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TESTIMONY OF JAN VANTASSEL, ESQ.
JUDICIARY COMMITTEE
March 17, 2006

RE: Raised Bill 5598 An Act Concerning Administration of the Courts of Probate

Good afternoon. My name is Jan VanTassel, and I am the Executive Director of the Connecticut Legal Rights Project, a statewide non profit agency which provides free legal assistance to low income persons with psychiatric disabilities. I am here today to express CLRP's qualified support for HB 5598, and to urge this committee to amend and strengthen this legislation.

As you would expect CLRP has clients throughout the state who have been subject to hearings in the Probate Court system, and despite the efforts and good intentions of the individuals involved in this system, it is not consistently dispensing justice to our clients. For this reason, we strongly support the provisions in this bill which would give the Office of Probate Court Administration more authority to establish and enforce court policies and procedures.

Similarly, we also support the creation of a Probate Court Review Panel to review complaints alleging that the business of a Probate Court is not being conducted properly. I would also suggest that the committee consider including on this panel at least one person familiar with the Probate system who is not directly involved in its operations or proceedings.

In addition, we believe it is critical that the legislation be further amended to protect the rights of individuals that CLRP represents.

* While we respect the knowledge and abilities of lay judges, we agree with those who have urged the enactment of legislation that would mandate that **future candidates for probate judgeships must be attorneys admitted to practice law in the state.**

* With the best of intentions, the features widely regarded as the advantages of probate court - accessibility, informal setting, user-friendliness - actually raise serious due process issues.

We feel strongly that there should be limits on the scope of issues that non-lawyer judges are permitted to handle. Specifically, **proceedings concerning a potential deprivation of liberty, such as civil commitment, conservatorship, guardianship, must be presided over by an attorney judge.** In testimony before the Committee last year, experts expressed doubt as to whether having non-lawyer judges preside over such cases could withstand constitutional scrutiny under the Due Process clause of the U.S. Constitution. Indeed, there has been litigation on just this issue in other jurisdictions, and numerous courts have held that the use of non-lawyer judges where liberty is at stake violates the right to due process of law. It has also been argued that such a system violates the right to counsel.

* Under existing law, matters concerning juveniles may be transferred to Superior Court. We urge you to consider legislation that would give adults rights similar to those now accorded juveniles: **adults facing deprivation of liberty should be able to have their cases transferred to the Superior Court.** Recent case law lends strong support to such a provision. In a decision handed down on December 27, 2005, the State Supreme Court unanimously held "there is no difference in the court's duty to safeguard the interests of a

minor and the interests of a conserved person.¹”

What is often overlooked by those focusing on estates and trusts and fees, is that our probate courts are very often the court of last resort for litigants facing deprivations of liberty. The probate courts hear hundreds if not thousands of cases annually concerning confinement of persons with psychiatric disabilities, concerning termination or refusal of medical treatment of individuals under conservatorship (these may be applications concerning the termination of life-saving treatment or a hospital’s application to allow for treatment over the objection of a person alleged to have a psychiatric disability). Civil commitment matters almost invariably moot out with no opportunity for appeal, because the average length of stay is so short.² Most probate court orders authorizing conservators to consent to treatment are limited to 120 days – a period of time too brief to allow for appeal. A statute allowing for transfer of these matters to Superior Court would, for the first time in Connecticut, afford many litigants who face the loss of liberty a hearing before a court of record with ability to have an appeal heard by a higher court. Unlike the situation with probate court trials, superior court cases may be addressed on appeal even though technically moot when certain conditions are met.³

* To assure professionalism and avoid ethical issues and potential conflicts, probate judgeships should be full time positions. The current system, under which probate judges continue the private practice of law while their fellow attorneys and colleagues serve as attorneys, administrators, and conservators in probate proceedings, undermines the office and the public perception of judicial independence and impartiality. We agree with arguments made eloquently before this committee in prior hearings as well with numerous statements and position papers on the issue around the country. Mandating that judgeships be full time will enhance the reputation of and public confidence in the probate courts.

In closing, I want to emphasize the CLRP does not support the creation of specialized mental health courts or establishing panels of judges with “special expertise” in disability matters.

While we recognize that this may be viewed as a compromise measure to protect our clients’ rights, we are adamantly opposed to this sort of segregated system.

CLRP would be very interested in participating in any group that convenes to consider the development of any final proposals.

Thank you.

¹ *Lesnewski v. Redvers*, (Conn., No. SC 17377, December 27, 2005), at p. 10.

² Connecticut’s average length of stay for mental illness was 8.1 days compared to the national average of 7.1 days. (DeFrances CJ. Hall MJ. 2002 National Hospital Discharge Survey. Advance data from vital and health statistics; no. 342. Hyattsville, MD: National Center for Health Statistics. 2004.)

³ See *Loisel v. Rowe*, 233 Conn. 382 (1995) concerning the “capable of repetition, yet evading review” exception to the mootness doctrine.