

COURT REFORM

Currently, I am employed in the Vermont Probate Court. Previously, I practiced law in Vermont for 32 years with considerable experience in Vermont Superior Court and limited experience in the Vermont District and Environmental Courts. Largely, my comments arise from my Probate Court experience.

EFFICIENCY ISSUES

If the Probate Court is to survive, it needs to become more efficient. With an ageing demographic we are likely to see more decedents' estates and more adult guardianships. Because of social changes we are likely to see more custodial guardianships for minors. In part because of public perceptions of lawyers and in part because of economic changes we are likely to see ever more *pro se* proceedings. If the Probate Court is to do more with fewer people, efficiency is critical.

The Probate Courts, regardless of number, need uniform and carefully crafted procedures and practices. Statutes and Rules should be reviewed to determine whether everything the Probate Courts currently are required to do really is necessary. Then, statutes and rules may be amended as necessary. The Probate Courts should have, at least:

- Uniform hardware;
- Uniform software;
- Networking within individual locations;
- High speed internet connections – no more dial-up; and
- A central electronic index and a central electronic docket to which all (including the public) would have access.

EXAMPLES OF INEFFICIENCY AND POSSIBLE SOLUTIONS

At my location we type, on cheap “Brother” typewriters: (1) index cards, (2) docket sheets which are kept in ring binders, (3) file labels, (4) Orders To Lie directly upon the Wills of decedents for whom no probate proceedings are required, and (5) envelopes into which Wills deposited for safekeeping are kept.

When a fee is received, we make a minimum of 3 manual entries (docket sheet, account book, and the State's ledger sheet which, on a quarterly basis, finds its way to Finance after our periodic “Visions” entries have been made). If we receive cash and when a Will is deposited for safekeeping, a 4th manual entry is required – a Receipt.

When opening a decedent's estate, in addition to the other records we create, we make manual entries on a sheet (which has space for 4 sets of such entries) and, when the sheet is filled, we mail it to the Tax Department; this, we suppose, triggers reviews for tax compliance and for Medicare recovery. This shouldn't be a manual operation. Both the Tax Department and the Medicare Estate Recovery Unit should have access to a central electronic docket from which each could extract this information.

(Perhaps the suggestion that all proceedings be submitted to a central office for initial processing and, then distributed to the appropriate court for administration really does have merit.)

The Probate Courts keep statistical records which, presumably, allow analysis of a specific Court's workload as well as the burden of the entire Vermont Probate Court. These records are kept manually. I'm confident that my location underreports because, when we're busy (which is most of the time), that is a task which is not essential for serving the public. My colleague doesn't miss many statistical entries, but I do. Most of the requested statistics also appear on our financial reports because many of the activities for which statistics are collected generate fees. Our financial reporting is 100% accurate. Why not use those financial records rather than require yet another set of manual entries? To the extent some activity is to be quantified for which there is no fee (for instance, motions and hearings), the Legislature could prescribe a fee; these fees will increase revenues and, likely, will discourage frivolous motions and requests for hearings, the result of which will be to slow increasing workloads. The only statistic which might not appropriately be generated by a fee is the closing of a proceeding but a central electronic docket would cure that problem. Of course, a central electronic docket could be the source for all desired statistics.

Comprehensive software would include, at least:

Calendaring. We now make manual entries in each of our three calendars (2 staff; 1 Judge). The program should include the unavailability of counsel. Presently, when counsel inform the Court of unavailability, we make manual entries in each of the 3 calendars.

Tickler. Involuntary guardianship proceedings require an Annual Notice of Modification or Termination be sent to all the parties; the program should produce that Notice automatically when the date arrives. At present and as time allows, we periodically search through the physical files examining each for compliance by the Court as well as for compliance by guardians of their duties. We do a similar review of the physical files for decedents' estates and trusts. We're never current on all.

Multiple document ("merge") program. At the commencement of several common proceedings, multiple documents are required and may be generated with a single input of data. In the case of testate estates, at least 7 documents are produced; intestate estates, at least 5; involuntary guardianships, 7; minor guardianships, 5. The currently used merge program at my location is Wordstar and it operates on a Gateway computer manufactured 12-30-96. A Leading Edge program may be used to produce individual documents on the same Gateway computer, although we have largely moved that function to new Hewlett-Packard computers (Pavilion model designed, apparently,

for home use). We print from cheap Hewlett-Packard printers (LaserJet P1505n) which, also, appear to have been designed for home use.

At the commencement of guardianship proceedings, the Probate Courts are required to submit the names of proposed guardians and other family members to a number of data banks for record checks, each one of which needs to be done individually. There must be a way to program checks of all required data banks in a single operation. (Perhaps this is yet another reason to have all petitions for proceedings sent to a central processing office before being assigned to a specific Probate Court.)

In many probate proceedings, Court action must be reported to a number of interested persons. (In a currently active proceeding at my location, there are 14 for each of whom an envelope must be prepared; this particular proceeding is very contentious, there is a lot of activity, and we have sent innumerable notices.) There must be a way to design a program so that the names and addresses of the interested persons requiring notification can result in the production of the required envelopes without having to do each one individually.

When retrieving files from Public Records, they're sent to us by UPS; when returning, we mail them; because the files almost always exceed 13 oz., we must hand-deliver the packet to the Post Office. It would be cheaper and more efficient to return the files by UPS. A special return envelope could accompany the file when sent from Public Records and a court would merely need to call UPS for pick-up.

It seems pointless to make electronic recordings of Probate Court hearings. Our equipment is so poor it is virtually impossible to transcribe recordings unless the transcriber was actually at the hearing – and that does not always guarantee a useful transcription. Then, the Court is required to retain the tapes for 23 years! (Will there then be a device which can play them?) The Probate Court as it now stands is not a court of record; appeals are to the Superior Court and are *de novo*. If a Probate Judge wants to record a hearing as an aid in drafting findings and orders, the Judge may do so. If any party wishes to record, the party may do so. (From time-to-time a party will hire a court stenographer to make a record.) What now seems to be the norm in our technological era is for hearing participants to make contemporaneous notes on laptops. In the last 3 years, I think my court has received only 1 request for a duplicate tape and the product was lousy.

It is time to get rid of our quill pens and green eye shades.

STATUTORY, CONSTITUTIONAL, POLITICAL & STRUCTURAL ISSUES

We must remove county government from the State Judicial system. (As a starter, the Assistant Judges should have no judicial duties. It seems neither fair nor appropriate to have non-law-trained persons deciding small claims cases. It is not uncommon for the Judge to have to assist the plaintiff in determining and presenting the issues, do the same for the defendant, and then proceed to render an informed and

impartial decision. The Small Claims Court Judge needs to be able to recognize the issues and the relevancy of evidence, skills taught in law school and honed through law practice. I am not familiar with the functions of the Assistant Judges in Family Court. Elevate the Assistant Judges to County Commissioners.

All Vermont court staff should be hired by, paid by, and subject to the control of the Judicial Branch of State government. Likewise, they should all enjoy the benefit plans offered by the Judicial Branch.

Long-term, the court facilities owned and operated by the Counties will need to be replaced by State owned and operated facilities. Although many of the old County Court houses are historic and architectural gems, they do not all provide adequate facilities for modern judicial proceedings. Security, privacy, technology access, and handicapped accessibility are some of the deficiencies. Also, in many instances they are not located in population/commercial centers.

Judges sitting on probate proceedings should be full-time and appointed (as in the rest of the Judicial Branch) and not elected.

If the Probate Court is to be kept, there could be 5 Probate Districts each served at any given time by one Probate Judge. Attempting to be mindful of both demographics and geography, the following might work:

District #1 Orleans Caledonia & Orange Counties

District #2 Franklin, Lamoille & Washington Counties

District #3 Grand Isle & Chittenden Counties

District #4 Addison & Rutland Counties together with the northern portion of Windsor County now comprising the Hartford District

District #5 Bennington & Windham Counties together with the southern portion of Windsor County now comprising the Windsor District

Venue, if the concept were to be retained, would be by District. Also to be considered is the number of locations within each District for the conduct of probate proceedings: one per District in the largest population/commercial center?

If the Probate Court is NOT to be kept, then its subject matter jurisdiction must be redistributed. Consider:

- (1) Transfer to Family Court all guardianships (minors, both custodial and financial; adults, both involuntary and voluntary; adoptions, both minors and adults; and emancipations). Since a substantial number of adoptions of minors are agency generated, the Probate Court's involvement usually has been a simple ministerial act of approval - a function which not unreasonably might be placed in the Department of Health as an administrative procedure. Any adoption requiring more than a ministerial act could be transferred to an appropriate Family Court for any required adjudication. Once the adjudication has been made, the proceeding would be returned to the Department of Health for administrative completion.
- (2) Transfer to Family Court all hearings on Advance Directives.

- (3) Transfer to the Department of Health all vital records proceedings (birth certificate corrections, delayed birth certificate requests, legitimations, marriage certificate corrections, civil union certificate corrections, and name changes) as administrative proceedings. Again, in those few instances where actual adjudication may be required, the proceeding could be transferred to an appropriate Family Court and, subsequently, returned to the Department of Health for administrative completion.
- (4) Transfer to the Office of the Secretary of State all requests for special authorizations to officiate at marriages and civil unions.
- (5) Transfer to the Superior Court all decedents' estates, trusts, issues relating to remains/cremains (18 VSA 5231), mortgage discharges and conveyances of real estate (27 VSA 465 and 14 VSA 1801, respectively), and Wills for safekeeping. (To the extent I have missed 1 or 2 infrequently requested proceedings, these could be transferred to Superior Court, as well.)

P.S. Probate Judge Sally Cook has distributed a 4-page memorandum entitled "Vermont Probate Courts, Consolidation, Two Shires Into One County: What Works; What Doesn't". It illustrates the need for efficiencies if the Probate Courts are to continue and how lack of uniformity of proceedings throughout the Vermont Probate Courts may effect expectations, experiences and results. (I don't have it in electronic form; only hard copy.) At the top of page 2 she states, "Bennington has some unique problems". From my experience, I suspect those problems to which she makes reference may not be unique. Also, if the State is to have a more efficient Judicial Branch, "side judges" should not be determining the physical locations of State courts. The conflicts created by County involvement in the Judicial Branch is well illustrated by Judge Cook's statement in the last paragraph on page 2, "I am appalled that there is such a lack of cooperation between Superior courts and state courts". Perhaps it is time to bring the Superior Courts and the Probate Courts into the State's Judicial Branch.

