

**VERMONT SUPREME COURT**  
**SPECIAL ADVISORY COMMITTEE**  
**ON**  
**RULES GOVERNING ELECTRONIC CASE FILE AND ELECTRONIC FILING**

**Minutes of Meeting**  
**March 30, 2012**

The meeting was called to order at 1:00 p.m. by Hon. John Dooley, chair, in the Supreme Court Garden Level conference room, Montpelier. Present were members Eric Avildsen, Bonnie Barnes, Hon. Robert Bent, Teri Corsones, Hon. Amy Davenport, Hon. Thomas Durkin, John Newman (by phone), Jody Racht, and Susan Steckel; court staff Rick Conklin, Renny Perry, and Michael Pratt; State Archives representative Tanya Marshall, and Professor L. Kinvin Wroth, Reporter (by phone).

**1. E-mail Notification.**

The Committee reviewed the March 23 draft administrative order on e-mail notification and the February 20 “Basket Service” summary attached to Professor Wroth’s March 23 e-mail. Justice Dooley noted that time was of the essence on this item, because the Court wished to proceed with it as soon as possible.

It was agreed that V.R.C.P. 77(d)(2) should be amended to restore the language deleted in the emergency amendments of August 17, 2010, so that it would provide that the clerk should give notice under V.R.C.P. 77(d)(1), and any other notice required by the rules, “by a method that the Supreme Court has provided by administrative order or directive” and would provide that such notice is sufficient for all purposes for which notice by the clerk is required. The restored language is identical to that of V.R.Cr.P. 56(d)(2) and V.R.P.P. 77(d)(2) and will apply under the Family and Environmental Division rules because the appropriate Civil and Criminal rules are incorporated in those rules.

To facilitate e-mail notification and to decouple E-filing registration from attorney licensing, it was agreed that V.R.E.F. 3(b) and 3(c) should be amended to read

(b) An attorney in good standing in the State of Vermont ~~may~~ must register on the electronic filing system website by submitting his or her attorney license number and verifying that the information submitted on his or her most recent attorney licensing statement under A.O. No. 41 and in any reported changes, is correct, or updating that information. An attorney registered under this subdivision may submit one or two e-mail addresses in addition to the address provided on the licensing statement all information required by the Court Administrator on the registration screen displayed on the website, including a current e-mail address. An attorney registered under this subdivision may submit up to two additional e-mail addresses. These All e-mail addresses submitted, which shall will be listed on the Judiciary website, and must be listed on all filings by that attorney, and They are the addresses to which all service, notice, or other communication submitted must be sent. The attorney must report any change in the information and e-mail addresses submitted under A.O. No. 41 and subsequent reports,

~~and in any additional address, within 24 hours of the change forthwith~~ by amendment to the electronic filing system registration.

(c) An attorney in good standing in another jurisdiction who is admitted pro hac vice under applicable rules of procedure or administrative orders, a represented or self-represented party, and any other person permitted to file electronically ~~may must~~ register on the electronic filing system website by submitting all information required by the Court Administrator on the registration screens displayed on the website, including a ~~currently maintained e-mail account current e-mail address~~. An attorney registered under this subdivision may submit ~~no more than three up to two additional~~ e-mail addresses. ~~These All e-mail addresses submitted, which shall will~~ be listed on the Judiciary website, ~~and~~ must be listed on all filings by that attorney, ~~and They~~ are the addresses to which all service, notice, or other communication submitted must be sent. The attorney must report any change in ~~any the information or and any e-mail addresses~~ submitted ~~within 24 hours of the change forthwith~~ by amendment to the electronic filing system registration.

In review of the draft administrative order, it was agreed that §2 should be revised and expanded to read

2. To authorize a unit and division of the superior court to use email delivery of one or more types of documents, the court administrator shall sign a directive that specifies the unit, the division, the types of documents that will be delivered by email, and the date on which email delivery will start. ~~The directive will be placed on the website of the Vermont Judiciary.~~

A. Notice of the directive shall given in the following manner and to the following effect:

(1) Prior to the effective date of the directive, it will be placed on the website of the Vermont Judiciary and a copy of the directive it will be sent to each lawyer who is then appearing in an open case in the unit and division designated.

(2) The notice will be sent by regular mail and to the e-mail address of the to a lawyer as specified in the licensing statement filed pursuant to §7 of Administrative Order No. 41 registered under Rule 3 at the e-mail address or addresses provided under V.R.E.F 3(b) or (c). The notice will be sent to a Vermont-admitted lawyer not registered under V.R.E.F 3(b) at the e-mail address of the lawyer as specified in the licensing statement filed pursuant to §7 of Administrative Order No. 41. The notice will be sent to a lawyer from another jurisdiction appearing pro hac vice and not registered under V.R.E.F. 3(c) at any e-mail or postal address provided in the case by that lawyer.

(3) The notice to any unregistered lawyer then appearing in an open case in the unit and division will include a statement that the lawyer must register under V.R.E.F 3(b) or (c) as appropriate if he or she wishes to receive further notices from the court in the case. All other lawyers must register under V.R.E.F. 3(b) or (c) before their appearance in a case in the unit and division covered by a

directive pursuant to this Administrative Order will be accepted under the applicable procedural rule.

(4) Prior to the effective date of email delivery in a unit or division of the superior court, all Vermont admitted lawyers who have appeared in an open case in the unit or units covered by the directive must register their email addresses on the judiciary electronic filing system website in the manner specified in Rule 3(b) of the Vermont Rules for Electronic Filing. In addition, all other Vermont admitted lawyers must register before they can appear in a case in the unit covered by a directive pursuant to this Administrative Order. As of the effective date of the directive, V.R.E.F. 11(b) notwithstanding, all documents covered by the directive will be delivered to lawyers solely by email to the address or addresses specified in the registration provided pursuant to V.R.E.F. 3(b) or (c).

(5) Lawyers are responsible for maintaining one or more registered, effective email addresses at all times to obtain specified court documents specified in the directive. Failure of the lawyer to receive a document delivered by email shall not render the delivery ineffective unless so ordered by the court based on a showing of good cause. However, if the court or the court administrator receives notice by electronic means that a delivery was entirely ineffective through no fault of the intended recipient, the court administrator will so notify the court, and the court or the court administrator shall will attempt to deliver the content of the document by another means.

It was agreed that §2.B. should be revised as follows:

B. Prior to the effective date of a directive, the court administrator or the clerk of the unit shall hold an open meeting for assisting will provide training designed to assist lawyers in registering and using the email delivery system. The meeting shall be held training will be available in the unit involved, and notice of the date and location of the meeting shall the training details will be included with the copy of the directive sent to each lawyer pursuant to § 2.A(1).

It was agreed that §2.C should be revised as follows:

C. A document delivered by email pursuant to this administrative order shall be considered presumed to be delivered when sent from the court. The ease management system judiciary shall maintain an electronic record showing the content of any document delivered pursuant to this administrative order, the time the document was sent, and the recipients to whom the document was sent. If a paper file is maintained, a record showing the content of the notice shall be part of the paper file.

No changes were suggested in §§1 and 3 of the draft

Justice Dooley noted that there were significant problems to be addressed regarding when and how to adopt the administrative order and related rules amendments agreed upon by the Committee: Should the changes be done statewide all at once or county-by-county? Can the changes all be accomplished by administrative order? Should some or all be promulgated as emergency amendments? The technology will be ready to go by the end of May. What should be

the effective date of the changes? Should effective dates of different provisions be staggered? Should there be sanctions for non-compliance, or would it be better to rely on persuasion and lawyers' responses to the practical necessity of compliance? Justice Dooley agreed to consider these issues and advise the Committee on his conclusions when Professor Wroth's drafts of proposed language were distributed.

## **2. Update on E-filing.**

Justice Dooley reported that there were two factors delaying the move of E-cabinet filing beyond the Rutland and Windsor civil dockets: (1) Extension of E-cabinet filing was to be timed to the availability of the V-case case management system. It now cannot be predicted when that will occur. (2) System failures in the trial courts and the Supreme Court have shown that there are serious issues concerning the risks of abandoning paper files. A study of the issues involved in establishing adequate redundancy has shown the need for a significant system upgrade with a price tag of \$2,000,000 or more. A RFP will be sent out in June to potential vendors for the upgrade.

Justice Dooley also reported on the bright side that public access terminals are now in place in Rutland and Windsor, and the E-cabinet software has now been configured to allow payment of filing fees by electronic check.

## **3. Electronic Record Retention Policies.**

Justice Dooley reported that a committee facilitated by Marna Murray and including Ms. Marshall is engaged in studying records management issues involving electronic court records. With apologies and thanks to Ms. Marshall, it was agreed to defer her presentation on these issues to a subsequent meeting.

## **4. Audio-video Participation and Testimony.**

It was agreed to defer consideration of this item to a subsequent meeting.

## **5. Next meeting.**

Justice Dooley agreed to circulate proposed dates for the next meeting with the revised drafts and comments on the e-mail notification process.

There being no further business, the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

L. Kinvin Wroth  
Reporter