

To: Senate Committee on Judiciary

From: Teri Corsones, VBA Executive Director

Re: Judicial Rules Letter Regarding E Filing

Date: September 2, 2020

Thank you for the opportunity to comment on the August 28, 2020 letter from the Legislative Committee on Judicial Rules to Chief Justice Reiber and to Court Administrator Pat Gabel, urging the Judiciary to delay its planned rollout of the e-filing system until e-filing issues have been fixed and training is improved. My comments are based on my experience regarding implementation of the provisions in Act 120 that require the Judiciary to meet with representatives of the Vermont Bar Association and other court users to listen to and respond to court users' experience with Odyssey, and to examine alternatives to the current "per use" e-filing charges.

Based on the difficulty and delay involved over the past two months in implementing the straightforward directive to the Judiciary in Act 120 to meet with court users, I support the recommendation to delay the rollout. This Committee's response to the outcry that followed the initial roll-out of the Odyssey e-filing system on April 20 led to the attached E-Filing Fee Study Report on May 15. That Report detailed the myriad of issues with the system, including the per-use e-filing fee. I won't go into the details of the Report again, but the Committee is aware that the issues are numerous. The bar was very grateful to the Legislature for recognizing (1) that there were serious issues with the per-use fee, (that was decided without legislative or bar input) and serious issues with operational aspects of the system; (2) that the issues weren't being addressed in the normal course; and (3) that it was necessary to direct the Judiciary to meet with court users so the issues could ideally be resolved. Act 120 gave the Judiciary four months to meet and to report recommendations for improving the rollout and for improving court users' experience with the system, including the e-filing fees.

Act 120 was signed into law on June 30. On July 1, I emailed Pat Gabel asking to set up the first meetings with court users. I viewed the meetings as a great opportunity for persons actually using the system – the users that the system is supposed to be designed to help – to point out where the system was working, where it wasn't, specifically why it wasn't working, and how it could be improved. It's now September 2. Despite asking for a first meeting date with court users since July 1, it wasn't until after the letter from the Legislative Committee on Judicial Rules went out last Friday, August 28, that I received an email asking for meeting dates in September. That email said the meeting would be limited to a 2-hour meeting, only. When I suggested that the alternative e-filing fee group may well need more than two hours to examine alternatives to the per-use fee, as directed by Act 120, the response was the meeting wasn't "solutional", that it was for "information gathering", only, and that should the consultant determine that additional time is required, then another meeting could be scheduled.

So, an opportunity for court users to meet with the Judiciary to fix the issues that this Committee's efforts brought to light and that was signed into law on June 30 has been reduced to a two-hour meeting in September. The meetings that could have taken place during the last two months, where volunteer court users were ready and willing to sit down and tackle the list of issues and check off how each one could be addressed and to explain how the training could be improved to include what

information is really needed to navigate the system, have not taken place. Instead a consultant was enlisted to devise a plan that now looks like it's designed more to report to the Legislature that an online survey was done, meetings were held in September, and, we've satisfied your directive that we meet with court users, instead of to achieve meaningful progress in addressing the many e-filing issues. In the meantime, a roll out of the system on October 15 to four other counties, including the largest county in the state, and the state-wide Environmental Division, is supposed to happen with little indication that any of the issues that led to the Act 120 directive have been identified or fixed.

I'm afraid that the opportunity that the Legislature thoughtfully provided for meaningful collaboration and problem solving between the Judiciary and court users is being wasted. Two separate groups of experienced attorneys have been waiting since early July for the purpose of meeting with the Judiciary in response to Act 120 – one is a court users group representing each of the trial practice dockets – criminal, civil, family and probate, as well as the Judicial Bureau and a representative of the access to justice community and a representative for pro se litigants. The other is an alternative fee study group that likewise includes representatives from the different dockets and constituencies, as well as contract experts who contributed their expertise to the E-Filing Fees Study Report and its detailing of the issues surrounding the per-use e-filing fee. A description of each group is attached. Those groups' potential for contributing to meaningful change has been relegated to a 2-hour meeting sometime in September. Yet the Odyssey system is scheduled to be rolled out in October. For all the reasons spelled out in the Legislative Committee on Judicial Rules Committee letter, it does not make sense for a system that is still fraught with issues to be expanded to other counties. The initial roll out was termed a pilot. Isn't the purpose of a pilot to see what issues there are, and fix them, before the system is implemented elsewhere?

Attached is the email string that shows the efforts since early July to set up a first meeting with court users, and that makes clear that the purpose of the meetings, in the eyes of the Judiciary, is not "solutional". Also attached is an August 31 email from one of the members of the court users group, detailing serious issues that the attorney has experienced with cases in Odyssey, above and beyond the issues detailed in the Addendum to the letter.

The attorney hopes, however, as do I, that "once the flaws are worked out", the benefits will be worth the strife. The bar remains ready, willing and able, to help – we recognize the benefits of a modern e-filing system. We implore the Judiciary to allow us to help fix the problems. We don't think that a 2-hour meeting, three months into a four-month process that the Judiciary does not intend to be "solutional", is what the Legislature had in mind when it directed the Judiciary to meet with court users. The bar has a long history of working with the Judiciary. We would respectfully ask the judiciary for the opportunity to be listened to and to be part of the solution.

We serve the same Vermont public – they're your constituents, our clients, and the Judiciary's court users. We would love the chance to work together with the Judiciary to ensure that a new e-filing system serves the Vermont public well. We agree that the Odyssey e-filing system shouldn't be rolled out to other counties until it does.