Below are my comments and opinions on Sections 1 and 5 of last year's Lighten the Load draft bill, as of April 15, 2015, which is being considered by the legislature now. I have shared these thoughts, in mostly the same form, in e-mail to the members of the VBA Family Law Section, of which I am Chair. I am not able to be in Montpelier on March 9th to testify before the House Judiciary Committee on this matter, so I would very much appreciate your forwarding this e-mail to the committee members. Thank you.
Sincerely, Penny Benelli

I object to Section 1, which would require litigants to serve copies of all motions on the opposing parties. It can be a nuisance for attorneys to figure out how to serve any particular defendant (and an additional cost to the client), but it could be a virtually insurmountable obstacle for pro ses. Service by registered mail by an attorney or a pro se litigant is more likely to be refused or ignored than the same service from the court. That means alternate service and more time and expense. Ultimately, it may lead to respondents being served by the sheriff or the constable right up front, just to get it done and get the case moving. That would not only be a significant expense for clients (likely $60 to $100 per service), but could complicate the case. If you are like me, service by the Sheriff or a constable is a last resort: having an officer show up at the door only exacerbates the hard feelings often involved in a family law case, and that reduces the likelihood of being able to settle it. If the court cannot afford to continue to make service in cases involving minor children, I would rather pay an extra fee for this service than to have the burden shifted to the litigants. Right now, we just pay $13.00 postage. I'd be willing to pay postage plus a "handling fee" of sorts to have the court do it. Any reasonable fee is likely to be a major savings to my clients over the cost of having to do it myself.

I also strongly object to Section 5. It would move all appeals from the magistrate from the family division , where they now go, directly to the Supreme Court. Both appeals are based on the record, so the standard of review is the same. But the process in the family court is simpler, more streamlined and MUCH less expensive than an appeal to the the Supreme Court. Few who feel
the magistrate made a mistake can afford to have an attorney take the matter to the Supreme Court. Even if they have the money, the cost of an appeal to the Supremes would often nullify--or exceed, perhaps by far--the benefit they could get by winning on appeal. In effect, this could foreclose appeals with merit from ever being filed.

I'd be curious to know how many who lose appeals in the family division end up appealing to the Supreme Court. My guess--and it is only that--is that it's a small percentage. Certainly not all who lose do so, which means that the process winnows out cases which can be resolved locally, both more quickly and more cheaply than a full Supreme Court appeal. I also don't see that business at the
Supreme Court is so slow that the Court has time to hear a whole new category of appeals. For these reasons, I strongly oppose the adoption of section 5.

Patricia G. Benelli
Dakin & Benelli, PC