

## **Clarification to Draft Report of Working Group on Restructuring of, and Access to, the Judiciary**

Four issues are brought to our attention since the September 11 Working Group draft report to the Commission. The first is the omission of a description of what judicial functions would be fulfilled by the probate judges after consolidation and reduction of probate districts. The second concerns the cost-per-case comparison between the probate courts and the criminal/family/civil courts. The third reflects the results of the National Center for State Courts' weighted case load study. The fourth regards the continued availability and use of Grand Isle and Essex county courthouses after the proposed transfer of their regular dockets to neighboring, full-time county courts.

1. As pointed out to me personally by Probate Judge Belcher, and later in correspondence from Probate judge Fowler, the draft report failed to articulate the trial role of probate judges following the consolidation of probate districts from 17 to 5 as proposed to the Commission by the Working Group. The drafting error was mine in not expressing the vision of Justice Johnson and Administrative Judge Davenport that, through the administrative judge's authority to appoint acting trial judges or with appropriate legislation, the five probate judges could be assigned by the administrative judge, or the presiding trial judges of the new, omnibus Superior Court for trial purposes. The trial work would include all of the jurisdictions currently addressed by the probate judges, as well as acting judge work depending on the needs of the district.<sup>1</sup> All probate judges should be attorneys.

2. The Working Group already acknowledged the probate judges' disagreement with comparing the cost of probate cases-added to the cost of cases-added to the other trial courts.<sup>2</sup> Assuming the probate judges are correct, that such a contrast risks an apples-to-oranges comparison, that comparison should be dispensed with in favor of the cost and cases-added comparison only between the Chittenden *Probate* Court and the other *probate* courts. Among all of the similarly charged probate courts, the full-time Chittenden model excels over the others in terms of staff-per-case and cost-per-added-case. Chittenden confirms that it can keep up with 727 cases-added per year with one full-time judge and three staff. We know, from Chittenden, that one full-time probate court can handle almost four times the cases at nearly half the cost compared to the average caseloads of the sixteen remaining part-time probate courts.<sup>3</sup> We also know, from experience with the Environmental Court, that single judges can effectively cover multi-county territories.

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<sup>1</sup> The Supreme Court still prefers the trial bench be appointed and confirmed by the Legislature for that purpose, rather than elected as probate judges are currently, and would seek a constitutional resolution to this anomaly over the next legislative sessions.

<sup>2</sup> See Working Group Draft Report, 9/11/09, p.5, n. 4.

<sup>3</sup> Chittenden, with 727 cases-added in FY 09, maintained a judge:case ratio of 1:727, a staff:case ratio of 242, at a judge/staff cost of \$437 per case compared to the other state-wide probate courts' average of 188 cases-added, a judge:case ratio of 188, and staff:case ratio of 133 at a judge/staff cost of \$822 per case. See Working Group Draft Report, 9/11/09, p. 6.

3. NCSC's weighted caseload study confirms the Working Group's proposal that the same number of probate cases state-wide could be handled with about a 75% reduction in the number of probate judges. The Working Group recommended consolidating and reducing the total probate districts from 17 to 5, along the lines of the Chittenden Probate District model which handles the state's busiest probate docket with a single judge and three staff, at a state personnel cost savings of \$1.3 million.<sup>4</sup> The raw NCSC weighted caseload analysis, based on a mere 40 hour work week, pegged the need for probate judges from 17 to 6. The more realistic and experience based NCSC calculation of a 47 hour work week finds that Vermont's probate caseload can be handled by 5.4 probate judges. The latter analysis fairly supports the Working Group's proposal of five judges, and the remaining 1/11<sup>th</sup> (.4) fraction of caseload could be spread among the five proposed districts, or the Superior Courts, or both, rather than form a sixth district at an estimated added cost of \$318,000 (based on the Chittenden cost model). Both NCSC analyses support the Working Group's essential recommendation that the current number of 17 probate judges can be substantially reduced and consolidated into far fewer, but full-time, judgeships.

4. We should clarify that, after the proposed consolidation of the underused Grand Isle and Essex trial courts, cases and proceedings can still take place at those courthouses as warranted by the circumstances and the needs of a case. As previously reported by the Working Group, the cost of keeping full-time courts at North Hero and Guildhall is not justified by their relatively scant volume of cases, while we expect that most of the matters heard and tried in those counties can be transferred to the neighboring Franklin/Chittenden and Caledonia/Orleans trial courts with little or no substantial inconvenience to the parties.<sup>5</sup> This is not to say, however, that trial and probate judges cannot sit in those courthouses when the needs of justice in a given probate, civil, family or criminal case so require. Also, the Essex and Grand isle courthouses could serve as a logical and familiar judicial service point where an employee of the judiciary can supply information to persons seeking judicial services.

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<sup>4</sup> See Working Group Draft Report, 9/11/09, pp. 7-8.

<sup>5</sup> See Working Group Draft Report, 9/11/09, pp. 2-3.