicable rules, statutes and best practices. Teri Corsones commented that it would have been useful to have system users represented on the Committee; Pat Gabel assured that stakeholders would certainly be consulted, and their views sought, as to changes in internal operating procedures. She also indicated that there were significant internal challenges in developing procedures to enable the judiciary to do its work better, but stakeholder input is absolutely contemplated. Justice Robinson emphasized that that would be so. On another subject, Scott Woodward reported that the Odyssey system would be encountering a “tech” adjustment, later in the Summer when the States Attorneys’ new software, “Just Ware” goes live and is integrated with OFS. A change in the OFS submission agreement would be contemplated. The object is to enable entry of case information into the Odyssey ECR more effectively than permitted with the existing State’s Attorney software. Justice Dooley reported that on March 3rd, the judiciary’s CLE training session for the Bar on Odyssey File and Serve (which included a briefing on the recent amendments of VREF 2, 4 and 11) was held, with almost 300 (approximately 291) attorneys and law office staff participating. Teri Corsones indicated that in her assessment, the program was very much appreciated.

Approval of Prior Meeting Minutes.

Eric Avildsen moved approval of the June 26, 2020 minutes, seconded by Teri Corsones; Ms. Corsones moved approval of the February 5, 2021 minutes, seconded by Judge Durkin; Judge Durkin moved approval of the February 17, 2021 minutes, seconded by Ms. Corsones. Each set of minutes was in turn approved by unanimous vote of the Committee.

Emergency Promulgation of Amendments to VREF 2, 4 and 11: Discussion of Submission Agreements Textbox Content and Activation Date.

The Court promulgated the Emergency amendments to VREF 2, 4 and 11 on February 22nd, effective on March 15, 2021. Reporter Morris indicated that there was an established comment period, ending on April 23rd. The Committee had planned to consider the actual content of the Submission Agreements checkboxes after the February meeting date, as an issue apart from the amendments promulgation, and provide comment. Further to this, a draft of the Submission Agreement text box for service (prepared by Justice Dooley, Emily Wetherell and Judge Morris) was sent to Committee members in advance of the meeting which provided as follows:

“I certify that for any document that must be served:

- (1) I have served all efilers with service contacts through File and Serve; and
- (2) If there are other parties to be served, I have attached to my filing a certificate of service describing service on these persons in compliance with V.R.E.F. 11(g)(2).”

Su Steckel had a proposal that she felt was more specific, accurate, and consistent with Rule 11 for Committee consideration:

“I certify that either

- (1) I am not required to serve my filing on any person; or
- (2) I have served all persons on whom service is required through File and Serve; or
- (3) I have served all efilers in this case with service contacts through File and Serve except as described in the attached certificate of service, and I have attached to my filing a certificate of service describing service on all persons served by means other than File and Serve in compliance with V.R.E.F. 11(g)(2).”

Justice Dooley reminded the Committee that any suggestions would be advisory only, but that there should be a recommendation for consideration in the configuration. In the brief following discussion, it was agreed that Su’s proposal provided more clarity, and more specific reference to the requirements of the service certification of V.R.E.F. 11(g)(2) and (3) (i.e., the three alternatives—service not required; all parties are efilers and served via File and Serve; and the “hybrid” where not all are efilers, some served via OFS, and a certificate of service efiled for those served other than by OFS).

The Committee ultimately unanimously decided to adopt Su Steckel’s suggested changes to the text, with some minor edits as follows:

“I certify that either

- (4) I am not required to serve my filing on any person; or
- (5) I have served all persons on whom service is required through File and Serve; or
- (6) I have served all persons on whom service is required through File and Serve except as described in my certificate of service; which is attached and describes service on all persons served by means other than File and Serve in compliance with V.R.E.F. 11(g)(2).”¹

VREF 12 and 3(b)—Exemption from efilings for wills in Probate Division and other original “paper” documents for which non-electronic filing may be mandated by specific provision of statute.²

The Committee discussed the text of the Reporter’s draft amendments of VREF 12 and 3(b). Justice Dooley stated that beyond the “Will Registry”, he was not sure that any statute required retention of original paper documents in the Probate Division as broadly as seemed to be requested by the probate bench. As explained by the Reporter, the principal amendment would be to VREF 12, adding a subsection (c) exception for retention of nonelectronically filed documents that must be retained by law. In addition, there would be an exception from efilings added to VREF 3(b), for filings “required to be made nonelectronically by provision of law, including but not limited to documents such as a will kept in the probate division for safekeeping pursuant to 4 V.S.A. § 2 (the “Wills Registry”). The discussion turned to extensive consideration of the state of the judiciary’s records retention policies, including probate division records retention and procedures for transition to the State Archives. Tari

¹ This text was ultimately adopted, configured, and appears in the OFS filing pages for certification of any efilings.

² See, e.g., 14 V.S.A. § 2 (Wills deposited for safe keeping in the Probate Division)

Scott indicated that at present, nonelectronic probate filings are being scanned into the electronic case record, as in other divisions, even though original nonelectronic wills are still retained. Even wills and related documents that are not probated are kept. At present, there is not a retention schedule for wills. Although there are records retention statutes, the CAO is in regular communication with State Archives as to transfer of judiciary records to review existing policies and establish them where necessary in view of the movement to electronic records throughout state government and the judiciary. Chas Stoots-Fonberg remarked that the probate judges have clearly expressed a preference for retention of nonelectronic wills and related documents.³

At Justice Dooley's suggestion, the Committee consensus was that the Reporter would provide a copy of the current draft of the proposed amendments to Judge Kilgore, with a request that the Advisory Committee on Rules of Probate Procedure and probate judges review the proposal for comment and any suggested changes.

Abrogation of 2010 V.R.E.F. ("eCabinet" efilng rules); Amendment/Consolidation of A.O. 44 and 45 Attorney email address registration requirements. (Draft amendments) (Wetherell).

Emily Wetherell provided an overview of the effect of these amendments. As to the first, the promulgated VREF 1(c) already provides for a phasing out of application of the 2010 VREF rules when the Court Administrator directs commencement of electronic filing in a division or unit at which time the 2020 VREF rules are fully applicable. That has already happened as to the units formerly using the 2010 rules, and will be the case for all units effective March 15th.

As to the second category of amendments of A.O. 44 and 45, attorney email address registration requirements, Emily indicated that the email addresses in issue are necessary to permit provision of court notices, calendars and other documents by electronic mail not only in the superior court, but also the judicial bureau, Supreme Court, and judicial boards. The amendments also serve to clarify the means by which clerks may provide email notices to self representing individuals and others such as guardians ad litem (but this is not required, unless the individual also registers for receipt of email notices in a particular case). The amendments are necessary for continuity in provision of electronic notices to attorneys and the specified others, while integration of the "court notices" function with Odyssey case management and File and Serve systems are explored. Ms. Wetherell prepared tables detailing the variety of attorney email registration requirements that were related to the proposed amendments (and A.O. 41 dealing with attorney licensing), as well provisions of the 2020 VREF and Rules of Civil Procedure pertaining to email and address information required in certain pleadings. She suggested that in the longer term, a consolidated administrative order (perhaps amending A.O. 41) to deal with all circumstances of provision of attorney (and electing self-representers') email contact addresses would appear to be a better solution, but at present the proposed amendments of A.O. 44 and 45 were necessary. Justice Dooley indicated that in his view, with the lengthy time line of Tyler reconfigurations, it was reasonable to assume that it would likely be a year of working with the amendments presently proposed as an interim solution. Scott Woodward contributed views as to the technological processes involved, and suggested that there was an opportunity to bring further clarity. In his view, use of the terms "eCabinet", "ERN" and "Attorney Identification Number" as related to email notice provision were confusing, and suggested "Electronic Notification System" address as an alternative. Ms. Wetherell emphasized the critical need to provide continuity of process and terms, and

³ At the Committee's December 18th meeting, Judge Jeff Kilgore indicated that the probate judges' concern for retention of "paper" wills was not only related to the requirements of the will registry, but that in case of a will contest, the operative "paper" will may feature as physical evidence of the validity of execution, in terms of impressions on the document, signatures and the like. He also indicated that at present, Vermont does not provide statutory authorization for electronic wills.

communicating any changes in nomenclature, now and with any future revisions. Judge Durkin and Tari Scott concurred in the need for the proposed amendments to provide clear guidance as Odyssey case management and efilings is finally implemented in all units and divisions.

Ms. Wetherell brought the proposed amendment of A.O. 44, § 4 to the Committee's attention. This provision would clarify that for self-representers and others (ex. GALs; Parent Coordinators) who *choose* to receive notices/court documents via email, and properly register to do so, notices *may be* sent by the court to them, but such is not required. Tari Scott indicated that at present, this is not done—notice is provided by paper (postal mailing), although there may be some case participants in some of the units with “official” case status, such as the GALs, who receive email notices but not per a specified policy. Both Ms. Scott and Mr. Woodward indicated that as a non-mandatory option, the proposed § 4 would work, and leaves open the option for systemic provision of emails to this category of recipients, per administrative directive. There was no opposition to keeping the proposed § 4 in the proposed amendment.

The Committee also considered the proposed amendment of § 5, (1) establishing a presumption of delivery of a document in the body of an email, or an attachment to an email, when the email is sent by the court, and (2) requiring the judiciary to maintain an electronic record showing the content of any email or attachment delivered; the time it was sent; and the recipient to whom it was sent. There were many questions, and extensive discussions as to the judiciary's technological capability to actually implement the second provision (maintaining an electronic record of the details of email notice). Tari Scott and Scott Woodward confirmed that such data existed; that Odyssey has a “Notice to Parties” event; but there were significant issues as to the value of retention versus the difficulty of managing the data, retrieving, and viewing it. After further discussion ultimate Committee consensus was to remove the second sentence of the proposed amendment of A.O. 45, § 5, keeping the first (as to presumption of delivery).

On motion of Tari Scott, seconded by Judge Durkin, the Committee unanimously approved of transmission for promulgation of the proposed amendments Abrogating the 2010 Electronic Filing Rules and Amending A.O. 44 and 45 as indicated. On a second motion of Ms. Scott and Judge Durkin, the Committee unanimously approved a recommendation that the proposed amendments be promulgated by the Court as emergency amendments.⁴

VREF 3(b)(1)—Exemption from Efilings for Certain Documents filed by Governmental Agencies and NGOs in Certain Proceedings, Notwithstanding Requirement of the Rule.

Consideration of these amendments was carried over from the December 18th meeting. As Tari Scott again indicated, Court Operations has had continued inquiries and requests from infrequent governmental and NGO filers seeking exemption from the requirement of efilings otherwise imposed upon governmental agency filers by VREF (b)(1).⁵ Ms. Scott described further the types of filers involved—the state Tax Department (tax clearance documents in estate cases); doctors providing forensic psychiatric/psychological evaluations through the Department of Mental Health; Lund Home (probate filings in adoption cases); hospitals (evaluations/records in Advance Directive disputes in probate); Community Justice and Supervised Visitation Centers (which are NGOs) and Qualified Domestic Relations Orders (QDROs) prepared on behalf of parties by an attorney who has not appeared in a case for a party (the Committee has previously considered this issue). Ms. Scott

⁴ The package of amendments was promulgated in an Emergency Order of the Court on March 8th, effective March 15th, 2021.

⁵ Which authorizes nonelectronic filing when the filer “who is not filing on behalf of a governmental agency is a self-represented litigant...”

indicated that Diversion Boards and Pre-Trial Services organizations (which work under auspices of the Department of Corrections) do efile their documents. As she indicated, the general population of entities effected are non-litigant nonprofits and nonlitigant governmental agencies.

A concept draft was provided by the Reporter which would in effect authorize the Court Administrator to establish terms for exemption of such infrequent filers from the requirement of efilings.⁶

Beyond Ms. Scott's description of the efilings exemption issue and the variety of contexts in which it is presented, there was insufficient meeting time to consider the substance of the concept draft, and the item was passed to the next meeting Agenda.

Efforts of Subcommittee to Propose Amendments to VREF and VRAP for Launch of Appellate Efilings and Case Management in the Supreme Court.

Justice Dooley briefly reported that the subcommittee⁷ has been meeting regularly since January, and will meet again on March 12th to continue its work in reviewing and recommending proposed amendments to both VREF and VRAP in advance of the launch of Odyssey efilings and electronic case management in the Supreme Court during the Summer. In his assessment, the subcommittee was then on track to complete and present its recommendations to the VREF Committee later in April.

On motion of Teri Corsones, seconded by Tari Scott, the meeting was adjourned at approximately 3:27 p.m. No next meeting date was scheduled, although it was anticipated that a next meeting will be convened at the call of the Chair, for review and action upon the recommendations of the subcommittee on appellate efilings rules, and other business items.

Respectfully submitted,

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

[5/13/21]

⁶ "A document may be nonelectronically filed when: [] the filing is made on behalf of a governmental agency, non-governmental organization, or other person or entity, who would otherwise be required to file electronically; the filing is not made in party status; and the filing is made with such infrequency that nonelectronic filing is made under terms specifically authorized by the Court Administrator for that category of document."

⁷ Justice Dooley; Justice Robinson; Emily Wetherell; Bridget Asay; Allan Keyes; Jody Racht; Rebecca Turner; Holly Wilson; and Reporter Morris.