

This email is sent including a request that it be made available to members of the House Judiciary Committee.

The issue to be addressed, as I understand it, is a change to direct appeals on matters of law directly from the probate court to the Supreme Court of Vermont, avoiding the existing appeal process to the Civil Division of the Superior Court.

I have served on a bar association probate and trust law section committee for the development of Vermont's Trust Code culminating in its adoption in 2009. That committee spent about two years studying our trust law, including the probate court role in contested and uncontested matters, and the appeal process.

I have spent about two years chairing a bar association probate and trust law section committee that has made a comprehensive review of the law governing the probate of decedent's estates, producing a bill that will be re-introduced in January, 2017. The appeal process was taken up again in that committee.

I have been chair or co-chair of the probate and trust law section of the Vermont Bar association, I believe for more than ten years.

In each of the projects that I've been involved in, the issue of appeals from the probate court directly to the Supreme Court has come up. Each time the arguments against it substantially outweigh the arguments for it. There are very few appeals, there are even fewer situations for which an appeal only on issues of law could be developed without significant time and effort to ascertain that the further presentation of a factual basis would not be helpful.

It seems improbable in the extreme that there would be a significant number of cases limited solely to questions of law to which a change in the appeal procedure would apply to make this worthwhile, and at the same time, considerable time and expense would often be expended trying to ascertain whether an issue were clearly only a matter of law so that a new appeal procedure, ostensibly to improve efficiency and better use of court resources, would be justified. The overall result is more likely to be increased costs and time of proceedings with very few special appeals of this nature resulting.

Each of the committees that I have worked on that addressed the more general question of whether all appeals from probate should go directly to the Supreme Court has concluded that this would be an unfavorable change in the law for many reasons. And although we have not addressed the more specific issue of direct appeals of matters of law only, I am of the opinion that court efficiency would be reduced and the cost in money and time to the parties would be increased by such a change.

Bob Pratt

ROBERT S. PRATT, ESQ.
PRATT VREELAND KENNELLY MARTIN & WHITE, LTD.