

September 11, 2009

**Proposal for Improved State and County
Judicial Funding and Structure**

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Background of the Proposal

I was present for Chief Justice Reiber's remarks regarding the state of the Vermont judiciary at the mid-year meeting of the Vermont Bar Association (VBA), and I have read Justice Dooley's article in the VBA Journal regarding the present financial strains on the judicial budget. I am aware of the half-day court closures and the 12 annual furlough days for judicial employees. I follow the efforts of the VCJO, and am familiar with its Interim Legislative Report dated April 15, 2009.

On June 22, 2009, I was invited to participate in a debate at a meeting of the National Judges' Association. I was asked to take a position opposed to the use of non-lawyer judges. I was also asked, somewhat in jest, whether I could credibly advocate this side of the issue, as the questioner perceived me to be ideologically pro-side judge. This reaction, which has not been unique in recent years, arises out of two VBA Journal articles that I wrote in the mid 1980s, and out of subsequent legal services that I provided during the 1980s and 1990s. That being said, the perception is mistaken. In fact, on some issues, my views could be perceived as being *anti*-side judge. Either view is, however, simplistic. I have spent a career working and teaching in the legal system, and through many contexts, I have worked hard to improve it. I am pro-access to justice, and pro-judicial efficiency, and it is for *that* reason that I have taken it upon myself to conduct the research which is described below. That research has informed this proposal.

Several weeks ago, I attended a Washington County Bar Association meeting, one of the series of county bar association meetings at which Chief Justice Reiber and others explained the strained financial state of the Vermont judiciary, and explained the work of the Commission on Judicial Operations to address that problem. Clearly, Vermont's balkanized state/county judicial structure is a significant contributing factor to the problem. Chief Justice Reiber left the meeting with the invocation that everyone in the room, regardless of his or her particular views, should do *something* to make the situation better. Because of my background in state/county judicial structures, I took the steps described below, and those steps have resulted in this proposal.

My Premises

1. Vermont's judicial system is under funded;
2. The county-based judicial system has more than enough untapped taxing authority to make objectively full funding of the Vermont judicial system possible;
3. The present statutory structure which governs Vermont's county-based judicial system allows the funding problem to be solved as described below without the need for statutory change. That said, the Legislature would have to agree to accept and appropriate the funds, and a provision in the state judiciary/county judiciary agreement would be necessary in order to prevent an undermining of the proposed financial augmentation through an offsetting decrease in the state judiciary's general fund appropriation;
4. In exchange for providing this increase in financial support to the state judiciary, the county judiciary desires concomitant changes to current intra-judiciary practices, as described below;
5. There are other characteristics of Vermont's current state/county judicial relationship which have an adverse impact on access to justice, and which can be better aligned, as part of a comprehensive state/county judicial reform, without adversely affecting the actual or perceived interests of either the state judiciary or the county judiciary;
6. Communication and collaboration between Vermont's state judiciary and county judiciary can, and should be, improved; and
7. Since I am able to communicate effectively with both camps, and since I am not professionally aligned with either, I am willing to facilitate further discussion.

My Groundwork

Before I began my research, and immediately after the Washington County Bar Association meeting, I exchanged several emails with Chief Justice Reiber, sending copies to Justice Skoglund, Chief Administrative Trial Judge Davenport, Court Administrator Bob Greemore, and Vermont Bar Association Executive Director Bob Paolini, all of whom attended that meeting. My basic message was that I believe that I can facilitate dialogue between the state judiciary and the county judiciary, and that by doing so, I can promote progress. I received encouragement from Chief Justice Reiber.

I next collected and analyzed the FY 2010 budgets of all 14 counties, a summary of which data is attached. I then reread the relevant constitutional, statutory and case law, consulted with a number of key individuals, analyzed the issues, and eventually arrived at the proposal which follows. I present the

proposal in two parts, believing that several things can, and should, be accomplished immediately. A number of other changes are desirable, but will, and can, take longer to implement.

Steps to be Implemented Immediately

- A. In the aggregate, across the state, with the burden shared proportionally in relation to grand list, all 14 county governments will raise an additional \$1M by increasing their property tax revenues in their FY 2011 and subsequent budgets, and will transfer those amounts, unrestricted, to the state judicial budget.**

These funds will be used to supplement, *not supplant*, the state judiciary's general fund budget, and any resulting decrease in the state judiciary's general fund appropriation which were to be intended to offset this supplemental revenue source would relieve the counties of their obligations to raise these additional amounts on a dollar-for-dollar basis.

- B. Counties will cooperate in the timely and complete implementation of the statewide computerized case management system in all Superior and Probate Courts;**

In order to implement this provision, it is my recommendation that the counties engage an independent court technology consultant to communicate with the Court Administrator, and to advise the counties on the optimal way to acquire the necessary hard-wired data connections, wireless capacity, software and hardware. I also recommend that the Vermont Bar Association, through its IT staff, participate in this process with an eye to the needs of its members and the public.

- C. The state judiciary and the 14 counties will agree on a process which allows for the deployment of the Assistant Judges, Probate Judges and county judicial employees, outside their counties, perhaps within geographic regions, in furtherance of the state's reasonable judicial needs;**

- D. The state judiciary will acknowledge, and work to optimize, the extent to which value is added to the statewide administration of justice by the county judicial system.**

For example, information regarding the identity, geographic affiliation and functions of assistant judges warrant a place on the Vermont judiciary homepage. This web presence should be designed by a web designer of the assistant judges' selection, subject to reasonable editorial oversight by the state judiciary.

Also, assistant judges should be included at judicial college, and at other judicial training events, through separate and joint tracks; and

- E. In furtherance of the above goals and commitments, the state and county judiciaries, or their designees, should meet at least annually to discuss how their cooperation can best fulfill the judiciary's constitutional mandates and its mission.**

Additional Goals in the Medium Term

- F. Expand "sit-alone" jurisdiction of assistant judges.**
Possible areas of such jurisdiction include, but are not limited to, truancy, parental rights & responsibilities, child support; and rent hearings. In exploring these types of areas, one should explore areas of the law which are high-volume, repetitive, and fact-intensive, the adjudication of which requires the application of narrow and straight-forward bodies of law;
- G. Conduct regular bench/bar meetings in areas of sit-alone jurisdiction;**
- H. Periodically revisit and (as necessary) revise training requirements in areas of sit-alone jurisdiction;**
- I. Phase out 3-judge panels;**
- J. Require "uniform county budget reports" per 24 V.S.A. § 133(e), and require that they be filed electronically with the State Auditor in a uniform format.**
The Court Administrator's Office and the State Auditor should provide any necessary technical assistance for the purpose of implementing this requirement;
- K. Standardize all county fiscal year ends to June 30;**
- L. All Superior and Probate Courts must be ADA-compliant; and**
- M. Efforts must be focused on technology (including wireless access in courthouses), support for pro se litigants, and low-cost legal services for qualifying individuals.**

About the Author

I have been a Vermont attorney since 1980. After clerking at the Vermont Supreme Court from 1980-81, I practiced law with three different Vermont law firms for a total of 25 years. Since 2006, I have been General

Counsel of the Vermont Department of Education. I published articles in 1984 and 1987 on the effective and efficient utilization of assistant judges. The first of those articles won the Vermont Bar Association's first "annual" writing competition. During the 1980s, I lectured several times on the subject. In the late 1980s and early 1990s, I represented what was then known as the Vermont Association of Assistant Judges. During that period, an effort to unify the Vermont court system (sometimes referred to as the Martin reforms) was under legislative consideration. Also during that period, the Vermont Family Court was created. I served as Chair of the Vermont Bar Association's Bench/Bar Committee from 1992 to 1997. In August 1994, I published an article in the Vermont Bar Journal entitled *The State and Direction of Vermont's Judicial System*. I served on the Vermont Bar Association's Board of Bar Managers from 1988 until 1992. I am an Adjunct Professor at Vermont Law School, and I taught law school in Russia during the fall semester of 1995 as a Senior Fulbright Scholar.

County	Budget Year End	Total Rev/Exps	County Tax	County Tax/ Total Rev.	Eq'd Grand List (2009) (\$100s)	Tax Rate per \$100 GL Value	Superior Ct Expenses	Sup Ct's % of Total Exp's	Probate Ct Expenses	Pro Ct's % of Total Exp's	Sheriff's Dept Expenses	Sheriff's % of Total Exp's
Addison	6/30/2010	349,810	267,260	76.40%	42,365,110	0.006308	150,349	42.98%	8,740	2.50%	190,721	54.52%
Bennington	1/31/2010	608,923	494,906	81.28%	60,591,600	0.008168	365,288	59.99%	11,900	1.95%	231,735	38.06%
Caledonia	1/31/2010	409,955	318,955	77.80%	28,219,950	0.011302	280,100	68.32%	2,300	0.56%	127,556	31.11%
Chittenden	1/31/2010	1,341,849	928,627	69.21%	186,932,120	0.004968	1,113,006	82.95%	11,611	0.87%	217,232	16.19%
Essex	1/31/2010	195,468	189,367	96.88%	7,876,290	0.024043	143,568	73.45%	9,100	4.66%	42,800	21.90%
Franklin	6/30/2010	533,266	411,762	77.22%	44,564,670	0.009240	321,837	60.35%	2,650	0.50%	208,779	39.15%
Grand Isle	6/30/2010	364,995	335,295	91.86%	14,856,080	0.022570	213,934	58.61%	0	0.00%	151,061	41.39%
Lamoille	6/30/2010	529,736	502,136	94.79%	45,337,630	0.011075	366,974	69.27%	5,740	1.08%	157,784	29.79%
Orange	1/31/2010	688,333	595,256	86.48%	29,668,830	0.020063	339,180	49.28%	8,100	1.18%	341,053	49.55%
Orleans	1/31/2010	434,354	397,354	91.48%	30,048,820	0.013224	326,080	75.07%	2,650	0.61%	105,624	24.32%
Rutland	1/31/2010	689,619	556,869	80.75%	74,610,300	0.007464	444,727	64.49%	8,264	1.20%	236,628	34.31%
Washington	6/30/2010	750,815	582,115	77.53%	67,049,590	0.008682	519,589	69.20%	3,100	0.41%	228,126	30.38%
Windham	1/31/2010	550,616	517,616	94.01%	77,402,140	0.006687	297,703	54.07%	44,194	8.03%	208,719	37.91%
Windsor	6/30/2010	879,133	820,383	93.32%	98,881,590	0.008297	685,320	77.95%	29,955	3.41%	163,858	18.64%
Statewide		8,326,872	6,917,901	83.08%	808,404,720	0.008557	5,567,655	66.86%	148,304	1.78%	2,611,676	31.36%

Raise \$1M more
7,917,901

Assume Taxpayer owns a \$200,000 house
Current county tax for owner of a \$200K house = \$16.72
New county tax for owner of a \$200K house = \$19.19
Additional county tax for owner of a \$200K house = \$2.47

New tax rate
0.009794

Increase in tax rate
0.12%