To: Senate Committee on Judiciary

From: Teri Corsones

Date: May 13, 2020

Re: eFiling Fees Study Committee Status Report

The VBA Board authorized an ad hoc eFiling Fees Study Committee on April 24, 2020, to immediately review the efiling fee aspects of the Odyssey efiling system that began operations on April 20, 2020 in the Windham, Windsor and Orange Units. Attached is the Committee composition, charge and designation. Committee Chair Elizabeth Kruska requested materials from CAO Patricia Gabel on May 4, including a copy of or link to the Tyler Technologies contract, materials supporting the Judiciary's position that adequate notice was provided the bar and the public regarding specifics of the efiling fees; and information regarding the Judiciary's decision to select the $5.25 (plus credit card charge and convenience fee charge) per use/envelope option, versus other available options. To date, only the contract (consisting of a link to its 1232 pages) has been provided. The Committee will have met three times as of the end of today. In addition to Committee members representing the Civil Division, the Criminal Division, the Family Division, the Probate Division, the Environmental Division, the Access to Justice community, the Judiciary and two at-Large Representatives, a number of bar volunteers are also assisting with the Committee work. The Committee anticipates completing its report and making a recommendation to the VBA Board on May 15. Examples of specific issues that the report will address include:

 1. Frequency of efiling fee – a new charge each and every time a party makes a separate electronic filing in a civil, family or probate case. This is a radical departure from fees historically charged in the Vermont state court system.

2. Alternative options for efiling fee – several alternative options are used in other state efiling systems, including a one-time fee with each new case instead of with each new filing; a modest increase in court filing fees; a variety of other funding mechanisms.

3. Legislative/bar involvement in decision-making process – the Judiciary did not involve the Legislature or the bar in the decision-making process regarding efiling fee charges, despite an often-stated emphasis on transparency, collaboration and the importance of input from stakeholders.

4. Adequacy of notice – neither presentations to the bar, live webinar trainings to the bar and the public, nor the VREF rules explained frequency or specifics of efiling charges.

5. Constitutional implications - interplay of new efiling fee charges on requirement in Vermont Constitution, Chapter I, Art. 4 "every person ought to obtain right and justice, freely, and without being obliged to purchase it".

6. Access to justice ramifications – attorneys who provide low bono and pro bono legal services to Vermont's most vulnerable citizens have serious concerns about the financial and logistical barriers these efiling fees will bring to access to justice.

7. Pro se litigant willingness to e-file – pro se litigants have the option of paper filing or e-filing. The goal of a state-wide efiing system is to encourage e-filing. Given the choice of paper filing with no per filing fee, and e-filing, with a $5.25 + charge for each and every new filing, pro se litigants will be effectively discouraged from efiling. This defeats a primary purpose of an efiling system.

8. Ethical implications – Committee has consulted with Bar Counsel about ethical implications, including those involving use of credit/debit cards for paying efiling fees.

9. Impossibility of projecting court costs – inasmuch as a litigant is at the mercy of how many separate filings an opposing party will make, to which the party is typically obligated to file a response and pay the resulting required efiling fee, it will be impossible to predict the efiling fee costs in any one civil, family or probate case.

10. Disparate treatment of represented parties – inasmuch as "only attorneys" are required to efile, represented Vermonters are being saddled with charges that other parties are not.