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May 12, 2020

VIA: ELECTRONIC MAIL

Member
Vermont Senate Judiciary
Vermont State House
115 State Street
Montpelier, VT 05633

Re: Odyssey E-Filing System Issues

Dear Senator:

I will be testifying Wednesday morning, May 13th regarding the excessive fees associated with the Odyssey E-filing Program. I have already written to Senator Sears, Baruth, and Benning about other problems inherent with the Odyssey E-filing System, including excessive fees and the manner Odyssey was selected by the Court Administrator for use in our Courts.

I watched your April 29th Committee Hearing on Odyssey, with particular attention to Court Administrator Gabel's testimony. First, I would like to address her comments.

As a long time practicing attorney in both the Civil and Criminal Divisions, I am frustrated by the Court Administrator's stubborn refusal to acknowledge that Odyssey was implemented *with virtually no input from members of the Vermont Bar*, who will be using this program!¹ Ms. Gabel used a lot of bureaucratic phrases such as "robust procurement process" and "reaching out to external stake holders", among others, while suggesting that there was wide spread involvement and approval in the "robust procurement" and "rollout processes".

However, you will remember that Vermont Bar Association Executive Director Therese Corsones testified that the Odyssey contract with Tyler Technologies was negotiated without consultation with the Vermont Bar, the public, and the Legislature, which was "very concerning".

¹ In defending the claim that the Bar was unaware of the Odyssey E-filing fees, Ms. Gabel claimed at the April 28th hearing that at a January 2019 Vermont Bar Association Meeting, "hundreds of people were present" when Odyssey was discussed. However, according to VBA Records, 99 attendees signed up for the program, with 15 not attending. Moreover, in reviewing the 42 pages of materials on the Odyssey, there was but a *single mention* of filing fees, without any per filing charge identified.

I concur with her statement that “we should have been given the opportunity to weigh in on (procuring and implementing Odyssey)”. Ms. Corsones confirmed that it was only on Monday, April 27th she first became aware of issues regarding the “per envelope” Odyssey e-file fee. As Senator Sears observed, the roll out of the Odyssey program was a surprise, particularly regarding the fees being charged.

Court Administrator Gabel also made several regrettable statements in her testimony defending the Odyssey program. First, she pushed back on the Bar’s legitimate concern about Odyssey filing fees by claiming “lawyers can’t avoid tech”, “we looked at the impact on filers”, presumably users of the program, and “the real barrier of access to justice *are the attorneys*”. These statements strongly suggest that the Court Administrator simply does not understand the practical impact Odyssey will have not only on we Attorneys, and our clients, but also on the Courts.

Ms. Gabel further stated that “we care about access to justice – but there is no free lunch”. Frankly, this is insulting. We attorneys all know the expense involved in keeping the Courts open and our obligation to help the Judiciary in any way we can. However, regarding Odyssey, the Court Administrator’s Office is simply turning a deaf ear to legitimate concerns about cost and numerous problems with implementing that e-filing system.

I’m attaching an email from Windsor County State’s Attorney Ward Goodenough, dated April 30th – the very next day after the Court Administrator testified before Senate Judiciary - to attorneys that practice in the Windsor Criminal and Family Divisions. The email highlights “significant issues with the new e-filing system”, with the State’s Attorney “*frequently not receiving copies of defense filings when they are submitted through the e-filing portal...*”.

Even as I was dictating this letter, on Friday, May 8th, I received an email from a Criminal defense colleague who shared the following problems with the new Tyler Technology Public Portal:

Today, I looked at the client’s case history in Windham, using the new Tyler Technology Portal, and it showed *that he had no cases and no active warrants*.

When I called the clerk’s office to double check (which took forever because I was cut off and sent to a random voice mail because of the new calling system) I was told that client *has two pending cases and two outstanding warrants*.

Odyssey will be “rolled out” for the Courts in the western counties on September 1st. This is a mere *three months* after the Courts reopen following the closings forced by Covid-19. There will be an enormous backlog of cases which will stretch the limits of the Judiciary, Court staff, attorneys, and clients alike. Still, the Court Administrator stubbornly refuses to delay the implementation of Odyssey until after September 1st, when the Courts have fully adjusted to coping with the accumulated backlog of cases, while implementing new public health and security measures. Why is the Court Administrator unwilling to even consider delaying the implementation of Odyssey for the rest of the State beyond September 1? Based on recent problems with Odyssey this “rollout” will not be seamless.

The Court Administrator chose to allow Odyssey to impose a roughly \$5.25 filing fee plus surcharges per “envelope”. This appears to have been decided without any input or warning to the Bar. Why did the Court Administrator choose the \$5.25 fee *per filing*, instead of Maine (Legislature approved raising the filing fees and adding surcharges, including a fine surcharge), Rhode Island (one time per case fee of \$17.50 for Civil cases payable to vendor plus \$3.25 technology surcharge) or Maryland (funded through increase in initial filing fees in all new cases)? Remember that the e-filing fees are paid out of our pockets directly to the vendor, and not to the Courts. Ms. Gabel also never answered Senator Sears’ question about protections if Tyler unilaterally decided to raise filing fees over the life of its contract.

The Court Administrator justifies this fee arrangement as being “comparable to the way we manage transcripts of Court hearings”. This is an inappropriate analogy. Multiple court filings must be made in every Civil case. Conversely, transcripts are ordered only when needed, and not as a matter of course.

A typical Civil case involves numerous filings, from Scheduling Orders to Jury Instructions. It is unduly burdensome for parties in the Civil Division, Probate, Family, and Small Claims Courts to pay \$5.25 per filing because the Court Administrator unilaterally decided it was better to pay a per filing fee rather than a single fee up front, which would have been more equitable. This fee multiplied many times over can create an even greater barrier to our Courts.

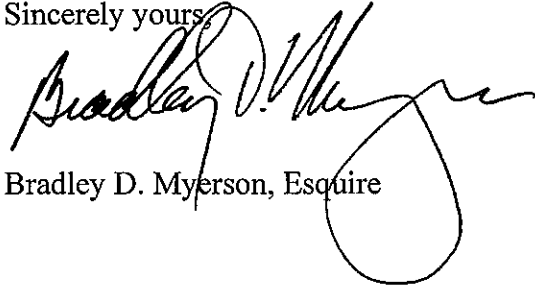
In summary, we attorneys and our clients are being forced to pay for a cumbersome system that so far has shown not to work, is unnecessarily expensive, and was selected without any input from the Bar and the public, who are the ultimate users of the system. If the contract with Tyler cannot be cancelled, it should be modified so that a single modest up-front fee is paid instead of a per filing fee.

Member
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Thank you for your consideration and I look forward to testifying before you Wednesday.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Bradley D. Myerson". The signature is fluid and cursive, with a large loop at the end.

Bradley D. Myerson, Esquire

BDM/dam
Enclosure

Cc: Therese Corsones, Esquire, Executive Director, Vermont Bar Association
Matthew Valerio, Esquire, Defender General
Elizabeth Kruska, Esquire, Chair, V.B.A. E-File Committee Chair

Myerson Law Offices

From: Goodenough, Ward <Ward.Goodenough@vermont.gov>
Sent: Thursday, April 30, 2020 4:16 PM
To: Andrew Higley; Andrew Kunkel; Brian Marsicovetere; Brice Simon; Catherine Dux; cdall; Charlie Buttrey; cmylwyr@sover.net; cteachout; Daniel Maguire; Dan Sedon; David Sleight; Elizabeth kruska; Evan Chadwick; Gary Apfel; Hugh Harwood; jason@sawyerlegal.com; jburke; Jordana Levine; Julie Smith; Leah Henderson; Matt Birmingham; Matthew Hart; melawyer@comcast.net; Michael Shane; robb@chadwicklawvt.com; Robert Lees; SAS - Windsor; snesq1@gmail.com; Brenda Pierce; Cc: Ankuda, Pat; Brannen, Barney; Bettina Buehler; Clough, Ruth; Davis, Emily; Decato, Peter; Donnelly, Michelle; Dworkin, Jeremy; Gatos, Pam; Hayes, Patrick; Henry, Kevin; Kenney, Michelle; LoCascio, Donald; Loftus, John; Martin, Maureen; McGee, Scott; Mulligan, Jim; Nemeth, Marc; Newman, Miriam; Paulino, Amanda; Rakow, Eugene; Ricci, Stefan; Stacey Adamski; Tierney, Nancy; Volz, Kevin; Ward, Wynona; Christopher C. Moll; Nikki South; Jennifer Lewis
Cc: Heins, Melinda
Subject: re: Windsor Criminal filings with

Dear Defense Bar,

Our office has been experiencing significant issues with the new e filing system. We are frequently not receiving copies of defense filings when they are submitted through the e filing portal, and in other cases, we are only receiving them several days after they were submitted. While the judiciary works on improving their system, I am asking you to email a copy of any filing directly to our admin (Georgia Potter and Melinda Heins) at the same time you efile it. While this may prove redundant at times, it will hopefully ensure that your filings are not missed by our office, and that you receive responses in a timely fashion.

Your assistance is greatly appreciated. I hope you are all staying healthy and safe.

Ward H. Goodenough
Windsor County State's Attorney
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