



STATE OF CONNECTICUT
OFFICE OF THE
PROBATE COURT ADMINISTRATOR

JUDGE JAMES J. LAWLOR
ADMINISTRATOR
ATTORNEY THOMAS E. GAFFEY
CHIEF COUNSEL
HELEN B. BENNETT
ATTORNEY
DEBRA COHEN
ATTORNEY

186 NEWINGTON ROAD
WEST HARTFORD, CT 06110
TEL (860) 231-2442
FAX (860) 231-1055

To: Senate Co-Chair Andrew McDonald
House Co-Chair Michael Lawlor
Senate Ranking Member John Kissel
House Ranking Member Arthur O'Neill
Honorable Members of the Judiciary Committee

From: Judge James J. Lawlor
Probate Court Administrator

Re: CB 6828 An Act Concerning the Recording of Probate Court Proceedings

Date: February 16, 2007

In general, probate proceedings are conducted without a "record", in the sense that there is no transcript of what is said by the court and the parties in the course of the hearings. The record of the court is the documentation of the proceedings, that is, the applications filed, the orders of notice issued by the court and the decrees of the court. Any appeal from a probate decree in such a case is *de novo*: the Superior Court on appeal hears the matter anew without reference to the decision of the Probate Court.

Section 51-72 provides an alternative to this process. If the parties so agree in writing, a stenographer may be appointed and sworn by the court to take an official transcript of the proceedings. In that event §51-73 provides that the transcript becomes the record of the court in that matter, and any appeal is on the record and not a trial *de novo*. This procedure has been available for many years, but is very rarely utilized.

The proposed bill would do two things. First, by changing the word "may" in the existing statute to "shall," it would require the court to appoint the stenographer as agreed by the parties. The parties having agreed, there seems no valid reason for the court to decline their request. We support the bill insofar as it makes the process mandatory when all parties agree.

The second proposed change relates to the payment of the stenographer. The existing statute provides for payment "by the parties in such proportion as the judge of the court decides." This mechanism leaves it to the discretion of the court to determine, on an equitable basis, the allocation of those fees.

The proposed bill would remove that discretion from the judge and place the cost of the stenographer on the "party that requested the hearing or other proceeding for which such record is made." It should be noted that this refers not to the party requesting the stenographer, but to the one initiating the proceeding resulting in the hearing to be transcribed. Whether it is fair and appropriate to place the burden on this same party in every case seems questionable. It should be recalled that the effect of this process involves more than merely the provision of a transcript. It changes the character of the proceeding, and in so doing affects the interests of all parties.

Because the agreement of all parties is required, the effect of this change may be to reduce the use of this already little-used procedure. If the petitioning party will be responsible for payment of the stenographer, he or she will not enter into the agreement unless he or she is willing to shoulder that cost. Without such agreement no stenographer can be appointed under this statute.

Our concern is that the proposed change is overly restrictive and would serve only to prevent the agreement required under the statute. We believe that the interests of the parties are better served by allowing the court to allocate the costs based upon the equities of the particular case. In the alternative we would support a change permitting the parties, as part of their agreement, to determine the allocation of this expense.