

**Gabel, Patricia**

**From:** Burgess, Brian  
**Sent:** Wednesday, July 08, 2009 11:30 AM  
**To:** Belcher, George  
**Cc:** Burgess, Brian; Reiber, Paul; Gabel, Patricia  
**Subject:** RE: Message from George Belcher  
**Attachments:** justice probate attach G; justice PROBATE CASELOAD cost to george.doc

Hi George,

This came up at the Orleans-Caledonia-Essex VBA discussion group last week at St. J on July 1. If I said "four times the cost" (and I very well may have—erroneously focusing on the difference between \$200 and \$800, instead of rounding up \$297 to \$300 as I should have) I was wrong. The correct calculation should have been "over two and one-half times the cost."

The basis is as follows: average state cost:case ratio in statewide criminal/family/civil courts=\$297 p/case  
 average state cost:case ratio in statewide probate courts (excluding Chittenden)= \$822 p/case

Chittenden was excluded for purposes of comparison, and I believe my comments at St. J specified that this was "outside of Chittenden," because it represents an example where almost four times more probate cases can be handled at half the average state probate cost: Chittenden district cost:case ratio= \$437 p/case  
 Remaining  
 probate districts cost:case ratio= \$822 p/case

The figures were derived from the Bob Greemore's "Attachment G" spreadsheets appended to the Commission's Interim Report that I believe you've seen, and are attached here. Also attached is my summary of probate function and calculations concerning average probate and nonprobate caseloads: judges/staff /cost.

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**From:** Wvjmpr@aol.com [mailto:Wvjmpr@aol.com]  
**Sent:** Tuesday, July 07, 2009 4:13 PM  
**To:** Burgess, Brian  
**Subject:** Message from George Belcher

Hello Justice Burgess:

I was told that you spoke at the Orleans Bar Association recently and stated that the cost per case in probate court is four times the cost per case in other courts. Would you be willing to share with me the data that you used to reach that conclusion? If that is true, I would like to know the basis of the statement. Thank you. George

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## PROBATE CASELOAD AND COST

### Overall Organization

For context, consider Vermont's constitutional provision at Ch II, § 43 that "Judges of Probate shall be elected by the voters of their districts as established by law."

There are currently seventeen probate districts in the fourteen counties. Each of eleven counties is a district (Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Grand Isle, Lamoille, Orange, and Washington), while three counties (Rutland, Windham and Windsor) are split into two districts (Rutland & Fair Haven, Windsor & Hartland, Marlboro & Westminster).<sup>1</sup> These double districts will be consolidated one per county, as of the 2010 election cycle. Each district has one judge. Each district has at least one register/clerical staff, except for Essex (.70 support position) and Grand Isle (0 position-support function is performed by unified county/state court manager).

The probate judges are paid by the state. Their salaries are set by statute "in lieu of all fees or other compensation." 33 V.S.A. § 1142(a). The salaries range from a high of \$91,402 at Chittenden to a low of \$28,853 at Essex and Grand Isle.

The registers of probate and clerical assistants are appointed, supervised and removed by the probate judges. These staff are paid by the state. 4 V.S.A. § 357(a). Their salaries are governed by the collective bargaining agreement for similarly situated state employees as determined by the state court administrator.

Probate courts are typically located within the county superior court buildings. The state does not pay for probate court space, except in Addison County and Caledonia County where the probate court space at the state-owned consolidated Middlebury courthouse and St. Johnsbury courthouse are included in the fee for space paid by the state judiciary. The other five probate courts not housed in county courthouses (Essex, Fair Haven, Marlboro, Westminster and Windsor) are in space rented by the county.

General jurisdiction of the probate court includes administration and enforcement of estates and trusts, guardian and ward, and the relinquishment and adoption of children. 4 V.S.A. § 311. Venue is governed by statute, and generally follows the district having a logical connection with the subject matter, such as the district in which the decedent resided, or where a nonresident decedent's estate is located, or the district where an adoptive parent resides. 4 V.S.A. § 311a. Disputes limited to purely legal questions may be appealed directly to the Supreme Court. 12 V.S.A. § 2551. Factual disputes, however, may be appealed to the superior court, 12 V.S.A. § 2553, where a litigant may insist on a wholly new trial of any and all claims. Clark v. Heirs of Clark, 21 Vt. 490 (1849).

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<sup>1</sup> Until last legislative session, Bennington also had two districts (Bennington & Manchester). These were consolidated into one district upon the retirement of one of the probate judges. P.L. \_\_\_\_

## 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,<sup>2</sup> 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.

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<sup>2</sup> 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 civil<sup>3</sup>) added to docket in FY09, with 30 judges (24 district/family, 6 superior and 4 magistrates)<sup>4</sup> 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

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<sup>3</sup> Not including small claims.

<sup>4</sup> Not including judicial bureau hearing officers and assistant judges.