REACTIONS TO THE PROPOSED "LIGHTEN THE LOAD BILL"

COMMENTS ON SEC. 3

My feeling about all child support appeals going to the Supreme Court is that it will be a monumental waste of time and resources for the Supreme Court to hear all of the child support appeals and an enormous expense for litigants which could in reality deny their access to justice. The system of appeal to the Family Court has allowed litigants to tell the court what they don't like. It can be pretty inelegant but at least the person has an opportunity to articulate concerns. Unless we are planning for a whole new set of rules for appeals, the process is beyond the capabilities of most self-represented litigants (and many of us who shiver at the formalities!). Are we really offering a solution or just scaring off only the most intrepid of the litigants. I personally have never understood how we can represent that the court system is user friendly because it is so full of traps that may or may not be fixable. This may reduce the caseload but the reduction is likely due to the cost and difficulty and not a genuine feeling that there are no appealable issues to be considered. I don't think we should be encouraging people to represent themselves and then making it impossible to manage.

Regarding the appeal process, once again we can disregard the "access to justice" mantra. For folks who do not know how to present their cases to the magistrate and then wish to hire counsel to "fix" what happened, the expense/cost to go to the Supreme Court is more onerous than to go to Family Court.

I completely disagree with Section 5. I agree with ----'s statement: "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 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."

How can the Supreme Court take on all of these appeals. It seems like they are proposing a lot more than just Magistrate appeals, but Probate too. Is there docket so slow that they have time, or will this just lead to appeals being slower to get through the process?

COMMENTS ON SEC.6

I agree with ---------. I see another issue. I was recently before Judge Toor on an interlocutory appeal from probate court. She was looking at Title 12 Chapter 107. Section 2551 of Title 12 states that the supreme court has jurisdiction of questions of law arising in the course of the proceedings of the probate courts in probate matters. I infer from the statute proposed under Sec. 8 that § 2555 would be amended to give one the right to appeal a question of law directly to the supreme court. The two statutes are similar but slightly different. One would infer that if the supreme court has jurisdiction of questions of law under § 2551, then that is the court to which you appeal but proposed § 2555 makes that explicit.

I also infer from Sec. 8 by repealing current § 2553 (appeals to the superior court) that Chapter 107 would be silent with respect to appeals regarding questions of law and facts. 14A VSA § 201 provides for an appeal to the superior court for trusts. VRCP 72 provides for an appeal from the probate court to the superior court in all probate matters (trusts, estates, guardianships, etc.). To the best of my knowledge, proposed Sec. 8 would remove the statutory right to appeal to the superior court in cases of law and fact. One would only have Rule 72 to rely on with respect to an appeal to the superior court. I think this would lead to much confusion among practitioners as they search for the statutory authority to appeal cases of law and fact.

I do not have a problem with direct appeals from the probate court to the superior court if it is only a question of law. Given our evidentiary system in the probate court, appeals to the superior court for questions of law and fact makes sense.

I am in agreement with those who have voiced a concern regarding the elimination of the de novo appeal. For more complex cases, the parties need the benefit of the Civil Division. To avoid the problem of trying a case twice, perhaps a procedure could be put into place to allow the parties to consent to the Civil Division in the first instance.

Using the probate court as the sole trial court for a case with a substantial amount at issue without revising the Vermont Rules of Probate Procedure is problematic. Among the first issues that come to my mind: the rules of evidence in the probate court are quite loose (VRPP 43), the parties have no right to discovery (VRPP 26), there is no procedure for the pre-trial relief (TROs; injunctions) or post-trial recovery (trustee process) as needed in fiduciary theft cases; and there is no procedure for summary judgment. Rather than revise the VRPP, it would be simpler to attribute jurisdiction in a complex or substantial value case to the Civil Division as the sole trial court. The Civil Rules are already designed for such cases.

I agree with ----'s comments on the probate appeals. First, there just aren't enough statewide to justify a major shift like this. But more importantly, it eliminates a valuable "first bite" at the process within the informal structure of the probate court. This gives the parties an opportunity to frame the issues and see the evidence without the full blown discovery and expense of a Superior Court action. Paul is right, the proposed change will mean protracted discovery, motions and longer and more expensive hearings in probate court to make sure one develops a record.

Are there statistics from the court showing how many probate and tax appeals go to superior court?

During the review of the Uniform Trust Code, a conscious decision was made to keep the *de novo* appeal (from probate court to superior court) in order to allow the probate courts to remain, more or less, informal. Eliminating the superior court appeal will cause more contention in the probate courts as the last place to develop a record.

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I, too, would like to see a procedure as suggested which would allow a bypass (by consent or motion) of the probate court where appropriate to reduce cost and to increase efficiency. Perhaps my experience is not the norm, but from my perspective, a not significant number of cases find their way from probate to a civil division appeal. The "first bite" usefulness of the probate division suggested by others can be terribly expensive and time-consuming with little ultimate gain when the right to a jury trial and discovery provided in the civil division seems quite inevitable from the outset. I have difficulty explaining this aspect of Vermont court jurisdiction and procedure to out-of-state clients (as well as to some Vermonters). To laypersons, it suggests duplicative bureaucracy the potential irrelevancy of which only benefits the lawyers financially.

Keeping de novo to superior court is important for many reasons as others have said. The "questions of law" aspect only confuses things. What if a party wants to appeal findings of fact and law? There's also no option for a jury trial in probate court – a constitutional right.

At the UTC meetings several years ago, when we debated these points, the number of probate cases appealed to superior court was some ridiculously small number, I think it was represented that 18 out of 1800 probate cases were appealed to superior court that year – one in a hundred.

The proposed changes seem like a bad idea, and perhaps a solution (if you want to call it that) in search of a problem.