



Vermont Commission on Judicial Operation
Interim Legislative Report

April 15, 2009

Problem Statement

The current balkanized structure of Vermont's courts and court staff violates the constitutional mandate for a unified judicial system, and impedes the Supreme Court from fulfilling its constitutional responsibility for administration of all state courts. It is established by the constitution 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. Instead, and despite the constitutional command to the contrary, a collage of statutes maintains a non-unified system of courts and interferes with, and sometimes thwarts, comprehensive management of the courts and court staff by the Supreme Court. As a result, Vermont's judiciary is deprived of the flexibility to reorganize to meet service demands and to rationally and creatively respond to budget limitations.

The Vermont Judicial Branch is under extreme pressure to reduce the total budget for Judicial Branch Services. Historically, the state appropriation for Judicial Branch operating costs has remained relatively flat for several years, with no adjustments for inflation. In addition, general underfunding of the Pay Act for many years aggravated an already decreasing revenue stream to meet existing operating expenses and personal services. As a result, the Judicial Branch has been forced to rely upon "vacancy savings" year after year to balance its budget. Over the past ten years, vacancies have increased from three (3) empty positions in fiscal year 1999 to twenty-five (25) empty positions in fiscal year 2009, or roughly 7% of currently-authorized staff. As revenues decrease, the growing number of vacancies takes a toll on the remaining and overextended court staff, and leaves the court administrator's office unable to respond quickly to support needs.

During the 2008 legislative session, the Supreme Court asked the Legislature to restore the Judicial Branch to an adequate level of funding and positions to meet the need. The Court identified problems resulting from a cumbersome management structure that hindered its ability to manage the system in a cost-effective, efficient manner, and to respond to any requests for serious revenue reductions.

The structural problems and anomalies in the system include the following:

1. The Supreme Court does not have authority to run the Judicial Branch as a single enterprise. It does not control all of the revenues that fund the Court, and it does not hire or have management authority over all the employees who work in the judicial branch. Accordingly, the Supreme Court can effectuate budget reductions and efficiencies only in those areas of the Judicial Branch that are under its control. The courts under its control, especially District and Family, can least afford reductions in resources. Therefore, any substantial reductions in the funding for these courts allocate resources irrationally within the judicial system, and could result in the closure of some courts entirely.

By way of illustration, the Supreme Court controls the budget that funds the District and Family Courts, the Environmental Court, and the Judicial

Bureau. The counties control the budget for the Superior Court, staff and facilities, as well as the hiring of the Superior Court clerk in each county, but the Superior Court clerk is paid by the Supreme Court. The Probate Court is partially funded by the county and partially funded by state revenues—the Court pays the staff, but does not hire them. The county pays for the Probate Court's facility and equipment.

2. A state/county hybrid system has resulted in 63 court service points (district, family, superior or probate court) in thirty-two buildings, all offering the full panoply of judicial services. Where all of the court services exist in a single building, there may be multiple managers where one would be sufficient and cost-effective. The Supreme Court does not have statutory authority to control the duties of the Superior Court clerk because that person is hired by the Assistant Judges. Therefore, it is powerless to effectuate efficiencies in management salaries that it is required to pay from general revenues. In some counties with multiple managers and low demand for services, the cost of providing judicial services is disproportionately high to that of other counties, and makes little sense when high demand areas of the system need more resources.

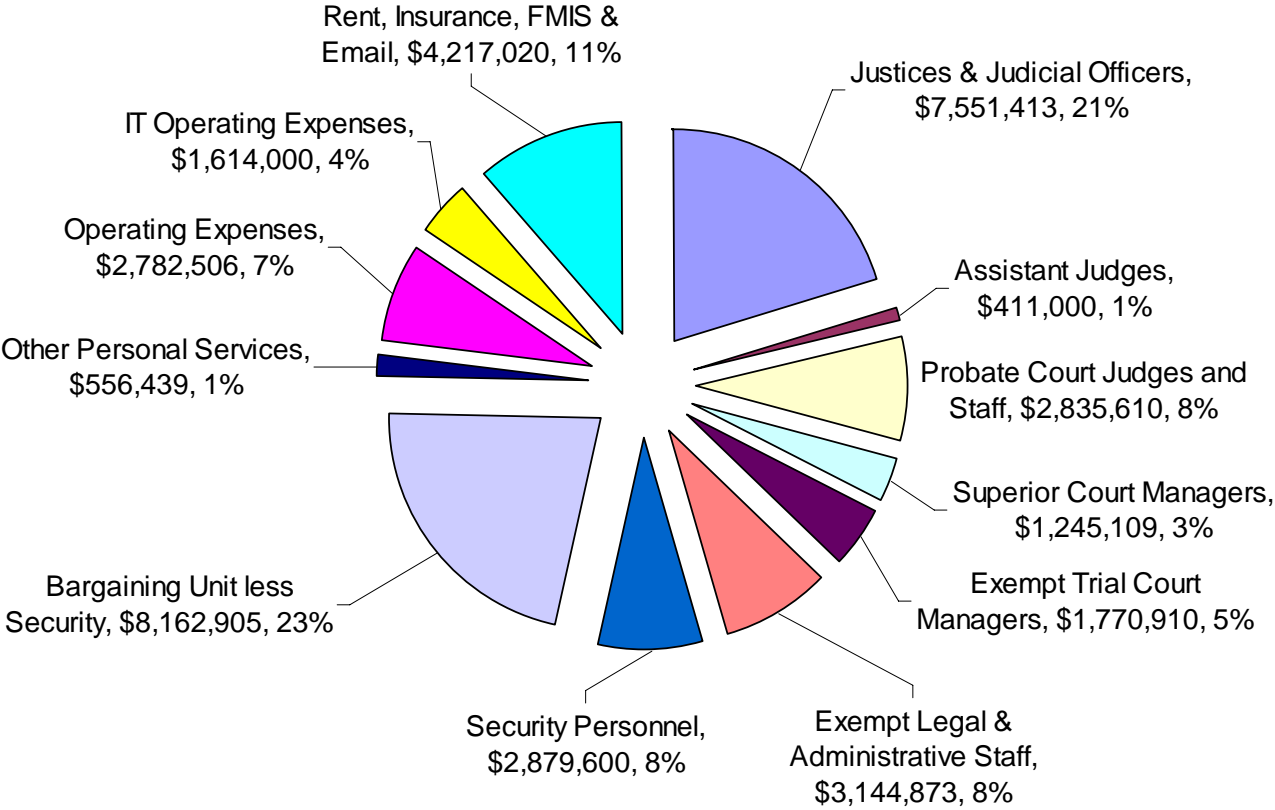
3. In the southern counties, there is more than one probate court, and more than one probate judge per county, with their attendant expenses paid by state revenues. Although the Court pays the staff from state revenues, it does not hire or control the staff. Demand for service is less in the southern counties than in Chittenden County, which is served by one probate court.

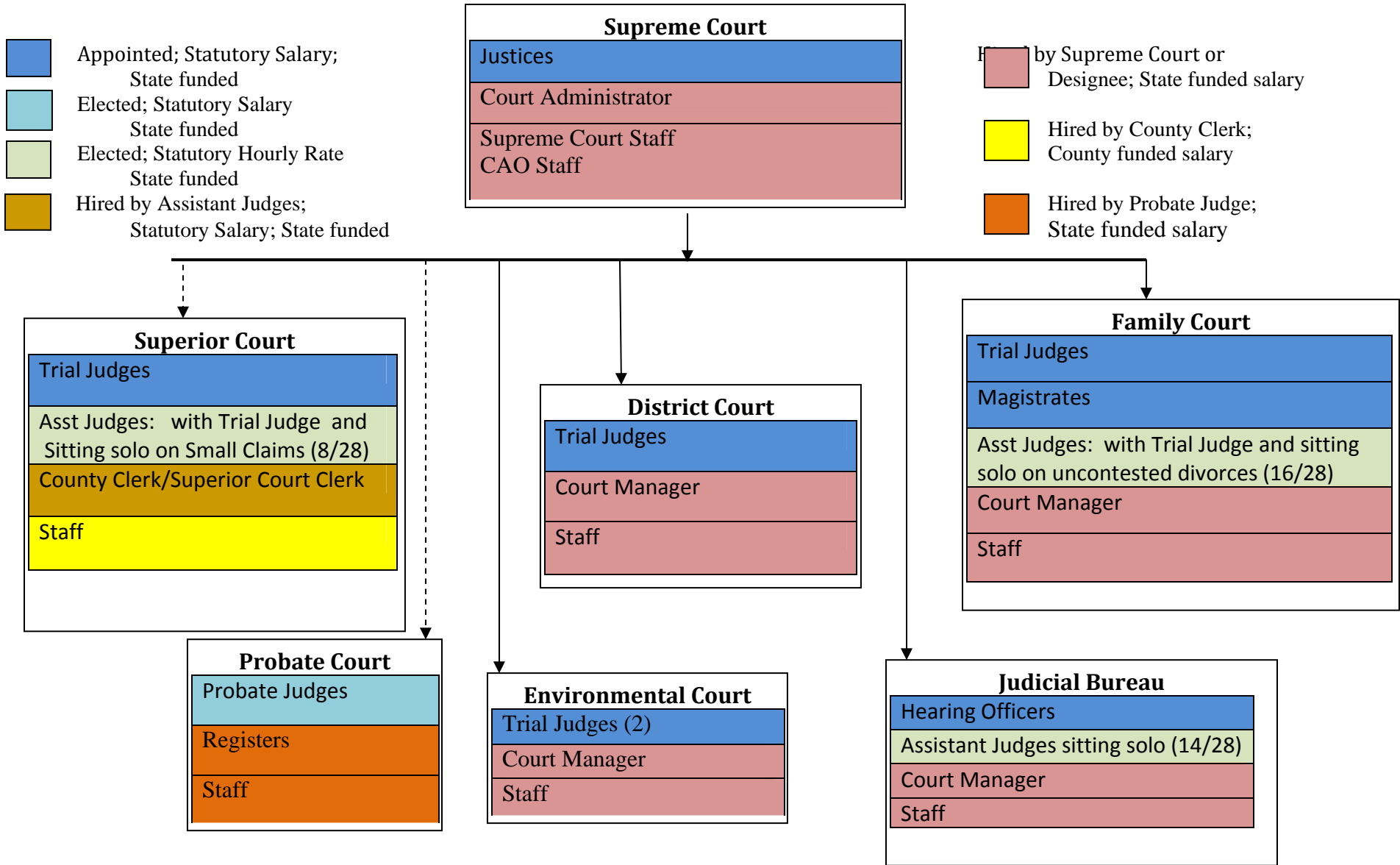
4. The judicial system is now comprised of a patchwork of statutes that variously define courts' jurisdiction and venue, geographical and functional divisions, facility usage, staffing and salaries. Some statutes relate to less than all of the counties, so that some counties operate by different rules.

5. Many redundancies in procedures and personnel exist throughout the system that could be eliminated over time to reduce expenses significantly if the Supreme Court had authority to address the Judicial Branch as a single enterprise, with full authority to match personnel to priorities and demand.

6. New technology systems, including electronic filing and electronic case management can support the redesign of the court system, improve access to justice for Vermonters and make the system more convenient for all users. To gain maximum efficiency from new technology, the Judicial Branch must be operated as a single enterprise.

Judiciary Budget Expenditures - All Funds By Object





The Legislative Response

The Legislature enacted a session law directing 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, and
- Any other idea for the efficient and effective delivery of judicial services.

Vermont Judicial Branch Mission Statement

The Vermont Judicial Branch of state government was established under the Vermont Constitution to protect the rights of all Vermonters by providing equal access to justice and to the courts, and to provide an opportunity for the merits of every legal dispute to be impartially heard and timely decided. The Judiciary, as a co-equal branch of government, is an important element in the constitutional balance of power between the Executive, the Legislative, and the Judicial Branches. The courts provide a forum for resolution of disputes involving the range of human conflict, including cases that address the protection of individual rights, public safety, and business and commercial concerns. The purpose of the Courts is identified in our constitution and is essential to the maintenance of an orderly society.

It is the mission of the Vermont Judicial Branch to provide a justice system that engenders public trust and confidence through impartial decision-making and accountability for the use of public resources. The general public and those who use the court system will refer to it as accessible, fair, consistent, responsive, free of discrimination, independent and well-managed.

Principles for Administration of the Vermont Judiciary

--The Judicial Branch is an independent, co-equal branch of government; its judges are fair, impartial and competent, and it is composed of people 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. 4, 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, Sec. 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 that is appropriate to the characteristics of the case.

--Court services are provided in a system that 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; 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 operations of the Judicial Branch.

Commission Work Plan for Phase II

The Judiciary has been awarded a grant from the federally-funded State Justice Institute to pay for consulting services from the National Center for State Courts to support the Commission’s work. NCSC will conduct a weighted caseload analysis and provide support for Commission outreach and focus groups, all of which will expand the

relevant information available to the Commission. [The Commission is awaiting permission from the Joint Fiscal Committee to spend the funds awarded under the grant.]

Weighted Caseload Analysis

Maintaining an adequate level of human resources is essential to effectively manage and resolve court business while upholding a high level of customer service. In order to meet these challenges, an objective assessment of the number and allocation of judicial officers and court staff needed to handle caseloads is necessary.

The Vermont Judicial Branch needs a method to accurately assess the impact of any proposed changes and evaluate the effect of those changes in the future. Since 90% of the Vermont Judicial Branch budget is personnel, any changes will affect the functions performed by judges and staff. A “Weighted Caseload System” will provide that critical planning and evaluation data.

The National Center for State Courts has extensive experience in this field. It will conduct a joint judicial officer and court staff workload assessment for the Vermont trial courts. The study utilizes a weighted workload assessment methodology with a time study data collection procedure to translate judicial officer and court staff workload into an estimate of resource needs.

A “weighted caseload study” responds to the fact that different types of cases are not equal in terms of the amount of time required to dispose of a case. For example, misdemeanor cases generally require less time to process than major felonies. A weighted caseload study develops the actual weights for caseloads for a particular system, which are the average minutes needed to supervise the case by supervision level/case type. The goal of the workload assessment method is to determine how much time it takes to perform job-related tasks and how many judicial officers and support staff are needed to handle both judicial and clerical work in Vermont’s courts.

The project begins with a meeting of the Advisory Study Group of court managers and staff on Thursday, April 16, and of judicial officers on Friday, April 17.

Survey, Focus Groups, Interviews, and Other Outreach Activities

The Commission will also conduct surveys, interviews, and a series of facilitated focus groups, to begin in April of 2009 and to run through the summer of 2009. The work of these groups, along with other kinds of consultation and outreach activities, will ensure that the Commission has engaged in effective consultation as it develops its proposals to restructure the Judiciary into a unified judicial system.

The timeline provided on the page following the list of Appendices [or, in electronic transmission, included as a separate attachment] provides more detail regarding the work associated with the Focus Groups and other Outreach Activities.

Set out below are some of the proposed Commission Focus Groups, with confirmed/proposed dates, where available:

1. Court Managers, 4/27 confirmed
2. Probate/Assistant Judges, 4/28 (invited)
3. Trial Court Judges, 6/2 confirmed
4. State's Attys and AG, proposed for week of 6/1
5. Public Defender, proposed for week of 6/1
6. Legal Aid, proposed for week of 6/1
7. VBA (Board of Managers), proposed for June 2009

In addition to the constituencies identified above, the Commission expects to schedule Focus Groups or other kinds of consultation activities with court staff, advocacy groups, state agencies, and other constituencies and organizations. As additional groups and activities are scheduled, the Commission will update the Commission webpage on the Judiciary website [www.vermontjudiciary.org] to supplement the information about Commission outreach activities contained in this Report.

Appendices

- A. Charge and Designation [2008, No. 192 (Adj. Sess.), § 5.101.1]
- B. “The State of the Judiciary,” an address delivered by Chief Justice Paul L. Reiber to a Joint Assembly of the Vermont Legislature on February 19, 2009
- C. “Judicial Funding In Times of Budget Crises,” an article written by Associate Justice John A. Dooley, published in the Vermont Bar Journal [Winter 2008/2009 pp. 33 – 36]
- D. Weighted Caseload Analysis Proposal from National Center for State Courts
- E. Legislative Guide to the Vermont Judiciary
- F. Financial Charts
 - 1. State Budget by Major Program without Federal Funds
 - 2. Judiciary Budget – General Funds By Object
 - 3. Judicial Branch Budget by Program
- G. Commission Court Data [02032009]
 - 1. Family & District Courts

Chart: Cases Added / Clerical Staff / Assigned Judge Time / Assigned Magistrate Time / State Budget
 - 2. Superior Courts

Chart: Cases Added / Staff / Assigned Judge Time / State Budget / County Budget
 - 3. Probate Courts

Chart: Cases Added / Staff (All State Paid) / Assigned Judge Time / State Budget / County Budget
- H. Chart: Growth of Vacancies in the Judiciary
- I. Personnel of the Vermont Judiciary
- J. 2009 Judiciary Facility Funding – County by County
- K. Examples of Judicial Branch Efficiency Measures Previously Taken