

**APPROVED**

**VERMONT SUPREME COURT**

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

**Minutes of Meeting  
June 30, 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. Brian Grearson, and John Newman (by telephone). Also present was Professor L. Kinvin Wroth, Reporter.

**1. Minutes of the meeting of May 20, 2015.** On motion duly made and seconded, the corrected minutes of the meeting of May 20, 2015, were unanimously approved with a punctuation correction in the second paragraph of item 5.

**2. Recommended amendments.** Professor Wroth reported that the Committee's recommended amendments to V.R.E.F. 1(a), 2, and V.R.E.C.P. 3, 4, and 5 will be promulgated effective July 1, 2015, and that the Committee's recommended amendment of Administrative Order 38, § II(c), had been promulgated as an emergency amendment on June 8, 2015, effective on that date, with the Committee to report to the Court by August 7, 2015, on any comments received.

A concern was expressed that the requirement of § I (a)(3) that a finding and reasons for the need for in-court appearance of an incarcerated individual be placed on the record might be overlooked. On motion duly made and seconded, after discussion, it was voted unanimously that the words, "and places the finding and the reasons for it on the record," should be deleted from paragraph (3) in a future amendment.

Justice Dooley stated that he would proceed to convene the joint subcommittee of procedural rules committee members to consider issues pertaining to broader use of video conferencing and would begin to develop performance standards with Professor Wroth, as agreed at the May 20 meeting of the Committee.

**3. E-filing for cases in the Essex Criminal Division.** The Committee noted that issues still remain concerning the location of the Essex County files and completion of the project for the e-filing of new cases in the Essex Criminal Division. Justice Dooley stated that he would now constitute the subcommittee proposed at the May 20 meeting, 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 to prepare a draft amendment to the E-filing Rules regarding e-filing in the Essex Criminal Division.

**4. E-filing in small claims actions.** Justice Dooley reported that the Court at its June 8 administrative meeting had received and unanimously approved the report of the Judiciary

Advisory Council recommending that a pilot project for small claims centralization be undertaken in the Addison, Orange, Rutland, and Windsor units. 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 indicated that rules to implement the report would not need to be emergency rules. Accordingly, the December effective date previously suggested by Professor Wroth would be appropriate. Ms. Corsones and Professor Wroth will prepare necessary draft rules amendments as agreed at the May 20 meeting.

## **5. Electronic notice and response in small claims and other actions.**

### **A. Electronic transmission of court documents to parties.**

Administrative directives. It was agreed that the purpose of the directives was to establish a procedure that was both uniform and universal. On motion duly made and seconded, it was voted unanimously that Professor Wroth should prepare a clean draft of the June 2 draft directive concerning e-mail transmission to attorneys, with Ms. Corsones' suggested revisions, to be sent to Justice Dooley for recommendation to the Court Administrator. It was then agreed to take no action on the June 2 draft directive concerning electronic transmission to self-represented litigants until the draft had been reviewed by Research and Information Services.

Revised Small Claims Rules amendments. The Committee considered Professor Wroth's June 30 drafts of Small Claims Rules amendments concerning transmission of court documents to parties, as developed by the Civil Rules and Oversight committees on the basis of this Committee's earlier draft. In discussion, Committee members questioned the appropriateness of promulgating draft V.R.S.C.P. 2.1 as a rule, rather than adopting it as guidance in instructions or in a Handbook provision. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that the Civil Rules Committee approve the June 30 proposed revisions of V.R.S.C.P. 3-10, with the elimination throughout of the phrase "agree in writing" and references to Rule 2.1, and the clarification that a party entitled to electronic delivery should file the original pleading with the court, rather than a copy. It was noted that the e-mail address registration program could be adapted to reflect consent.

**B. Electronic transmissions from parties to the court.** After Committee consideration of draft V.R.E.F. 11(e) providing 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, it was agreed that the final sentence of the draft rule concerning permission to file should be deleted and that the present draft, with that deletion, should be added as a new rule rather than as a subdivision of Rule 11. Ms. Corsones agreed to provide a new draft for the next meeting.

**C. Electronic transmissions from parties to other parties.** After discussion, on motion duly made and seconded, it was voted unanimously to recommend to the Civil Rules Committee that the substance of proposed V.R.E.F. 11(f) making e-mail transmission between represented parties mandatory be included in the proposed amendment of V.R.C.P. 5(b).

**6. Other Business.** At Ms. Corsones' suggestion, it was agreed that a proposal that electronic filing be expanded to the mental health docket, with appropriate provisions for security, would be put on the agenda for the next meeting.

**7. Next meeting.** It was agreed that Professor Wroth would circulate proposed dates for a meeting of the Committee in late July.

There being no further business, the meeting was adjourned at 12:15 p.m.

Respectfully submitted,

L. Kinvin Wroth  
Reporter