

Law Office of James A. Dumont, Esq., P.C.

15 Main St., P.O. Box 229, Bristol VT 05443
802-453-7011; Toll Free: 866-453-7011; fax 453-6040
email: jim@dumontlawvt.com; website: dumontlawvt.com

James A. Dumont, Esq.

Kit D. Donnelly, Legal Assistant

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Hon. Paul L. Reiber
Chief Justice
Supreme Court of Vermont
133 State St.
Montpelier VT 05602

Re: Commission on Judicial Operations

Dear Chief Justice Reiber:

I write to you as Chairman of the Commission on Judicial Operations, in response to the presentation at the V.B.A. "town meeting" at the Lake Morey Inn.

Thanks to you and the other members of the Court and the Commission for tackling these issues, and thanks for making clear that the top priority is access to justice. In my opinion, each of the recommendations set forth in the Working Group report deserves the support of the bar, the public and the legislature. If these are adopted, the result will be preservation and enhancement of access to justice by Vermonters, and an improved quality of justice. In particular, I think the proposal for *pro se* service centers is a terrific idea.

I would like to add some suggestions to the Working Group's draft.

There was discussion at the V.B.A. meeting about the use of lawyers as Acting Small Claims Judges. I and several other members of the Addison County bar have been serving as Small Claims Judges for several years. In this county, we serve without any compensation. I was surprised to learn that in other counties Acting Small Claims Judges they are paid. I believe that the volunteer approach would benefit the public if it were expanded and also if it were provided more structure.

I don't think payment is necessary because those who serve generally find the work to be its own reward. The work provides a public service, it earns CLE credits, and it often involves interesting legal questions or compelling personal stories.

I also believe that the use of Assistant Judges to serve as Small Claims Judges carries with it serious potential for injustice. This is for several reasons. One is that I have found that the resolution of Small Claims Court cases not infrequently requires resort to statutes and common law that the litigants are not aware of and that a lay judge would not recognize. For example, it has been my experience that many Small Claims disputes between merchants and consumers trigger interrelated provisions of the Uniform Commercial Code. I am sure our Assistant Judges are

The Hon. Paul Reiber

well acquainted with some statutes, such as the Vermont landlord-tenant statute. But it requires the training that lawyers have in order to recognize the relevance of and to apply the U.C.C. Unless we want Small Claims Court justice to be rough justice, not based on the law, lay judges simply cannot meet the requirements of this role. Another reason is that in Vermont we have found that it is bad policy to have the same one or two judges presiding in a particular courthouse for long periods of time. Justice tends to become too personal. That is one reason why we have judicial rotation among Superior and District Judges. Selection of Acting Judges from a good-sized group of lawyers avoids this problem; having one or two Assistant Judges always as the Small Claims Court Judge in a county creates just such a problem.

However, there is no training for any of the lawyer Small Claims Judges, and there is no accountability. I suggest that the Commission consider a proposal for Acting Small Claims Judges under which a CLE would be required before appointment. The CLE would address the issues many of us do not have experience with in our practices, such as how financial disclosure process should work, how much to order debtors to pay each month (the statute and rule provide only for the maximum that can be ordered), the thorny issues of criminal and civil contempt, and the limits of the hearsay exception. (The VBA is already developing such a CLE.) I also think some better accountability to and oversight by the Administrative Judge or the Court Administrator would be a good idea, so that it is not just the assistant clerks or Court Managers who are, in effect, deciding who should and should not be acting as Acting Judge on behalf of the State of Vermont.

I also hope the final set of proposals focuses more explicitly on a subject addressed at the meeting -- having the courts travel to the litigants in counties where a court no longer will be open on a daily basis, rather than having litigants and witnesses travel long distances to court.

Finally, I would note that with a little tweaking the Court's website could better direct the reader straight to the current proposals and to the data supporting them.

I hope these thoughts are useful.

Sincerely,



James A. Dumont, Esq.