WRITTEN COMMENTS BY THE HONORABLE RUSSELL A. KIMES, JR. TO THE JUDICIARY COMMITTEE MARCH 17, 2006

Senator MacDonald, Representative Lawlor, members of the Committee. Thank you for the opportunity to present written testimony on the two proposed Probate Bills 5598 and 431.

I am the judge of the Probate Court for the District of New Canaan. I write to you to question the intent of Raised Bill 5598 and to oppose two sections of Raised Bill 431.

This year your committee has introduced two probate court bills that are unrelated to the Legislative Program Review and Investigations Committee investigation, report and recommendations. As has been the case for several years, legislation has been proposed without any input from the Probate Assembly and this year the Probate Court Administrator has publicly announced that he would propose no legislation this year. One must ask where does the impetus for your bills come from?

RAISED BILL 5598

The bill contains 13 sections:

The first two sections and section 7 would require all courts be opened 20 hours a week with a staff determined by the Probate Court Administrator. This requirement will be impossible in Hampton where the Town Hall (and therefore the Probate Court) is only opened two days a week from 9 am to 4 pm. This first section illustrates how ridiculous this bill is. To think that an administrator sitting in West Hartford and who answers only to the appointed Chief Justice is so omniscient that he can determine the manning levels for 120 courts, determine the compensation, hire and fire each and every Probate Court employee in each and every Probate Court **without any of the safeguards normally associated with hiring and firing state employees** is frankly **outrageous**.

The fourth and fifth sections would eviscerate the existing Council on Probate Judicial Conduct and replace it with a "Star Chamber" panel of three judges who would be **the final appeal of any Administrator conduct**. It would give the Administrator the power to reassign cases, cite in other judges and fine the elected probate Judges all without any due process considerations.

Section 8 would expand the Administrator's powers to establish regulations **without complying with Chapter 54 of the Statutes, the Administrative Procedures Act**. You may recall that this committee questioned this proposal to

do away with public input and the safeguards that the review of administrative regulations by the legislature's Regulations Review Committee gives, but the proposal is back again this year. You have repeatedly rejected it each and every time **and I urge you to reject it again**.

Section 6 and 9 through 12 would solidify the Administrator's carte blanche authority to write **all** the rules again **with no accountability to the Legislature**.

While the final section, section 13 may have some merit in dealing with the "citing in" of replacement judges when the sitting judge is ill, absent or disqualified due to conflict of interest, it is currently being handled on an informal basis and to my knowledge no administrative efforts have been made to remedy the burden on the Office of the Probate Court Administrator.

BOTTOM LINE: This bill is not well thought out. It would give sweeping powers to the appointed Probate Court Administrator who would is not accountable to the legislature. It was not proposed or recommended by anyone in the Probate system. The Legislative Program Review and Investigations Committee bill is designed to provide for far greater accountability and orderly development. **5598 should be defeated**.

RAISED BILL 431

This bill consists of four sections:

The first would practically assure retirement benefits to anyone working in the many Probate Courts if that employee or judge is employed through 2010 and their courts are merged with another district. There is no provision for any required contribution from the employees receiving this windfall. One can only speculate on what the cost of this "golden parachute" could be. **Adoption of this section should be postponed until the true cost of this proposal is known.**

The second section would modify the probate fees statute to eliminate out-of-state real property, life insurance proceeds, tangible personal property and the value of real property to the extent it is encumbered by a mortgage. The Probate Assembly did endorse a portion of these proposed modifications. They did not endorse excluding tangible personal property (cars, art works, jewelry) located out of Connecticut which have traditionally been used as a basis for calculating fees. It also should be noted that life insurance has always been the basis for calculations in all estates that were large enough to be subject to the Federal Estate Tax. **I would remove the language dealing with tangible personal property and leave exclusion of the life insurance, the mortgage indebtedness and out of state real estate.**

The second section also would remove a charge that was instituted years ago to pick up estates that paid no probate fees but used the courts to clear title to jointly owned real estate. The judges have sought guidance from the Administrator's Office on whether or not we should continue to collect this additional charge but have received no guidance. **It currently can result in double charging and the law should be changed**.

The third and fourth sections deal with jurisdiction of probate courts for conservator proceedings for persons hospitalized in the district. It has been the practice in my court to find jurisdiction for persons hospitalized in our district as residents of the hospital, albeit only for the length of their stay so there would be no practical effect if this is adopted.

BOTTOM LINE: This bill also contains provisions that are not well thought out. The cost of the golden parachute is unknown, the modifications of the fee statute other than the fee on estates under $600,000 are too broad and finally the final section is unneeded. **431 should be modified accordingly**.

Respectfully submitted

Russell A. Kimes, Jr.

New Canaan