

Members of the Joint Committee:

Thank you for the opportunity to speak with you this evening. I regret that I cannot join you in person, which would have been my preference had I not moved out of state last fall.

My name is Kyle Clauss. I would like to share my concerns about Judge David Barra's retention, and respectfully ask the Joint Committee to recommend that he not be retained. I must note before I continue that the views I express today are my own and not those of my current or former employers.

I am an attorney licensed to practice in Vermont. My license number is 6764. I worked as a Staff Attorney for Legal Services Vermont from October 2023 until November 2025. I represented low-income Vermonters in eviction cases. My former colleagues at LSV and Vermont Legal Aid are easily the most brilliant, compassionate team of attorneys I ever had the pleasure of working with. I took enormous pride in our work.

Shortly after Judge Barra cycled into Addison County, we observed his palpable antipathy to tenants. In my experience, Judge Barra has not treated these Vermonters with the respect and dignity they deserve. The experience of appearing before Judge Barra left at least one of my clients with their confidence in our Judiciary's capacity to vindicate their rights profoundly shaken—perhaps irrevocably.

Before the agency's budget crunch last fall, LSV operated "rent escrow clinics" in five counties, including Addison. Several LSV attorneys would be present in the courthouse and available if an eligible tenant wanted limited representation for their rent escrow hearing. When both parties are present, rent escrow hearings are rarely, if ever, held at their scheduled time; judges encourage the parties to continue talking (within reason, of course) in hope that they might stipulate to either a global resolution or a rent escrow order. The clinics were an invaluable resource that could steer landlord and tenant toward a mutually beneficial outcome. For this reason, Chief Justice Reiber and many Superior Court judges were among the clinics' admirers.

In contrast, it was far from assured that Judge Barra would permit LSV attorneys adequate time to speak with their clients and discuss potential resolution. Before a rent escrow hearing in Addison County, one of my former colleagues, who was appearing remotely, tried to speak with her client, who had appeared in the courtroom and did not have a cell phone. Court staff did not appear aware that the courthouse had a telephone that the tenant could use, so my former colleague and her client were made to use the courtroom's teleconferencing capabilities instead. She was unable to have a complete, confidential conversation with her client because Judge Barra returned to the bench and would not provide additional time to converse.

During another rent escrow hearing in Addison County, my client testified at length about the downright appalling conditions in their home caused by the landlord's breach of the warranty of habitability. Notwithstanding, Judge Barra ordered their rent paid into court for premises that were arguably condemnable.

In a Bennington case, a different, self-represented tenant filed a motion to continue their rent escrow hearing in the form of an unsigned letter, with the landlord's attorney, copied. The tenant explained that she had medical appointments at Massachusetts General Hospital in Boston, scheduled months earlier and related to her ongoing and unavoidable health concerns. She explained that she was making the request in good faith and without intent to delay the proceedings unnecessarily.

Judge Barra denied this tenant's request because her motion did not substantially conform with the Court Rules.

Most concerningly, Judge Barra departed from common procedure in rent escrow hearings and applied a novel interpretation of the rent escrow statute, 12 V.S.A. § 4853a, to preclude tenants from presenting evidence at the hearing if they did not file a memorandum in opposition in advance and request an evidentiary hearing therein.

In my two years representing tenants in eviction cases, I never encountered a client who was independently aware of the memorandum-in-opposition requirement, nor another judge who prevented them from presenting evidence in what is often the tenant's only court appearance before losing possession of their home. I have studied the rent escrow statute and wrote a forthcoming article for the *Vermont Law Review* on the dangers posed to tenants' constitutional rights by a conventional application. The danger posed by Judge Barra's anomalous reading, which renders the hearing all but illusory and the tenant a mere stage prop, is even greater.

When LSV made the painful decision to withdraw from Addison County due to its budget shortfall, my stomach sank at the prospect of self-represented tenants appearing before Judge Barra without my former colleagues' assistance or bearing witness.

Returning to the Addison County case involving my client in substandard housing, hearings on our repeated emergency motions for injunctive relief to restore the basic necessities of life, supported by affidavits and scores of photographs, were not treated with the urgency they warranted.

In response to the third such motion in October 2024, in which my client stated that their family lacked heat as winter fast approached and feared the imminent structural failure of the unit's floors due to unmitigated water damage, Judge Barra waited four days before issuing an order that appeared to ignore our request for a temporary restraining order, and set the matter for a hearing. At this hearing, the landlord appeared to perjure himself during cross-examination. When I pressed the landlord further in order to bring the falsity of his testimony into starker relief, Judge Barra abruptly continued the hearing to another day.

I will never forget how I felt on that long drive back to Burlington from Middlebury, empty-handed, with no order restoring heat to my client's home. I imagine my client felt even worse as the temperatures dropped that night.

As an officer of the court, I feel dutybound to bring the foregoing concerns to the Joint Committee, so that the full promise of Article 4 of the Vermont Constitution may be realized; that “every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; conformably to the laws.”

It is in this spirit that I respectfully urge this Joint Committee to recommend against Judge Barra’s retention.

Thank you.