

FOCUS GROUP NOTES

PROBATE JUDGE FOCUS GROUP

APRIL 28, A.M., WATERBURY

Around the table comments as to what each person thought should be considered:

This is a large commission; considering the time frames, hope that the commission will be thoughtful and considerate. There is lots of confusion, rumors and innuendo. Communication is a big issue – one segment knowing something another segment doesn't.

Concern about communication. Vermont has been lean and mean. We can't do business as usual. On the part of the Judiciary, there has been no sincere effort to advocate for what we do. We have only seen that we have got to cut.

Utilize the VBA to advocate.

The questions and mission have focused on cuts, adjustments, and reorganization outside of Montpelier; I haven't heard of cuts, adjustment, etc., in Montpelier.

I understand we have a budget issue and it is serious. I want to be sure we are not making huge changes that don't benefit in the long run. There are some things that can be done now, but keep an eye on the long view.

I agree with prior comments. You need to look at the long term. I have heard rumors about reducing the jurisdiction of probate courts. It seems to be running counter to what is happening nationally. I have a NCSC white paper on the expansion of probate courts, the need for elder courts and to consolidate some other services to improve access to justice for elders. I go to homes, hospitals, nursing homes to be sure guardianships are in place.

I am from one of the counties with dual districts. Consolidation in the southern counties (Bennington, Rutland, Windham and Windsor) has been on the table for a long time. I haven't been opposed to it. I train my staff and recruit guardians ad litem. The trial judges have been taking shots about the probate judges not being team players and legislators have said the probate judges are pushing for something that would be advantageous to the probate judges. There appears to be a concern among the trial judges that they are not happy with the probate judges. Those concerns may be based on 1. we are not required to be lawyers; 2. we are elected; and 3. the statute permits us to run a private law office. These things appear to be a source of worry/concern from the trial bench. It bugs them. Probate judges enjoy their work. It feels like the trial judges are throwing brickbats.

I would suggest focus on what the probate judges can do to enhance the services of the probate courts to serve the citizens of Vermont.

Probate court is the stepchild of the Judiciary. There is no centralized control.

I have concerns about the county administration of the probate court, and about the assistant judges. They wanted to build new office space for the probate court and themselves to cost over 1/2 million dollars.

It would make sense to be centralized. Does the current structure with side judges make sense?

In the rush to save money, are you missing an opportunity to use a very valuable resource?

I echo everything everyone else has said. Twenty years ago, the family court organization was focused on the idea of specialized courts; since then, there has been the development of drug courts and the environmental court.

One aspect of the probate jurisdiction that falls in this is the probate court deals with cases where adjudication on merits does not mean the end of the case. There is follow up and monitoring. Title 18 guardianships in family court require follow up and supervision which does not happen in family court. The trial court's case management system has no "check the box" to tell them those cases alive. The new case management system has a feature to do this. In the past there was a move in legislature to put these cases in probate court. There are fundamental, structural issues that can't be measured in the current system/model.

I like the diversity of opinions among the probate judges. I disagree with (prior comment). I accept that things will change, and I recognize the tension between the probate judges and trial judges. There is a historic distinction between them.

I think there is something very different and very valuable in the county probate system. The commission will have to make some value judgments. I believe in "measure three times and cut once." I think the probate judges can participate in a way that can be meaningful if we are allowed to present our case regarding the value of the probate courts to the judiciary.

My worry is that people really don't know what probate courts do. If the commission knows what the probate courts do, they will have an appreciation. We have quick turn around of decisions, guardianships and estates; there are

large amounts of money that go through probate. To our credit, how many cases that go to probate court don't go anywhere else? People do not appeal. Estate cases are about families, I try to announce my decision at the hearing. I have had more losing parties thank me than I have had cases appealed. Not many layers are familiar with probate, and people in the judiciary aren't. I don't think probate courts are an expensive court, they move a lot of money. I have a staff of 3 to supervise; I hire and train them. The probate courts provide a valuable service.

I would like to thank the Supreme Court members present and the commission members for being here.

Most of the thoughts I had have been expressed. There is a unique nature of the probate court. I hope the commission and the rest of the judiciary understand. We deal with fiduciary relations. When I hear that the issue to be recommended by the commission means a unified court, if the court means one judge doing everything, I don't think the trial judges should be doing this. The probate judges are accountable – they are elected.

The Vermont Senate is considering revision of the Vermont trust code. The debate is about where jurisdiction in inter vivos trust cases should be, and there are recommendations that all trust cases go to the probate court. People who use the courts feel those cases should be in the probate courts.

As to centralization, I think probate courts should remain local. I do not support centralization of all probate courts.

(Justice Skoglund noted that she was present because she is chairing a committee heading up public input and information sharing. She said that she

is stunned to hear that the trial bench doesn't respect the probate judges. She thinks the commission should be careful and thoughtful. We can't diminish the services we give to people.

The probate judges are passionate, committed and ready to roll up their sleeves to help work on/try to fix things. My hope and goal is that the quality and work produced in the probate courts don't diminish. I disagree somewhat with regard to comments about the trial bench. They probably have the best understanding of what the probate judges do, and they don't want to take over the probate jurisdiction. The probate judges deal with adversarial proceedings, they deal with long term supervision of cases and deal with a lot of family situations, nuanced cases. These cases require a different state of mind than the trial bench. The probate judges are primarily from a transactional background; they work toward consensus. The probate judges had a presentation in a program which stated that in NH all probate mediators are the most sought after. I want to be sure that what probate judges do is understood.

Linda McIntire, the Deputy Secretary of Administration, a member of the commission stated that the members of the commission are all committed to take opportunities like this; they won't just railroad something through. It will be complicated but it is a good opportunity.

Stephan Morse, a member of the commission, noted that several had made reference to a rush to judgment. The Court encouraged the commission to slow down and talk to everyone.

Justice Johnson noted that we have scrubbed budgets in the past 20 years. We are trying to look at what revenues will look like years out. We think we won't be seeing revenues increase for years. The judiciary has been trying to slow things down and refrain from quick decisions. She added that she has never heard any enmity toward probate judges among the trial judges. It is about the ability to be flexible with contracting and expanding budgets. No decisions have been made. They have put everything on the table. The plan is to adopt principles and reorganize the system consistent with those principles. No one has made up their minds. Justice Johnson noted that she knows there is a lot of accessibility in the probate court and that it is user friendly. She wants to preserve what is working. We have to cut somewhere and we weren't well funded to begin with. We appreciate the probate judges being part of the process.

After review of the mission statement and principles, Dan noted the theme seemed to be that we cannot sacrifice quality services, and we need flexibility of resources among competing interests. Further comments from probate judges followed.

It made no sense for me to go out and look for space, negotiate a lease for 5 years, and then have the assistant judges turn around and ask what if we want out of the lease in 3 years. We are state employees using facilities in the county administered by the county. It makes sense that we would have equipment connected with the state. There is overlap between family court and probate court.

Chittenden Probate is on the Chittenden Superior system. Franklin and Chittenden are not on the state computer system. Some clerical and administrative functions, with electronic capabilities, could be done in other locations. Some segment of the probate litigants cannot do things electronically.

Regarding personnel, we have some stuck personnel issues. Greeny knows what probate courts are understaffed. They are not controlled by the county; they are controlled by the court administrator. Orleans has only 1 staff person; Caledonia has 2. In effect, it is centralized and not working.

(Dan noted there is a weighted caseload study being undertaken. It will take into account that there will be people with various levels of experience. There will be a section on sufficiency of time to perform duties. John added the model accounts for there always being some who are slower and some faster).

Regarding the technology question, I disagree to the extent that we could have a kiosk model. Litigants don't understand what information is needed; many are functionally illiterate. Staff spends time helping them through forms.

Many litigants are challenged that way. 80 to 100% of litigants are pro se.

We are part time judges. Contested hearings can take up time.

John noted that part of the study will be to apply a statewide model average.

Forms are on line. They are form fillable. You cannot save them once they are filled out; to save the information you can only print them. We use these forms and change entries on them as cases proceed. If the forms could be set up like the IRS online forms, it would be great. They are user friendly.

The bar put pro se forms on line. There is good information on the judiciary website on the settlement of cases. It was prepared by a probate judge. (There was a question as to whether it is on the new website yet).

Regarding technology, Justice Dooley has a vision for paperless filings.

Technology cannot be the be all and end all. An example of this is the survey that was sent out electronically to probate judges as part of this process. The probate judges had difficulty accessing and completing the survey. You have to have users involved in development of systems.

How can probate judges enhance services?

The population has not increased, but longevity has increased. The likelihood of the need for the services of the probate court has increased. There is willingness and ability to take on additional jurisdictions. Lamoille is understaffed. The register will take a 2-week vacation this summer; part of that time we will have the office closed and the superior court staff will accept filings. My office is across the street, so I am nearby for questions that arise. The GAL program needs to be statewide. Guardianships are frequent. I have tried to get help with training and was told no, it is only for family court. I offered to teach the probate section for GALs. There are the same problems with GALs and pro bono attorneys. With pro bono attorneys in small counties, there are small bars. The other courts are so underfunded; we turn to each other and there is no help. (Pat asked if the probate judge who was told no to GAL training was also told that there is a specific grant for GALs in family court).

Regarding the GAL issue, Rutland is using IOLTA funds to represent indigents, and it is working.

Regarding the website, by seeking assistance of the probate judges, there has been a good result from the bottom up.

The concern with letting the judges in family court handle adoptions in TPR cases is that it would slow down the process. DCF wants adoptions to take place in probate courts. There is a visible sense of relief when those kids come to court. One family asked a probate judge not to wear a robe for the adoption proceedings because the child felt traumatized by the process in family court.

2. Will conversion to the State system by probate judge improve the administration?

It would be better to be on Citrix; currently inconsistency in financial accounting and periodic status report forms and how they are filled out by guardians/executors, etc.

I review all my files quarterly; if someone is appointed to manage an estate, I need to review those cases, too, to be sure things are happening as they are supposed to.

Absconding cases, particularly in elderly cases and in some child guardianship cases, need to be identified.

Annual reports are required.

3. Dan asked if the jurisdiction of the probate court could be expanded.

Responses were as follows:

We are all part time, standing down when case work is low.

There is a match of time and salary (Bob Greemore knows this); it is infinitely adjustable.

Another question asked was What about doing small claims?

In Addison and Washington small claims are done pro bono by attorneys.

Small claims are the nuts and bolts of delivering justice.

Fmr. Administrative Judge McCaffrey assigned Judge Belcher to step in to help in mental health and a tpr case – Judge Belcher stated he would not recommend that. He stopped because he wasn't getting paid to do this extra work.

You need to figure out if it still makes sense to continue funding side judges – if you have the political will to stop, use that money to do small claims.

It was unanimous among those present that probate judges should be lawyers.

The following questions were asked: Should probate judges be full time?

Should probate judges be elected?

I like working part time; I wouldn't mind working more.

Re: election of judges – it becomes a problem when it becomes too political or too partisan.

It is a different process in probate court – you wouldn't get as good applicants if appointed – a good trial judge wouldn't be as good as a transactional attorney.

4. What if jurisdiction was transferred to superior court or family court?

Probate judges could take cases that require ongoing supervision and those involving family relational matters. The probate backlog is nothing compared to that in the trial courts. Probate judges could recruit GALs and pro bono attorneys from the community.

Probate judges handle cases where emergency surgeries are needed.

I don't sense that the trial judges are looking for additional work – why was this question asked?

A positive aspect of having a probate judge handle cases is that they have an ongoing relationship in cases that require ongoing supervision. There is no rotation.

Regarding adoption cases – a lot of finalizations take place in offices; going to family court would slow down the process.

Move estate and trust jurisdictions; it would be a big change in the way they are administered.

Have the one judge-one case concept in minor guardianships.

The question is also what might be transferred to probate courts.

Montpelier doesn't realize the many ways we have to make things work; DCF or family court decide if probate court gets minor guardianships.

Dan gave the opportunity for all to go around the table one more time.

Why do probate court appeals have to go to superior court?

I like the fact we aren't a court of record. There was a response that probate is a court of record.

Thank you to the commission members and the Court.

This has been a beneficial process; it was a good opportunity

I was on one of the original family court committees; then we were talking about some these issues.

We are a very dedicated, humble bunch with different backgrounds, and we all genuinely like each other. Keep it in mind

There is growing communication both ways.

Adjourned at 12:10 p.m.