

**SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR**

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M E M O R A N D U M

TO: Janet Ancel, Chair
House Committee on Ways and Means

FROM: Patricia Gabel
State Court Administrator

DATE: January 21, 2014

RE: Judiciary Fee Bill Proposal

Incorporation of Surcharge into Fees

During the process of moving the court restructuring bill through the Legislature during the 2010 legislative session, there was established a 5% surcharge on fees collected by the Judiciary pursuant to 32 V.S.A. §§1431 and 1434 [except §1434(13)] to assist with funding the restructuring effort. The language for the surcharge is found at 32 V.S.A. § 1434a, and it is due to sunset on July 1, 2014. In FY13, the surcharge generated \$195,549 in General Fund revenue. If the surcharge does sunset, this revenue would not be realized. The Judiciary requests the Committee on Ways and Means to give consideration, at a minimum, to continue the surcharge.

A consequence of using a percentage for this purpose is that it creates additional work in the courts to administer it. It also increases the opportunity for errors to occur. When the 5% surcharge is applied to existing fees, it creates varying amounts with dollars and cents. This forces the court staff to have on hand a petty cash drawer to make change, thereby adding time to each transaction.

It is our recommendation that the surcharge be replaced with amendments to the fee statutes by increasing all fees in 32 V.S.A. §§ 1431 and 1434 by at least the amount of the surcharge rounded to the nearest \$5 above the current fee. We would then recommend that 32 V.S.A. § 1434a be repealed. The “rounding up” will result in a very modest increase in revenue to the General Fund in the neighborhood of \$20,000.

In light of the fact that the surcharge was not added to the fee for adoptions in 2010, and in light of the fact that judges and staff working in the Probate Division believe that the fee for adoptions is disproportionately low in comparison to other matters, the filing fee for adoptions is proposed to be raised from \$75 to \$100.

Proposed New Fees to be paid into the General Fund

There are three new fees in the Probate Division that the Judiciary proposes to implement beginning on July 1, 2014:

- Relinquishments that are not combined with adoptions
- Petitions for Minor Settlements
- Filing of subsequent will for safe-keeping in the same unit of the probate division or for transfer of will to another unit

These changes are proposed to rationalize the amount of the fee charged and the average amount of staff time the matter involves in comparison with other matters for which a fee is charged. These proposed changes are not likely to generate significant revenues for the General Fund at this time. [The fees for filing of wills currently benefits the counties.]

Spreadsheet re: Judiciary fee changes

A spreadsheet of proposed changes is included. When reviewing the spreadsheet, you will note that there are some fees where it appears there has been no revenue generated. It is believed that the revenue generated by these fees is grouped into an Account Code with another fee. The estimated revenue for FY14 and FY15 is based on the activity in FY13, with no material increase or decrease expected in the number of events.

Authorization of Judiciary Rule-Making regarding Electronic Filing Fees

We propose that the Legislature authorize the Judiciary, through the Judiciary's rule-making process [which includes the participation of the Legislative Committee on Judicial Rules], to adopt electronic filing fees.

A few years ago, there was established within the Judiciary a technology special fund [4 V.S.A. §27]. The fund was established to provide funds for judicial technology projects, including electronic filing. It has been funded by receipts from an administrative charge on state offenses under 13 V.S.A. § 7252 and fees established for not answering a traffic complaint and failure to comply with a judgment from the judicial bureau. It was originally projected to have sufficient funds to purchase over time a case management system with electronic filing capability and to pay for its on-going costs.

This assumption has proven inadequate for two main reasons. The traffic ticket revenue stream that feeds the fund has declined significantly in relation to projections. When the fund was established, the judicial bureau was processing 130,000 traffic complaints a year. Now the bureau is processing 85,000 to 90,000 complaints a year, reducing the revenues going into the Technology Fund.

Secondly, the Judiciary's hardware, operating systems, and network architecture needed to be replaced and upgraded. As of July 1, this is provided by DII, and its annual cost is roughly the same as the annual cost of the case management system.

Unless revenues to the court technology special fund are enhanced, the Judiciary cannot afford the ongoing costs of a case management system, including the ongoing costs of electronic filing.

State judiciaries around the country are implementing electronic filing to allow courts to operate more efficiently, while giving greater service to court users. Court users strongly support the introduction of electronic filing because it reduces the cost of litigation while improving access. It is used in Vermont by the federal courts, including the bankruptcy court. The House, in approving S. 25, voted for its use in the Public Service Board.

States and the federal government have used a number of ways to fund modern case management systems from revenues provided by PACER [public access to court electronic records.] PACER charges those that download federal court electronic case records [per page], and revenues from these fees are sufficient to fund not only the operation of PACER but also the court software systems. A number of states are adopting the PACER system.

Some states fund the maintenance of their electronic filing system through additional filing fees for electronic filing or for involvement as a party in a case that is electronically filed. The additional fees are justified by the increased functionality and reduced costs of electronic filing. For example, when filing is electronic, documents do not need to be mailed; so the cost of postage is saved. Similarly, since most documents are now created electronically in word processing systems, electronic filing saves the cost of printing. It will likely require a mix of these sources to fund the ongoing costs of an electronic filing system in Vermont because none of the sources alone is sufficient. [Please note that access to family and criminal case records is currently prohibited by statute.]

The proposed legislation that accompanies this Memorandum and the spreadsheet includes a proposed amendment to 4 V.S.A. §27 to cross-reference the new source of revenue provided by 32 V.S.A. §1431(i). Proposed section 1431(i) authorizes a fee on participating in an e-filing case [a per case fee] or an electronic filing [a per filing fee]. These are alternatives, and the most practical method would be used. Section 1431(i) also authorizes a fee on electronic access to electronic records. Again, the most practical method would be used, whether periodic [Nebraska has a monthly system], per record, or per page fee.

As previously mentioned, the fees would need to be adopted by Supreme Court rule, so they would be reviewable by the Legislative Committee on Judicial Rules in accord with 12 V.S.A. §1. Of course, no fees would be imposed until there is a system that has electronic case records. The Judiciary does not have them now.

We are submitting this proposal at this time to enable us to put together a full financing package and because of the limited window [every three years] for a Judiciary fee bill proposal.

Thank you for your consideration of this request.

cc: William Lippert, Chair, House Judiciary Committee