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MEMORANDUM

To: Rep. Maxine Grad, Chair, House Committee on Judiciary
From: Rep. Janet Ancel, Chair, House Committee on Ways and Means
Date: February 3, 2016
Subject: Judiciary; proposed fee language

The House Committee on Ways and Means heard testimony in connection with the FY2017 Fee Bill from the State of Vermont Judiciary, which proposed two fee and language changes. Section 1 pertains to co-payments and reimbursement orders to cover fees for public defenders. Section 2 is a proposed addition to Title 32 on fees in Supreme and Superior Courts when an inmate files an in forma pauperis application in a legal action.

Please see below the Judiciary's proposed language and fees. It would be helpful if you could review these sections respond with your recommendations by the end of the day on Tuesday, February 9th, 2016. Thank you in advance for your consideration.

* * * Judiciary * * *

* * * Public Defenders * * *

* * * Co-Payment and Reimbursement Orders * * *

Sec. 1. 13 V.S.A. § 5238(d) is amended to read:

(d) To the extent that the Court finds that the eligible person has income or assets available to enable payment of an immediate co-payment, it shall order such a co-payment to cover in whole or in part the amount of the costs of representation to be borne by the eligible person. ~~When a co-payment is ordered, the assignment of counsel shall be contingent on prior payment of the co-~~

~~payment.~~ The co-payment shall be paid to the clerk of the Court and to the extent not paid it shall be subject to a reimbursement order.

* * * Fees in Supreme and Superior Courts * * *

Sec. 2. 32 V.S.A. § 1431a is added to read:

§ 1431a. COURT ACTION BY INMATE; APPLICATION TO PROCEED IN FORMA
PAUPERIS

(a) Prepayment of filing fee and certified copies required. Notwithstanding the provisions of § 1431, a person who is confined in a state correctional facility may not bring a civil action arising under federal or state law in any court in this State with respect to a condition of that person's confinement or the effect of an action or inaction by a government official on the life of that person confined and may not appeal a judgment in such a civil action without prepayment of the filing fee unless, in addition to the in forma pauperis application and affidavit required by the Vermont Rules of Civil Procedure 3.1(b), that person submits a certified copy of the general client account statement for that person for the 6-month period immediately preceding the filing of the action or appeal, obtained from the appropriate official of each facility at which that person is or was confined.

(b) Waiver of prepayment of filing fee. If the court finds that the action or appeal is not frivolous and has been brought in good faith and that the person is without sufficient funds to pay the filing fee, it shall order that prepayment of the full amount of the filing fee be waived. If the court denies the in forma pauperis application, the action or appeal must be dismissed without prejudice, unless within 7 days after the denial the person pays the filing fee to the clerk of the court.

(c) Full payment of filing fee required; initial partial filing fee. Notwithstanding subsection 2, the person shall pay the full amount of the filing fee. The court shall assess the person's financial status and, when funds exist, collect as a partial payment of the filing fee an initial partial filing fee of 20% of the greater of:

(1) The average monthly deposits to the general client account credited to the person for the 6-month period immediately preceding the filing of the action or appeal; or

(2) The average monthly balance in the general client account for the person for the 6-month period immediately preceding the filing of the action or appeal.

(d) Payments from account. After payment of the initial partial filing fee, the person shall make monthly payments of 20% of the preceding month's deposits to the general client account credited to the person. The facility having custody of the person shall forward monthly payments from the account to the clerk of the court each time the amount in the account for the person exceeds \$10 until the filing fee is paid in full.

(e) Restrictions on filing fee. The filing fee collected may not exceed the amount of the fee permitted by law for the commencement of a civil action or an appeal of a civil action. A person may not be prohibited from bringing a civil action or appealing a civil action if the court finds that the action or appeal is not frivolous and has been brought in good faith and that the person has no assets and no means by which to pay the initial partial filing fee.

(f) Payment of outstanding restitution orders. Any compensatory damages awarded to a person in connection with a civil action brought with respect to a condition of the person's confinement or the effect of an action or inaction by a government official on the life of the person confined must be paid directly to satisfy any outstanding restitution orders pending against the person, whether as the result of court proceedings or facility disciplinary proceedings. The remainder of any such award, after full payment of all pending restitution orders, must be forwarded to the person.

(g) Notification to victim. Prior to payment of any compensatory damages awarded to a person in connection with a civil action brought with respect to a condition of the person's confinement or the effect of an action or inaction by a government official on the life of the person confined, reasonable efforts must be made to notify the victims of the crime for which the person was confined concerning the pending payment of any such compensatory damages.

(h) Civil liability. Neither the failure to perform the requirements of this section nor compliance with this section subjects the Commissioner of Corrections or the Department of Corrections, the employees or officers of the department or the attorney representing any of them to liability in a civil action.

Sec. 3. EFFECTIVE DATE

These sections shall take effect on passage.