

JOHN F. CAMPBELL, ESQ.
EXECUTIVE DIRECTOR

PHONE: (802) 828-2891



110 State Street
Montpelier, VT
05633-6401

FAX: (802) 828-2881

STATE OF VERMONT
OFFICE OF THE EXECUTIVE DIRECTOR
DEPARTMENT OF STATE'S ATTORNEYS & SHERIFFS

February 9, 2022

Senator Jeanette K. White, Chairperson
Senator Anthony Pollina, Vice-Chairperson
Senator Kesha Ram Hinsdale, Clerk
Senator Brian Collamore
Senator Alison Clarkson

Dear Madam Chair and Committee Members,

I have just learned that your committee has taken up S.171 for consideration. Unfortunately, the Department of States Attorneys and Sheriffs has not been asked to testify on this bill that will seriously impact many of our employees. I respectfully request that you consider this letter as testimony and understand our concerns.

As I am sure the committee knows, the Vermont Constitution states that the Vermont Supreme Court “shall have administrative control of all the courts of the state, **and disciplinary authority concerning all judicial officers and attorneys at law in the State.**” VT CONST. Ch. II, § 30 (emphasis added). This section clearly establishes the principle that the State’s Supreme Court has sole authority for establishing and effectuating disciplinary actions of judicial officers and attorneys.

In its current form, S.171 would create a significant conflict between the constitutionally vested authority and obligation of the Vermont Supreme Court vis-a-vis its Code of Professional Responsibility and the statutory requirements and prohibitions established in this bill. Vermont’s Code of Professional Responsibility (VCPR) is one of the more progressive codes in the country and is continuously reviewed for changes that may be necessary.

The “conflict-of-interest” issue, as addressed by the VCPR, is considered to be a model policy in our country’s legal community. It is a subject drilled into every law student and attorney who is licensed to practice in our state. The conflict-of-interest language found in S.171 is inconsistent with our model rules and likely result in unintended consequences when identifying actual conflicts of interest. The criminal justice sector of the bar is already facing a shortage of attorneys to handle the prosecution and defense of ever-growing caseloads. S.171 has the real potential of exacerbating that problem by increasing the number of attorney recusals for mere appearances of conflict rather than actual conflicts.

Senate Government Operations Committee
February 9, 2022
Page Two

Further, the mechanics of recusal as set forth in S.171 may place the attorney in jeopardy of violating VRCP as they relate to the disclosure of information, thereby subjecting her to discipline by the Professional Responsibility Board and other civil remedies.

Finally, a major concern has to deal with the prohibition of employment by attorneys who have left government service; a topic addressed in the VRCP. This section would specifically relate to the women and men who serve as our State's Attorneys (SA's) and Deputy State's Attorneys (DSA's). Working in the public sector is their first post-graduate job for many law school graduates. Our DSA's gain experience during their tenure with us, which assists them in moving to work in the higher-paying private sector, usually in the criminal defense field.

S.171 would prohibit that ability for at least a year, which could have serious financial consequences for the young attorney with significant student debt. I believe this restriction is unfair, without justification, and violates their constitutional rights.

I would urge and respectfully request that the committee re-work this bill and consider these matters, and exempt attorneys from the bill. A similar exemption already exists for judicial officers, which like attorneys, are governed by a separate code of ethics (the Vermont Code of Judicial Conduct). I would be happy to answer any questions the committee has regarding this legislation. Thank you for your consideration of this testimony.

Sincerely,
//John//
John F. Campbell

JFC/bms
cc: Gail Carrigan