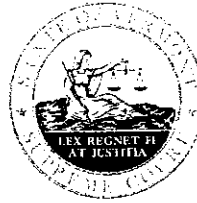


PROBATE COURT
DISTRICT OF CHITTENDEN

Susan L. Fowler
Probate Judge



(802) 651-1518

County Courthouse
P.O. Box 511
Main Street
Burlington, Vermont
05402

June 16, 2009

Justice Brian L. Burgess
Vermont Supreme Court
109 State Street
Montpelier, Vermont 05609-0801

Re: Judicial Restructuring

Dear Justice Burgess,

Thank you for taking the time to speak with me last Friday and for your follow up email. I am very grateful for the opportunity to be heard and take part in this discussion. In light of what feels to me to be a disconnect between what happens in the probate courts and the general understanding of our responsibilities and work load I wanted to get this letter out to you before we meet again. One point in your recent email reflects a common misunderstanding about the level of attention required by the probate judges to annual accountings. While I spend some time every day reviewing accounts that have problems, and hearings are sometimes required to address contested accounts and other issues, there are many other matters in the court that require greater attention. I hope to demonstrate that fact in this letter. In setting out my thoughts on these issues I will reiterate that I am speaking solely for myself and not as a representative of the probate judges.

There clearly are two agendas under consideration. One involves finding new ways to cut costs in this time of budget crisis; the other involves a basic restructuring of the courts, having little effect on the budget problem.

With regard to the budget crisis, if the county/state issues are not addressed, the most effective way to cut costs would involve consolidation of courts. After years of discussion, this has happened in the probate courts with legislation passed this year that will reduce the number of probate courts from 18 to 14 as of February 1, 2011. Further consolidations are certainly possible, but careful consideration should precede excessive constriction of the probate courts at a time when business is at an all time high. As the baby boomer generation ages, it is well documented that probate courts across the country have experienced increased caseloads, and this trend is likely to continue for the next decade or more. As I mentioned in our conversation on

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June 12, 2009, people may choose to get a divorce or commit a crime and thus pay a visit to family or district court, but we are given no choice about aging and death. To the extent that some consolidation may be necessary, smaller courts could be closed to effect savings, which would require people to travel further for service, or all courts could remain open and a reduced number of judges could travel to service the outlying districts - savings would be reduced under this plan, of course.

To the extent that increased jurisdiction in the probate courts over the past decade has made the issues we hear more complex and technical, with the exception of the sole lay judge in Essex County, we wholeheartedly share your belief that all judges should be licensed attorneys. We attempted to pass legislation last year that would have required all judges to be attorneys, but were unsuccessful. Perhaps with more support we could get it passed. I trust we would also not object to any additional qualifications or training thought to be useful. While I don't know that many of the probate judges have strong feelings about being elected rather than appointed, I believe the credentials of the attorney probate judges are generally equivalent to those of the judges serving by appointment. In light of the fact that a constitutional amendment would be necessary to change the manner in which probate judges are selected, it may not be a battle worth fighting at this time.

Moving forward to the proposals to amend jurisdiction of the probate courts, I see no reason or useful purpose to be served by this action. The probate courts have historically functioned quite well, providing efficient and personal service to the citizens of their respective communities. Is the system perfect? No. We have difficulty getting on the same technical page statewide because of differing levels of support from the assistant judges; we are not included in the statewide GAL trainings; and it is difficult to obtain attorney assistance at state expense. Nonetheless, should we dismantle the current system in favor of a more cumbersome process in family or superior court? On balance, I think not. We deal with unique problems and statutes that are not generally and easily transferred to other courts, and we generally do so with personal assistance and in a timely fashion.

With regard to minor guardianships, DCF kindly offered to screen all potential guardian candidates in advance of our initial hearings about a year ago, and that system is working very well. In my experience minor guardianships are much like marriages, most of them are entered into voluntarily; problems arise later. There are certainly a few cases every year that would benefit from DCF assistance and I have generally been unable to enlist their involvement when abuse or neglect becomes apparent during the term of the guardianship. However, the now defunct Probate/Family Committee proposed a bill which was pending at the end of the last legislative session (H121) that would effectively solve the problem by allowing a probate court to transfer a minor guardianship to family court with the permission of the family court. I have attached a copy for your consideration.

I trust that nothing said thus far has come as a surprise to you. The real intent of this letter is to address the proposal of having files kept in some central location and reviewed by registers, who will then ship specific files to court for hearings. In my opinion this would not represent a productive development. In an effort to shed some light on how the court works on a daily basis, I asked my register to pull some quarterly statistics for review. Statistics are reported only annually as of this year, so we looked at the statistics for the last quarterly report, which covers the period from October 1, 2008 through December 31, 2008. What follows is a breakdown of the activity in Chittenden Probate Court during that period:

a. Estates - As of October 1, 2008, there were 687 open estates being administered;
104 estates were opened in the following quarter;
106 estates were closed;
Each estate requires an annual accounting - not reflected in statistics;
69 Notices to Appear for Noncompliance issued;
15 Motions for Partial Decree issued;
28 Licenses to Sell or Mortgage issued;
32 estate related evidentiary hearings

b. Testamentary Trusts - As of October 1, 2008 there were 131 open testamentary trusts begin administered through the court;
2 trusts opened;
5 trusts closed;
Each trust requires an annual financial accounting - not reflected in statistics;
15 Notices to Appear for Noncompliance Issued;
1 contested evidentiary hearing

c.**Inter Vivos Trusts - as of October 1, 2008, the probate court did not have jurisdiction over inter vivos trusts and trust law in Vermont was limited, at best. This changed with the passage of H86, effective July 1, 2009. This 121-page bill completely overhauls Vermont Trust law, places exclusive jurisdiction in the probate courts, and is expected to generate a noticeable uptick in our docket.

d. Guardianships - As of October 1, 2008, there were 1029 guardianships being administered through Chittenden Probate Court. Many of these cases have been open for years, and some will remain open for the duration of the ward's lifetime. Each requires an annual personal status report and financial accounting, due on the anniversary of appointment unless waived.

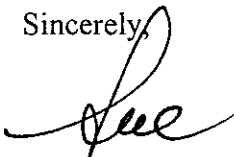
- B. 6 birth corrections;
- C. 2 death corrections;
- D. 4 special authorizations;

G. Appeals - 0

There was one appeal from Chittenden Probate in 2008, three in 2007, and one in 2006.

In setting out the foregoing I did not intend to bore you into submission, but rather hope to show that keeping all probate files in a central location to be shuffled to and from courts for hearings is not a reasonable proposal. I believe it would negatively affect productivity and lead to significant delays and wasted time in scheduling, something currently handled quite effectively by the staff of the court. The registers become familiar with the parties, understand the issues, and communicate with the judge in scheduling hearings that are necessary, timely, and scheduled for an appropriate amount of time. Perhaps in the future electronic transferring of accounts may be workable. I find it hard to imagine how the general population will manage that sort of system now. The registers spend hours on the phone and in person every week guiding citizens through the process of completing forms and accounts.

If you would like me to prepare a list of attorneys who practice before this court regularly, I would be happy to do so. Perhaps if you contact them directly additional ideas will surface. I look forward to speaking with your group on June 22, 2009, and again, thank you for giving me the opportunity to express my thoughts.

Sincerely,

Susan L. Fowler
Probate Judge