

I would like to comment on the proposed legislation ending appeals to the Superior Division from Probate Courts, and I would ask that you distribute this comment to the members of the House Judiciary Committee.

Put succinctly, 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 realize that what I have stated above may need some explanation for House Members who are not trial lawyers, but the reality is that the trial of a \$2 or \$3 million abuse of trust case simply cannot be accommodated with fairness to the litigants under the current probate court rules. Such cases should be removable from the Probate Courts to the Civil Division as a court of first instance. The Civil Division is equipped materially and procedurally to deal with complex cases of this magnitude.

Thank you for your attention to this important matter for Vermont litigants.

John

John C. Newman
Kenlan Schwiebert Facey & Goss, P.C.