STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATOR

JUDGE JAMES J. LAWLOR
ADMINISTRATOR
ATTORNEY THOMAS E. GAFFEY
CHIEF COUNSEL
HELEN B. BENNET
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: RB 1272 An Act Concerning Administration of the Courts of Probate and the Duties of the Probate Court Administrator

Date: March 30, 2007

In recent years, I have appeared before this committee on numerous occasions in support of various efforts to improve our Probate Court system. Ours is a unique system with many positive attributes that should be preserved and protected. The informality of proceedings allows people to feel comfortable in our courts, even after suffering a traumatic event, such as the death of a loved one. To make it easier for those who are elderly, informed or mentally ill to participate in court proceedings, many probate hearings are held, not in courtrooms, but in hospitals, nursing homes or even private homes. In response to the ever-increasing number of children's matters, the Regional Children's Probate Courts have been developed. They have received national recognition for innovation. They have proven to be effective in addressing the issues facing children, and cost effective for the state.

At the same time, however, the Probate Court system faces urgent problems that must be addressed and resolved quickly. The courts presently face a financial crisis that threatens to cripple the system. Last year the Probate Administration Fund lost $3.2 million. We are projected to lose an even greater amount this year. While some have expressed doubt at such dire predictions, an outside auditor and the staff of the Legislative Program Review and Investigations Committee have independently examined our analysis and concurred.

The disparities among our 117 probate districts are staggering. They contribute to the system's financial woes and create additional problems. Thirty-seven probate courts

are open to the public less than 20 hours per week. More than 57% of the work of the entire system is handled by only 20% of the courts. Hiring and compensation of court staff is left to the individual judges without standards or limitations.

Districts serving more affluent communities produce much greater revenue, enabling them to hire more staff and pay higher wages. At the same time, larger districts struggle with problems common to our cities, such as poverty, substance abuse and mental illness. Their dockets contain large numbers of difficult social service cases that require a disproportionate amount of work but produce little revenue. The income of such courts is often insufficient to support the staff required to handle their huge workloads.

The statutory mandate given to the Probate Court Administrator requires him to see to "the efficient operation of courts of probate and for the expeditious dispatch and proper conduct of the business of those courts". Nonetheless, the statutes provide the Administrator with inadequate tools to accomplish these ends. In fact, the primary remedy available involves the submission of an offending judge to the Council on Probate Judicial Conduct. However, the Council is a disciplinary body, charged with investigating serious ethical violations and imposing disciplinary measures as appropriate. It is not well suited to identifying and correcting administrative deficiencies, such as the failure to properly and timely file statutorily mandated reports, the payment of assessments or inappropriate hiring practices. The Council is not in a position to oversee the day-to-day operations of the courts or to see, for example, that a judge is available to meet the needs of his or her court and community, or provide competent, well-trained and responsive staff. Such issues are better addressed by the Probate Court Administrator, whose statutory directive it is to see to the expeditious dispatch and proper conduct of the business of the courts. However, in order to carry out this mandate, the Administrator must be armed with additional and sufficient authority, accompanied by appropriate safeguards. The lack of such authority on the part of Administrator was recognized in the Legislative Program Review and Investigations Committee's Report.

Raised Bill 1272 would begin to address some of the problems facing our system.

Section one is a technical change regarding preservation of court records. Towns currently pay for the cost of microfilming all the courts records. This is a cost to the towns of some $250,000 annually. However, the statue does not contemplate the latest digital and electronic document storage devices that we have begun to use. Probate Administration provides the necessary hardware and software without cost to the towns. The use of these new technologies is expected to reduce the costs to the towns by more than 60%. In addition, many courts are running out of vault space. Providing additional vault space is an extremely expensive proposition. The digital storage of court records will, in many cases, relieve the need for additional vault space.

Section two of the bill would alter the process for establishing regulations governing Probate Court operations. Currently, and inexplicably, some such regulations must be established in accordance with the Uniform Administrative Procedures Act, while others are not. However, unlike most regulations under the UAPA, Probate Court regulations do not apply to the public, only to the internal operations of the courts. This bill would

simplify the process for some regulations, and would establish a standard process for the adoption of all such regulations.

This section would allow the Probate Court Administrator or the Executive Committee of the Probate Assembly to recommend new regulations for the system, both of which must approve the proposed regulation. In the absence of such approval, a panel of Superior Court Judges would determine if the proposed regulation is appropriate.

Section three would establish the Probate Court Review Panel, which will review enforcement actions that the Probate Court Administrator initiates. The panel will include the President-Judge of the Probate Assembly, a probate judge appointed by the Probate Court Administrator, and an individual appointed by the Chief Court Administrator.

Section four would create procedures for enforcing the regulations, statutes and procedures of the probate courts. It empowers the Probate Court Administrator to reassign a case, cite in another judge, and require the probate judge in violation to pay any costs associated with enforcing a regulation. At the request of the judges involved, any oft he Administrator's actions would be referred to the Probate Court Review Panel for review. After a hearing, the Panel may affirm, dismiss or modify the Administrator's decision.

Sections five and six would allow the appointment of special assignment probate judges, having demonstrated expertise in certain areas of probate law. They would be appointed by the Chief Justice from among sitting and retired judges of probate and authorized to hear matters that require specialized attention.

Section seven of the bill would establish minimum standards in the operation of the courts of probate. That section requires every court to be open at least 4 hours per day, five days per week to provide the public with greater accessibility. The Probate Assembly has endorsed this provision.

The bill also requires that a clerk be present during all hours of court operation. The Legislative Program Review and Investigations study recognized the problems inherent with judges having direct communications with those who use the courts, outside of a duly noticed hearing. Similarly, attorneys have shared their concerns about ex parte communications between judges and the parties appearing before the court. If, during regularly scheduled hours of court operation, the judge alone is present in the court, he or she must necessarily engage in communications with parties that will thereafter appear before the judge. The presence of a clerk would serve as a buffer between the judge and the public, preventing inappropriate communications. It would also improve the court's professionalism.

Although this bill does not address all the issues presently facing the Probate Court system, it is a necessary first step. I appreciate the Committee's careful consideration of this bill, and urge your joint favorable action on it.