

Supreme Court of Vermont
Office of State Court Administrator



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TO: Senator Ann Cummings, Chair
Senate Finance Committee

FROM: Patricia Gabel, Esq., State Court Administrator

RE: S. 293 – An act relating to an exemption from attorney renewal fees

DATE: February 13, 2020

Dear Senator Cummings:

I am writing on behalf of the Judicial Branch to express concerns about the provisions of S. 293, which proposes to create a legislative exemption to attorney licensing fees established under the Supreme Court of Vermont’s constitutional authority to regulate the licensing of attorneys at law in Vermont.

Vermont's Constitution provides that “[t]he Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the others.” Vt. Const. Ch. II, § 5. Under Chapter II, § 30, the Supreme Court has “administrative control of all the courts of the state, and disciplinary authority concerning all judicial officers and attorneys at law in the State.” The Legislature has recognized the Judiciary’s responsibility for licensing of attorneys. Under 4 V.S.A. § 907, the Supreme Court is authorized by rule “to impose an annual fee on lawyers admitted to the bar of the Supreme Court as a condition of being licensed to practice law.” 4 V.S.A. § 907. Accordingly, the Court promulgated an administrative order requiring all attorneys seeking to renew a license to “[r]emit the licensing fee required by a fee schedule that has been approved by the State Court Administrator.” Supreme Court Administrative Order (“A.O.”) 41, § 2(b).

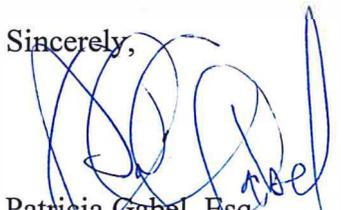
The proposed legislation is at odds with both 4 V.S.A. § 907 and A.O. 41 in that both of those provisions recognize the power of the Supreme Court (and then through delegation, the power of the State Court Administrator) to impose licensing fees; and A.O. 41 specifically requires a fee. The operative question here is whether the statutory change encroaches on the Judiciary. “The focus of a separation of powers inquiry is not whether one branch of government is exercising

certain powers that may in some way pertain to another branch, but whether the power exercised so encroaches upon another branch's power as to usurp from that branch its constitutionally defined function." In re D.L., 164 Vt. 223, 229 (1995). As another court described, the legislature has an interest in maintaining a competent bar under its police power, but may not act in a way that supersedes or detracts from the power of the courts." Washington State Bar Ass'n v. State, 890 P.2d 1047, 1051 (Wash. 1995). Here, the bill's proposed attempt to absolve certain members of the bar from the licensing requirement encroaches on the judiciary's power to such a degree that it appears unconstitutional for two main reasons:

1. The enactment is directly at odds with existing statute and the Court's own rules regarding relicensing. See id. at 1052 ("Once this court has adopted a rule concerning a matter related to the exercise of its inherent power to control the bar, the Legislature may not thereafter reverse or override the court's rule."). The existing AO requires payment of a fee and the amendment would purport to override that order.
2. The statutory change could interfere with or impede court functions. Attorney licensing fees are used to fund the Licensing and Professional Responsibility Special Fund. Maintaining this program is central to the judiciary's ability to maintain and oversee a competent bar. Although the legislation exempts only certain attorneys from paying the fee, if the Legislature had the power to exempt attorneys from paying the fee, the fund could quickly become diminished.

I appreciate the opportunity to comment on this bill, and I would be happy to appear before your Committee and answer questions from your Committee regarding the proposed legislation.

Sincerely,



Patricia Gabel, Esq.
State Court Administrator

cc: Sen. Mark A. MacDonald, Vice Chair
Gregg Mousley, Chief of Finance and Administration
Faith Brown, Committee Assistant
Sen. Michael Sirotkin
Sen Brian Champion
Sen. Becca Balint
Sen. Randy Brock
Sen Christopher A. Pearson