



**Vermont Association  
for Justice**

1 Main Street #305  
P.O. Box 1366  
Burlington, VT 05402-1366  
802.861.7999  
fax 802.861.7995  
[vtaj@vermontjustice.org](mailto:vtaj@vermontjustice.org)  
[www.vermontjustice.org](http://www.vermontjustice.org)

**February 19, 2015**

**VTAJ Letter in Support of Increased Judge Time and  
Opposition to Proposed Judiciary Budget Reduction**

The Vermont Association of Justice (VTAJ) opposes the proposed reductions to the Judiciary budget on the basis that the proposed cuts are likely to harm citizens' opportunity for access to judges and to have civil jury trials.

The interface between trial judges and any litigant -- from a criminal court defendant to a party in family court -- is the single most effective tool the judiciary has for swiftly administering justice and maintaining an efficient flow to keep cases moving through our judicial system. Very often, brief but substantive interaction with a judge and an announcement as to how they will rule on one or a number of issues serves as the determinative moment, spurring the case to settle or setting it on course for trial. The proposed cuts in the judiciary budget would accelerate the loss of substantial interaction between litigants and judges and significantly diminish the already dwindling available time for civil trials. Further, judiciary budget reductions challenge every Vermonter's right to a civil trial of disputes under the 7<sup>th</sup> Amendment of our Federal Constitution and as guaranteed under our State Constitution.

As a result of increasing caseloads in all courts, civil matters suffer disproportionately. The increased caseloads compel trial courts, including the Civil Division, to devote the already limited judge time to addressing the emergent matters such as those impacting children, petitions alleging physical threats, abuse or stalking, and residential evictions. In some circumstances, Judges from one court are expected to assist with the caseloads from other trial courts to address the onslaught.

This results in substantial delay in other civil matters that require those same judges' time, attention and legal training. Further, in cases requiring more complex analysis or a hearing that may last more than two hours, delays accrue in the passage of many months and sometimes, years.

When no one is accountable, no one is safe.

**President**  
Christopher Larson, *Rutland*  
**President-Elect**  
Vanessa Kittell, *St. Albans*  
**Treasurer**  
James C. Foley, Jr., *Middlebury*  
**Secretary**  
Michael Green, *Burlington*  
**Parliamentarian**  
David Polow, *Hyde Park*  
**Immediate Past President**  
Christopher Maley, *Burlington*  
**Executive Director**  
Cece Wick  
**Governors**  
Cynthia Broadfoot, *Burlington*  
Bernard Boudreau, *Bennington*  
Robert Halpert, *Montpelier*  
Erin Miller Heins, *Burlington*  
James Levins III, *Rutland*  
D. James Mackall, *Woodstock*  
Joshua Martin, *St. Albans*  
Kelly Massicotte, *Montpelier*  
David Mickenberg, *Burlington*  
David Polow, *Hyde Park*  
Anthony Roisman, *Lyme, NH*  
Richard Rubin, *Barre*  
Lawrence Slason, *Bellows Falls*

For example, in a claim alleging negligence against a senior care facility, where the Court heard the legal issues at a summary judgment hearing in 2013, some, but not all, of the legally significant issues were not decided by the Court for eleven months. The Court never responded to several of the substantial legal issues. In the instance of a recent wrongful death claim, one trial Court took more than 15 months to respond to a motion for summary judgment. In that instance, the summary judgment raised a substantive issue governing whether the case would be dismissed. In locations where trial court judges are shared between counties, it is not unusual for the Court to schedule a hearing anticipated to take three or more hours more than four or more months in advance due to the limited judge time at that courthouse. At present, attorneys understand and must counsel their clients to anticipate that it will take 18 to 26 months before arriving at a two-or-more-day civil jury trial. These delays matter most to individuals and small businesses. For many, delay itself becomes a substantial factor in deciding whether to settle or wait for a civil trial. Worse, we see instances where the party that can afford to wait, capitalizes on the delay by settling with the claimant for a substantially reduced value.

For example, a small business suing a fuel delivery provider for damage to property may be compelled to accept substantially less than the value of the loss on the basis that that further delay may drive them out of business. In another context, we see instances where claimants, substantially harmed in auto collisions, must settle their claims for injury, loss of employment and emotional distress for markedly small sums due to the fact that where a Carrier denies accepting liability the person cannot afford to wait the 18 or more months for a jury trial.

Proposals on variation in court channeling procedures distract from the problem and merely protect the failing status quo. Alternative administrative procedures do not more efficiently move cases. Court staff cannot stand-in as fact finders at hearings and legal decision makers where hearings and orders require judges' attention and legal training to render decisions and move cases through the judicial process.

Trial court judges, through a number of legal decisions that they must make on any given matter, govern when and how a case will be tried. This gate-keeping role of trial judges in both substantive and practical ways cannot be replaced by clerks or administrative activity. The work of the trial court judge addressing the legal issues tailored to the facts of the case requires legal training, experience and judicial attention. Where the judiciary is looking to more efficiently move cases through to conclusion, adding trial court judges and law clerks would serve as the most cost-effective remedy.

In sum, austerity in the judiciary budget in the instance of further reducing trial court judge time becomes self-defeating. A budget shortfall cannot be denied. However, where cuts further reduce the time trial court judges have with litigants, the shortfall compounds the problem, adding burden to individuals and small businesses.

Other avenues exist to address the shortfall in the judiciary. First, systemic activity to add trial court judge positions will assist in overall reduction in judicial administrative spending. More trial court judges can contribute to more effectively moving cases through the judicial system and more effectively addressing increased caseloads. Second, consideration must be given to raising revenue through various fee adjustments such as raising probate-filing fees on a graduated scale in step with the size of an estate, or increasing filing fees in foreclosure matters by bank or corporate claimants in step with the size of the mortgage repayment sought.

We appreciate your time. Please do not hesitate to contact us should you have any additional questions or concerns.

Sincerely,

Chris Larson, Esq.  
VTAJ President.  
(802) 747-0610  
[larson@yourvtlawyer.com](mailto:larson@yourvtlawyer.com)

Vanessa Branon Kittell, Esq.  
VTAJ President-Elect  
(802) 524-6568  
[vkittell@vbklawvt.com](mailto:vkittell@vbklawvt.com)