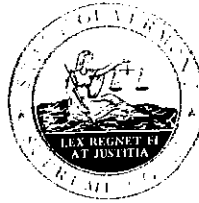


PROBATE COURT
DISTRICT OF CHITTENDEN

Susan L. Fowler
Probate Judge



(802) 651-1518

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

July 15, 2009

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

Re: General Probate Court Numbers

Dear Justice Burgess,

Judge Belcher forwarded a copy of the document entitled *Some General Probate Court Numbers* for my review, and I would like to comment briefly on the financial analysis laid out in the letter. Your analysis appears to be based upon Chittenden Probate Court numbers that I submitted for your consideration, and I stand by those figures. However, I believe the average judge to case ratio is inaccurate because the nature of probate court proceedings is not taken into consideration.

"Cases Added during Year" was used as the basis for calculating the number of cases each probate judge is handling, and footnote (2) states "Cases disposed of by the probate courts amount to 94% of cases added." While that statement may be reflective of operations in district and family courts, probate court guardianships, estates, and trusts are rarely disposed of within any calendar or fiscal year and many remain open and active for decades. Even without particular problems, (such as licenses-to-sell property, end-of-life medical orders, or hearings concerning nursing home commitments), every guardianship, trust, and estate will generate at least one yearly analysis and/or hearing. None of these events triggers a new docket number. By way of example, family court would operate more like the probate court if it retained jurisdiction to address all ongoing disputes between the divorced parties until the last child of the marriage attained the age of 18. This is the situation with minor guardianships, which can become adult guardianships when the minor turns 18. This is also the situation with adult guardianships,

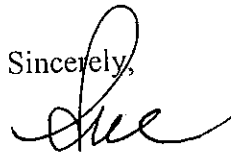
Justice Burgess
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which often remain open from the time the person under guardianship achieves age 18 until decades later when the person under guardianship dies.¹

Going back to the statistics for Chittenden County Probate Court, rather than using the 727 cases added during the year for fiscal year 2008 as the basis for your "Judge: Case ratio," a more accurate figure would be 2,077. This figure is reached by taking the 2,100 cases reflected as "Cases Pending Year Ending 6/30/08" and backing out the pending adoptions (23), because those cases are usually resolved within nine months of filing. By applying this amended figure to the Chittenden District and appropriately amending the figures for the remaining Probate Districts, the ratio would then be reflective of ongoing estates, guardianships, and trusts, and would not include any of the matters handled by the court that are normally disposed of within one year, i.e., name changes, adoptions, TPRs, birth parent searches, birth and death corrections, marriage authorizations, emancipations, etc.² This suggested amendment of the "Judge: Case ratio" would not affect arguments for court consolidation based on other factors, but would have a significant impact on the figures as they relate to the cost associated with handling each case in the probate court.

I bring this to your attention in the hope that a more accurate reflection of court operations will enhance cooperative dialogue as we continue to search for ways to save money going forward. As always, I welcome the opportunity to speak with you personally if you have questions or concerns about this letter or any other probate matter.

Sincerely,



Susan L. Fowler
Probate Judge

cc: Hon. Paul L. Reiber
Hon. Amy Davenport
Patricia Gabel, Esquire

¹District court figures may also be skewed because one incident often triggers several charges, each calculated as an individual case. Multiple counts charged as separate cases are frequently consolidated in plea agreements prior to trial and before any major investment of judicial resources.

²Your calculation of case numbers did not include emancipations, name changes, vital records orders, accountings of agents under powers of attorney, gifts to minor actions, or burial disputes.

Some General Probate Court Numbers

Chittenden District, the busiest probate docket, handled 727 (424 estate/trusts, 181 guardianships and 122 adoptions) cases added to its docket in FY 09,² with one probate judge and three staff (2 registers, 1 clerk), at a state cost of \$318,019 (personnel: \$306,646 and operating: \$11,373).

As an example of its caseload, Chittenden reports that for the quarter ending December 31, 2008, it opened 106 estates/trusts, closed 111 estates/trusts, issued 127 motions, licenses and noncompliance notices, and held 29 evidentiary hearings relating to estates/trusts. Trusts and estates require a report and accounting annually. At the same time, 1023 guardianships (361 involuntary adult, 200 voluntary adult and 462 minors) were under administration, requiring 87 noncompliance notices and 56 evidentiary hearings. Also conducted were 40 hearings relating to adoptions, with 22 new adoptions filed and 29 adoptions finalized. Other matters included closure of 5 terminations of parental rights, 26 name changes which can sometimes be contentious and 8 birth/death certificate corrections.

Excluding Chittenden, the seventeen remaining probate courts handled 3,200 cases (1,972 estates/trusts, 921 guardianships and 307 adoptions) added to docket.

Excluding Chittenden, the remaining seventeen probate courts employed 17 judges and 24 clerical staff, at a total state cost of \$2,633,135 (personnel: \$2,480,502 and operating: \$152,633).

	Chittenden District	Remaining Probate Districts Combined
Avg. Judge:case ratio	1: 727	1: 188
Avg. staff:case ratio	1: 242	1: 133
Avg. cost:case ratio	\$437 p/case	\$822 p/case

It is important to recognize that the Chittenden probate judge works fulltime, while the remaining seventeen judges may not, and receive lower salaries presumably commensurate with their lower caseloads. Chittenden demonstrates, however, that one judge and three staff can handle at least 727 new probate cases annually. Chittenden's probate judge emphasizes, as do numerous commentators, that probate court must accommodate a largely pro se clientele in various stages of stress or grief, or both, and that probate court "works" in that litigation is minimized by personalized attention, a nonadversarial atmosphere and informal mediation. While "user friendly," Chittenden's experience also suggests that in the remaining districts, combined and on average, four times the number of probate cases might be handled for about half of the cost.

² Data is from FY09. Cases disposed of by the probate courts amounted to 94% of cases added. Since dispositions are close to intake, we refer only to cases added as a measure of case load. Actual caseloads will be slightly higher.

Some General Statewide Caseload Numbers

Appreciating the positive aspects of the slower pace and user friendly tradition of probate court, its relatively low caseload stands in stark contrast to other dockets. Excluding probate, Vermont's other courts handled 51,776 cases (20,530 district, 23,322 family and 7924 civil³) added to docket in FY09, with 30 judges (24 district/family, 6 superior and 4 magistrates)⁴ and 171 staff, at a total state cost of \$15,351,908 (\$13,584,857 district/family, \$1,767,051 superior). For comparison purposes:

	Criminal/Family/Civil	Remaining Probate Districts Combined
Avg. judge:case ratio	1:1725	1:188
Avg. staff:case ratio	1:303	1:133
Avg. cost:case ratio	\$297 p/case	\$822 p/case

³ Not including small claims.

⁴ Not including judicial bureau hearing officers and assistant judges.