

**COURT ADMINISTRATOR'S 2015 Judicial Rotation System Report submitted pursuant to
§ E.204.8 of Act 58 (2015)
Patricia Gabel, Esq., State Court Administrator -February 25, 2016**

**VERMONT JUDICIARY
State Court Administrator
Report on Rotation submitted pursuant to Act 58 (2015)**

TO: Senator Jane Kitchel, Chair
Senate Appropriations
Representative Mitzi Johnson, Chair
House Appropriations
Senator Dick Sears, Chair
Senate Judiciary
Representative Maxine Grad, Chair
House Judiciary

The FY 2016 Act 58 (H. 490 “Big Bill” or Operating Budget) provides, in part, as follows:

E.204.8 JUDICIAL ROTATION SYSTEM REPORT

(a) On or before December 15, 2015, the Court Administrator shall report to the House and Senate Committee on Appropriations and on Judiciary on the costs, benefits, and impacts on the provision of justice in Vermont associated with the judicial rotation system. The report shall include the costs of instate travel and all expenses associated with the periodic rotation of judges between different court units.

REPORT:

Specialization, duration of assignments, and special assignments are three aspects of rotation, so each will be addressed in turn.

A. Specialization

Former Administrative Judge Amy Davenport, as a new judge in 1990, firmly believed that she could provide the best service if she were permanently assigned to the area with which she was most familiar and had the most experience, in her case the Family Court. As time went on, however, and she gained experience with both criminal and civil cases, her views changed. She realized that this broader range of knowledge made her a better judge. Without that broad range of knowledge, assignments to multijurisdictional courts, such as Lamoille, Orange, Addison, Caledonia and Orleans, would be impossible. In her experience, those multijurisdictional assignments were some of the most interesting and rewarding of her career.

There are a number of lawyers who assert that since specialization is the direction in which practicing lawyers have gone, it should be the direction that judges should follow as well. The reality, however, is that judges and attorneys play very different roles in the legal system. Unlike judges, attorneys have the responsibility of advising clients who are

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involved in a legal dispute about all of their options – a responsibility that requires an intimate knowledge of all of the substantive law that may impact their case. They are also responsible for educating the judge with respect to the facts of the case and the application of the law to those facts. While judges are responsible for the correct application of the law to the facts as they are presented in court, they are not responsible for advising litigants as to pros and cons of all of their options. Nor are they responsible for deciding which facts should be presented and which should not

Unlike attorneys, however, judges have significant case management and administrative responsibilities. In a small rural state like ours, this requires prioritizing some cases over others in terms of available court time and attention. This work is done both within a division as well as across divisions. For example, a presiding judge for a unit has to make decisions about the best use of scarce court resources. If a day set aside for a criminal trial is not needed because the case pleads out (as is often the case), the presiding judge needs to ensure that court time is used as effectively as possible. This often means that the judge who would have heard the criminal case is instead going to hear and decide a family or a civil case. Specialization by judges would make this kind of flexibility impossible.

Many new judges who are just coming on to the bench start out believing that they can best serve the judiciary if they are assigned to the division in which they have the most experience as an attorney. There are relatively few new judges with broad attorney experience in criminal, family and civil. Most come with particular experience in one of the three areas and, not surprisingly, their initial inclination is to stay in their comfort zone. Over the course of the next few years, however, as they gain experience in the other divisions, this view changes and they come to appreciate the benefits of gaining a more diversified range of experience. It is not unusual for judges who come into the job with a strong preference for the division where they have had the most experience as an attorney, to discover that they really like sitting on cases in one or both of the other divisions.

B. Length of Rotation Assignments

Although a rotation schedule is implemented on an annual basis, two year assignments have become quite common in the past ten years. Of the five full time civil division assignments (Chittenden, Rutland, Washington, Windsor and Bennington/Windham), there have been two-year assignments almost 50% of the time during the last ten years. Of the eight full time family division assignments (Chittenden (2), Rutland, Washington, Windsor, Windham, Franklin and Bennington), multiple year assignments have occurred 64% of the time. (In two cases the rotation was for three years as opposed to two.)¹

There are many considerations in putting together the rotation schedule. Whether the court will benefit from the consistency of a two-year rotation is certainly an important

¹ I have not computed the frequency of the multi-jurisdiction and criminal division assignments, but I expect the frequency would be about the same – somewhere in the range of 50 to 60% of the time.

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one, but there are others including the travel burden/expense, potential burn out, the relationship between the judge and the staff, the judge's career development - to name a few others. Putting together the schedule statewide and getting all of the pieces to fit with each other is probably the most challenging and difficult part of the job of the Administrative Judge / Chief Superior Judge. Multiple year rotations sometimes make the job easier, but sometimes they can also add complexity to the puzzle. We think that they already are and should continue to be an important consideration, but we do not think that they should be mandated. The decision about whether a one year assignment should become a two year assignment should not be made until the judge has been in the assignment for at least six months so that an assessment can be made as to whether the assignment is a good fit.

C. Special Assignment

The Administrative Judge / Chief Superior Judge is given broad authority to make special assignments under 4 V.S.A. § 73(c). For many years going back to Judge Martin, this authority was routinely used for murder cases in the criminal division. Judge Davenport continued that practice. The requests generally came from judges in July or August right before rotation. The primary criterion for granting the requests was whether, given the judge's knowledge of the case, a special assignment would facilitate resolution notwithstanding scheduling difficulties.

The Administrative Judge / Chief Superior Judge also occasionally receives requests for special assignments in civil and family cases. It is interesting that the requests in family cases are extremely rare. Most of those requests came in the form of a letter or a motion from one or more attorneys involved in the case. The same test applies: would special assignment of this particular judge enhance the ability to move this case forward.

Since restructuring in 2009, authority to specially assign cases does not rest exclusively with the Administrative Judge / Chief Superior Judge. The presiding judge for each unit has the ability to specially assign a superior judge to a particular case as long as the superior judge is assigned to the same unit. Thus, if a judge rotates from the Windsor civil division to the multijurisdictional assignment in Orange, the presiding judge for the Windsor/Orange unit can specially assign the judge in Orange to continue to sit on a Windsor civil case. The presiding judges use this authority when they are aware of a complex case that needs the consistency of having the same judge assigned to it. I am not sure how often attorneys take advantage of their ability to request that the presiding judge invoke this authority.

In two-attorney cases where both sides agree to the special assignment, the attorneys are often willing to travel to the unit where the judge is assigned for motions or status conferences (or else participate by phone). This is obviously more difficult if one side supported the special assignment and the other opposed it.

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COSTS OF ROTATION

I'm not aware of any significant costs of rotation other than mileage and fleet.

In FY15, Superior Judges incurred \$141K of mileage and fleet). Matt Riven, our Chief of Finance and Administration, estimates that approximately 90% -- or \$127K -- of the costs are associated with rotation. In our view, that's a reasonable price to pay for the important policy goals underlying the rotation system. We continue to monitor these expenses and have driven them down through the use of fleet cars, but have likely already harvested most of the net savings opportunity. (In other words, at this point, expanding the fleet of cars would cost about the same as reimbursing for mileage.)