

## Vermont Commission on Judicial Operations

Date: September 11, 2009

Present: Eileen Blackwood, Esq., Stephen Dale, Joan Gamble, Hon. Brian Grearson, Hon. Denise Johnson, Hon. Kathleen Manley, Deborah Markowitz, Esq., Stephan Morse, Hon. Paul Reiber, Charles Smith, Representative Donna Sweaney, Hon. Brian Burgess, Hon. John Dooley, Hon. Marilyn Skoglund, Senator John Campbell, Patricia Gabel, Esq., Robert Greemore, Tom Clarke, Daniel Hall

Also members of the public attended.

### **Opening Remarks:**

Chief Justice Reiber reminded everyone about the Commission and its work. The Chief reviewed some of the history of the Commission and the current economic crisis facing the Judiciary. He then reviewed the agenda for the meeting.

### **Presentation Weighted Caseload Report:**

Dan Hall from the National Center for State Courts was asked to present the Weighted Caseload Report. He spoke about the history of the tool and what it measured. He said that the weighted caseload study was a tool to assess efficiencies and to assist in determining where any imbalances between courts might exist. It provides a baseline based upon objective data.

He explained the structure of the report: 1) set of baseline case weights begins on page 30, this information is the result of the 4 week construct in which judges and court staff participated; 2) Adequacy of time survey begins on page 21, this survey asked about the quality of time to do certain functions based upon a scale from 1 to 5; 3) a breakdown for every case function of time between courts and counties, allowing the user to identify possible efficiencies; 4) Recommendations begin on page 35.

### **Presentation of Public Input and Information Sharing Workgroup Report:**

Eileen Blackwood began by listing the members of this workgroup: Justice Skoglund (chair), Deb Markowitz, Charlie Smith and herself.

She went on to explain the process of gathering input through a questionnaire and then expanding upon this information through a focus group. This process was done in phases with various groups participating. Over 600 people participated in this process. The results from the surveys and focus group notes are available on the Judiciary's website.

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Throughout this process there was both agreement and disagreement on the issues. However, the groups found unanimity around several themes:

- Consolidate the court structure, including the possible closure of some courts and regionalization, and consolidation of court management.
- Professionalize the court system (all judicial officers need to be lawyers)
- There was concern about people who represent themselves (pro se) and the fact that we need to provide more help and concern about the amount of resources this would take. It also included suggestions about simpler forms, software, and pro se centers.
- It was agreed that the Court needs the ability to redistribute resources where needed.
- Many were concerned with access to justice issues.
- Most recognized that the use of technology would be beneficial, although there was also some concern about technology too.
- Another theme is the regionalization of some cases and trials that are either larger or more complex cases (electronic evidence, etc.). There was disagreement around how to choose the cases.
- A pool of Probate and Superior judges was another theme.
- Standardization to the appropriate degree was another theme.
- It was agreed that centralizing payments would be a good idea.
- When the technology becomes available, these groups favored the idea of a virtual clerk's office.
- Another theme was the idea of redirecting staff from routine clerical duties to cover more of the routine duties monopolizing the judicial officer's time.

These themes can be used to design specific proposals. The implementation of these proposals would be spread across separate timelines. Small recommendations might be implemented first so that the courts are not overwhelmed by the changes.

Members were asked if they had any questions. There were no questions.

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**Description of materials available on the web:**

Patricia Gabel was asked to describe the materials pertaining to the Commission that are available on the Judiciary's website. Patricia said that everything except the Weighted Caseload Report had been loaded onto the Judiciary's website:

[www.vermontjudiciary.org](http://www.vermontjudiciary.org). On the Commission webpage, this meeting will be the first item. All the materials related to this meeting are under this tab, including surveys, focus group notes, workgroup reports, etc.

Also, she reminded people that the Interim Legislative Report that was issued by the Commission in April 2009 is on the webpage, as well.

Correspondence that we have received related to the Commission has been posted to the website. If you do not find your correspondence on the website, please let Patricia Gabel know. Our goal is to be as transparent as possible; we want everyone to be able to find what's been collected. If you wish to add to this information, please send us your correspondence and/or data as soon as possible.

**Presentation of Restructuring of the Judiciary and Access to Justice Workgroup Report:**

Stephan Morse began by explaining that the members of the two workgroups decided that they should meet as a single group.

Stephan identified two driving forces: to cut the budget and to achieve a unified court system as required by the 1974 Constitutional Amendment.

He then offered some highlights of the report:

- Full state management and supervision of a single superior court with four divisions.
- Propose reducing judicial services in Grand Isle and Essex Counties, with neighboring counties supporting the transferred work
- Judicial functions of Assistant Judges should be eliminated. All judges need to be trained in the law.
- Probate Court changes were recommended, including consolidating 17 part-time judges into five full-time Probate Judges, each of whom will handle the caseload in one of five Probate Districts, as follows: Chittenden, Northern, Central, Southeast and Southwest. All Probate judges must be legally trained. The contested cases should be moved to trial court level. If these changes are implemented, the savings is estimated to be in excess of \$1,000,000.

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There were several other areas for which we offered some recommendations, including allowing the Supreme Court to set venue; while we need to consolidate, we believe there needs to be a place in each county where a person can have access to information about the courts (this access includes contact with a person); and the need for pro se centers.

These recommendations address the budget needs, modernization of the courts, and offer a more efficient and more direct legal system to the people of Vermont.

Members were asked if they had questions about this report. There were no questions.

### **Presentation of Resources, Facilities and Personnel Workgroup Report:**

Joan Gamble began her report by listing the members of the workgroup: Justice Dooley (chair), Stephen Dale, Dick Marron, and herself. She also mentioned that support was given by Patricia Gabel and Bob Greemore.

Their workgroup was directed to look at personnel and facilities to find a way to save 1 million dollars in a year. We also needed to abide by the tenets of providing a quality judicial experience in a cost effective and efficient manner.

The workgroup made the following recommendations in its report (you have heard some of these ideas set forth from the other workgroups as well):

- We recommend the consolidation of the four separate court structures into one court (the Superior Court, per the Constitution), with four divisions: civil, criminal, family, and probate. The staff of the current Superior Courts would be brought under the state system. To make this change we'll need 2.3 million dollars more, so the savings needed is now 3.3 million dollars overall.
- Another recommendation is that staff needs to be used more efficiently. To do this, we recommend that all court staff report to the Court Administrator, allowing the staffing to be addressed based upon need. Savings should be found in consolidation of middle management. It would allow the Court to make changes to serve the public in the best way.
- Also, it is our recommendation that the Court have control over what cases are heard in what facility. We do not anticipate the State taking over any county facilities at this time. The operations that currently take place in Grand Isle's Courthouse and Essex's Courthouse need to be reduced. We would offer to work with those counties to try to figure out how to utilize those buildings.

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Joan offered that the savings from these recommendations would total in excess of the 3.3 million dollars we needed to save by \$200,000. However, there are other additional costs, such as the hiring of a new hearing officer and retirement incentives.

Members were asked if they had any questions.

Charlie Smith said that he was unclear about the funds flow. Because he's not sure that just because you absorb the county employees that the source that pays for them would be tied to this change.

The following explanation was offered by Bob Greemore: Basically, the Judiciary will take on the cost for county court personnel, and we would ask that the small claims fees be given to the Judiciary instead of the counties. The bottom line is that there is a potential savings in property taxes of 1.6 million dollars. Of course, this savings is contingent on the budgetary actions of the counties.

There were no more questions from members.

### **Summary of technology, proposals requiring statutory changes, etc:**

Justice Dooley opened by saying that the parallel technical track was central to many of the goals from the working groups. We need improvements in technology. Technology is interrelated to operational opportunities.

1. We need to get better at using the technology we have. Probate is the least tech supported court.
2. We need to have an electronic case file. We need to convert the paper files we have. Electronic case files mean they can be accessible from anywhere. There are efficiencies to be had from eliminating the physical geography of a file.
3. Use technology to enhance access. We're working on a software package based upon an interactive model (like Turbo tax) to allow for more pro se access through our website.
4. In the future, there is a need to have electronic filing. E-filing would allow for 24 hour access to courts.
5. We need to allow for loosening of venue, so we can do some trials regionally, like criminal cases that have more sophisticated equipment needs. We might have 4 courthouses that are equipped to handle these types of trials.

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We will need to pursue statute changes for venue, restructuring Probate districts, and possibly in the future we should look at whether we should consider changing where and how we handle middle level claims, like house construction claims for \$20,000.

Members were asked about whether they had any questions. There were no questions.

A fifteen minute break was taken.

### **Public Comment & Response:**

**Jim Pelkey** identified himself and offered his comments. He offered his appreciation for the efforts of the Commission, but he did not agree with the working groups' recommendations in their reports. He stated that he will be submitting his own position paper. He offered that from his perspective as Superior Court Clerk in Franklin County for 10 years that there was no divisiveness between county and state workers, at least not from our side, and that he was not sure where these inefficiencies were that everyone was talking about. Also, he mentioned that the state asked them to change their computer system, but the state was not willing to pay for this change. He added that they already had a system that worked and couldn't see why they should change. We're willing to cooperate and have done so in the past. Flexibility of use, we've had Family Court cases and Judicial Bureau. Judges are travelling now. We share a judge with Chittenden; it makes it more challenging to get the work done, but it gets done. We need a full time staff. As for technology, when we received our 2 deck tape recorder, we thought we'd died and gone to heaven. Our staff does everything the state tells them. We don't need to be state employees to do the work the state needs. The Judiciary currently determines how judicial space is used. We have many pro se litigants, but our court does not have many forms. Why not make it a forms court? Don't toss the structure out to save some efficiencies!

The Chief asked Jim if he had any thoughts on where the Court might save the money needed.

Jim did not offer any ideas at this time.

Justice Burgess asked if the Court needed to send your staff to help another court, what the reaction would be.

Jim stated that there are only 3 of us. We'd need training on the state system. It might be difficult, but if required, we'd do it. He said that he was fortunate to have long term staff available to help.

The next person to speak was **David Carter, Esq.** He read a letter from Joseph Bauer, Esq., co-president of the Franklin-Grand Isle Bar Association that stated their resolution

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to support the continued existence of the Superior, District and Family Courts as presently configured in Franklin and Grand Isle counties.

He went on to read from a proposal about how to fund the county courts. He spoke about the historical significance of many of the courthouses. Next, he spoke about how until recently most bills for these buildings were paid by the county. His proposal was to let the county decide whether they want to keep their courthouses open and whether or not they want to fund that continuation of function. It would be better than having the state tell them that they must close them. You should allow local society to decide how the facilities are used. It should not be a legislative decision.

Senator Campbell stated that the problem is that we have hard decisions to make. The legislature can not give the Judiciary more money. It is incumbent upon us to try to hold the line and not raise taxes.

David spoke more about the need to allow for local control of the courthouses, letting the counties decide what should stay open or be closed and how they might fund these expenses. Then, he offered that he thought technology might offer some cost savings. Possibly by using existing technologies more often, like video conferencing. Although he also said that sometimes it might be more useful to have the person there. Also, he thought e-filing might offer some efficiencies.

While David thought that some elements of these reports were good, he didn't like the idea of travel for Probate in the Northern district. There are multiple issues involved in Probate – trusts may go on for years, guardianships, too. Having litigants and attorneys travel long distances is not a good idea.

Justice Burgess offered that for Probate we were thinking that issues would still be litigated in a trial court in the local community. We envisioned the judges travelling, not the attorneys and litigants.

David stated that his point, particular to closing local courts, is that it will be a difficult political issue; a firestorm of opposition will be generated; it may prove to be your Achilles Heel.

Stephan Morse stated that he doesn't take local control or closing of facilities lightly. Do you have any suggestions for where to find one million dollars?

David offered some suggestions, like cross trainings, other efficiencies to be found, and other smaller efforts. Also, he wasn't sure that the pro se suggestion would work.

Stephan Morse said that the Commission would be interested in David's suggestions.

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Deb Markowitz added that she understood the importance of these buildings to communities. However, she said that she had heard in her discourse with towns that they don't believe that they get a direct vote on the county budgets. She had questions about how these items would be put before the public.

David said that county budget hearings are advertised. Also, he mentioned that county officials meet with select boards. He can not help it if people do not attend the county hearing.

Deb Markowitz made a comparison between school budget issues and the courthouse issues.

David offered that local control is the tendency on schools; also, local control should decide which courthouses should remain open or be closed and shuttered; what functions should continue. Whatever they decide they will have to decide to put up the money to do this. If they choose not to participate, that is their choice.

Eileen Blackwood wanted to know what aspects does the county want to preserve. She offered that she had heard from others that the divisiveness between the county and the state is problematic. In our discussions, we have talked about leaving a staff person as a local presence. It was not our intention to yank your courthouse off the map. However, there is a need to run the Judiciary from a central place. This action anticipates moving some events away from the community. Is this problematic?

David offered that justice is not always efficient. The local courthouse has been there all their lives. The idea of going to other places causes them anxiety.

Eileen Blackwood responded that the trial would be there.

David replied that they want to keep the presence in the county. The Islands have resisted these kinds of changes for 200 years. The Islands are unique, autonomous. He stated that Islanders want to retain their courthouse. He also offered that he believed it has one of the most beautiful views from the bench.

**Judge Barney Bloom** was the next person to speak. He introduced himself as Washington County Assistant Judge. He wanted people to know that he was speaking for himself and no one else. He wanted to address 2 points that Stephan Morse made about it being required to pass the bar (for Assistant Judges) and the concern for pro se litigants. He said that he has seen a considerable range of styles and approaches in the judicial proceedings in which he's participated. Many pro se litigants do not follow what these judges are saying. Non-attorney judges with training are able to explain a system that has its own language to the pro se litigants. Life experience can be practical.



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**Judge Toby Balivet** was next. He said that he was speaking on behalf of the Probate Judges. He offered that what he wants to address is how you did what you did and how you didn't do what you didn't do. He pointed out that comparing case per judge across jurisdictions to other case number counts by different jurisdictions is not an accurate measurement. Yet, you kept these conclusions in there, instead you shot the messenger. We believe that Probate was under reported, but we believe that it is good enough. Docket numbers don't work for measurement – they don't begin to measure case burden. You used figures that were incorrect. He said that he does not understand where you are getting information that says there are few contested cases in Probate. You didn't get it anecdotally from the Probate Judges. It is the kind of information that you need to get right. There will be significant consequences of moving contested cases from Probate to Superior. This move could create a serious problem if you're wrong. He then went on to say that we see the study as rational and comprehensive. The idea of looking at efficient courts within the system is a useful analytical tool. Why have you used it just on Probate? Why not other jurisdictions? From these preliminary figures using the most efficient courts in each jurisdiction, you only need 4 ½ Superior Courts in the state to handle Superior Court matters; 4 District Courts and 5 Family Courts. Chittenden is not always the most effective model for other jurisdictions. For example, Washington District/Family Court is most effective for District/Family Courts. Lamoille Superior Court has lowest for Superior.

Justice Burgess asked Judge Balivet whether this was his recommendation.

Judge Balivet said that what he wanted was for the Commission to look at everything comprehensively including Probate. These are two different things: one is economy of scale and the other is most efficient court. There are more potential cost savings by looking at all of these things. Some changes while saving cost effect access to justice issues. Debate needs to happen. We don't believe that where the Commission has gone so far is where it should be.

Charlie Smith asked if Judge Balivet envisioned in replicating the Chittenden theory for Superior Courts into 5 regions whether there would be the need to add space anywhere.

Judge Balivet said that is taking it to threshold. You would need to ask across jurisdictions.

Stephen Dale asked Judge Balivet if the initial data analysis was looking at non-comparable items.

Judge Balivet responded that for example in Family Court, the judge does 20 divorce hearings a day and the Superior Court judge hears 5 boundary disputes in a day. Then you could extrapolate that Family Court does 20 times the work of Superior Court.

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The Chief offered that this was addressed in section 4 of the report. Of course, this is a concern of the Commission. He offered that Tom Clarke could explain it to Judge Balivet, if he wanted.

The next person to speak was **Eric Fitzpatrick**. He asked about the venue statutes.

Justice Johnson answered that, in anticipation, should the Commission chose to act on the suggested changes for venue that we were working on structuring legislation for rules for venue. This proposed change would allow us more flexibility. However, whatever rules we suggest would be cognizant of access to justice and other issues.

### **Prior Minutes:**

Next a motion was made to approve the minutes of the past Commission meetings. There was a proposed change to the language of the motion to say, “approved as circulated to members”. The motion as changed was then seconded. Everyone agreed to approve.

### **Commission Discussion and Deliberation:**

Patricia Gabel asked whether the Commission should ask the National Center for State Courts to provide an analysis of the efficiencies that can be identified through the results of the Weighted Caseload Report.

*A resolution was offered that the National Center for State Courts is hereby requested to provide to the Commission an analysis of the Weighted Caseload Report that will assist the Commission to fulfill the charge that it received from the Legislature in the enabling legislation, with such analysis to be provided to the Commission on or before September 30, 2009.*

The motion was seconded.

There were some questions. What will be included in analysis? What needs to be done?

Tom Clarke of the National Center for State Courts responded to these inquiries by outlining some of the issues his report would address: 1) economies of scale (he cautioned that analysis can only guess what efficiencies are replicable); 2) Application of technology make more efficient (what kinds of things); 3) Quality adjustments.

The Chief asked whether the current grant funding would cover this additional report.

Dan Hall of the National Center for State Courts said that it would be covered.

*Members were asked if they would adopt this resolution. It passed unanimously.*

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Another resolution was offered: *A subcommittee of the Commission is hereby charged to prepare and circulate among Commission members discussion drafts of the Commission's Final Report in form that is generally consistent with the work group reports and informed by the analysis from the National Center for State Courts and in sufficient time to allow consultation and comment from Commission members so that a final report can be presented to the Commission for a vote at its meeting on October 20, 2009.*

*This resolution was seconded. It passed unanimously.*

*It was further resolved that Associate Justice Denise Johnson shall chair the drafting subcommittee, and that the other members of the subcommittee shall be Eileen Blackwood, Dick Marron and Donna Sweaney.*

*Again, this resolution was seconded and passed unanimously.*

Stephen Dale asked whether another meeting of the Commission should be scheduled to view the follow up report from the National Center for State Courts.

Patricia Gabel offered that she would circulate the report to Commission members once it was received.

Some discussion ensued about whether the full Commission should meet or whether individuals from the work groups would forward their thoughts to their representative on the subcommittee drafting the proposed final report.

There was also a mention about needing to draft some proposed legislation that follows the recommendations in the report.

Several members felt strongly that public comment needed to continue to be available prior to the meeting on October 20<sup>th</sup>.

Again, members expressed the need for the full Commission to meet prior to October 20<sup>th</sup>. It was agreed that Patricia Gabel would send out some potential dates for this additional meeting to the Commission members.

Upon motion duly made, seconded, and unanimously carried, the meeting was adjourned.