

REMARKS OF THE HONORABLE RUSSELL A KIMES JR  
JUDGE OF PROBATE - DISTRICT OF NEW CANAAN  
JUDICIARY COMMITTEE  
FEBRUARY 26, 2007

I am Russell A. Kimes, Jr., Judge of Probate for the District of New Canaan. I also serve on the Board of Directors of the Connecticut Probate Judges Association for Local Courts representing 36 Connecticut probate judges.

The Connecticut Probate Judges Association supports Raised Bill 7150 - AAC Funding of Regional Children's Probate Courts. Last year, the cost of the operation of the three Regional Probate Courts far exceeded the original cost estimates of the Probate Court Administrator<sup>i</sup> and when combined with the sudden increase in the cost of indigent cases<sup>ii</sup> resulted in the second reduction in the balance of the Probate Court Administration Fund in the past 25 years. The reduction was \$3.2 million. [The first reduction occurred in 2002-2003 when the General Assembly took \$15 million out of the fund to help balance the General Fund budget.] The Probate Fund is the non-appropriated, special revenue fund established in the 1960's to provide solvency for the Judge's retirement fund and pay for the operation of the Administrator's Office. Through the years since the Fund was established, it has been charged with paying the expenses associated with indigent cases and the health insurance benefits for active and retired court employees.

The Regional Court authorizing statute, 45a-8a, as modified by Raised Bill 7150, still contains several provisions that we believe are unconstitutional. And we believe that you should address these illegal provisions in your final version of this bill:

The first illegal provision is the delegation by the General Assembly to the Probate Court Administrator of the power and responsibility to designate the towns in the Regional Court's district or region. This power has always been a power of the Legislature, and in the original law, the ten towns of the first region were spelled out by the law. Unfortunately when the law was amended in 2005 the makeup of the regions was left to the Probate Court Administrator with no requirements for any approvals by the General Assembly. There were no guidelines and no requirements that the Administrator adopt any regulations. Clearly this was an unlawful delegation of the legislature's authority to determine the towns within a court's district to an appointed bureaucrat in the Judicial Department.

The second provision involving an illegal delegation of legislative authority was the delegation to the Administrator of the responsibility to set salaries for the Administrative Judges in the regional courts. The power and responsibility of the Legislature to set judges' salaries has been recognized in a Connecticut

Supreme Court decision<sup>iii</sup> and this delegation of authority without any guidelines or requirements for regulations is also fatally flawed.

Finally, 7150 would remove the requirement that the Administrator submit a report to this committee on the effectiveness of the regional children's courts on or before January 1, 2007. Albeit that the January 1 deadline has passed and the Administrator has not submitted the required report, just as he failed to submit the reports required in 2005 by 46b-150h and in 2004 by 45a-107a, but it is one thing for you to ignore this failure, and another thing to remove the direction and by implication condone his defiance of your authority.

Bottom line: We urge you to modify and approve the bill. We would also be willing to work with your staff on any such modifications if you felt that would be helpful.

---

<sup>i</sup> On March 14, 2005, before the Judiciary Committee, Administrator Lawlor testified that the cost of the New Haven regional children's court is "\$170,000. My estimate is that when we get 13 courts online, one in every DCF district, that our total cost will be less than \$2 million per year." See *March 14, 2005 transcript of public hearing before Judiciary committee at p. 6-7*. The three existing Regional Children's Probate Courts cost over one million and the spending will only continue to grow as more courts are established. (See also the letter from Chief Administrative Judge Pellegrino to James Lawlor attached.)

<sup>ii</sup> Rising from 1.0 million in 01-02 fiscal year to over 4.0 million in 05-06.

<sup>iii</sup> "The General Assembly has, by statute, fixed probate fees, as it has the salaries of the judges and the fees of other courts, since long before the constitution of 1818. See *Conn. Acts and Laws, 1796, pp. 177, 178; Statutes of Connecticut (Rev. of 1821), tit. 83, p. 388 §§1-5; Statutes of Connecticut (Rev. of 1849), tit. 46, p. 563 §2, p. 569 §18; General Statutes (Rev. of 1958) §45-17*. Section 19 purports to transfer the power to fix court fees or costs, subject to the foregoing basic limitations, from the General Assembly to the probate court administrator. The fixing of court fees is clearly a legislative, rather than a judicial or even an administrative, function." *Adams v. Rubinow*, 157 Conn. 150, 174-175, 251 A.2d 49, 64 - 65 (Conn. 1968).



STATE OF CONNECTICUT  
JUDICIAL BRANCH

CHAMBERS OF  
JOSEPH H. PELLEGRINO, JUDGE  
CHIEF COURT ADMINISTRATOR

231 CAPITOL AVENUE  
HARTFORD, CT 06106

January 31, 2006

The Honorable James J. Lawlor  
Probate Court Administrator  
186 Newington Road  
West Hartford, CT 06110

Dear Judge Lawlor:

Thank you for taking the time to meet with me yesterday to discuss your request for revisions to the budget of the Office of the Probate Court Administrator for the current fiscal year. I remain very concerned about the solvency of the Probate Administration Fund, particularly with respect to the burgeoning costs of operating Regional Children's Probate Courts.

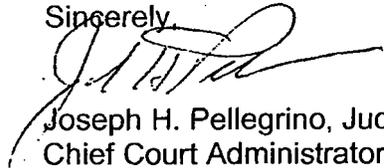
I have been concerned since its inception that the significant costs of operating the original Pilot Children's Court in New Haven would result in a substantial drain on the balance of the Fund. The data you have recently provided to me strongly supports that contention. The New Haven pilot has grown from an initial operating cost estimate of \$100,000 to a revision to \$170,000 and now to a requested increase to \$470,000. By all accounts the cost of this project will continue to escalate. I am not questioning the effectiveness of the program, and in fact all the studies I have seen indicate that the program is working well, but there is no stable funding source earmarked to continue this program in the future, particularly at this funding level.

The legislatively authorized expansion of the Children's Court to six additional sites can only result in a quicker depletion of the Fund. You have asked me to approve the expenditure of over \$400,000 to cover the start-up costs of these additional sites through the end of the fiscal year, and you acknowledge that the full year costs of the new courts will be substantially higher next year. You estimate that the full operating costs of all seven projects could approach \$5 million per year. At that pace, the Probate Administration Fund will be exhausted in two to three years.

Because you have been given legislative authorization to initiate these programs, I believe I have an obligation to approve your requested budget

revisions. However, I do so with the following caveat. I strongly encourage you to prepare a comprehensive assessment of the annualized costs of operating all the Regional Courts and to immediately share that information with the Executive and Legislative Branches and begin discussions on the permanent funding of the programs. Otherwise there is an almost certainty that the Regional Courts would cease to operate, which would ill serve those who come before the Court and those who have worked so hard to make the program successful.

Sincerely,



Joseph H. Pellegrino, Judge  
Chief Court Administrator

cc: Hon. William J. Sullivan, Chief Justice  
Hon. William J. Lavery, Chief Court Administrator designee  
Honorable Michael Mack, Deputy Chief Court Administrator  
Thomas A. Siconolfi, Executive Director