

**VERMONT COMMISSION
ON
JUDICIAL OPERATION**

**FINAL REPORT
To The
LEGISLATURE**

November 6, 2009

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EXECUTIVE SUMMARY

The Legislative Charge

In May of 2008, the Vermont Legislature directed the Supreme Court to appoint and convene a Commission on Judicial Operation composed of members of the three branches of government and the citizens of Vermont. The Legislature asked the Commission to address the following areas:

- Consolidation of staff, including clerks of courts, paid by the state within the Judiciary budget and consolidation of staff functions, across courts in individual counties and statewide;
- Regionalization of court administrative functions, both those now performed at the state level and those performed at the county level;
- Use of technology, including video technology, to reduce unnecessary expenditures, including transport of prisoners, while improving access and maintaining the quality of adjudication;
- Flexibility in use of resources to respond to the demands on the Judiciary overall and particularly in instances where the amount and nature of demand changes;
- Reallocation of jurisdiction between courts, consistent with effective and efficient operation;
- Any other idea for the efficient and effective delivery of judicial services;
- A reduction of \$1 million in the Judiciary budget.

The Work of the Commission

In establishing principles to guide its work, the Commission focused on values important to the judicial system of the future, taking into account the rural nature of the state, access to justice, the advantages and disadvantages of new technologies, and judicial independence. At the same time, the Commission recognized the reality that a reduction in funding of at least \$1 million, coupled with dire revenue projections in the upcoming years, means either significant changes in the operation of the Judicial Branch or severe retraction in services. The challenge was to build a system based, first, on values and second, on a reduced cost.

The Commission also recognized that the advent of new technology will dramatically reshape the Vermont Judiciary of the future.

A major source of information for the Commission came from 44 focus groups held throughout the state during the summer and early fall and surveys of court users that addressed the issues identified by the Legislature. Over 800 individuals responded to the survey and/or participated in a focus group and over 360 different ideas, suggestions and proposals were made to the Commission.

Key Commission Findings

Structure of the Judiciary

- The current four-courts-per-county construct of the Judicial Branch is duplicative, overly expensive and inefficient.
- Although the Vermont Constitution mandates that the judicial power be vested in a unified judicial system and gives the Supreme Court administrative control of all the courts, these mandates have not been fully implemented. Instead, a hybrid state/county management system diffuses authority between the Supreme Court and fourteen individual county governments.
- As the shortfall in general fund revenues continues to grow, it is imperative to implement the unification envisioned in the Vermont Constitution.
- Vermont courts currently bring justice to the citizens of Vermont through 63 courts in over 30 locations. With far more access points than any other governmental service, the fixed costs of its delivery system are substantial.
- Without management authority over all personnel and public funds devoted to the judicial system, the Supreme Court cannot make rational decisions on resource allocation when reductions in funds occur.
- Budget cuts to the Judiciary have already reduced access to all Vermont courts as a result of monthly full-day furloughs and weekly half-day closings.
- Without restructuring, the courts that will be the hardest hit by future budget cuts will be the courts that have the highest priority cases involving public protection and children at risk of harm—District and Family. Although these are the courts that can least afford reductions, they are the only courts over which the Supreme Court has full management control.
- The system must be reconfigured to eliminate redundancies in management and procedures, and to improve access to justice and service to the public by taking full advantage of new technologies.

The Impact of New Technology

- One of the greatest benefits that will accrue from restructuring is the administrative flexibility necessary to produce long-term improvements in efficiency from technology. One key to surviving the economic crisis without massive reductions in services is technology.
- Through the introduction of new available technologies, the Judiciary has a unique opportunity to improve judicial services, greatly increase access to justice and implement efficiencies that will reduce costs over time.
- The introduction of the electronic case file and electronic filing enables dramatic increases in efficiency and reductions in cost in two ways: lower personnel costs through the automation of routine activities and the flexibility to accomplish certain activities anywhere in the state without having to duplicate the process in each court.

- As new technologies, such as the use of videoconferencing, improve communications between courts and users, many types of hearings can occur with the parties and the judge in different locations.

Smaller, Underutilized Courts

- The resources consumed by the smallest Vermont courts are disproportionate to the demand for court services.
- The combined caseloads for Grand Isle and Essex represent less than 2% of the total number of cases filed in Vermont.
- Although their caseloads require only 4 to 5 days of trial judge time per month, each county is fully staffed, five days a week.
- The cost per case in Essex and Grand Isle is two to three times greater than the statewide average.

Probate Courts

- The Probate Courts are not fully integrated into the rest of the court system. Probate Court is usually housed in the Superior Court house, but with the exception of Grand Isle, the staff of probate and the staffs of the trial courts exist in separate silos.
- The Probate Courts rely on county funds for equipment and office systems.
- Probate employees are hired by the probate judges, but paid out of the state Judiciary budget.
- Chittenden Probate Court handles 19% of all probate cases statewide and is the only court with a full-time judge. Chittenden is significantly more efficient and less costly than the other Probate Courts.

Assistant Judges

- Of the \$411,000 paid to the assistant judges by the state for their judicial duties, approximately two-thirds is used to pay assistant judges for the time they spend sitting with the presiding judge.
- A court order is valid regardless of whether the case is adjudicated by one, two or three judges, and there is simply no evidence that having more than one judge improves the quality of justice. It makes sense to eliminate the cost of this redundancy.
- The current use of assistant judges to preside over small claims and traffic cases results in a two-tiered justice system, one in which cases that are the most likely to involve self-represented litigants are heard by non-law-trained judges.
- Use of lay judges to preside over certain types of cases is inconsistent with the principle that all judges in a modern judicial system should be law-trained.
- Practicing attorneys who currently preside over small claims cases are entitled to earn a maximum reimbursement of \$75 per day, which is half what it costs to have an Assistant Judge perform the same function. Further, practicing attorneys frequently do not charge for their services. Thus, removing this function from Assistant Judges makes economic sense.

Key Commission Recommendations

- ❑ **A Single Superior Court with Four Divisions:** The Commission endorses the creation of a single Superior Court with four divisions: Civil, Criminal, Family and Probate. The court should be administered by the Supreme Court on a county basis with staff support directed by a single manager appointed by the Court Administrator and a presiding judge designated by the Administrative Judge for Trial Courts.
- ❑ **Comparable Pay/Benefits for and Management of all Employees:** The Commission further recommends that all employees of the courts within the management control of the Supreme Court be state employees paid according to the same pay scale and eligible for the same benefits. *Total cost to the General Fund: \$1,896,405. Estimated net savings to counties: \$1.2 million in property tax.*
- ❑ **Transfer Small Claims Filing Fees to the General Fund:** If the state takes over all of the costs currently borne by the county for staff costs associated with judicial functions, the revenues from small claims filing fees should revert to the General Fund, thereby offsetting a portion of the cost of converting county employees into state employees. *Total revenue added to the General Fund: \$700,000.*
- ❑ **Reduce Middle Management Positions in the Trial Courts:** With unification and the creation of a single Superior Court with four divisions and one court manager, the number of middle management positions can be reduced. *Estimated net savings to the General Fund: \$649,907.*
- ❑ **Reduce and Transfer Court Staff in the Smallest, Underutilized Courts:** A full-time equivalent position should be maintained in each county for transacting court business such as the filing of pleadings, providing information and referrals to the public and assisting self-represented litigants to the same degree that they do today. The administrative work of these courts should, however, be consolidated with the work of the neighboring larger court. Court hearings may still be held at the Grand Isle or Essex courthouse as appropriate. *Total Saving to the General Fund: \$353,588.*
- ❑ **Continue to Maintain County Buildings for Judicial Services:** The Commission recommends that the counties, through the assistant judges, continue to make available the county courthouses for any judicial business that the Supreme Court determines is necessary, under the same cost-sharing arrangement that existed as of July 1, 2009.
- ❑ **Improve Access to Justice through Flexible Venue Rules and Improved Assistance to Self-Represented Litigants:** The Commission recommends that venue rules be promulgated by the Supreme Court, subject to review by the Legislative Rules Committee, consistent with effective implementation of new technologies. Such rules will improve convenience for court users as well as allow the efficient deployment of judicial resources. Following the implementation of electronic filing, the Supreme Court should ensure that sufficient assistance is available for self-represented litigants through service centers at the courthouse, and through trained assistance in areas where maintenance of a service center is not justified by demand.
- ❑ **Integrate Probate Court into the Trial Courts:** The Commission proposes integrating the Probate Court into the trial court system by making the Probate Court a

division of the newly formed Superior Court. The probate division would be a part of the Superior Court in each of the twelve counties.

- ❑ **Require Probate Judges to be Lawyers:** Consistent with the principles of the Commission, the Commission recommends that probate judges be lawyers.
- ❑ **Eliminate Redundant Appeals:** All court proceedings in Probate Court should be on the record and appeals from contested Probate Court proceedings should be direct to the Supreme Court, thereby eliminating the redundant appeal to Superior Court over disputed factual issues.
- ❑ **Consolidate Judicial Positions:** The Commission recommends that the position of probate judge be a full-time position and that the number of positions be reduced to five. The probate judge from a multi-county district would be expected to travel just as trial judges, magistrates, hearing officers and environmental judges do now. *Total savings attributable to the reduction in the number of probate judges including retirement and health care benefits: \$686,208.*
- ❑ **Reduce Probate Court Staff:** Consolidation of the Probate Court into the newly organized Superior Court will modernize the system and create efficiencies that will reduce the need for the number of staff the current system supports. *Total savings from probate staff reductions: \$440,377.*
- ❑ **Eliminate the Judicial Functions of Assistant Judges:** The Commission recommends that the judicial functions of the assistant judges be eliminated. This recommendation has no impact on the county role of the assistant judge. Under the Commission proposal, assistant judges would continue to be responsible for the county budget and county buildings. In addition, they would continue to oversee the activities of the county sheriffs and provide services such as handling passport applications. The savings to the general fund would be offset to some degree by filling one of the two vacant hearing officer positions to handle the traffic ticket cases currently adjudicated by assistant judges. *Estimated net savings to the General Fund: \$288,000.*
- ❑ **Total estimated savings to the state and county budgets from the aggregate of all Commission proposals is \$1.2 million in property tax savings to the counties and \$1.2 million in savings to the state General Fund.**

Notwithstanding the constitutional command for a unified judicial system, it is the plain fact that Vermonters can no longer afford the present system. This is not a question of politics, but one of fact. If the Legislature does not take action to reorganize and consolidate to a more efficient and less redundant system, the Judicial Branch cannot function in this economic climate. Backlogs already developing from half-day closures and furloughs will grow exponentially. It is no overstatement to say that the Judicial Branch is at a crucial juncture in its history. As a state, we cannot make the choice to do nothing.

SECTION I

THE LEGISLATIVE CHARGE AND THE WORK OF THE COMMISSION

“If you restructure the Judiciary, it is necessary to have clear goals, to balance efficiency with access to quality, to look at the long-term effects of any changes, and to identify how to better serve Vermonters and other constituencies.”

*From the Minutes of the Commission Meeting
November 20, 2008*

Statement of Commission Principles

- The Judicial Branch is an independent, co-equal branch of government; its judges are fair, impartial and competent, and composed of men and women of integrity who will interpret and apply the law that governs our society.
- The Supreme Court operates the state court system as a unified system, in accordance with the Vermont Constitution, Ch. II, Sec. 30, which provides that “the judicial power of the State shall be vested in a unified judicial system....”
- The Supreme Court manages, controls and is accountable for all resources and buildings that support state judicial services in Vermont in accordance with the Vermont Constitution, Ch. II, §30, which provides that “the Supreme Court shall have administrative control of all the courts of the state....”
- The Supreme Court deploys resources in a manner that is cost efficient for the taxpayer while providing access to court services that is cost effective to litigants.
- Court services are provided in a system that:
 - Is open, affordable, understandable, and with a level of service appropriate to the characteristics of the case.
 - Ensures access to justice and respect for all litigants and members of the bar.
- Case decisions are made by appropriately educated and well-trained judicial officers; all judges must be lawyers. Trial court judges are capable of working in any court, hearing any case that needs to be heard on a particular day.
- Judicial officers issue timely decisions that do justice for the litigants, establish clear and ascertainable law, and apply the law correctly to the facts.
- The Judicial Branch is organized to minimize redundancies in court structure, procedures and personnel, and to provide an efficient balance of workload among courts.
- Funding authorities provide resources that are appropriate to the structure and provide long-term stability in the budgeting, funding and operation of the Judicial Branch.

Commission Members

Paul L. Reiber, Chief Justice,
Vermont Supreme Court

Denise R. Johnson, Associate
Justice, Vermont Supreme
Court

M. Kathleen Manley, Superior
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Brian J. Grearson, District
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The Legislative Charge

In May of 2008, the Vermont Legislature directed the Supreme Court to appoint and convene a Commission on Judicial Operation composed of members of the three branches of government and the citizens of Vermont. The Legislature asked the Commission to address the following areas:

- Consolidation of staff, including clerks of courts, paid by the state within the Judiciary budget and consolidation of staff functions, across courts in individual counties and statewide;
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- Use of technology, including video technology, to reduce unnecessary expenditures, including transport of prisoners, while improving access and maintaining the quality of adjudication;
- Flexibility in use of resources to respond to the demands on the Judiciary overall and particularly in instances where the amount and nature of demand changes;
- Reallocation of jurisdiction between courts, consistent with effective and efficient operation, and
- Any other idea for the efficient and effective delivery of judicial services.

In May of 2009, the Legislature gave the Commission one further directive: Find a way to reduce the Judiciary budget adopted by the Legislature for FY10 by at least \$1,000,000.

.... a reduction in funding of at least \$1 million, coupled with dire revenue projections in the upcoming years, means either significant change in the operation of the Judicial Branch or severe retraction in services. “

The Work of the Commission

The Commission met seven times between October of 2008 and September of 2009. The meetings were open to the public. Minutes are posted on the Commission website. The focus groups described in the Section on Data and Information provided multiple and widespread opportunities for public comment. Written input was encouraged, and these comments are posted on the website. In addition, an opportunity for public comment on the working group reports was provided at the September 11, 2009 meeting.

The Commission was aided in its efforts by the National Center for State Courts (NCSC), which assisted in the development of a public outreach plan and conducted a weighted caseload study. The Commission is deeply grateful to the assistance and resources provided by the NCSC through a grant from the State Justice Institute.

As its first task, the Commission discussed and adopted the set of principles that are set forth at the beginning of this section to guide its work in responding to the Legislative charge. In establishing these principles, the Commission focused on values important to the judicial system of the future, taking into account the rural nature of the state, access to justice, the advantages and disadvantages of new technologies, and judicial independence. At the same time, the Commission recognized the reality that a reduction in funding of at least \$1 million coupled with dire revenue projections in the upcoming years, means either significant change in the operation of the Judicial Branch or severe retraction in services. The challenge was to build a sustainable system based, first, on values and, second, on a reduced cost.

Having adopted principles to guide its work, the Commission divided into three working groups—Public Input and Information Sharing; Resources, Facilities and Personnel; Restructuring of Judiciary and Access to Justice. Each working group met over the course of several months and produced reports¹ for presentation to the Commission at its meeting on September 11, 2009.

The Commission quickly recognized that the advent of new technology will dramatically reshape the Vermont Judiciary of the future. Discussions regarding the impact of electronic filing, electronic case files and the new case management system currently under development, became common place as the Commission sought to develop recommendations designed to maximize future efficiencies that will accrue as a result of technological progress. A report on

¹ The initial reports of the working groups are on the Commission's website:
<http://www.vermontJudiciary.org/MasterPages/WhatsNew-CommissionJudicialOps.aspx>

technology is included below along with economic data regarding the drastic decline in revenue projections over the course of the next few years and into the foreseeable future.

Information and Data Considered by the Commission

Focus Groups and Surveys:

A major source of information for the Commission came from 44 focus groups and regional bar association forums that were held throughout the state during the summer and early fall. The process for each focus group included a questionnaire that was provided to participants in advance. Responses from the questionnaires were summarized and made available to those who attended the focus group session. During the session, participants addressed the survey questions as well as broader issues of judicial efficiency. Over 800 individuals responded to the survey and/or participated in a focus group and over 360 different ideas, suggestions and proposals were made to the Commission. Focus groups were held in many locations including: St. Albans (sponsored by Franklin-Grand Isle Bar Association), Burlington, St. Johnsbury, Montpelier, Barre, Bennington, Brattleboro, Rutland, Middlebury, Waterbury, and White River Junction.

A total of 77 different agencies, organizations or entities were invited to participate including: trial judges, probate judges, assistant judges, court staff, state's attorneys, public defenders, local bar associations, Vermont Legal Aid, assistant attorneys general, legislators, law enforcement, Department of Corrections, Office of Child Support, Department for Children and Families, Council on Domestic Violence and the Human Rights Commission.

Copies of the questionnaire, questionnaire results and notes from the focus group can be found at the Commission website.² The Commission also received a number of thoughtful letters from interested parties. These can also be found on the website.

The Commission's Work Group on Public Input and Information sharing prioritized the voluminous list of suggestions and proposals that emerged from this process. Prioritization was based on the following factors: the principles adopted by the Commission; the Mission and Principles for Administration of the Vermont Judiciary (See Appendix ____); cost; timeliness of implementation; and service impact. Once these factors were applied, several major themes emerged:

- Consolidation of Court structure and management
- Professionalization of the entire court system
- Increased assistance to self-represented litigants
- Increased efficiency through the redistribution of resources
- Increased efficiency through technology
- Regionalization of some cases and trials
- Standardization of business processes

² <http://www.vermontJudiciary.org/MasterPages/WhatsNew-CommissionJudicialOps.aspx>

- Centralization of basic services through technology
- Transformation of staff into a virtual clerk's office
- Redirection of staff from basic clerical duties to tasks that economize judicial time

For a more complete discussion of the prioritization process and the major themes, please see the Report of the Public Input and Information Sharing Work Group. The report can be found at the Commission website.

Statistical and Budget Data:

The Commission reviewed statistical, personnel and budget data provided by the Court Administrator.

- Statistical data included: number of cases filed and number of cases disposed annually by county, case type, and court type (District, Superior, Family, Probate, Environmental and Judicial Bureau); and information regarding pending caseloads, backlogs and clearance rates in the District and Family Courts.
- Personnel data included: number of staff in each of the 63 court locations; the growth in the number of vacancies in staff positions over the past ten years; the judge time allocated to each court in each county; staff to judge ratios; cases per staff ratios; and cost per case based on number of cases filed.
- Budget Data included: Judicial Branch budget information including expenses funded from general fund revenues in the state budget and Superior Court expenses paid out of county funds from the property tax. Budget information was broken down by court type and by county. Commission members were able to compare the cost of court operations in different counties by comparing the administrative cost per case filed for similar court types.

Weighted Caseload Study

During the course of the Commission's analysis of the court system, the National Center for State Courts (NCSC) conducted a weighted caseload study in Vermont. A weighted caseload study provides an accurate picture of how judges and clerical staff currently spend their time, by measuring the average number of minutes it takes to resolve a particular type of case (e.g small claims, divorce, etc.) or perform specific phases of work within each case type. Separate case weights were calculated for judge time and staff time. Case weight results allow comparison of the time required for one case type to the time required for a different case type. For example, on average it takes a judge 22 minutes to resolve a small claims case as compared to a felony sexual assault case which, on average, requires 400 minutes. This comparison gives the Judiciary an administrative tool with which to determine the necessary staffing levels and judge time among courts based on the type of cases handled. The study also measured adequacy of time currently allocated to each case type by surveying judges and staff to determine whether they believe they have sufficient time to attend to essential job related activities related to each case type. This qualitative data is useful to help evaluate case weights and workload standards. Although the NCSC has conducted this type of analysis in many states across the country, this is the first time that such a study has been done in Vermont.

A number of important findings emerged from the weighted caseload study:

- Trial judges report that they have significantly less time than they need to hear family court cases, particularly juvenile cases. Certain criminal case types, such as felony sexual assaults and domestic assaults, are also problematic.
- Judges and staff in Probate Court report they almost always have enough time to handle probate cases.
- Environmental Court staff report that they almost always have enough time to complete their case related tasks.
- There is a broad range in local court efficiency, particularly with respect to staffing efficiencies from one county to another. There is thus potential for our courts to become more efficient even without technology improvements.
- The potential efficiency gains for staff as a result of technological improvements are substantial. These efficiencies are discussed in greater detail in the technology section below. Once the courts have the capability to maintain electronic files and accept documents through e-filing, many tasks currently performed manually by staff such as case initiation, case processing, calendaring and financial management will become fully automated. These technological improvements will allow staff resources to be reallocated to increase services to self-represented litigants and focus on tasks that economize judicial time.
- To capitalize on potential efficiency gains, the management of Vermont courts must be consolidated so that the business processes of case management are consistent from one county to the next.

For further information regarding the results of the NCSC's Weighted Caseload Study, please refer to the two reports on the study, which can be found on the Commission's website.³

³ "Opportunities to Improve Vermont Court Efficiency Based on the Results of the NCSC's Weighted Caseload Study," October, 2009, is available on the Commission's Website, <http://www.vermontJudiciary.org/MasterPages/WhatsNew-CommissionJudicialOps.aspx>

Other Major Factors Considered by the Commission

Technology

The Judiciary has a unique opportunity to improve judicial services, greatly increase access to justice and implement efficiencies that will reduce costs over time, all through the introduction of new available technologies. One of the greatest benefits that will accrue from restructuring is the administrative flexibility necessary to produce long-term improvements in efficiency from technology.

Courts are natural users of technology because they receive, store, distribute and create massive amounts of information, now usually in paper form. They also provide access to proceedings in which many persons participate to convey information in written and oral form. The Vermont Judiciary was in the forefront in the initial stages of court technology deployment. Twenty years ago, it developed a locally programmed case management system to keep track of all events in the processing of cases from filing through judgment and on appeal, if that occurs. At the time the system was created, it was nationally recognized as cutting edge. Although still in use today, it has become almost an anachronism in light of technological advances. The system also has its limits. For example, although Probate Courts could derive significant benefits in efficiency from a case management system, Probate Court cases types have never been part of the court's system.

The ability of the Judiciary to keep acquiring and employing technology stalemated as it became impossible to find money to pay for technological enhancements. In 1998, the Vermont Supreme Court approved a report of its technology committee that called for the Judiciary to move to a paperless court with an electronic case file, electronic filing and electronic workflow control. Now, over 10 years later, the Judiciary retains the same vision and, with the help of the Legislature, will finally be able to bring this goal to fruition within the next 3 to 5 years. A special technology fund created by the Legislature with revenues from fines will enable the Judiciary to purchase a new case management system, with electronic case file and filing capabilities, and video and audio technologies. The development of the new system is scheduled to begin early in 2010.

THREE MAJOR BENEFITS FROM THE INTRODUCTION OF NEW TECHNOLOGIES:

1. Improved Access to Justice

Access to justice is a universally shared value of Vermont citizens, reiterated constantly by Commission members and by participants at focus group meetings. Vermont citizens share a vision of justice that is readily available, affordable, timely, high quality and responsive. This vision has always been difficult to achieve in a rural state like Vermont where courthouses are often located at significant distances from litigants' homes or attorneys' offices. The response has been to bring justice to the citizens through 63 courts in over 30 locations, a delivery system that has enormous fixed costs and far more access points than any other state governmental service. Virtually all of the information about a case resides in a paper file in one

location and can be accessed only in that location. Any improvement in the quality, efficiency or accessibility of court services has to be replicated 63 times.

Digital technology offers the opportunity to dramatically improve access to justice in new ways. The central change turns the paper case file into an electronic case file in which all case information exists in digital form. This can be accomplished by scanning paper documents or electronic filing. An electronic case file allows the file to be accessible from anywhere and at any time. It allows litigants to make filings from anywhere and at any time. Lawyers and litigants can access their case file from the office, home, a terminal at a public library or any courthouse in the state, irrespective of where the case was filed.

The largest access to justice challenge for the courts is to provide a system that allows effective participation by self-represented litigants and ensures their interests will be heard, while at the same time maintaining its obligation to be fair and impartial. Engaging effectively in litigation can be complicated. At the same time, the economic situation of many persons makes it difficult to afford professional legal services. The number of litigants who decide to represent themselves has increased greatly over the last twenty years. In the Family Court's domestic docket almost 80% of the litigants now appear without legal representation.

New technologies can greatly improve access to the courts by self-represented litigants. They allow the Judiciary to provide extensive "Help" assistance over the internet through the Judiciary website. In an electronic filing system, a litigant can fill out forms on-line while obtaining extensive help from the website where form fillable documents can be easily accessed. The form can then be filed on-line without being reduced to paper and then automatically inserted into the court's electronic case file. The Judiciary is currently in the process of developing on-line interviews, similar to interviews used in popular tax preparation software, to assist litigants in the preparation of court documents. A litigant who wants to file for divorce, for example, responds to a series of straightforward questions. Upon completion of the interview, the computer software integrates the information into a divorce complaint that can then be filed electronically with the court.

While the gain in effective access is most apparent for self-represented litigants, lawyers who represent clients in court will also benefit from new technologies. Documents can be filed and court responses received more quickly and efficiently. Reducing the number of paper copies reduces costs for the attorney and the client. Court files can be accessed after hours or from various locations without the necessity of waiting for a busy court clerk to have the time to deal with minor issues. Comments by lawyers during the Commission focus groups clearly indicate that the Vermont bar is eager for e-filing and other electronic enhancements.

Video technology that allows persons to appear by videoconference represents another significant gain in access. Many court hearings do not involve live witness testimony, credibility determinations or evidentiary issues. In these circumstances, lawyers or parties can appear remotely with no reduction in the quality of information exchange or ability of the court to

render a fair decision. A remote appearance can be a significant saving of time and expense for a lawyer or litigant who would otherwise have to drive to a courthouse.

Video technology is a natural expansion of and improvement on telephone hearings that are allowed informally by some courts in some proceedings. The Legislature has played a leadership role in encouraging the use of this technology where it can save transport expense for arraignments and other proceedings involving incarcerated defendants. These instances demonstrate how improvements in technology can save money for litigants and the state, while maintaining broad access to the courts.

2. Improved Efficiency and Cost Reduction

The Judiciary receives, processes and disposes of over 50,000 cases every year, each case represented by a case file that can contain hundreds, or even thousands of pages of documents. A large part of the cost of the system lies in processing these paper files and scheduling and keeping track of proceedings that result from these filings. As a result, the Judiciary is a labor-intensive operation, made even more so by the duplication of staffing capacity in 63 different courts.

The introduction of the electronic case file and electronic filing enables dramatic increases in efficiency and reductions in cost in two ways. First, personnel costs can be reduced through the automation of many routine activities that require little skill. For example, a simple operation like opening the mail, putting it in the appropriate file and making a docket entry can be fully automated in an electronic filing system. Second, particular activities can be done anywhere within the state and do not have to be duplicated in all courts. For example, court scheduling can be centralized. A centralized calendar that provides information regarding scheduled cases and attorneys in every court in the state will dramatically reduce the number of hearings that have to be continued and rescheduled. This will not only reduce staff time necessary to process cases, but it will also ensure that cases are heard and decided in a more timely manner.

As part of the weighted caseload study, the National Center on State Courts attempted to quantify the efficiency gains possible for specific court activities through the introduction of technology. The second NCSC report contains the following estimates regarding reductions in clerical time as a result of automation:

- 60% of the time spent on case initiation, processing and management;
- 20% of the time spent on scheduling;
- 80% of the time devoted to responding to litigant inquiries about forms can be replaced by automation, particularly with the introduction of the A2J author software;
- 90% of the time spent on financial management;
- 90% of the time spent on jury management.

In the aggregate, these efficiency gains are substantial and will result in a significant reduction of personnel costs for routine administrative functions. It is important to emphasize

that these gains are achievable only over time – the 3 to 5 years necessary to develop and implement the new case management system and for the Judiciary to work comfortably with the system. The reduction of time commitment to routine administrative functions frees staff to take on more challenging work such as some of the case management tasks currently performed by judges. The overall result should be a more skilled, better trained staff operating much more efficiently.

3. Improved Capacity for Complex Trials

Although much of the gain from new technologies comes from improved access and efficiency, there are opportunities to improve case adjudication. The primary example involves jury trials, which occur in criminal and civil cases. Jury trials are conducted in the Vermont courts much the way they were conducted 100 years ago---that is, a case is presented to a jury through oral testimony, paper exhibits, oral argument of counsel and oral and written instructions to the jury. Studies indicate that these methods of communication are inadequate, especially in long or complex trials, and there are serious deficiencies in jurors' comprehension of the evidence. By comparison, the federal courts use modern technology to increase communication to the jury – such as display screens so each juror can view a document exhibit as a witness testifies from it – and even may allow simulations of events constructed electronically.

It is financially impractical to bring this technology to courts in every county. For rural courts with limited numbers of jury trials, the cost of the equipment cannot be justified in relation to other needs. Flexible venue rules and the ability to assign any case to any courtroom whether the building is owned by the state or the county would make it feasible to set up a limited number of high-technology jury courtrooms statewide and try lengthy and complex jury trials in those courtrooms. The cost of a few such courtrooms can be covered by the efficiencies gained overall in this proposal.

The Economic Context

As it considered the options for restructuring, the Commission also took into account the economic forecast. As revenues tumbled and forecasts for the future became gloomier, the need to restructure the Judiciary in a manner that was both consistent with the Commission's principles and ensured future budget stability became ever more challenging.

A recent report on the website for the Joint Fiscal Office⁴ gives the following information:

- Revenues for FY 2010 are now below those of FY2005
- Since July of 2007, the revenue projection of FY2010 has decreased by 18%
- Current deficit projections for Vermont are as follows
 - FY 2011 (\$82 million) = 6.4% shortfall
 - FY 2012 (\$155 million) = 11.6% shortfall

⁴ “Vermont Revenue and Budget Picture: Facing Vermont’s Fiscal Challenges”; September 30, 2009; Prepared by the Legislative Joint Fiscal Office and available at <http://www.leg.state.vt.us/JFO/>.

- FY 2013 (\$127 million) = 9.2% shortfall

The above projections are built on a series of assumptions, some of which may not prove to be accurate. They assume for example that revenues will increase by 5-6% between FY 2011 and FY 2013 year and that general fund expenditures will increase at the rate of 3.5% per year. Inaccuracy with respect to either of these projections could result in even greater shortfalls and the need for even more savings.

The Commission has concluded that, in the face of this economic future, it had no choice but to make bold recommendations to streamline the Judiciary and position it to take the greatest advantage possible of efficiencies from new technology.

DRAFT

SECTION II

PROPOSED PLAN

***“The judicial power of the State shall be vested
in a unified judicial system...”***

Vermont Constitution, Ch. II, §4

***“The Supreme Court shall have administrative
control of all of the courts of the state...”***

Vermont Constitution, Ch. II, §30

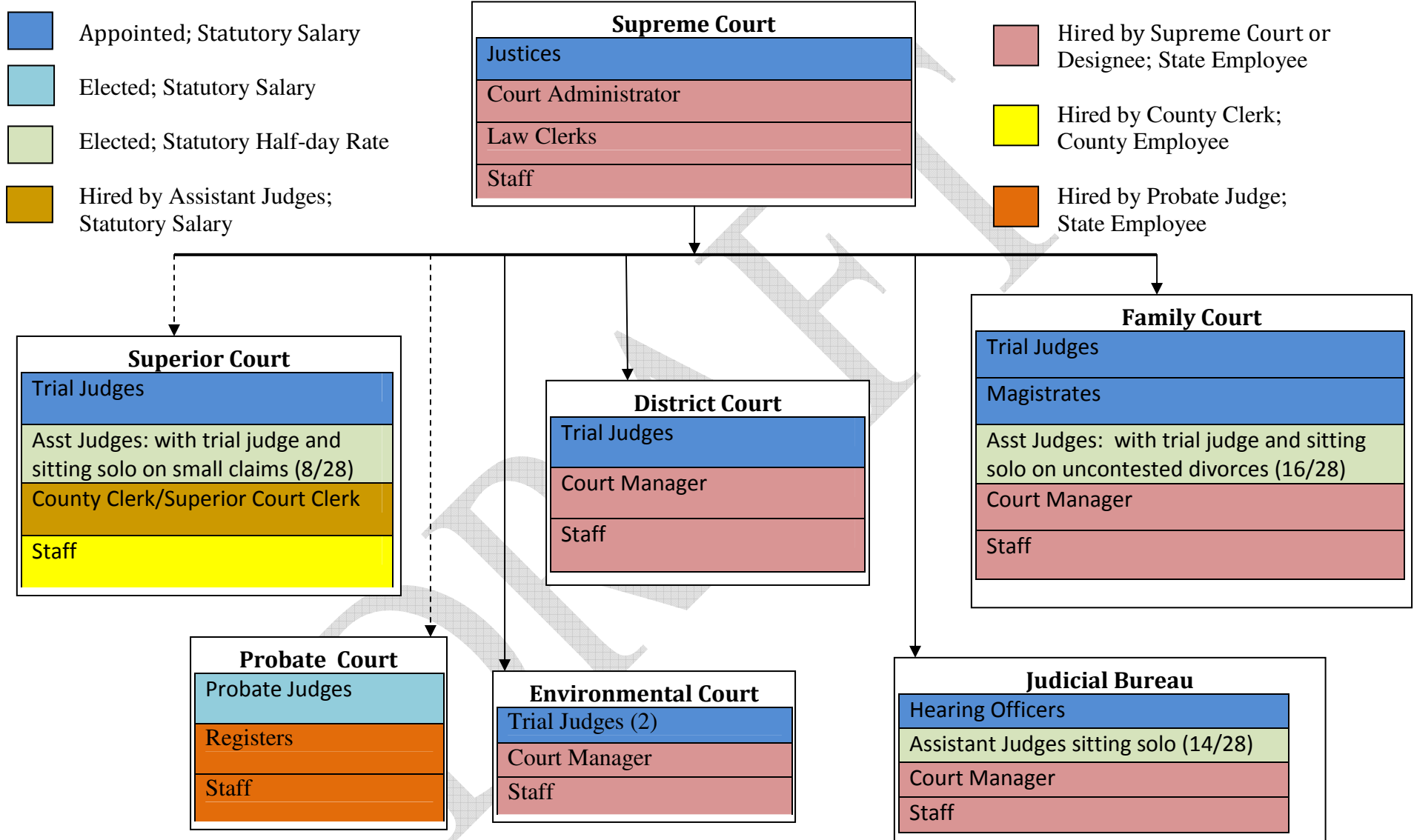


Figure 1: Configuration of Current Court System

Essential Elements of the Proposed Plan

1. **Unify Judicial System**
 2. **Consolidate trial courts into one Superior Court with four divisions: civil, criminal, family and probate**
 3. **Ease venue requirements to improve access**
 4. **Require all judicial officers to be attorneys**
 5. **Consolidate probate judicial positions into five full-time probate judges**
 6. **Eliminate judicial functions of assistant judges while maintaining their authority as county administrators**
-
-

Estimated Savings:
General Fund: \$1.2 million
Property Tax: \$1.2 million

THE PROPOSED PLAN

Introduction: Why Restructure?

Two interconnected reasons compel the restructuring of the Vermont Judicial Branch if it is to survive and provide access to justice fairly and equitably throughout the state: the current inefficient management structure and reduced revenues.

Failure to unify the courts as directed by the Vermont Constitution results in a balkanized structure that precludes efficient and effective management. Despite the constitutional command that “[t]he judicial power of the State shall be vested in a unified judicial system,” Const. Ch. II, § 4, and that “[t]he Supreme Court shall have administrative control of all the courts of the state,” Const. Ch. II, § 30, unification has not been implemented. Instead, a hybrid state/county management system diffuses authority between the Supreme Court and fourteen individual county governments plus seventeen probate districts.

This diffusion of authority prevents the Supreme Court from operating the Judicial Branch as a single entity. See Fig. 1. The state paid court clerks of the Superior Courts are hired and supervised by elected county assistant judges, who oversee a county budget that pays for some of the expenses of operating the Superior Court. The remaining staff in the Superior Courts are hired by the clerk, but paid out of county funds. Elected probate judges hire a register and other staff who are paid by the state and sit in facilities overseen by the county assistant judges. The Supreme Court hires and pays the District and Family Court staff. The consequence is non-uniform procedures, multiple managers, and a system riddled with inefficiencies and redundancies.

A hodge-podge of statutes impedes comprehensive and efficient management of the courts, judges and court staff. System-wide administrative decisions require negotiations with fourteen separate counties (each with two assistant judges and at least one probate judge) requiring

significant administrative time and overhead. This process is not always successful. For

It is no overstatement to say that the Judicial Branch is at a crucial juncture in its history. As a state, we cannot make the choice to do nothing.

example, while twelve Superior Courts agreed to join the Judiciary's case management system in the early 1990s, two counties refused. Even today, they continue to use their own separately developed systems that do not communicate or interface with the central system in any way. Additionally, the Supreme Court cannot move staff from a county court to a state court to relieve backlogs or even up workloads without the agreement of the county. Without management authority over all personnel and public funds devoted to the judicial system, the Supreme Court cannot make rational decisions on resource allocation when reductions in funds occur.

The second reason to restructure is the steady erosion of resources necessary to run the system, a problem that will only intensify in years to come. The Judicial Branch will not be able to meet its constitutional responsibilities to the citizens of Vermont without dramatically increasing the efficiency of

its operation. To do so, the Judicial Branch must have the ability to prioritize services and assign resources across the entire system.

This is not a new problem related only to the current economic crisis. The reduction of resources has been going on for years in the form of general under-funding of the Judicial Branch budget.⁵ To keep all courts operating, the Judicial Branch has been forced to meet budget reductions by keeping positions vacant. Over the past decade vacancies have increased from three empty positions in 1999 to approximately 40 positions today or 12% of the currently authorized staff.⁶ State Judicial Branch employees earning over \$60,000 per year have gone without cost-of-living increases and suffered reductions in salary. Over the six-month period from January 1 to June 30, 2009, judges and staff earning over \$60,000 took a voluntary pay cut of approximately 5%. District and Family Courts were closed a half-day each week. On July 1, 2009, the pay cut was continued and extended to the entire Judicial Branch through its authority to furlough employees. Now all courts are closed one day a month because of furloughs and, in addition, Family and District Courts are closed for a half-day every week that there is not a furlough. Services and access for all litigants, no matter how needy, have been reduced.

The Judicial Branch was already in a weakened state when tax revenues tumbled in 2008-2009. In the fall of 2008, the Judiciary's budget was reduced by a \$930,000, a rescission that resulted in the half-day closings and 5% reduction in salaries described above. During the session, the FY10 budget was further reduced by another million, which resulted in furloughs for all employees. In addition, the Legislature requested that the Commission find a way to reduce the budget by yet another \$1 million in FY11. The Commission fully

⁵ Appendix G rev., Interim Legislative Report, Vermont Commission on Judicial Operation, April 15, 2009.

⁶ Appendix H, Interim Legislative Report, Vermont Commission on Judicial Operation, April 15, 2009.

understands that the current downturn in state revenues is not projected to be a short term problem. The Joint Fiscal Office and economic analysts all seem to agree that recovery will be slow and some of the downturn in revenues will be permanent.⁷

Without a reorganized system, the Supreme Court can affect only the portion of the Judiciary budget that it controls. If the current system remains in place and further cuts are required, it could be forced to reduce services in the state run portion of the system far more substantially than the reductions proposed by the Commission. The courts that will be the hardest hit will be the courts that have the highest priority cases involving public protection and children at risk of harm—District and Family. Although these are the courts that can least afford reductions, they are the only trial courts over which the Supreme Court has full management control.⁸ The combination of diffused management structure and reduced revenues may ultimately jeopardize the Supreme Court’s ability to meet its constitutional mandate and will reduce access to justice for the citizens of this state. Given anticipated declines in revenues in the next several years, the system must be reconfigured to eliminate redundancies in management and procedures, permit more flexibility in staffing and allocation of resources, and take full advantage of new technologies to improve access to justice and service to the public.

One key to surviving this economic crisis without massive reductions in services is technology. As described in Section I, technology can bring much needed efficiency and uniformity to the system and, at the same time, dramatically reduce costs through automation while providing greater public access. The Legislature has already authorized the Court to invest in a new case management system. The development of that system is in progress and its funding is unaffected by the Commission’s proposed reorganization. It is the vehicle that can transport us to a new and better place.

For this effort to be successful, however, the Supreme Court must have management control over the entire system. In its second report to the Supreme Court on the weighted caseload study, the National Center for State Courts analyzed areas for potential future efficiency gains in the trial courts. The report highlights the important link between unification of the court system and improved efficiency through technology:

A key proposal currently under consideration by the Commission is to fully unify the Vermont trial courts by folding together the current District, Superior, Family and Probate Courts into one Superior Court with four divisions. Under this proposal, there will be only one court manager/clerk for each Superior

⁷ “Vermont Revenue and Budget Picture: Facing Vermont’s Fiscal Challenges”; September 30, 2009; Prepared by the Legislative Joint Fiscal Office and available at <http://www.leg.state.vt.us/JFO/>.

⁸ The Supreme Court does have administrative control over the staffing for the judicial bureau. It has no administrative control over the staffing for the environmental court. 4 V.S.A. §1001 requires that the environmental court have two full-time judges and a “minimum staff” of one court manager, one case manager and two docket clerks who “shall not be subject to rotation with other courts.” 4 V.S.A. §1001(f).

Court... Consolidation of management staff will make it easier to improve efficiency through the uniform dissemination of efficient business processes.

“Opportunities to Improve Vermont Court Efficiency Based on the Results of the NCSC’s Weighted Caseload Study,” NCSC Report, October, 2009.

Notwithstanding the constitutional command for a unified judicial system, it is the plain fact that Vermonters can no longer afford the present system. This is not a question of politics, but one of fact. If the Legislature does not take action to reorganize and consolidate to a more efficient and less redundant system, the Judicial Branch cannot function in this economic climate. Backlogs already developing from half-day closures and furloughs will grow exponentially. It is no overstatement to say that the Judicial Branch is at a crucial juncture in its history. As a state, we cannot make the choice to do nothing.

DRAFT

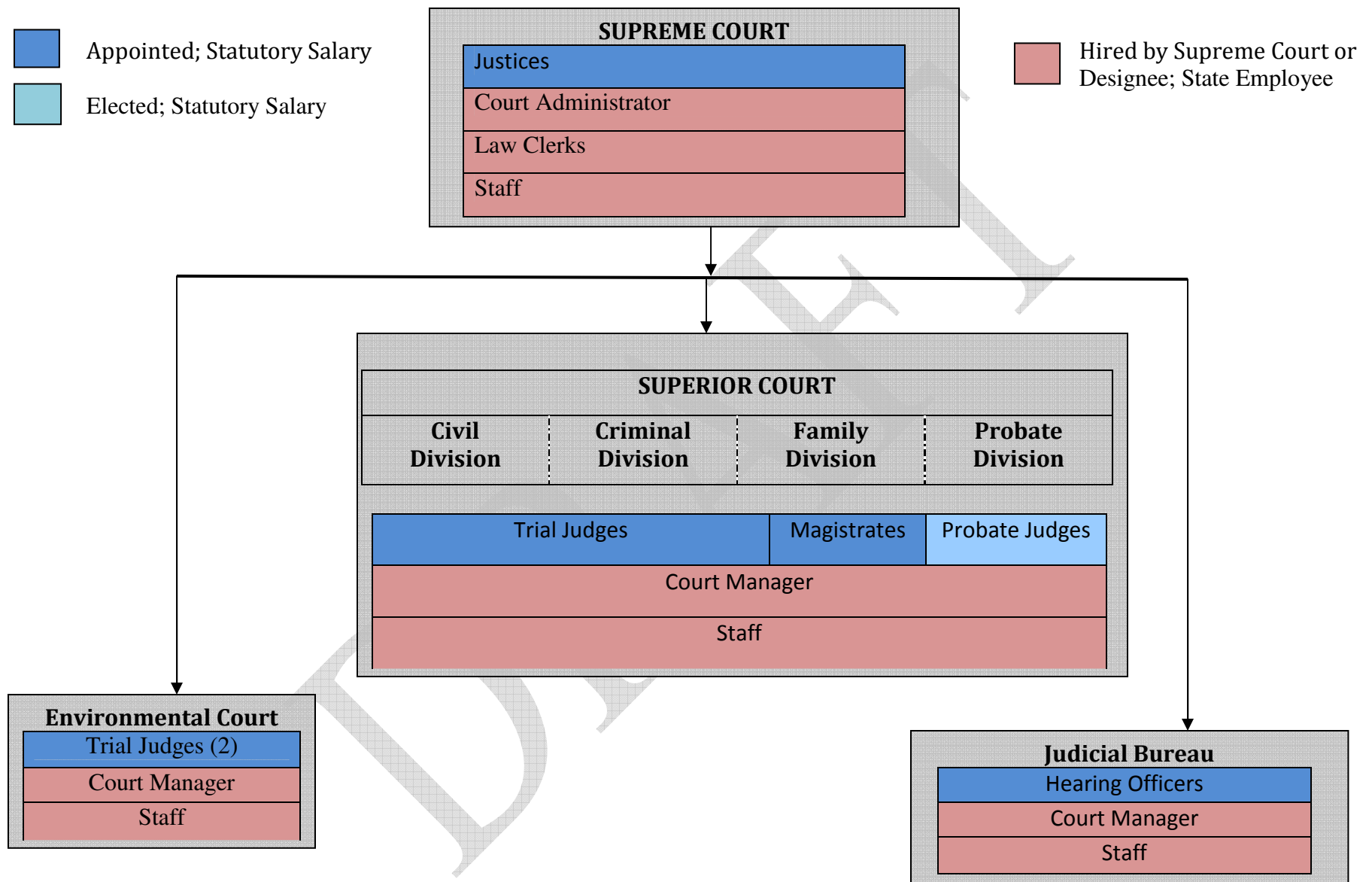


Figure 2: Unified Court System under Commission Plan

Commission Proposal

- Fulfill Constitutional mandate for a unified judicial system
- Consolidate trial court operations into a single superior court with four divisions: civil, criminal, probate and family
- Make all judicial branch employees state employees paid according to state payscale with the same benefits
- Consolidate management of court operations through appointment of one court manager/clerk in twelve counties
- Modify the delivery of services in smaller, underutilized courts
- Maintain current arrangements with the county for courthouse space
- Transfer \$700,000+/- in revenues from small claims filing fees from the county budget to the state budget

Estimated Savings:

Property Tax: \$1.2 million

Part I: Unification

In 1974, the Vermont Constitution was amended to create a unified judicial system under the administrative control of the Vermont Supreme Court. That unification was not fully implemented despite the constitutional requirement. As caseloads grow, and litigation becomes more complex, the need for unification is even greater than it was in 1974.

The deficiencies in the current structure are aggravated by the fact that the Superior Court is administered at the county level and the Probate Court is administered at both the county and state levels. See Fig. 1. The promise of a unified court system cannot be fulfilled unless the current Superior and Probate Courts are brought under full state control. Consolidated state operation of these courts was endorsed overwhelmingly in the focus groups and the responses to questionnaires.

The current structure of the trial courts, including the Probate Court, may have some advantages in terms of specialization, but the advantages are outweighed by the disadvantages in a small rural state where many venues and limited resources require flexibility to ensure a rational allocation of resources. A unified system maintains many of the strengths of the current system while at the same time offering significant improvements and savings. We can maintain the current specialization by having one court with separate divisions: civil, criminal, family and probate. We can consolidate the administrative functions of the court under a single manager, reduce staff and gain economies of scale. We can cross-train staff to provide more persons with knowledge who are able to serve the public, no matter what inquiry comes to the clerk's window, improving access to justice for users. We can more efficiently use the available courtrooms.

Judicial Functions

The judicial functions of the unified court are already in place. Trial judges are currently capable of sitting on any case – civil, criminal or family. By folding the Probate Court into the newly configured Superior Court, as discussed more fully below, the probate

division will automatically become a court of record and be integrated into the trial courts. The goal is to increase the ability to use judicial resources flexibly, to accomplish the work in a timely fashion, and to reduce administrative costs through consolidation.

Staff Functions

The current system of having similar staff responsibilities performed in some courts by state employees and in other courts by county employees is rife with inherent inequities. While performing virtually the same or similar job duties, the pay scale and benefits for a county employee are not consistent with those for a state employee. The pay scale and benefits for county employees are not even consistent from one county to the next. Similarly workloads may be heavier in one court than another, but cannot be balanced because of differing management structures.

As a direct consequence of multiple venues and rigid court divisions, there are many middle managers in the court system. These management positions have been consolidated in a few of the smaller counties to very good effect. The experience from these counties demonstrates that savings and efficiencies can be achieved when there is only one manager for all courts in the same county or court unit. Unfortunately the Court's efforts to consolidate management in other counties have been blocked by the Court's lack of authority to consolidate the positions of Superior Court clerk (hired by the assistant judges) with the position of District/Family Court manager and engage in an open recruitment hiring process. The Probate Court has yet another set of staff, including the register, who must duplicate some supervisory functions that could be handled by a single manager.

As discussed earlier, improvements in efficiency through technology are on their way to the Vermont court system with an estimated implementation time frame of three to five years. The National Center for State Courts has identified unification and consolidated management as key steps that must be taken to reap the benefits of the potential gains in efficiency for staff as a result of technological improvements.⁹ The potential is enormous, but it can be realized only if the system permits the imposition of standardized business processes. If some Superior Courts, including the State's largest in Chittenden County, continue to elect to use their own case management systems in lieu of a centralized uniform system, the loss of potential savings will be considerable.

Essex and Grand Isle

As part of the analysis of the structure of the Vermont court system, the Commission also examined the cost of maintaining Vermont's smallest and least utilized courts. The courts in Grand Isle and Essex counties operate out of historic courthouses in North Hero and Guildhall and are part of the historic fabric of the Vermont court system. Each of their caseloads, however, represents less than 1 % of the total number of cases filed in Vermont. In FY08, for example, the average number of criminal cases

⁹ See: "Opportunities to Improve Vermont Court Efficiency Based on the Results of the NCSC's Weighted Case Load Study," October, 2009.

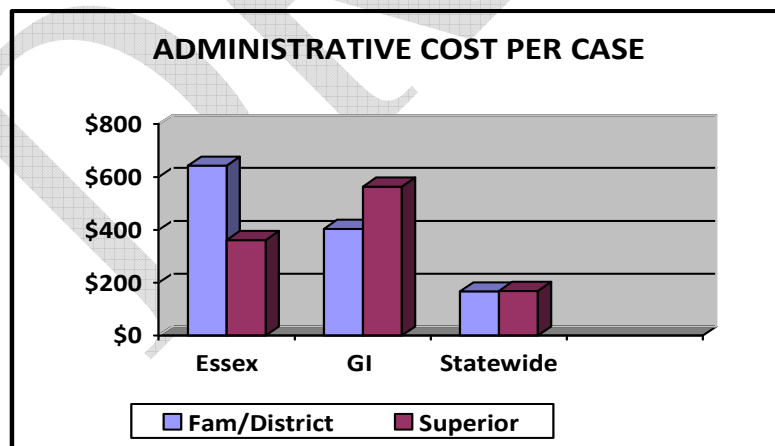
filed in Essex per month was 9. The average number of criminal cases filed in Grand Isle per month was 15.¹⁰ Even under the current system, the presiding judge for the county is at the courthouse only 20% of the time. Although their caseloads require only 4 to 5 days of trial judge time per month, each county is fully staffed, five days a week, with a total of 8.75 staff members¹¹ between them.

The resources these smaller courts consume are disproportionate to the demand for court services. An examination of the ratio of the combined staff in the District, Family, Superior and Probate Courts to number of cases filed illustrates the problem.

	# of Cases Filed in FY08 All Courts ¹²	# Staff In FY08	Cases per Staff Person
Statewide	67,488	201.3	335
Grand Isle	607	4.1	148
Essex	545	4.75	115

Although the statewide average is 335 cases per staff person in the other trial courts, more efficient courts exceed this average by a considerable amount. For example, the average number of cases per staff person in Windham Superior Court is 556. In Chittenden Family/District Court the average number of cases per staff is 422.

The significance of the staff-to-case ratio becomes apparent when one calculates the cost per case¹³ and compares the cost per case from one county to another. The lower the number of cases per staff, the higher the cost per case as illustrated in the graph below:



¹⁰ By contrast, in FY08 the average number of criminal cases filed in Caledonia was 85 per month. The average number in Orleans was 71.

¹¹ This includes all staff for the district, superior, family and probate courts except court officers.

¹² This includes all cases filed in FY08 in the district, superior, family and probate courts.

¹³ Cost per case includes staff and operating costs only. It does not include the cost of the judges.

The Commission heard no evidence that the employees in these counties were any less diligent or hard working than their counterparts in other counties. The simple reality, however, is that in the court system there are certain economies of scale related to the processing and docketing of cases. Courts as small as the courts in Grand Isle and Essex must still perform all the same tasks as the larger courts, but derive no benefit from these economies of scale and are therefore very expensive operations.

The cost and potential for closing or reducing the use of the Essex and Grand Isle courts was a recurrent theme in the focus groups. Public defenders and defense attorneys based primarily in the Chittenden/Franklin and Orleans/Caledonia areas were virtually unanimous in requesting the elimination of the need to travel to these smaller courts. Concerns were expressed about litigant travel and reducing access to courts; but moving most of the staff to larger courts would not significantly affect that access as litigants would still be able to file documents and in some cases attend hearings at those courts.

Additionally, it is not unusual for Grand Isle residents to travel to St. Albans or Burlington for services. Nor is it unusual for Essex residents to travel to either Newport or St. Johnsbury. In fact, many towns in Essex are closer to St. Johnsbury or Newport than they are to Guildhall. Historically, the Grand Isle and Essex criminal courts were consolidated within the Franklin and Caledonia judicial districts until the 1980s. The Agency of Human Services consolidates towns in Grand Isle County into its St. Albans AHS District. Towns in Essex County are divided between the St. Johnsbury AHS district and the Newport AHS district. Even the Vermont Legislature consolidates Essex and Orleans into a single Senate district.

The potential for cost savings derived from the staff consolidation of these two underutilized courts with existing larger courts is significant. If all court services were eliminated, the cost savings would be \$473,588. A less drastic option would consolidate the administrative functions of each court with its larger neighboring courts while leaving one full-time equivalent staff person at each court to take filings and answer litigant questions. Maintaining some court presence in the county is consistent with the Commission's concern for access to justice; and, for this reason, the Commission recommends reducing savings from staff consolidation to preserve this presence in the counties. This option yields savings to the General Fund of \$353,588.¹⁴

County Courthouses

With respect to the use of county courthouses in general, the Commission does not propose significant changes. Assistant judges will continue to maintain the county courthouses for use as court facilities under the current cost-sharing arrangement between the county and the state. This will allow the Judicial Branch to continue to use the courthouses for judicial business. Indeed, in counties such as Lamoille and Orange,

¹⁴ This figure does not include any additional savings that the counties may derive as a result of having to have fewer county paid employees.

for example, the county courthouse is the only court facility. In this sense, the judicial system will continue to look virtually the same to the court user as it does today. There is an issue regarding county courthouse compliance with the Americans with Disabilities Act (ADA). A few of Vermont's historical courthouses in use today are not ADA compliant and this creates a serious access to justice issue. The Commission recommends that all courthouses come into compliance with the ADA.

Technology, Venue and Access to Justice

The interaction of technology and more flexible venue rules will meet the overarching goal of the Commission to improve access to justice even as the Judicial Branch consolidates operations. The introduction of the electronic case file, discussed infra in Section I, will make current restrictive venue requirements obsolete.

Venue refers to the geographical place where a case is filed and processed. At present, it is defined by statute. Venue is important at two points in the life of a case--filing and hearing/trial location. The goal of electronic filing is to allow filing from anywhere, regardless of where the case will actually be heard. With an electronic case file, accessible by the judge, staff, or user from any location, it will make no sense to require a case that may ultimately be heard in Lamoille County to be filed there first. The second point—hearing or trial location—requires a particular geographic location. In recent years, some flexibility has been introduced into venue rules to permit, for example, regional arraignments to reduce prisoner transport cost or to allow the Supreme Court to move criminal cases between units of the District Court. As new technologies, such as the use of video conferencing, improve communications between courts and users, many types of proceedings can occur with the parties and the judge in different locations. Therefore, to improve flexibility in venue and to increase access to justice, the Commission proposes that venue be defined by rules of the Supreme Court, which are then subject to review by the Legislative Rules Committee. The rules should reference access to justice issues, the convenience of the parties, the technological requirements for trial, and available judicial resources.

Finally, the Commission recommends that to improve access to justice, the Supreme Court should develop service centers in each major court center, and a network of services in more rural areas, possibly utilizing web access in public libraries after electronic filing is implemented. It provides a place, apart from the clerk's office, that is staffed and designed to help self-represented litigants with information, both oral and written, work space, computers and printers, access to the web and to DVD media. The service center has been used successfully in other states by self-represented litigants, the bar and the general public. With the advent of electronic filing, improved services will be essential for self-represented litigants who do not have computers or who need assistance in using them. In conjunction with Law Line of Vermont, Inc., the Judiciary is already using an interactive computer program to develop on-line interviews, similar to interviews used in popular tax preparation software, to assist self-represented litigants in the preparation and filing of pleadings and other court

documents. Such programs offer enormous potential to improve services to litigants, as well as reduce staff and court time in processing cases. As staff is consolidated and functions are reallocated, it will be possible to dedicate some positions to staff this type of service center.

Commission Recommendations

The Commission recommends full state control and operation of all trial courts including the Superior and Probate Courts. The current four-courts-per-county construct of the Judicial Branch is duplicative, overly expensive and inefficient.

A Single Superior Court with Four Divisions: The Commission endorses the creation of a single Superior Court with four divisions: Civil, Criminal, Family and Probate. The Environmental Court and the Judicial Bureau would remain as stand-alone entities directly under the Supreme Court. The consolidated Superior Court would eliminate the existing four separate courts, each organized according to jurisdiction (Superior Court-civil with vestigial criminal jurisdiction, District Court-criminal with civil appellate jurisdiction for traffic violations, Family and Probate). The court would be administered on a county basis with staff support directed by a single manager appointed by the Court Administrator and a presiding judge designated by the Administrative Judge for Trial Courts. The division organization will allow responsive service to the public, while allowing court management to strategically allocate resources based on need, priority and availability. It will enable the Court to organize staff and judicial officers to perform all judicial functions with the greatest possible efficiency.

A consolidated Superior Court fulfills the constitutional mandate for a unified Judiciary under the centralized administration of the Supreme Court. It also meets the Commission's legislative mandates to consider both "Consolidation of staff, including clerks of courts, paid by the state within the Judiciary budget and consolidation of staff functions, across courts in individual counties and statewide," and "Reallocation of jurisdiction between courts, consistent with effective and efficient operation."

Comparable Pay/Benefits for and Management of all Employees: The Commission further recommends that all employees of the courts within the management control of the Supreme Court be state employees paid according to the same pay scale and eligible for the same benefits. The salaries and benefits for personnel who perform judicial (as opposed to county) functions in the Superior Courts are currently paid with county funds. **Total cost to the General Fund: \$1,896,405.¹⁵**

¹⁵ The total cost of all employees in the superior courts paid for by the county is \$2,333,000. Some of those employees perform non-court related county functions such as passports. Some represent middle managers whose positions would be eliminated by the reduction in middle management resulting from consolidation of the four trial courts and modification of services in Grand Isle and Essex. When these personnel costs are deducted from \$2,333,000, the balance is \$1,896,405.

Transfer Small Claims Filing Fees to the General Fund: In 1995, the Legislature transferred to the Superior Court responsibility for the small claims docket. To offset the cost to the County for staff necessary to handle this busy docket, the Legislature also transferred the revenues from small claims filings. In FY 2009, those revenues were approximately \$700,000. If the state takes over all of the costs currently borne by the county for staff costs associated with judicial functions, the revenues from small claims filing fees should revert to the general fund, thereby offsetting a portion of the cost of converting county employees into state employees. **Total revenue added to the General Fund: \$700,000.**

Reduce Middle Management Positions in the Trial Courts: With unification and the creation of a single Superior Court with four divisions, the balance of the conversion cost can be offset through reductions in middle management positions. The Commission recommends, however, that some of the savings from this proposal be set aside to use for economic incentives to encourage retirement and fill a position in the Court Administrator's Office to assist the trial courts in the transition to the new structure. **Net estimated Savings to the General Fund: \$649,907.**

Modify the Delivery of Court Services in the Smallest, Underutilized Courts: The Commission recommends a modification in court services available in Essex and Grand Isle rather than completely closing these courts. The Commission concludes that a full-time equivalent position should be maintained in each county for the transaction of court business such as: filling pleadings, assistance to self-represented litigants, and information and referrals to the public. The administrative work of these courts would, however, be consolidated with the work of the neighboring larger court. Court hearings may still be held at the Grand Isle or Essex courthouse as appropriate. **Total Savings: \$353,588 in General Fund.**

Continue to Maintain County Buildings for Judicial Services: The Commission recommends that the counties, through the assistant judges, continue to make available the county courthouses for any judicial business that the Supreme Court determines is necessary, under the same cost-sharing arrangement that existed as of July 1, 2009. It is the responsibility of the county to ensure that all courthouses used for judicial business be ADA compliant.

Improve Access to Justice through Flexible Venue Rules and Improved Assistance to Self-Represented Litigants: The Commission recommends that venue rules be promulgated by the Supreme Court, subject to review by the Legislative Rules Committee, consistent with effective implementation of new technologies. Such rules will improve convenience for court users as well as allow the efficient deployment of judicial resources. Following the implementation of electronic filing, the Supreme Court should ensure that sufficient assistance is available for self-represented litigants through litigant service centers at the courthouse, and through trained assistance in areas where maintenance of a litigant service center is not justified by demand.

Commission Proposal

- Integrate the probate court system into trial court system by making it a division of the newly configured superior court
 - Eliminate redundant appeals from probate court to superior court
 - Consolidate 17 part-time probate judge positions into 5 full-time probate judge positions
 - Maintain probate staff in all 12 superior courts
 - Require all probate judges to be attorneys
-
-

Total Savings: \$1,126,585

Part II: Probate Court

Vermont Probate Courts have a long tradition as user-friendly courts where the pace is slower than the family or District Courts, the issues less adversarial and judges and staff have as much time as needed to help the self-represented litigant who needs to probate a will or adopt a child. These traditions, however, do not come without cost and the costs are significant.

Probate Courts in Vermont have jurisdiction over the following case types: estates, trusts, adult and minor guardianships, adoption, change of name, corrections to vital records, and certain other miscellaneous proceedings. Much of the work in Probate Court is driven by forms that must be filled out by litigants, reviewed by staff and approved by the judge. The majority of probate proceedings are uncontested. To the degree cases are contested, factual disputes can be appealed to the Superior Court where a litigant may insist on a whole new trial on any and all claims. Legal disputes are appealed directly to the Supreme Court.

The Vermont Constitution provides that “judges of probate shall be elected by the voters of their districts as established by law.” Vt. Const., Ch II, §43. Ten of the fourteen counties in Vermont constitute single probate districts, while the four southern counties (Windham, Bennington, Windsor and Rutland) are split into two districts. There are currently seventeen probate districts

because the two Bennington districts were consolidated into one by the Legislature in 2009. The double districts in the other three southern counties are scheduled to be consolidated in February, 2011, which will further reduce the number of districts to 14.

Probate judges are part-time elected judges with the exception of the Chittenden probate judge who is full-time. Every district has a probate judge except for three of the four southern counties that have two so there are currently 17 probate judges. The salaries for probate judges are set by statute (32 V.S.A. §1142) and total \$934,170¹⁶. In addition, every probate judge is paid full health care benefits and Group D retirement benefits regardless of whether the position is full or part-time, at a cost of \$380,040.

The Probate Courts currently stand within, but somewhat on the periphery of the Judiciary. The court is usually housed in the Superior Courthouse, but with the

¹⁶ Budget figures for FY2011.

exception of Grand Isle, the staff of probate and the staff of the Superior Court exist in separate silos. The Probate Courts rely on county funds for equipment and office systems and are not fully integrated into the State Judicial System information network.

Although Probate Court cases and Family Court cases involving the same child sometimes overlap, the Family Court and the Probate Court operations are also siloed. If not informed by the litigants, one court may not know that another court has a pending case involving the same child. To the degree that probate staff and/or probate judges may have flexible time or workloads, their assistance is not available to be used by other trial courts. Similarly trial court staff is not available to assist the Probate Courts when extra help is needed because of an illness, retirement or emergency matter. While Probate Court employees are paid by the Judiciary, they are not hired or supervised by the Court Administrator as is the staff in the District, Family and Environmental Courts and the Traffic Bureau.

The largest Probate Court is in Chittenden County, where one full-time judge and three staff (two registers and a clerk) handle approximately 19% of all of the probate cases filed in Vermont. The cost to the state for the Chittenden Probate Court was \$318,019 in FY09. By contrast, in FY08 the remaining 17 Probate Courts employed 17 part-time judges and 24 staff at a total state cost of almost \$2.5 million. When Chittenden is compared to the other Probate Courts, the difference in the cost¹⁷ per case filed tells a compelling story:

	Chittenden Probate Court	Remaining Probate Courts
Cases per Judge	727 cases	188 cases
Cases per Staff	242 cases	133 cases
Cost per Case	\$454/case	\$866/case

In considering the question of how many full-time probate judges would be needed to handle the current probate caseload statewide, the Commission examined the results from the weighted caseload study reported by the National Center for State Courts (NCSC). According to the weighted caseload study, 6.26 judges would be needed to perform the tasks currently being performed by all of the probate judges in the state assuming that judges worked a forty hour week. Results from the weighted caseload study also revealed, however, that judicial case weights from Chittenden for trusts and estates, two of the largest case types in Probate Court from a numerical standpoint, were substantially lower in Chittenden than the statewide average. Estates, for example, average 87 minutes per case statewide, but only 45 minutes in Chittenden. Similarly, trusts average 22 minutes per case statewide, but only 17 minutes in Chittenden. Even small reductions in case weight (the average amount of time it takes to dispose a case) can make a substantial difference in the amount of judicial time

¹⁷ Cost figures include all expenses in FY08 including staff, judges and operating expenses regardless of funding source.

needed to process all cases statewide. When the Chittenden case weights for trusts and estates were substituted for the statewide case weight, the number of judges required drops from 6.26 to 5.16 assuming the judges work an eight-hour day.¹⁸

Commission Recommendations

Integrate Probate Court into the Trial Courts: The Commission proposes integrating the Probate Court into the trial court system by making the Probate Court a division of the newly formed Superior Court outlined above. The probate division would be a part of the Superior Court in each of the twelve counties. Relaxed rules of venue would allow a court user to file documents in any county regardless of where the case may ultimately be heard.

Require Probate Judges to be Lawyers: Consistent with the principles of the Commission, the Commission recommends that probate judges be lawyers. This proposal was made to the Legislature two years ago and was supported by the probate judges. It passed the House, but failed in the Senate.

Eliminate Redundant Appeals: All court proceedings in Probate Court would be on the record and appeals from contested Probate Court proceedings would be direct to the Supreme Court, thereby eliminating the redundant appeal to Superior Court over disputed factual issues.

Consolidate Judicial Positions: The Commission recommends that the position of probate judge be a full-time position and that the number of positions be reduced to five. The five probate judges would be elected from five newly formed electoral districts described as follows:

Chittenden District:	Chittenden County (pop. 148,916; cases filed annually 727)
Northern District:	Franklin, Grand Isle, Orleans, Essex and Caledonia (pop. 116,245; cases filed annually 742)
Central District:	Lamoille, Washington, Orange (pop. 111,432; cases filed annually 714)
Southwestern District:	Addison, Rutland, Bennington (pop. 136,974; cases filed annually 974)
Southeastern District:	Windsor and Windham (pop. 102,051; cases filed annually 770)

¹⁸ According to the weighted case load study, the average work day for trial judges, magistrates and hearing officers is actually 9.5 hours including 40 minutes for travel. If this were also the average work day for full time probate judges, then only 5.4 judges would be required even if one uses the higher caseweights for trusts and estates. The Commission does not use this figure to support its conclusions regarding the number of judges needed because it in no way wished to suggest that judges should have to work a 9.5 hour day.

A probate judge from a multi-county district would be expected to travel just as trial judges, magistrates, hearing officers and environmental judges do now. The probate judge for the southeastern district, for example, would divide his or her time between the Windsor and Windham courts with staff trained to handle probate matters in both locations. Scheduling practices can minimize travel and cross training of staff in all court locations can ensure access to justice for litigants requiring assistance. To the degree one district is over-burdened, the Administrative Judge would have the authority to appoint a judge from a neighboring district to help out. Similarly, the Administrative Judge would also have the authority to appoint a probate judge to hear a family matter or a trial judge to hear a probate matter. This would ensure that families with overlapping cases currently heard separately in Family and Probate Courts, have to appear in front of only one judge who can handle all aspects of the case. This would also allow the court the flexibility to shift resources to high priority cases in times of need.

Five Full-Time Probate Judges: There was some debate as to whether the system requires five or six full-time probate judges based on the current probate caseload. The Commission elected to recommend five based on several factors. First, the fact that Chittenden is able to handle almost a fifth of the probate cases filed annually with one full-time judge, indicates that five is the right number. Second, the weighted caseload study appears to indicate that when judges are full-time, they become more efficient and are able to process cases more quickly. Even assuming a 40 hour work week, but using the Chittenden case weights instead of the statewide averages for the two most numerous casetypes, the number of judges required is only slightly more than five.

Total savings attributable to the reduction in the number of judges: \$686,208¹⁹.

Reduce Probate Court Staff: Consolidation of the Probate Court into the newly organized Superior Court will create efficiencies that will reduce the need for the number of staff the current system supports. The reduction is amply supported by the Chittenden model, where three staff handle almost 20 percent of the probate cases filed in Vermont. A number of these reductions can be accomplished through retirements and vacancies. **Total savings from probate staff reductions: \$440,377.**

¹⁹ Savings figures include \$71,000 in savings already reflected in the 2011 budget figures resulting from the consolidation of the dual probate districts in Windsor, Windham and Rutland.

Commission Proposal

Eliminate the judicial duties of Assistant Judges

Fill one of two vacant hearing officer positions to cover the traffic court cases currently heard by assistant judges

Net Savings: \$288,000

Part III: Assistant Judges

The position of assistant judge was created by the constitution with the caveat that the judicial functions of the assistant judge were to be established by law. Vermont Const., Ch. II, §50. Two assistant judges are elected from each county. Legal training is not required and most assistant judges are not lawyers. Assistant judges have both judicial and non-judicial functions. They are paid a salary by the county for their non-judicial county duties. When performing judicial duties, assistant judges are paid by the state Judiciary \$142 per day plus FICA or \$71 plus FICA for a half-day, regardless of whether they sit on a case with the presiding judge or sit by themselves, which some are authorized to do in certain cases.

One or both assistant judges may sit with the presiding judge in most civil non-jury cases and on divorce, parentage and relief from abuse cases in the Family Court's domestic docket. When an assistant judge sits with a presiding judge, the role of the assistant judge is circumscribed. Like jurors, they are permitted to find only facts, a function that is also performed in non-jury cases by the presiding judge. Assistant judges may pick and choose which cases they want to sit on. Some are active in Family Court cases, and some do not sit at all. There is no requirement that an assistant judge sit on any case. The actual performance of these duties varies greatly from assistant judge to assistant judge and county to county. Of the \$411,000 paid to the assistant judges by the state for their judicial duties, approximately two-thirds is used to pay assistant judges for the time they spend sitting with the presiding judge.

In more recent years, the Legislature has authorized assistant judges to sit on their own and adjudicate certain types of cases, specifically small claims, traffic tickets and uncontested divorces. The Legislature has set certain training and experience prerequisites, but once these requirements are met, assistant judges can assume full control of these dockets within their county²⁰. Currently 8 assistant judges are authorized to adjudicate small claims cases and 14 are authorized to adjudicate traffic cases.

The current use of assistant judges results in a two-tiered justice system, one in which some cases are heard by law-trained judges and others are heard by non-law-trained assistant judges. Traffic and small claims cases are matters where most litigants represent themselves. Rather than being a good match, lay person to lay person, the

²⁰ In order to hear traffic violations, for example, an assistant judge must serve in office two years, successfully complete 40 hours of training, and complete 8 hours of continuing education every year. 4 V.S.A. §1108(b). Similar requirements for small claims cases can be found at 12 V.S.A. §5540(a)(2)(b) and for uncontested divorces at 4 V.S.A. §461c(c).

use of assistant judges in these cases means that no one in the equation is law-trained. The legal issues in small claims cases include all of the complex, civil legal issues that are decided in Superior Court; only the amount in controversy is less. Not surprisingly, when assistant judges sit in small claims, some use a disproportionate amount of law clerk time relative to the trial judges, raising concerns about whether they have the necessary skill and training to perform these functions.²¹

The elimination of the judicial functions of the assistant judge was overwhelmingly supported by attorneys who attended Commission focus groups. The Commission endorses this approach.

While some have argued that assistant judges sitting by themselves are cost-effective because they are cheaper than trial judges and hearing officers, the Commission rejects this argument as inconsistent with the values embodied in its principles--that all judges in a modern judicial system should be law-trained and that judicial officers should establish clear and ascertainable law and apply the law correctly to the facts. Further, the cost-effective claim is not accurate with respect to small claims work. In counties where the assistant judges have not chosen to complete the training requirements for small claims, the cases are often heard by attorneys appointed by the administrative judge to sit as acting judges. Many of these attorneys do not charge for this work, but instead treat it as their pro bono contribution to the legal system. When attorneys do charge, the maximum they can be paid is \$75 per day, approximately half the cost of an assistant judge.

The balance of benefits and costs is closest for assistant judges who sit on traffic offenses. The Judiciary currently pays assistant judges approximately \$48,882 to perform this work along with mileage if the work is out of county. When traffic cases were decriminalized in 1989, the Legislature authorized four hearing officers to adjudicate traffic cases statewide. Hearing officers must be attorneys. They are supervised by the Administrative Judge. Two of these positions are currently filled by hearing officers who hear traffic cases along with the assistant judges. Two positions are vacant. The Commission recommends that one of these two vacant positions be filled and that Vermont return to a system where legally trained hearing officers adjudicate traffic cases.

Finally, with respect to the fact finding duties when sitting with a presiding judge, the Commission has concluded that this function should also be eliminated. A divorce decree is valid regardless of whether the case is adjudicated by one, two or

²¹ Some have noted the small number of appeals from small claims cases decided by assistant judges. Appeals, however, are time consuming and expensive, and small claims cases involve only amount under \$5,000. A certain degree of legal knowledge is necessary in order to determine whether an appealable issue even exists. Given the high percentage of self-represented litigants in this docket and the relatively small amount in controversy, the lack of appeals is not surprising.

three judges, and there is simply no evidence that having more than one judge improves the quality of justice. It makes sense to eliminate the cost of this redundancy.

Commission Recommendations

Eliminate the Judicial Functions of Assistant Judges: The Commission recommends that the judicial functions of the assistant judges be eliminated. This recommendation has no impact on the county role of the assistant judge. Under the Commission proposal, assistant judges would continue to be responsible for the county budget and county buildings. In addition, they would continue to oversee the activities of the county sheriffs and provide services such as handling passport applications.

Fill One of the Two Vacant Hearing Officer Positions: The savings to the general fund would be offset to some degree by filling one of the two vacant hearing officer positions to handle the traffic ticket cases currently adjudicated by assistant judges. The cost to the General Fund of filling this position is approximately \$123,000.

Estimated Net Savings to the General Fund: \$288,000.

Part IV: Computing the Net Savings

The Commission proposals will reduce the General Fund budget for the Judicial Branch by \$1.2 million dollars. In addition, the conversion of county employees to state employees will result in potential savings to property tax payers of \$1,196,405. Savings to both county and state are calculated in Figure 3 below.

Total Savings from Commission Proposal		
	County	State
Convert County paid employees that perform judicial functions and are necessary to staff the newly configured Superior Court	\$1,896,405 ²²	-\$1,896,405
Reduce middle management positions	0	\$ 649,907
Reallocate revenue from Small Claims Filing Fees	(\$700,000)	\$700,000
Reduce services in Grand Isle and Essex counties	0	\$ 353,588
Consolidate Probate Court		\$ 1,126,525 ²³
Assistant Judge: Net Savings		\$ 288,050
TOTAL SAVINGS	\$ 1,196,405	\$1,221,665

Figure 3: Estimated Savings from Commission Proposal

The Legislature has mandated that the Commission find \$1 million in general fund savings. The Commission's proposal saves \$1.2 million in general fund dollars. The Commission recommends that the additional \$221,665 in general fund savings be used by the Judiciary to buy back half-day closings and increase access to justice for the citizens of Vermont.

²² The total cost of all employees in the superior courts paid for by the county is \$2,333,000. Some of those employees perform non-court related county functions such as passports. Some represent middle managers whose positions would be eliminated by the reduction in middle management resulting from consolidation of the four trial courts and reduction in services in Grand Isle and Essex. When these personnel costs are deducted from \$2,333,000, the balance is \$1,896,405.

²³ Savings figures include \$71,000 in savings already reflected in the 2011 budget figures resulting from the consolidation of the dual probate districts in Windsor, Windham and Rutland.

Part V: A Vision for the Future

Under a unified system, the judicial branch can deliver better service at less cost *without compromising access to justice.*

Under a unified system, the Judicial Branch can deliver better service at less cost without compromising access to justice. With the advent of technological improvements and a more flexible approach to where a case must be filed and heard, court users can file papers, access information about their case or receive help filling out forms, at any location where the Judicial Branch maintains an office. Such offices could be the clerk's office at the courthouse or a service center designed specifically for litigants, complete with computers and web access, and staffed by an employee whose job is to help court users with access to the courts. Attorneys and litigants will be able to access their cases on the web.

With the advent of a court file that is accessible from any location, court hearings can be scheduled at a courthouse based on convenience to litigants rather than in accordance with rigid and outdated venue rules. Video conferencing can even permit the judge and the parties to be in different locations during a court hearing, providing even more convenient access for the public and the bar.

The Commission's proposal for a unified system saves \$1.2 million in General Fund dollars. More importantly, it addresses the lack of flexibility that threatens the ability of the Judicial Branch to meet its constitutional responsibilities to Vermonters. Without unification, public protection and children at risk will be hardest hit by cutbacks because of outdated and irrational structural limitations on the Supreme Court's management authority. With revenues on the decline for the foreseeable future, the Supreme Court must have more options at its disposal besides reducing access to the courts through furloughs and half-day closings.

Even if Vermont revenues were to improve tomorrow, the unification plan proposes a wiser use of public money by eliminating long overdue redundancies in staff, procedures, and judicial functions. It positions the Judicial Branch to take maximum advantage of future technological improvements that will allow further efficiencies and reduced costs. The plan outlined in this report is largely an internal management plan designed to streamline functions that are for the most part invisible to the public. From the standpoint of the court user, the court system will look virtually the same except that justice will be more, rather than less, accessible.