

VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES FOR ELECTRONIC FILING

**February 9, 2024, 9:00am**

Committee Attendance:

<b>Committee Members</b>	<b>Attendance</b>
Honorable John A. Dooley	Present
Honorable Rory Thibault	Present
Honorable Thomas S. Durkin	Present
Honorable David Fenster	Present
Honorable Megan Shafritz	Present
Marcia Schels	Present
Chasity Stoots-Fonberg	Present
Laura LaRosa	Present
Michelle McDonald	Present
Elizabeth Kruska, Esq.	Present
Vacant Attorney Member	--
David Koening, Esq.	Present
Steven Brown, Esq.	Absent
Jordana Levine, Esq.	Present

Others in attendance: J. Waples (Supreme Court liaison), Teri Corsones (State Court Administrator), Emily Wetherell (Reporter).

**1. Approval of Minutes of the October 20, 2023 Meeting**

J. Durkin move to approve the minutes; Attorney Kruska seconded. Teri Corsones proposed three minor edits. The minutes were approved as amended with J. Fenster and J. Shafritz abstaining.

**2. Committee Membership**

Committee welcomed new member J. Thibault.

J. Dooley explained that there is a vacant committee position for an attorney member and asked any members with suggestions to contact him.

BUSINESS ITEMS:

**3. V.R.E.F. 5(d), (e) and (g). Promulgated Amendments to Clarify Grounds for Rejection on Court Staff Review and Post-rejection Appeal Process. (Promulgated 11/6/23, effective 1/8/24)**

The amendment rule was promulgated in November and became effective January 8, 2024. [PROMULGATED-VREF5--STAMPED.pdf \(vermontjudiciary.org\)](#)

The Judiciary website now provides a list of reasons for rejection of a filing. [Vermont Rules of Electronic Filing Rejection List.Published \(rev.\).2.pdf \(vermontjudiciary.org\)](#)

There are also instructions and forms related to appealing a rejection.

[Electronic Filing | Vermont Judiciary](#)

Ms. Stoots-Fonberg reported that the rejection reasons are posted on the Judiciary website and the appeals process is in place. There have been no appeals filed. There have been no issues so far with implementation of the amended rule.

#### **4. V.R.E.F. 8 Proposed Amendment. Comments due January 8, 2024**

[PROPOSED-2020VREF8--FORCOMMENT.pdf \(vermontjudiciary.org\)](#)

Draft amendment to 2020 V.R.E.F. 8 requires all exhibits to be filed as separate documents into the electronic filing system. Comments to rule from Attorney LaRosa, Attorney Guevin).

Reporter Wetherell outlined the amendment and the two comments. One commenter suggested that the rule provide a uniform deadline for exhibits to be prefiled. The other commenter asked that the rule clarify the change is not meant to alter existing process where the exhibit list is filed as the lead document and the exhibits are filed as attachments to that lead document.

Reporter Wetherell shared revised Reporter's Notes to clarify that the amendment was not meant to alter current practice. Reporter Wetherell did not make amendments regarding the time for pre-filing as this has been approached differently across divisions and invited feedback from the committee.

There was a discussion about whether further clarification was needed in the Reporter's Notes to make clear that the amendment was meant to codify current practice and not to alter the instructions currently on the Judiciary website. Committee members deferred to the Reporter for exact phrasing of the Reporter's Notes. No substantive changes to the rule were suggested.

J. Thibault moved to recommend that the Court promulgate the amended; J. Durkin seconded the motion. All voted in favor.

#### **5. Proposed Amendments to 2020 V.R.E.F. 2(c), 8(c) regarding VDEP**

Reporter Wetherell provided background to VDEP. The Judiciary has begun implementing the Vermont Digital Evidence Portal (VDEP) to allow submission and storage of digital evidence. A pilot of the system began in the criminal division in a few counties and is being rolled out to all criminal courts on February 12, 2024. Further information is on the Judiciary website.

[Vermont Digital Evidence Portal | Vermont Judiciary](#)

Following the committee's discussion at its last meeting, Reporter Wetherell drafted amendments to two rules. First, proposed change to 2020 V.R.E.F. 2(c), which provides a definition of "Electronic Case File." The amendment clarifies that this term refers to the items in the electronic case file in the case management system. Second, a proposed change to 2020 V.R.E.F. 8(c), regarding exhibits. This rule currently addresses exhibits that can be filed as PDFs through OFS and physical exhibits. The amendment specifically adds "digital evidence" to the rule to recognize that digital evidence may be submitted electronically.

J. Fenster wanted to confirm that these amendments would not conflict with any guidance on how to use the system that might be included in an Administrative Order or other directive. Reporter Wetherell confirmed that these rules are not meant to dictate how the system is used.

J. Fenster moved to send out for comment; J. Durkin seconded. All in favor.

## **6. VREF 3(b)(1); Email Filing by Self-Represented Parties; OFS Filing by Self-Represented Parties.**

J. Dooley indicated that this item would stay on the agenda in case the committee could get more information or statistics on the use of efilings by self-represented litigants.

Teri Corsones reported that she contacted New Hampshire, which requires efilings for self-represented parties but allows exceptions. Ms. Corsones will ask New Hampshire for statistics on how many exceptions there are in New Hampshire and indicated that she was looking at whether Vermont can get statistics on how many self-represented parties in Vermont are choosing to efile.

Ms. Stoots-Fonberg reported that there is currently no good way through OFS to track how many efilers are self-represented and that configuring OFS to collect this data would require all efilers to indicate their role each time they efiled, which would be burdensome on lawyers.

### **OTHER**

J. Dooley inquired whether there were other items for the committee.

J. Shafritz asked about Rule 11(g) regarding certificates of service. J. Shafritz asked whether the language of Rule 11(g)(1) meant that a judge could assume that the efiler had certified service if the document was successfully filed. J. Dooley explained that yes, it is a checkbox and must be checked to proceed. Therefore, the fact of filing means that service was certified. It does not mean that service necessarily happened.

J. Shafritz also inquired about whether the language in the Reporter's Notes to the 2020 amendment meant that information regarding who was served can be retrieved from OFS by a judge. J. Fenster explained that information is available through the filing history in OFS, but judges need to ask a judicial assistant to retrieve it.

Attorney Levine explained that attorneys also have access to the information. The email notification lists all attorneys served with the efilings. Attorney Kruska said efilers can also look at envelope details and see who served and when opened, but she was not sure how the opened feature worked for documents in confidential cases that were viewed by accessing the portal not by attachment.

J. Shafritz appreciated clarification.

J. Fenster inquired if there was a way to know whether a self-represented party was an efiler. J. Dooley asked J. Fenster to follow up with staff about the current situation and bring it back to committee if more discussion is needed.

J. Durkin moved to adjourn; J. Fenster seconded. All voted in favor and meeting adjourned at 10am.

Next meeting date - May 10, 2024, 9am. [subsequently rescheduled to May 24, 2024]