

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES  
FOR ELECTRONIC FILING**

Minutes of Meeting September 20, 2024

Committee Attendance:

<b>Committee Members</b>	<b>Attendance</b>
Honorable John A. Dooley	Present
Honorable Rory Thibault	Present
Honorable David Fenster	Present
Honorable Megan Shafritz	Present
Marcia Schels	Present
Chasity Stoots-Fonberg	Present
Laura LaRosa	Present
Michelle McDonald	Absent
Elizabeth Kruska, Esq.	Absent
Steven Brown, Esq.	Present
Jordana Levine, Esq.	Present
Jonathan Rose	Present
Laura Gans	Present

Also present: Emily Wetherell, Reporter; Teri Corsones, State Court Administrator

**1. Approval of Minutes of the May 2024 Meeting**

Attorney Brown moved to approve the minutes; Attorney Levine seconded the motion. The minutes were unanimously approved as previously circulated.

**2. Committee Membership**

J. Dooley welcomed new members Laura Gans and Jon Rose to the committee.

J. Dooley provided his appreciation to J. Durkin for his long-time contributions to the committee.

Reporter Wetherell noted that the Court had not yet appointed a replacement for J. Durkin.

BUSINESS ITEMS:

**3. Promulgated Amendments to V.R.E.F. 2(c) and 8(c)**

These amendments were promulgated on June 1, 2024, and will be effective January 1, 2025.

[PROMULGATED-VREF2\(c\)8\(c\)--STAMPED.pdf \(vermontjudiciary.org\)](#)

VDEP is live in all divisions of the superior court as of June 3, 2024.

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

Reporter Wetherell explained that the rules were promulgated.

#### **4. Proposed Amendments to the Vermont Rules for Environmental Court Proceedings**

J. Dooley mentioned that Ms. Wetherell had referred to the civil rules committee some suggested amendments to the Vermont Rules for Environmental Court Proceedings because those rules still contain outdated references to the now-abrogated 2010 Vermont Rules for Electronic Filing.

#### **5. Representative for AI Committee**

Attorney Levine provided an update on the work of the Judiciary AI subcommittee on rules. The committee met twice and each representative identified any rules that might need modification. Attorney Levine indicated that no efilings rules were implicated. The subcommittee discussed the Rules of Evidence and possible amendments to those rules and V.R.C.P. 11.

#### **6. Efilings for PRB Hearing Panel Cases**

J. Dooley mentioned that efilings is not yet being used for attorney discipline panel hearing proceedings. The process was started a few years ago but stalled because some PRB practices did not match the rules. PRB has been working on those rules and wants to restart the process of implementing efilings for PRB hearing proceedings. Reporter Wetherell will work with J. Dooley and Mike Kennedy to get this process restarted.

#### **7. Update on Forms Used by Self-Represented Litigants.**

At the May meeting, Attorney Brown recommended that additional forms provide a place for SRLs to opt into allowing service by email. He indicated that petitions to seal or expunge are often filed without an attorney and the process could be improved if there was a place on the form that indicated the SRL consented to service by email.

In response to this inquiry, Ms. Corsones provided the committee with a copy of a proposed revised form to expunge or seal with a new section allowing a self-represented litigant to opt into service by email. Attorney Brown indicated that the addition would be helpful and is responsive to request.

Attorney Brown further inquired whether the waiver of counsel form in the criminal division could also be revised to include an opt-in for service by email. Ms. Corsones indicated that this change would not have to go through the full oversight committee review because it is not substantive. J. Fenster asked about whether it would be useful to have a notice of appearance form in the criminal division like in the civil division because there may be situations where waiver of counsel is not required but notice of appearance is appropriate. Ms. Corsones indicated that a new form would have to go through the criminal oversight committee. J. Fenster expressed it might make more sense to have one form with a waiver of counsel and a notice of appearance. Ms. Corsones will refer the matter to criminal oversight and in the meantime get the email service opt-in provision added to the waiver of counsel form.

J. Dooley indicated that he would like this committee to make further inquiry regarding efilings by SRLs at a future meeting.

## **8. Update on Appeals Process for Rejected Filings**

The appeals process in V.R.E.F. 5(d)(7) for rejected filings went into effect on January 8, 2024.

Ms. Corsones reported that no appeals have yet been filed for rejected filings.

Ms. Corsones also reported that she had not heard about issues with the list of reasons for rejection from judiciary personnel or from the court users' group.

## **9. Certificate of Service- Request from J. Toor.**

J. Toor contacted both the civil and efilings rules committees suggesting that the rules be amended to "return to the old requirement of a certificate of service for every filing." She indicated that as a judge she was unable to determine whether or how people were served, particularly in cases involving a mix of lawyers and self-represented litigants (SRLs). She reported that in her experience SRLs rarely file certificates of service and that it would be easier if the same rules applied to all filers.

J. Dooley provided background on the electronic certification (check box) that is used by efilers for service on other efilers. J. Dooley reiterated that service by or on a party that is not an efiler requires a separate certificate of service (COS). The issues identified by J. Toor pertain to situations with SRLs where a COS is already required by the rules. An efiling cannot be filed without checking the box certifying service. Rule 11 applies to both electronic certification and separate COS. The civil rules provide that the clerk cannot refuse a filing for lack of a COS.

Attorney Brown asked about the communication between OFS and case-management system, and whether the case-management system can document the service contacts chosen in OFS. J. Dooley explained that they are two different systems, and the service information does not import to the case-management system.

Ms. Stoots-Fonberg indicated that there were incidents where lawyers check box but do not choose all contacts from public list so not all parties are served. In addition, attorneys may choose efile instead of efile&serve, resulting in no service. Ms. Stoots-Fonberg clarified that the default is eFile&Serve but if there are multiple lead documents and the efile chooses add a new document, then the system can default to eFile. Ms. Wetherell will follow up on this. Ms. Stoots-Fonberg said that like in the paper world, a party could certify service, but not actually serve and it is up to a party to raise the issue with the court.

Ms. Corsones recalled that eliminating a separate COS was supported by attorneys during the transition to efilings and if there is a change being contemplated, the court users' group should weigh in on it.

J. Shafritz provided her opinion that the check box is not an effective certification and that requiring a separate COS makes people more aware of the requirement and it is helpful to have the same rule for all situations. She expressed that more training might be appropriate for

lawyers or their assistants and judges. J. Shafritz also explained that in situations where a COS is not filed and is required, then the judge can ask for one.

Attorney Brown clarified that the lawyer making an e filing can check for eservice. He was opposed to having paper COS in all situations because if lawyers are not using OFS properly, then having a paper COS will not change how they are using system. He thought that most lawyers are using the system properly.

J. Thibault expressed that attorneys should be held to the requirements of the rules and learn to use the system appropriately. There is no excuse for efilers not using OFS properly. He noted that there are issues with SRLs and therefore a COS is needed in those situations.

Attorney Levine clarified that an e filer can see who was served and if a party who is served, that party can also see others who were served.

Ms. Corsones indicated that there was a recent upgrade and that the upgrade may have added the possibility that information about eservice could be imported into the case-management system. J. Dooley indicated he would follow up on this question.

J. Shafritz encouraged education for judges if no changes to the rule are made.

J. Dooley expressed concern about service with SRLs and suggested that he send a letter to the civil rules committee regarding the paper COS required by and for SRLs. There was no objection by committee. J. Dooley indicated he would also formulate a response to J. Toor.

By unanimous consent, the meeting adjourned at 10:45 a.m.

Reporter will coordinate with Chair to set next meeting dates.