



Vermont Bar Association

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35-37 Court Street
PO Box 100
Montpelier, VT 05601-0100
p. 802-223-2020
f. 802-223-1573
www.vtbar.org

To the Vermont Supreme Court:

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Therese M. Corsones, Esq.
Executive Director
tcorsones@vtbar.org

Jennifer Emens-Butler, Esq.
Education and Communication
jeb@vtbar.org

Mary C. Ashcroft, Esq.
Legal Access Coordinator
mashcroft@vtbar.org

Lisa M. Maxfield
CFO/Member Benefits
lmaxfield@vtbar.org

Laura Welcome
Programs Coordinator
lwelcome@vtbar.org

Michelle Abajian
Lawyer Referral & Membership
Coordinator
mabajian@vtbar.org

As the Court is acutely aware, the Vermont Judiciary recently implemented Tyler Technologies' Odyssey File and Serve for electronic case management and e-filing. The Judiciary also has opted to use the Odyssey system to create an online portal for attorney licensing. While an online system for attorney licensing has long been discussed, it was not entirely clear until early May of 2021 that the licensing system would also be administered through Odyssey.

The attorney licensing portal went live on May 17, 2021. Attorneys who were scheduled to re-license in 2021 would have approximately six weeks to log into the portal, create their profiles, and to re-license. Attorneys have no alternative option for licensing other than to use the OFS portal.

On behalf of the Vermont Bar Association, I write today to express our concerns with the use and roll-out of this system. Our concerns are noted below:

1. The licensing portal requires use of a separate email address than the attorney's OFS email address. This is likely meant as a security measure; if an attorney leaves a position and no longer has access to an email address associated with that position, his or her licensing email address is one they could always access. However, this has created significant confusion and concerns, especially around attorneys' ability to continue to receive court notices.
2. Fees were not disclosed, and are problematic for numerous reasons.
 - a. In the spring of 2021 the Judiciary re-negotiated the "per envelope fee" with Tyler and settled on a per-party/per-case fee of \$14. This was noticed to the bar by email on March 31, 2021. It was not made clear in that email that the \$14 fee would also be charged to attorneys when they attempt to re-license. Attorneys have been told after the fact that this is only a one-time fee, not unlike the per-party/per-case fee.
 - b. Licensing fees must be paid electronically, and may only be paid by credit or debit card. In OFS when a party pays filing and other fees, they may use either a credit card or an e-check. Use of a

- c. credit or debit card carries with it a percentage fee, while e-checks carry a flat \$1 fee. When attorneys attempt to re-license, they are not given the option to pay with an e-check, and instead must pay with a credit or debit card. The difference is astounding; the credit card “convenience” fee is \$12.54. An e-check would cost \$1. While many may not be upset about \$11.54, many would be upset that there is a more cost-effective option that is available when e-filing but not when re-licensing. This does not make sense.
 - d. As a result, attorneys are paying \$420 for licensing, and an additional \$26.54 for the “convenience” of paying through the portal.
 - e. State employee attorneys had been promised that state agencies do not have to pay filing fees. They are now upset and confused that when they go to relicense, suddenly they are required to pay fees they were previously told they do not have to pay. While this likely has to do with the fact they are personally re-licensing, it is inconsistent with prior guidance.
 - f. Most strikingly, there is no rule that permits the addition of such fees. Amended Administrative Directive PG-26, dated February 5, 2020, is the most recent directive or rule on attorney licensing fees. It states only the \$420 licensing fee; it does not contemplate or authorize the addition of other “convenience” fees.
 - g. This Court has previously considered adding a \$20-\$25 fee to the attorney licensing fee for purposes of funding a Lawyer Assistance Program. The Court has chosen not to add this fee in an effort to keep costs manageable for lawyers. The “convenience” fee added by Tyler Technologies is more than the previously-proposed LAP fee.
3. Not every licensing status is covered within the system. An attorney with *pro bono emeritus* status attempted to register in the portal very early on and was unable to do so. This may have been addressed, but was distressing to the attorney who attempted to be proactive and get registered early.
 4. Where attorneys attempt to register and/or re-license have difficulty, they have no reliable method of support. Tyler is of limited help. The VBA has received reports of attorneys spending in excess of an hour on the phone with Tyler Technologies with no resolution to their issues.
 5. Attorneys are concerned about the sharing of their personal information, such as dates of birth, with a third-party vendor. In the event of a data breach – which has happened with Tyler Technologies – all Vermont attorneys will have their personal information at risk.

Much like the larger Odyssey rollout, this was not communicated clearly to attorneys statewide.

The fees added to the licensing fee itself feel excessive and unwarned; the bar finds itself in the same position it was in the spring of 2020 when faced with the new “per envelope” fee, which also felt inadequately warned. Because there is no alternative method for re-licensing, attorneys are now forced to pay excessive additional fees for the ability to continue practicing law.

We are also concerned that the additional fees have not been reviewed or presented to the legislature. As with filing fees, and with the per-party/per-case fee, these attorney re-licensing should be subject to legislative oversight and review.

We ask that the Court take action on this matter, and direct that attorney licensing fees *not* be subject to additional fees.

Sincerely,



Elizabeth A. Kruska
President, Vermont Bar Association Board of Managers

cc: Andrew Strauss, Esq.