

Although the letter is accurate as to its impetus, it is not an official communication of any kind, has not been sanctioned by the VBA or any of its committees, and speaks only for me.

Frank Kochman

Letter From Frank Kochman, Esq. to Senator Sirotkin

From: Frank Kochman

Sent: Tuesday, January 20, 2015 2:33 PM

Subject: judiciary budget

Dear Michael:

I write to urge you to do everything you can to preserve the judiciary budget uncut for the next fiscal year. It has already been subject to a current budget revision. The amount removed for the current year should be restored and the full amount, at least, rebudgeted for next year.

The specific impetus for this message comes from discussion among members of the environmental section of the bar, spurred by concerns about the retirement of Jaclyn Fletcher as manager of the Environmental Division of the Superior Court and the news that there is no current plan to replace her. This will be a crippling blow to the functioning of that court. It has already lost personnel, such that a case ready for trial today will not be scheduled until August at the earliest (per advice from Judges Durkin and Walsh last week). It is ironic that the Legislature, recognizing the importance of this Court and its workload, doubled the number of judges from 1 to 2 a few years ago, yet, today, because of staff cutbacks, it is impossible for the court to conduct more than one trial at a time.

But my concern is not limited to the environmental division. My understanding is that there are three judicial vacancies that will also go unfilled for an indeterminate period. As you may know, I do not have a blistering trial practice, but my clients nevertheless have felt the impact of the erosion of judicial efficiency brought on by the scarcity of resources. For example, in March of 2014, I obtained a judgment in a boundary case tried to the Court in Chittenden Superior in November of 2013 (18 months after the case was filed), but the court wanted one of the survey points re-checked by a special master and so ordered. The hearing on the Special Master's report (favorable to my client) is now scheduled for February 5, 2015 in Hyde Park, 15 months after the trial and 31 months after the case was filed. (And an appeal is likely.) In another matter, a partition case, it took eleven months to get a decision on my Motion in Limine – again, a decision favorable to my client which, if rendered sooner, could have eliminated a lot of stress and expense for both sides. To appreciate the collective impact of an inadequate judicial budget, multiply these experiences by the 4,000 or so members of the bar and the many who carry 10 or 20 litigation matters for every one of mine.

The judiciary should not be a competitor for funds as if it were an executive agency. It is one-third of the Constitutional government. Properly perceived, it is not merely one priority clamoring for attention among others of equal standing. It is a structural priority. Delay and inefficiency in the administration of the courts does more than cause inconvenience or disappointment – such as, for example, the inconvenience and disappointment caused by a delay in a public works program. Rather, untimeliness and inefficiency in the courts undermines confidence in the law itself. As important as the macro-economy is, and as compelling as one's concern for the welfare of the body politic as a whole may be, it is case-by-case individual justice that is the hallmark of the common law and the belief in its availability that is the backbone of civil order in a democracy. A failure of individual justice cannot be "made up" in later years.

I ask that you prevail on your colleagues to recognize that the ability of the courts to deliver timely and efficient decisions must be preserved in both good times and bad.

Although I would be making the same argument from principle even if the judiciary consumed an outsized share of the budget, as far as I can tell it is in fact a stupendous bargain at only 3.1% of the whole. (Looks like about \$41.6 million out of \$1.332 billion.) A half million dollar cut, tiny in comparison to the size of the State's projected deficit, would contribute little to the solution of the larger problem while "leveraging" grossly disproportionate harm for a long time to come.

Thank you for your consideration.

Respectfully, and with best wishes for the New Year,

Frank Kochman, Esq.