



STATE OF VERMONT
GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON JUDICIAL
RULES

ADDENDUM TO LETTER OF AUGUST 28, 2020

JUDICIARY E-FILING SYSTEM ISSUES

Office of the Defender General

- Consistent and reliable Internet connection, with a computer, scanner, printer, with the necessary software to run the Odyssey system.
- Inability of defense to file anything unless a case has been docketed. This is problematic in at least the following six settings:
 - Motion to Return Property. There are times when things may be seized and no charges are filed or where the citation date is several months postarrest. People have a constitutional right to the possession of all legal/noncontraband property.
 - Expungement of arrest record where no charge filed. Expungement of arrest records are allowed by law under 13 V.S.A. § 7603. There is no mechanism currently to e-file a petition in cases where no charges were filed.
 - Motion to Modify Bail Conditions. There are some cases where conditions are imposed, but there is a delay between arrest and arraignment. Those conditions are subject to review, but counsel cannot file a motion if the charges have not been filed.
 - Notice of Appearance. This is critical because our ability to review court records online is restricted in criminal cases until we have entered our appearance.
 - Waiver of Appearance/Waiver of Arraignment. This is especially important due to COVID-19, but it also applies any time a defendant lives out of state and does not find out until the last minute that their waiver is approved. It is problematic when we cannot file a waiver until the Friday or Monday prior to a Tuesday morning arraignment, and we do not get an order until the following Monday prior to the hearing or not at all. Many of our clients have already asked for time off from work or paid travel expenses by that point.
 - Diversion acceptance. We have had cases where the parties have agreed to diversion a month prior to arraignment, but we are not able to accept the offer until the time of arraignment. Prior to e-filing we were able to file all the above documents at any time.

- Delay between submitting pleading and acceptance by the court. While most submissions are accepted within 12–24 hours, we have had some filings that were not accepted until days/weeks later.
- Inability to file the same pleading simultaneously in multiple dockets. This comes up most frequently with expungement petitions, but also with a Motion to Continue, Motion to Suppress, or other pleading when a defendant has multiple pending dockets.
- Lack of notification of court orders. This has occurred mostly in plea by waiver situations. [This problem also preexists e-filing/Odyssey as there have been multiple cases we have arrived for a hearing only to be informed that the court had issued an order/decision already.]
- Calendaring/scheduling issues. We have had some hearings canceled without receiving notification from the court.
 - In VTADS, we had the ability to compare our office calendar with all scheduled court hearings based on the ability to search our court calendar for whatever time period we set. We are unable to do this in Odyssey.
- Service issues. We have not received notice of filings by opposing party, most notably by law enforcement in traffic court. Initially, we were not receiving notice that our own filings were served upon opposing parties, but this seems to have been resolved. **WE KNOW THAT THIS ISSUE IS RELATED TO NOT BEING ENTERED AS A SERVICE CONTACT.**
- Inability to file documents at the courthouse. This is probably more a function of e-filing rules than an Odyssey issue. This has come into play when the parties have reached a stipulation. We used to be able to handwrite a stipulation and file it with the court; now we need to type it up, convert the document to a PDF, and e-file. We do not always bring our laptops to court, especially when we will not be presenting video evidence. **UNDERSTAND THAT THIS ISSUE WILL BE RESOLVED BY AMENDING THE RULE.**
- Delay in ability to access court records. Prior to e-filing, we could go directly to the court and review a record. Now we cannot access a record through the Judiciary online portal until we have filed a Notice of Appearance and the notice is accepted by the court.
- Clerks either:
 - accepting a filing but not uploading all documents, so the Judge issues an entry order that we need to file the remaining documents;
 - rejecting a filing but all necessary documents already filed, clerk just didn't look/upload everything in envelope; or
 - accepting a filing that they shouldn't, no electronic signature/affidavit/inadequate Certificate of Service.
- Certificates of Service. If documents are filed and served through Odyssey, COS are not necessary or required; clerks are still requiring a Certificate of Service.

- Different requirements/process in Windham and Windsor Counties re: plea agreement and supporting documents, e.g., how it should be e-filed—it should be the same everywhere.
 - This is related to what should be filed as a lead document, what can be an attachment. None of the trainings covered what is required to be a separate lead document.
 - Also, now we need to file multiple separate motions, when previously all that relief, which relies on the same facts, could be requested all in one pleading. For example, now we must file:
 - (1) Motion to File Motion Under Seal;
 - (2) Motion Requesting an Expedited Hearing on Motion; and
 - (3) Motion [Requesting Specific Relief, e.g., emergency motion to modify parental rights and responsibilities].
- Staff not able to access orders that it is receiving notice of. The Court records are confidential, but they are our clients, and the order is usually for sealing and/or expunging; but the Court is not attaching the order for us.
- Judicial Bureau will not permit defense attorney to e-file a signed notice of dismissal on behalf of the law enforcement officer, which we used to be able to deliver to the Judicial Bureau for filing.
- All parties that are receiving notice are not listed on the hearing notice, so it's not clear who is actually getting notice; in the past, this was a document that was consulted to see who got notice of the hearing if someone failed to appear—e.g., DOC, DCF, victim's advocate, GAL.
- Search function is way too sensitive—it won't return results unless you enter the person's name exactly how it is entered.
 - For example, if a defendant has gone by different names, and the former last name is in parenthesis, if you search by their current name, it will not retrieve cases with the former last name in parenthesis.
- Odyssey systems errors not being communicated to the bar. The Judicial Bureau recently had a system error that listed many cases as “in collections,” but these cases were closed and paid in full or still pending. We discovered this, reached out to the Judicial Bureau, and then were able to notify our clients.

State's Attorney's Offices

- Inadequate training from Tyler and/or judiciary; only one training (creation of templates) focused on criminal case input. All other trainings focused on how to file cases in the Family Division.
- The increased workload to input cases remains unsustainable.

- The default setting of “e-file” creates unnecessary work; the default setting should be “e-file and serve” to avoid filers not perfecting service.
- Notices produced by the system and sent to the parties create documents titled with nonsense letters and numbers (rather than naming the document, e.g., “Entry Order” or “Hearing Notice”), which creates unnecessary work as users must open all documents.
- Smart Search function creates unnecessary work:
 - unable to tell status of case on results page;
 - unable to determine arrest warrant/bail on results page;
 - unable to receive broad results (e.g., unless you know to use *, a search for Steve Smith will not produce any records for Steven Smith).
- Inability to file into multiple dockets at one time creates unnecessary work.
- Criminal Charge Disposition Report (previously a DDR) used by prosecutors to prove prior convictions at trial is inadequate (e.g., it does not contain defendant’s date of birth); this will require unnecessary work for court clerks as they will be necessary witnesses to explain the report in criminal trials.
- Filings are rejected for reasons other than technical issues (e.g., a court clerk rejected a document interpreting that a motion could not be filed on a closed case when it was a motion to withdraw from plea agreement), and there is either inadequate or no explanation provided with the rejection; this creates unnecessary work.
- The new system is much more labor intensive for State’s Attorney’s Offices.
- Law enforcement agencies were notified how to sign up for the public portal, but were provided no training on how to use the new system.
- Law enforcement officers are allowed enhanced access but must request it.
- Without enhanced access, law enforcement (dispatchers) are unable to view anything more in the system than all citizen users.
- Law enforcement relies on the system 24 hours a day to check:
 - arrest warrant dispositions;
 - active conditions of release.
- Checking information in the system is only as good as the information inputted into the system; transfer of pre-3/3/20 criminal cases does not always include accurate conditions of release.
- The search function of the new systems requires in-depth exploration to an extent not required by the old system. Specifically, the summary page after a “smart search” lists a variety of information (with enhanced access) but requires the user to open each listing in order to check:

- whether a case is active or closed;
- whether there is an arrest warrant and what the bail amount is.

This hampers law enforcement's ability to quickly discern the status of a case, and this reduces their ability to enforce conditions of release.

- The new system is more labor intensive for law enforcement.
- Other stakeholders (such as law enforcement agencies, Court Diversion, Attorney General, Office of Probation and Parole, and pro se litigants) have experienced either an inadequate or a total lack of training in their use of the system or have not had their feedback proactively solicited.

Vermont Bar Association

Inadequate Training and Communication

- Attempts to ask for help or to suggest alternative processes are met with "it's our way or the highway" attitude.
- My office had a very hard time getting set up to file with Odyssey, particularly with a waiver account for filings in criminal cases. There was no support available from Tyler, and their offer was to sign up my office staff for a webinar in September. Tyler told us repeatedly that there is no waiver account for filings in criminal cases, although that is supposed to be the arrangement.
- The court staff has been unable to help with the Odyssey system and appears to have little understanding about the system themselves.
- We had our "orientation" Webex yesterday. Disorder and chaos ruled the day. It started late, with what I would say was more a sales PowerPoint than anything else. Then the whole Webex promptly stopped, because no one bothered to give most of the SA's office a link to be on. That was despite the SA's office sending a list of who needed to get the link. Then no one could find the link to pass on to the SAs. I finally forwarded one of the e-mails with the link, and we waited forever for everyone to get on. The judge wasn't even on. She was "too busy." It was just NOT organized right out of the box.
- The "training" materials from Odyssey are about useless; the kid from Judiciary running that end of it knows the stuff well and has no clue how to train the unwashed masses, and they steadfastly refuse to do separate trainings for criminal, civil, prosecution, defense, etc. And it was pretty obvious to me that, unless we seek help somewhere, we all are going to be learning this system hit and miss by doing it ourselves.

Delays with Processing E-filed Documents

- Another problem I've seen just within the past two months is e-filing delays. Some Odyssey filings are "accepted" right away, but some can take over a week. I have a case where I filed a speedy trial motion (my client is incarcerated pretrial), and it took 10 days from the date I e-filed the motion until it was "accepted" in Odyssey. The State's reply then took a full week (7 days) to be accepted, and I filed a response that again took 7 days to be accepted. In fact, the Court issued a decision on the motion several days after I filed my response but before my response was accepted, so the Court did not even consider my response in its decision (because the Court apparently did not know I had filed anything). The result was that my client spent nearly a month of his life behind bars for a delay that was attributable solely to Odyssey processing on a speedy trial motion.
- I "e-filed" an important document in a criminal case in the Windsor Criminal Division that was submitted on July 1 at 12:00 p.m. and not approved by Tyler until July 8 at 9:30 a.m. This means the Court did not have any knowledge of my filing for a week, which is totally unacceptable. Filings in criminal cases are routinely time sensitive and require immediate attention. A delay of a week to get a filing to the Court is a serious access to justice problem. Also, there is no other way to get filings in front of the Court. This represents a fundamental failure that should never happen. Given that the other non-Odyssey criminal divisions have been accepting filings by e-mail throughout the pandemic, and on a case by case basis for years, there is no reason for this expensive, cumbersome, and difficult to use system.
- Here is a specific example of the communication failure from the court/Odyssey to the user. I filed a simple motion for license to sell in an estate matter. No consents to the motion were filed, nor were they required under the unique circumstances of the case. Weeks upon weeks passed after the filing was accepted, with no action from the court. When speaking with the Register about a different filing problem I asked about this motion. I was told the "system" had incorrectly flagged it as needing a consent, something it "often does," but its only action was to create a flag or tickler, putting the matter on hold until a consent was filed. The court was never going to communicate to me its view that a consent was needed. This feels like the system is going beyond electronic filing and is operating as some kind of low-IQ artificial intelligence system that makes its own decisions without human intervention. Prior to Odyssey, if the court believed a consent was needed, a human being would have communicated that to me, but this system communicated nothing. By the way, a week and a half after being told that the license to sell would be issued right away, I still don't have it.
- I did call the Windsor Criminal Division on Monday about my delayed filing from the previous Wednesday, and the Court could not do anything about expediting the filing because the Court could not see that anything was filed. I understood from the Court that the filing did not exist from the Court's perspective because it had not been approved and sent along by Tyler. I would say that what you were told about calling the court to expedite a filing vs. my experience is an example of either the Tyler folks not knowing how their system works or the court staff not knowing how to use it. At this point, the Court should accept all filings by e-mail that are delayed by Tyler until this is straightened out.

Issues with Rejected Filings

- When a filing is rejected, there must be detailed, clear, and understandable explanations given. The character-limited box in which to put cryptic comments from the court is insufficient. We should not be left guessing as to what is needed to fix the problem
- When a filing is rejected, the system should save a copy of what was attempted to be filed, so that when contact with the court is made to try to rectify, court staff can see the documents. The system should not void all the documents when rejected.
- Filings should not be rejected out of hand for the lack of a perceived required, minor element. They should be accepted and then a communication sent requesting what the court feels is missing. This is how the courts have previously functioned. There seems to be no appreciation for the amount of work that goes into making a filing with many components only to have the entire thing done over again to address a very minor issue. Frankly, the \$5.25 fee issue pales in comparison to the amount of staff and lawyer time wasted when filings have to be completely refiled.

Issues With E-filing Fees

- When a police officer writes a motorist several tickets in a single traffic stop, which is quite common, each of those tickets becomes a separate case in Odyssey. To deny the violations and request a hearing on the three tickets now costs me \$16.20. Also, the Judicial Bureau recently sent out hearing notices for telephone hearings with the caveat that a defendant who wishes an in-person hearing can do so by requesting an in-court hearing in writing. Once again, another \$16.20 for that client with three tickets to re-request the hearing that I have already paid to request. Now I have to send the client a bill for \$32.40 and then spend time explaining why we have sent the bill. If we are going to appeal the tickets after the hearing, another \$16.20. This is ridiculous. No one should have to pay a filing fee to deny a violation and request a hearing.
- Our firm is particularly disappointed with the (now temporarily waived) fee arrangement, which requires a charge of \$5.40 even for a simple filing such as a discovery certificate. As an employment firm, many of our clients are unemployed but are responsible for paying litigation expenses. Switching to the new system of requiring \$5.40 per filing creates an unexpected financial responsibility for our firm and our clients.

Improvement Needed for Screens

- I am writing with my feedback on the Odyssey system. This relates to probate court filings only. Overall, I want to say I am very discouraged by the poor performance of the system and

of the communication interface it establishes, or really impedes, between counsel and the court.

- While the previous e-Cabinet system was imperfect, we do find the new Odyssey system to be considerably less user-friendly (and clunkier, if you will accept that as appropriate criticism). For example, on several occasions now, other parties (such as the mediator or defense counsel) have e-filed a motion or a report, thinking the system would send a “courtesy copy” to us, but perhaps unknowingly not selecting that option. Consequently, the parties are not informed of the filing, causing missed deadlines or other confusion. We’re not design experts but would suggest modifying the interface to more clearly emphasize the elements that are important to litigants: categories of filing, service to other parties, and receipt of filing.

Errors in the Public Information

- I was preparing for part 2 of an RFA hearing this afternoon when I noticed a significant discrepancy. The Docket Report through Odyssey noted the hearing time was 9:00 a.m., and the Court calendar from the Judiciary’s website listed our hearing at 10:30 a.m. I never received a notice of tomorrow’s hearing and was only going by what the Judge advised during our last hearing a few weeks ago.