

APPROVED

VERMONT SUPREME COURT

**SPECIAL ADVISORY COMMITTEE ON RULES
GOVERNING AN ELECTRONIC CASE FILE AND ELECTRONIC FILING**

**Minutes of Meeting
May 20, 2015**

The meeting was called to order at 9:10 a.m. in the Supreme Court conference room, Montpelier, by Hon. John Dooley, chair. Present were members Eric Avildsen, Teri Corsones, Hon. Amy Davenport, Hon. Thomas Durkin, Hon. Brian Gearson, and John Newman. Also present were Jeffrey Loewer, Director of Research and Administration Services in the Court Administrator's Office, and Professor L. Kinvin Wroth, Reporter.

1. Minutes of the meeting of February 27, 2015. On motion duly made and seconded, the minutes of the meeting of February 27, 2015, were approved as corrected in the attachment to Ms. Corsones' e-mail of March 1.

2. E-filing in the Environmental Division: Proposed amendments. Professor Wroth reported that no comments had been received on the proposed amendments to V.R.E.F. 1(a), 2, and V.R.E.C.P. 3, 4, and 5 sent out for comment on March 11, 2015, with comments to be sent to Chairman Griffin of the Civil Rules Committee by May 11, 2015. See [https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVREF1\(a\)_2\(a\)and\(b\)_11andVRECP3_4_5.pdf](https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVREF1(a)_2(a)and(b)_11andVRECP3_4_5.pdf). On motion duly made and seconded, it was voted unanimously to recommend to the Supreme Court that the amendments be promulgated as circulated. Professor Wroth agreed to send the recommendation to the Court in time for it to be considered at the Court's June 8 administrative meeting. He will advise the Civil Rules Committee of this action at its June 12 meeting.

3. E-filing for cases in the Essex Criminal Division. Judge Gearson reported that preparatory work for the e-filing of new cases in the Essex Criminal Division has been completed. Mr. Loewer reported that a public access terminal slated for installation in the Essex County court house is in the process of final configuration. It was agreed that a subcommittee consisting of Ms. Corsones, Judge Davenport, Kathleen Pearl (Clerk of the Essex Unit), the judge to be assigned to the Essex Unit, a prosecutor, and a representative of the defense bar would prepare a draft amendment to the E-filing Rules regarding e-filing in the Essex Criminal Division to be considered at the Committee's next meeting.

4. E-filing in small claims actions. Ms. Corsones reported that the Judiciary Advisory Council had recommended to the Supreme Court that a pilot project for small claims centralization be undertaken, with Rutland and Addison claims to be processed in Rutland and Windsor and Orange claims to be processed in Windsor. Hearings would be held in the filer's county. The project would include mandatory electronic filing for attorneys. Self-represented litigants would have the option of paper or electronic filing. Justice Dooley stated that the Court would consider the report at its June 8 administrative meeting. Ms. Corsones will check with the

Services, Security, and Facilities Committee regarding the recommended effective date and will report the result to Justice Dooley before June 8. She and Professor Wroth will prepare necessary draft rules amendments and she will contact the Civil Division Oversight Committee regarding any necessary revisions to the Small Claims Handbook and the Small Claims Instructions and forms.

5. Electronic notice and response in small claims and other actions. The Committee considered Ms. Corsones' e-mail memorandum of May 9, 2015, on electronic communications and Professor Wroth's drafts of necessary Small Claims and Electronic Filing rules amendments.

In discussion of part 1, electronic transmission of court documents to parties, it was agreed that further consideration needs to be given to the need for encryption of confidential documents and the inclusion of specific encryption provisions in the Electronic Filing Rules. In discussion of Ms. Corsones' draft administrative directive for electronic delivery to attorneys, it was agreed that the directive should rescind all prior directives that it superseded, and that the second paragraph should be revised to provide exceptions to the requirement of e-mail delivery for original documents that cannot be sent electronically, including specific examples; for documents in non-public proceedings, including mental health and juvenile proceedings; and for documents when the parties have agreed on the use of non-electronic transmission. Regarding the draft directive for transmission to self-represented litigants, it was agreed that similar exceptions should be incorporated in the second paragraph and that consideration should be given to the manner of advising those litigants of the option to file electronically. Ms. Corsones agreed to provide new drafts of both directives addressing these points for the next meeting.

The Committee agreed with the proposed amendment to V.R.S.C.P. 3(a)(1), with the proviso that the electronic delivery option should be stated first as the preferred option. Professor Wroth agreed to redraft the amendment to incorporate that change and the other amendments identified in Ms. Corsones' May 9 memorandum and to present the revised draft to the Civil Rules Committee for review at its June 12 meeting.

In discussion of part 2, electronic transmission of documents from parties to the court, it was noted that proposed new V.R.E.F. 11(e) provided that, in courts where e-filing is not permitted, electronic transmission of court documents to the court may be made only with the court's prior permission. The Committee agreed with the language of draft V.R.E.F. 11(e) but deferred to the next meeting consideration of Justice Dooley's concern that the provision was more appropriate as a management practice or as an administrative directive or order. Ms. Corsones noted that a number of complex issues made it inappropriate to have a general rule allowing electronic transmission by parties to the courts. She will ask the Clerks to prepare a separate rule for those kinds of communications for consideration at the next meeting.

In discussion of part 3, electronic transmission of documents from parties to other parties, it was noted that currently many attorneys now engage in such transmission by agreement. The Committee agreed with the language of draft V.R.E.F. 11(f) but similarly deferred the question of form to the next meeting.

6. Proposed rule on judicial appearance by video. Justice Dooley focused discussion on the practices in other states and under A.O. 38 (II), noting that the immediate issue was to provide for a pending Chittenden County pilot project for remote arraignments, but that there would soon be a need for more general provisions covering a wider range of actions.

Professor Wroth agreed to prepare an emergency amendment of A.O. 38(II)(c) similar to a comparable provision in the Arizona Rule and transmit it to the Committee for review and to the Court in time for promulgation at its June 8 administrative meeting.

It was agreed to establish a joint subcommittee with two representatives from each of the individual procedural rules committees and this Committee to review the differences among the other procedural rules concerning the subjects suitable for video appearance and to propose a uniform rule for consideration by the individual committees. Professor Wroth will provide to the subcommittee the relevant language of each of the present procedural rules and AO 38, as well as appropriate provisions from the rules of other states.

At the same time, this Committee will develop proposed operating performance standards based on other states that will work with Vermont's present systems. In a review of the Arizona and Indiana standards, Mr. Loewer agreed that their requirements would work in Vermont, as would a provision for a camera that could move around the court room and a provision for private attorney-client conferences off line. Professor Wroth agreed to work with Justice Dooley on preparation of a draft for the next meeting.

7. Next meeting. It was agreed that the Committee would meet at 9:00 a.m. on Tuesday, June 30, 2015, in Montpelier at the Supreme Court.

There being no further business, the meeting was adjourned at 12:00 noon.

Respectfully submitted,

L. Kinvin Wroth
Reporter