

Summary of VBA Court Users Group/ Berry Dunn Meeting on 10/19/20

Doug Rowe from Berry Dunn Consulting opened the Microsoft Teams meeting with the VBA Court Users Group in attendance at 2:00 p.m. on October 19. Mr. Rowe provided an agenda that included a summary review of experiences with other affinity groups, and a continued discussion of e-filing improvement opportunities. The Court Users Group reported that it had received comments regarding additional e-filing issues from other court users since the September 28 meeting and also had several questions following that meeting. The general topics covered during the meeting are summarized below.

1. Stakeholder Group Information.

Mr. Rowe indicated that since the September 28 meeting he has met with representatives from the Attorney General's Office, the State's Attorneys' Office and Vermont Legal Aid. He also met with several court users from the Windham, Windsor and Orange Units and from the Chittenden Unit that morning. He indicated that each group expressed views regarding e-filing issues very similar to those of the VBA Court Users Group. He is attempting to set up meetings with representatives from AHS, OCS and DCF in the next day or two. He has not set up a meeting with law enforcement and does not plan to. It was suggested that law enforcement is a critical stakeholder group. Names of law enforcement contacts will be emailed to Mr. Rowe. He is submitting his report to CAO this week. The Judiciary's report to the Legislature is due October 30.

2. Court Users Group Questions.

The group had a number of questions following the September 23 meeting:

A. Have all of the cases in the BRACE courts been scanned into the Odyssey system?

Mr. Rowe indicated that they have not, despite court staff working hard to scan the cases in before the launch date of October 19. Cases can't be scheduled for hearings until they have been scanned in to the Odyssey system. Mr. Rowe indicated that New Hampshire hired college students to scan in their cases prior to the Odyssey launch date in New Hampshire. Pat Gabel is apparently now considering hiring temporary personnel to scan in the cases that have not yet been scanned in. Court users have commented that this situation is greatly exacerbating the scheduling backlogs.

Issues have also arisen regarding critical documents in cases that haven't been included in the scanning process. Mr. Rowe suggested calling the affected courts, since courts are deciding which documents to scan into individual cases.

B. Is there a mechanism yet for emergency filings to be delivered promptly to the judge?

Mr. Rowe indicated that there is not. E-filed documents are typically processed in the order in which they're e-filed. There have been numerous reports of processing delays, both with respect to the initial acceptance of e-filed documents, and with respect to delays in emailing e-filed documents to parties entitled to service. One member has a system where she calls the court staff to alert them to an emergency filing in the criminal docket. Others have reported that even when they call to alert court staff of an emergency filing, there are still inordinate delays in processing. The Vermont Rules of Electronic Filing don't include an exception for paper filing emergency filings. The lack of a mechanism to

ensure prompt delivery of emergency filings to judges has been highlighted as a critical issue since the Odyssey e-file launch in April.

C. Have the duplications in the public service contact list been cleaned up?

No. Mr. Rowe indicated that a communication intended to address this issue will be coming out soon. Members are of the opinion that a memo that purported to clear up service contact issues in the past did not resolve the issue. The memo provided in part: "Going forward, attorneys should NOT add service contact information for each case, but instead should ONLY use the Public Contacts feature." Members indicated that it behooves them to enter service contact information in each of their cases to ensure that they receive copies of e-filed documents in the cases. They do not agree with the directive in the memo. Many comments have been received that the memo caused created more confusion than it cleared up.

D. Does the Odyssey system include a conflicts check function and will it prevent double booking attorneys for scheduled hearings?

Mr. Rowe indicated that Odyssey is supposed to prevent double booking within the Odyssey system but won't prevent double booking that involves scheduling through VTADS. Comments have been received that attorneys have been double and triple booked within the Odyssey system, however. Judges have also been double booked, including a judge in the Chittenden Unit who had to continue a hearing where all the witnesses were present to testify, because the judge had not received notice of the hearing and he was double booked in another hearing at the same time.

E. Is there a mechanism for e-filing issues to be addressed in a systemic way, such that significant issues impacting many court users will be addressed promptly?

Mr. Rowe indicated that the Judiciary is working on developing a system for addressing different types of issues. If the issue is due to a defect in the system, Tyler is required to correct it. There are otherwise three levels of correction. An example of an issue in the first level is if the system is down. That would be addressed immediately. The second level involves an issue that is not a defect per se but requires a work-around that might be very cumbersome. That type of issue may be addressed sooner rather than later. The third level includes minor issues that will likely take considerable time to address. The Judiciary is working on a system to prioritize the different issues within this framework.

F. Is there an answer to the "circular support" issue where court users are directed to Tyler, and then back to the courts, or vice versa, with no clear indication as to who is responsible for answering specific support questions?

Mr. Rowe indicated that one temporary interim model that is being considered is if Tyler is not able to answer an e-filing question then the question would be routed to a single individual state-wide who would be responsible for solving the problem. Members were skeptical that one individual state-wide could realistically respond to the myriad of questions that have arisen. Mr. Rowe explained that the next level of support that's being considered is call center staff receiving enhanced training to assist not just members of the public with basic questions, but also to assist attorneys with more complex questions. Given their experience with the call center to date, members were skeptical that this approach would offer a viable solution. They were also concerned that if highly trained staff are assigned to the call

center, court staff numbers would be further depleted and that would exacerbate current staff shortages. A “wait and see” approach to this model was suggested.

Next Steps.

Mr. Rowe asks that any additional input, including comments from court users that have been submitted since the September 28 meeting, be provided to him before Wednesday. (See synopsis of comments below.) He repeated his appreciation for the information that members have provided and for the helpful discussion. The meeting ended at 3:40 p.m.

Comments from court users provided since the September 28 meeting, most of the comments fall into the “Usability” category referenced in the agenda, but some fall into the “Training” or “Communication” categories:

Data missing from the Odyssey Portal – upon expansion of the Odyssey Portal to the BRACE courts, OCS staff have been unable to access numerous cases that they should have access to pursuant to the OCS/Judiciary MOU, including RFA’s, which could significantly jeopardize the safety of OCS litigants. Private counsel are also reporting repeated problems opening cases in the probate and family dockets. They receive notices about their cases but cannot open the cases or see the documents.

Insufficiency of trainings – training materials are too generalized and lack the granularity necessary to enable OCS to file matters in a clear and consistent manner that will be accepted by the various family divisions throughout the state. Specifically, trainings have not included clear guidance on how to e-file documents when filing codes are not available in the Odyssey system, e-filing and service directions when an agency has not historically been “served” in a formal capacity, and standardized processes for the filing of such documents as proposed orders.

Lack of standardization and communication given to respective courts in the WOW units – despite a concerted effort to attend all available trainings, and every effort being made to ensure that all documents e-filed comport with the relevant training materials and rules involved, staff resources have been consumed by having to constantly adjust filing practices to the preferences of a given court. Unless a uniform filing practice is developed and accepted by all family divisions, the volume of work needed to adapt to the currently inconsistent filing practices will be unsustainable.

Unsustainable increased workload for agency staff – functions traditionally performed by the courts have been transferred to OCS staff. The time required to set up new cases, select appropriate filing codes, and identify the appropriate level of security of every document is significant. Whereas a standard filing would historically take 10 – 15 minutes to complete, it is now taking 45 minutes to an hour to file in Odyssey. Documents and evidence that would typically be submitted while physically attending hearings must now be e-filed, including many documents that require both a confidential copy and a public copy. Although some effort is being made to identify possible solutions to streamline the filing process, no clear solution has been identified.

Continued problems opening documents in Odyssey - despite getting notices for cases, attorneys and staff are unable to open the documents in the cases, despite having elevated status. Odyssey-generated

notices state “Error. Server Error” resulting in an inability to download documents from the Odyssey system. Emails to the helpdesk have not been answered, other than a message days later that the issue had been forwarded to the vendor. It has been two weeks without any follow-up.

Major issues with Odyssey and attorney scheduling conflicts – whether it is a training problem, poor staff management or a failure of Odyssey, no one seems to be doing any conflicts checks when scheduling attorneys for hearings in the Odyssey courts. I have a vulnerable adult case with three defendants. I got a temporary order in early September and the case was scheduled for hearing in the next RFA block. I was already scheduled for another hearing. I was told I had to file three separate Motions to Resolve Scheduling Conflict. The three hearings were re-scheduled again during a time I was already scheduled for a hearing. I had to file three more motions to resolve the conflict. Again I was scheduled during a time that I already had a hearing. The same week Windham Family set three back to back hearings for me on the same morning that a Bennington case had been set weeks ago. I was told to file the motion and learned that the Bennington hearing was re-scheduled to another date and time that I’m already scheduled for in Windham. My staff is spending inordinate amounts of time attempting to sort out these scheduling conflicts, all within the Odyssey courts. If courts within the system are not integrated for scheduling purposes, then the system is a failure. I have raised this issue with CAO and get a polite but non-effective response. The Judiciary is failing in its mission to provide basic due process.

Hearing searches are yielding inconsistent results – when I ran a hearing search using attorney name and the appropriate search terms, two fewer cases showed up for me than showed up for my assistant. Two of my clients showed up under my name, one of which was incorrectly assigned to me, and two didn’t. When I inquired, I was told it had to have been user error. There were no errors on our part when we queried the system.

Inconsistencies between the Odyssey calendars and notices of hearing– I had a hearing in an RFA case originally scheduled for October 7 at 10:00 but later re-scheduled to 10/6/20 at 11:30 a.m. In the Notice of Hearing the hearing time is correct but in the “Hearings” section of Odyssey’s Register of Actions the hearing is scheduled for 9:00 a.m. There are also inconsistencies between the Odyssey calendars and the court calendars on the Judiciary website. The following notice has been several clicks in on the Tyler website for some weeks now: “Until further notice, users are advised to verify actual start times of individual hearings by (1) opening up and viewing the hearing notice itself (which should be available within case records) and/or (2) checking the hearing start time listed on the court calendar on <https://www.vermontjudiciary.org/court-calendars>. There is currently a technical issue on the Public Portal that causes some hearing times to display incorrectly on Portal Case Summaries. The time displayed within case records represents the start time of the session block in which the hearing is scheduled, and not the actual start time of the hearing itself. The Judiciary is currently working with Tyler Technologies on addressing and resolving this issue as quickly as possible.”