



STATE OF VERMONT
GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON JUDICIAL
RULES

August 28, 2020

Honorable Paul L. Reiber, Chief Justice
Patricia Gabel, Court Administrator
Vermont Supreme Court
111 State Street, Drawer 9
Montpelier, VT 05609-0801

Dear Chief Justice Reiber and Court Administrator Gabel:

At the August 18, 2020 meeting of the Legislative Committee on Judicial Rules, the Committee heard testimony from a number of witnesses regarding the Supreme Court's implementation of its new electronic case filing system. Although the e-filing system appears to be a necessary and well-intentioned modernization of court procedures, the testimony from attorneys who have used the system indicates that it contains a significant number of operating flaws and that users have not been sufficiently educated in its use. For these reasons, the Committee strongly and respectfully recommends that the Supreme Court delay its planned October 15, 2020 expansion of the e-filing system until its problems have been fixed and system users have been properly instructed in its operation. In addition, the Committee recommends that, going forward, the Court include all relevant stakeholders as it further reviews and implements the e-filing system.

The Committee appreciates the work that the Judiciary has done to develop and establish a system to permit electronic filing of court documents. E-filing holds the promise of facilitating access to justice for all Vermonters using their State courts. As more people work at home, particularly as a result of the COVID-19 pandemic, an electronic filing system has become even more necessary.

However, rolling out any new system while it still contains major flaws and before its users have been given enough instruction on using it would be premature and counterproductive. The Committee understands that systemic change will always require time to iron out unforeseen problems, but this situation appears to be much more than the usual period of adjustment. Witnesses with experience using the Court's e-filing system in its current form consistently testified that it has serious functionality issues and that practitioners had not been taught well enough how to use it.

In particular, while they typically have different views in court, both Vermont prosecutors and defense attorneys agreed in their August 18 testimonies that the e-filing system has too many flaws to be further expanded in its present form. The Vermont Bar Association expressed similar

concern in testimony to the Senate Judiciary Committee earlier this year. Attached in the Addendum to this letter is a list of the concerns expressed to the Committee by each of these three parties. This list was provided to the Committee by Jordana Levine, Esq., Windsor County Primary Public Defense Contractor; Tracy Shriver, Windham County State's Attorney; Ward Goodenough, Windsor County State's Attorney; and Teri Corsones, Executive Director, Vermont Bar Association. It is the Committee's view that these concerns should be addressed before the e-filing system is implemented in any other Vermont counties.

While this list of concerns may appear lengthy, the unifying themes are functionality and education. The Committee is extremely concerned that, in its current state, the Judiciary's e-filing system has numerous performance issues and has not been adequately explained to users. The Committee shares the Judiciary's goal of establishing an e-filing system for Vermont courts and appreciates the steps already taken to implement such a system. However, until the current functionality issues identified in this letter are resolved and system users have been effectively educated as to its use, the Committee strongly urges the Court to refrain from expanding the e-filing system to any additional Vermont counties.

The Committee recognizes the challenge of pausing implementation after the rollout of the e-filing system has already begun. However, in the Committee's view such a delay is necessary to prevent the system's flaws from becoming more widespread, and it would be fiscally unwise to proceed with expansion while there are such clearly identified problems. The costs already incurred as a result of the system's flaws are substantial. Addressing these problems now, before any further rollout of the system, would save future problem-solving expenses and be a much more cost-effective approach.

It may be that the e-filing system's problems could have been detected sooner if users had been able to provide feedback at an earlier time. The Committee recommends that this be the approach going forward: practitioners and other users of the system (prosecutors, defense attorneys, members of the bar, and law enforcement officers, for example) should be afforded the opportunity to make comments and suggestions on an ongoing basis and before the e-filing system is rolled out further. If all the relevant stakeholders are able to participate in any formal or informal Court committee overseeing the e-filing system, future problems can hopefully be addressed at an earlier stage of the process.

Thank you for your long-standing work with the Judicial Rules Committee and for your consideration of its concerns. We would be happy to discuss this matter further at any time.

Sincerely,

Senator Joe Benning, Chair
Legislative Committee on Judicial Rules

Representative Sandy Haas, Vice Chair
Legislative Committee on Judicial Rules