

Probate Recommendations Cost Analysis

The working group recommendations to the Commission regarding probate include elimination of Essex and Grand Isle probate, consolidation of the probate judiciary into five full-time regional positions, and transfer of the contested proceedings to Family and Superior court. The estimated cost savings is \$676,195 in judicial compensation and \$390,840 in staff compensation, for a total of \$1,067,035. Using generic position compensation¹ instead of actual compensation, the figures change slightly to **\$679,636** in judicial compensation and **\$395,583** in staff compensation, for a total of **\$1,075,219**.

The estimate of savings is overstated because it includes cost savings unrelated to the Commission recommendations, and because it does not account for additional costs that would be charged against the changes.

Southern consolidation. The estimate of savings includes the anticipated savings from the consolidation of the districts in the remaining southern counties (Rutland, Windham, Windsor) in the next election cycle, a change the Legislature enacted in the 2009 legislative session. The Commission's estimate includes **\$160,816** in judicial compensation and **\$22,959** in staff compensation, for a total of **\$183,775** resulting from the southern consolidation.

Court administrator staff reductions. The Commission proposals contemplate reduction of judicial positions but maintenance of the existing probate offices (exclusive of Essex and Grand Isle). There are staff

¹ By averaging benefits, or assuming two-person households and otherwise typical benefit elections.

reduction savings in the estimate of savings provided the Commission by the court administrator. They do not, however, derive from working group proposals. Nor do the reductions await Commission approval. They are currently being implemented, under existing authority.

The working group proposals do discuss staff reductions. The restructuring working group, for example, proposes duplicating Chittenden staff caseloads, by duplicating Chittenden staffing times four, mirroring the reduction in judicial positions.² However, the decision to maintain the existing office locations for public access negates this possibility.

The resource working group discusses “excessive middle management” in the court system.³ However, the probate court system, consisting predominantly of one- or two-person staffing of autonomous offices in which that staff is simultaneously responsible for administration, public interface, and case management, lacks the “middle management” contemplated.⁴

The estimate of savings provided by the court administrator derives, not from Commission recommendations, but from inherent statutory authority, currently being exercised by the court administrator independent of Commission activities. Probate judicial salaries and districts are defined by the Legislature. The hiring of staff, by statute, is undertaken by the probate judge. 4 V.S.A. §357. However, all staff salaries and classifications are under the current direct control of the court administrator. *Id.* The court administrator is exercising this authority, currently primarily by attrition, to

² Restructuring working group draft report, pages 7-8.

³ Resources working group draft report, page 1.

⁴ For further discussion of this issue, See October 14, 2009 letter of Judge Fowler to Eileen Blackwood, Esq.

both down-size (from register-and-clerk to register sole) and re-classify (from Register C to Register B, and from Register B to Clerk) probate staff positions. These reductions account for an anticipated **\$323,859** in staff savings, reducing the total probate staff to 21 full-time equivalent (FTE) positions.

However, these changes are being undertaken without the information provided by the weighted caseload study as to the staffing levels required to meet the probate caseload. The weighted caseload results indicate 28.8 staff positions required to support the probate caseload. The probate staff reductions would require the excess workload to be shifted to 7.8 FTE trial court staff positions. Valued at an average probate staff compensation of \$55,785, the additional cost of \$435,123 in trial court staffing requirements would have to be set off against the probate staff savings, for a net loss of **\$111,264**.

Essex/Grand Isle. The elimination of Essex and Grand Isle probate courts would create a reduction of **\$92,050** in judicial compensation and **\$49,302** in staff compensation, for a total of **\$141,352**.

Commission-proposed consolidation. The proposed reduction of the probate judiciary to five full-time positions, recommended by the restructuring working group,⁵ was offered without the benefit of knowing whether the reduced judiciary could sustain the probate caseload. The weighted caseload study, which provided the ability to make that analysis was delivered on the same day as the working group report. The court administrator had estimated the reduction to five full-time probate judiciary

⁵ Restructuring working group draft report, pages 7-8.

positions would result in a reduction of **\$426,772** in judicial compensation. However, the probate caseload requires 6.35 full-time judiciary positions.⁶ The excess caseload shifting, presumably to the trial courts, would require an increase of 1.35 trial judicial positions. Applying a base trial judge compensation of \$159,240, the additional trial judicial position cost of **\$214,974** ($\$159,240 \times 1.35$) would be a set-off against the probate saving, for an actual net saving of **\$211,798**.

Jurisdictional shift. The restructuring working group proposed the transfer of the probate adversarial proceedings from probate to the trial courts, contested guardianships and adoption matters going to family court, and contested estate and trust matters going to superior court.⁷ The transfer of time associated with contested hearings⁸ in these categories would add a caseload equivalent of two full-time judicial positions to family court at a cost of \$318,480 ($\$159,240 \times 2$) and two-thirds of a position to superior court at a cost of \$106,160 ($\$159,240 \times 2/3$), for a total cost of **(\$424,640)**. The remaining probate judiciary in the mean time would be underutilized, with a caseload sufficient for 3.68 judicial positions. This analysis likely underestimates the cost impact of the shift as it does not include staff time and does not include non-adversarial judicial time associated with the transferred cases.

Summary. Of the original estimate of \$1,067,035 in savings from the Commission working group probate recommendations, \$183,775 is

⁶ 577,387 annualized minutes / 90,906 minutes per judge.

⁷ Restructuring working group draft report, pages 7.

⁸ Case-related activities #3 (evidentiary hearings), #4 (merits/final hearings), and #6 (research and decision writing) in the weighted caseload study.

unrelated to the Commission recommendations at all but rather is derived from the southern district consolidation already enacted into law.

Another \$323,859 is also unrelated to the Commission’s work, but rather undertaken by the court administrator, in the exercise of his statutory authority, to down-size and re-classify probate staff. This effort, being undertaken without taking into consideration the effect of the changes on the probate work load, should be evaluated with the assistance of the now-available weighted caseload results. Initial analysis suggests the probate savings would be offset by increased trial court staff workload having a payroll value of \$435,123, off-setting the anticipated savings for a net loss of \$111,264.

Of the original estimate of savings, \$568,124 remains to be accounted for by the Commission recommendations. \$141,352 in savings would be achieved by closing Essex and Grand Isle. The estimated savings of \$426,772 in judicial salary accomplished by the proposed five-district consolidation again suffers from a failure to analyze the impact of the change on the actual probate work load. Initial weighted caseload analysis suggests an off-set of \$214,974 in increased burden on the trial bench, for an actual net savings of \$211,798.

	Probate Judiciary	Probate Staff	Trial Judiciary	Trial Staff	Non-Comm. Savings	Comm. Savings	Total Savings
Southern consolid.	\$160,816	\$22,959			\$183,775		\$183,775
CAO down-size		\$323,859		-\$435,123	-\$111,264		-\$111,264
Grand Isle/Essex	\$92,050	\$49,302				\$141,352	\$141,352
State-wide consolidation	\$426,772		-\$214,974			\$211,798	\$211,798
	\$679,638	\$396,120	-\$214,974	-\$435,123	\$72,511	\$353,150	\$425,661

Conclusions. Substantial disruptions to the judicial system are contemplated by the Commission recommendations, in exchange for a hoped for savings of \$353,150. With the imbalance of that kind of trade-off, effectively the Commission recommendations need to be considered on grounds other than economic if they are to be persuasive.

The Commission processes were undertaken in reverse order. The data necessary to analyze the system came in after the conclusions had been reached. Savings proposals need to be rigorously analyzed for economic and qualitative impact. Real savings are possible. However, analysis in consideration of the weighted caseload results are essential to almost any such inquiry. Several examples worth exploring come to mind:

- Probate court, a court of record, maintains its record largely by electronic tape supervised by the presiding judge. The trial courts maintained a record by electronic tape supervised by a court staff person, who sits and watches the tape for the hearing duration, maintaining a hand-written log of witness and attorney interrogation changes. Probate judges generally maintain their own log. Some trial judges by-pass the staff logging system, and track the hearing tape with a personal cue system. Trial judges spend the equivalent of 23 FTEs of judicial positions in hearing, accompanied by at least one staff person. If this staff position were eliminated, at a rate of \$55,785 per position, a savings of **\$1,283,055** to the judiciary could be achieved.
- If probate judges were available for assignment by the trial administrative judge to stressed areas of the trial court jurisdiction,

particularly, for example, family court whose subject matter is the most similar to probate, there would be an over-all saving to the system, even if the non-probate work were compensated at trial court levels. The additional trial judicial capacity would come from existing judicial employees, without additional benefit compensation. The entire available capacity in the probate judiciary, per the weighted caseload study, consists of 7.65 FTE trial judicial positions. Full utilization would yield a savings of **\$278,253** [\$159,240 (trial total compensation) - \$122,867 (trial salary) x 7.65].

Other savings, even significant savings, are possible. However, the judiciary has not yet begun to apply the rigorous analysis necessary to find and weigh those possibilities.