

**PROBATE COURT
DISTRICT OF CALEDONIA**

Ernest Tobias Balivet, Judge
Pamela D. Comeau, Register



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Hon. Paul L. Reiber, Chair
Vermont Commission on Judicial Operation
109 State Street, Montpelier, VT 05609-0801

Dear Chief Justice Reiber:

On behalf of the probate judges, I wish to point out that the assertion being made at the Commission focus groups, that probate proceedings cost three and four times as much as trial proceedings, is incorrect. It is derived from misreading the caseload statistics, and applying them in a manner for which they were not designed.

Dividing budget share by cases added, the per case cost is \$789.99 for probate, \$309.79 for district and family, and \$332.66 for superior (or \$827.45 excluding small claims). However, the courts count "cases" differently, in part reflecting the "adversarial proceeding" approach of the trial courts distinguished from the "ongoing supervision" approach of probate courts.

In the trial courts a case is closed when no decision is pending, and reopened or added when a new issue arises. Probate cases remain open for the life of the case. The bulk of my guardianship, estate, and trust caseload will not register as a "case added" within a statistical year. However, a typical probate file of a discordant family may register 2-3 "cases added" events in a year if the probate courts adopt the trial court approach to data reporting. At a minimum, guardianships and estates generate one account review annually, and trusts one every three years. Adding these cases alone, the per case cost for probate drops to \$184.66, and (at 6.74 (FTE) judicial positions for probate) the probate judge caseload is 1:2,493.

The defective conclusions result in part from failure to distinguish between case types, consistent with accepted cost-per-case methodology. In addition, the computation is premature. The NCSC-supported weighted caseload study should yield the data our in-house statistics cannot, and were never designed for. To the extent that data, and correctly-applied analysis, supports the reasonable thesis that probate disposition is more cost effective because the personnel costs are lower, or to the extent it shows probate is less cost effective because it is poorly structured, the Commission, with our support, should pursue the consequences of the data. The Commission should not, however, be relying on the routine annual statistics for this analysis.

Thank you for your consideration.

Sincerely yours,


Ernest Tobias Balivet, Judge
Caledonia District Probate Court

cc: Hon. Brian L. Burgess, Robert G. Greemore, Court Adm'r; Hon. Amy M. Davenport, Admin. Judge