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MEMORANDUM

To: Representative Janet Ancel, Chair, House Committee on Ways and Means

From: House Committee on Judiciary

Date: May 7, 2015

Subject: Senate Proposal of Amendment to Judiciary Fees in H.489

The Committee has reviewed the Senate's proposal of amendment. The proposal increases Judiciary fees by 24.2% overall, which includes a 58.5% increase in probate fees and 13.4% average increase of other fees. The Committee has identified three areas of concern: 1) the new fees regarding trusts; 2) the new mandatory *in forma pauperis* co-pay; and 3) the Judiciary fee schedule.

New trust fees

The Senate proposal of amendment establishes a tiered system of fees based on the value of the trust that parallels the system currently used for estates. The Committee on Judiciary believes there are substantive differences in the way in which estates and trusts are managed that justify different fee structures. When an estate is probated, the fees come from the estate. If an individual with a stake in a trust has a concern about management of the trust and seeks an accounting by the Court, the individual must pay the fee from his or her own pocket. Under this proposal, if there is an estate and a trust each valued at \$1,000,000.00, each with five equal beneficiaries, the beneficiaries of the estate receive an accounting as part of the probate process at no personal cost, but if one of the beneficiaries of the trust requests such information, he or she would be required to pay a \$1,000.00 filing fee. The Committee would like the Committee on Ways and Means to consider whether for trusts, the fee could be based on the proportion of the trust to which the petitioner is entitled based on the value of the trust at the time of the filing.

In forma pauperis co-pay

The Senate proposal of amendment establishes a \$10.00 co-pay. The Court Administrator explained that the fee was created as a stopgap measure to address instances of frivolous filings. The proposal identifies an estimated current 3,500 pre- and post-judgment IFP requests for exemption from the filing fee schedule. Assuming that the majority of these requests are

justified, the Committee is concerned that applying a default fee for all IFP requests is too blunt an instrument to address the issue of abuse, and will negatively impact poor Vermonters who approach the judicial system in good faith. The Committee knows of no other state that requires a minimal fee to file for an IFP exemption and is extremely hesitant to make Vermont the first. With additional information, the Committee may be open to requiring the fee for filing motions for postconviction relief, but further discussion would be necessary.

Fee schedule

The Committee simply wants to take note of the fact that the Judiciary fee schedule had the fees up for review and amendment in FY 15 which is the same schedule as the protection fees. The Committee was unsure of whether the three-year cycle would remain for FY 18 as the next date for review.

The Committee on Judiciary appreciates the opportunity to weigh in on these matters and stands ready to assist the House Committee of Conference on H.489 as needed. We will continue to share additional information about these proposals as we receive data from the Judiciary.