Hon. Russell A Kunce Jr.

Senator MacDonald, Representative Lawlor and distinguished members of the Judiciary Committee.

I am unable to attend the March 30th Public Hearing due to a previous travel commitment to attend the National College of Probate Judges Conference in Virginia on April 1-3, 2007. Please accept my sincere regrets for not personally delivering these thoughts.

I am writing in support of bills 6821 and 1439 and in opposition to bills 1272 and 1453.

Of all the matters on today's agenda, there are three that must be addressed:

Program Review Committee Recommendations - Proposed Bill 6821

By far the most important legislative proposal is Proposed Bill 6821, AAC Adopting Certain Recommendations of the Legislative Program Review and Investigations Committee concerning the Connecticut Probate Court System. And yet, your committee has totally ignored it.

Two years ago the Program Review Committee undertook an in-depth review of the probate court system. That committee adopted its final report on January 19, 2006. A bill [5391] was introduced that embodied the recommendations of the committee. That bill was referred to the Judiciary Committee on March 9, 2006. It appeared as bill number 58 [the last item] on the committee agenda on the last day to JF bills, March 27, 2006. It never left your committee.

Now it is a year later and you are 2 weeks away from this years' JF deadline and the Program Review Committee bill has not even been drafted. To its credit, the Probate Assembly has in good faith pressed ahead with all of the Program Review recommendations that directly involved the Probate Assembly. The Probate Court Administrator, on the other hand, has generally **ignored** the recommendations and offered his own legislation that would make him more powerful and less accountable.

With two weeks remaining it is clear that any rush drafting and passage without any public input would be worse than waiting another year. But in the future, **your committee must take a leadership role to see that these recommendations are adopted. Your committee is totally responsible for this failure.**

Increasing the Probate Court Administrator's Powers - Proposed Bill 1272

Anyone familiar with the current Probate Court Administrator, James J. Lawlor, knows that he has totally politicized his office and Connecticut's probate courts and continues to ignore statutory direction whenever it suits his agenda. Ask any member of the General Assembly, many of whom attended the Administrator's "celebrations" in Phoenix, Arizona, Philadelphia, Pennsylvania, New Haven, Meriden, or New London, and they will tell you Administrator Lawlor is nothing if he is not a political animal.

Administrator Lawlor's Proposed Bill 1272 AAC Administration of the Courts of Probate and the Duties of the Probate Court Administrator, is, in a word, **unconstitutional**. In 1967, the Connecticut Supreme Court held in the case of *Adams v. Rubinow*[i], that the Legislature cannot delegate its responsibilities to an appointed bureaucrat in the Judicial Department. Now, 40 years later, the Administrator is trying to do it again.

Just a few examples of the unconstitutional provisions in this bill:

1. Eliminate any accountability to the General Assembly by removing the requirement that the Administrator comply with the Administrative Procedures Act.
2. Give the Administrator the power to appoint non-judges to hear cases in place of duly elected judges.
3. Give the Administrator the power to determine judges' compensation.
4. Remove the requirement that the Administrator report inadequate court facilities to the General Assembly and give the Administrator the power to punish judges if a town fails to provide appropriate court facilities.
5. Give the Administrator the power to micro-manage all 117 local probate courts
6. Give the Administrator the power to force a court to open even when the town hall is closed.
7. Give the Administrator the power to force the reassignment or transfer of cases from an errant judge.

The Administrator does not need any more power. The anecdotal examples he cites as justification for a need to expand his power are, without exception, adequately addressed in current statutes. The Administrator clearly does not want to be accountable to anyone but himself.

This proposed bill is **bad legislation and unconstitutional**. It should be killed.

Conservator Legislation – Proposed Bill 1439 and Proposed Bill 1453

There are two bills that address the rights of those people who are unfortunately incapable of managing their own affairs.

As a direct result of the efforts of the elder law unit of the Greater Hartford Legal Aid, the Connecticut Legal Rights Project Inc. in Middletown and the continual barrage of opinion columns and editorial comment by the *Hartford Courant*, much attention has been given to the elderly and otherwise infirm for whom probate courts have appointed conservators.

Legislation enacted in 2005, currently requires the probate courts limit the powers of temporary conservators to "protect the rights" of those who are incapable of caring for themselves.

This year there are two proposals that address the involuntary appointment of permanent conservators:

S.B. No. 1439, AAC Conservators and Probate Appeals:

This bill contains provisions that are intended to assure:

1. that the ward receives notice of the proceedings;
2. that the ward has competent legal counsel;
3. that evidence is presented to prove actual notice and jurisdiction;
4. that an audio recording of the proceedings be permanently preserved; and
5. that the appointment of a conservator is the "least restrictive form of intervention" (whatever that means)

The bill also extends the time to take an appeal to Superior Court from 30 to 60 days for ALL probate matters and requires that any Supreme Court hearing be held on the record (preserved in #4 above).

In support of this proposed bill, there may well be a need for minor modification of the existing statutes to tighten up the notice requirements and provide for the production of an audio record of the proceedings that can serve as a record on appeal, but the wisdom of extending the 30 appeal period is questioned.

S.B. No. 1453, AAC the Transfer of an Application for the Appointment of a Conservator to the Superior Court or other Probate Court

In contrast, 1453 is a dramatic, sweeping, potentially dangerous proposal that will give the Superior Court concurrent jurisdiction over conservator matters. This will inevitably lead to forum shopping. What possible rational can there be for allowing for a right to transfer into the Superior Court with all the attendant delay associated with Superior Court matters, or for allowing "any person" the right to apply to the Superior Court to challenge the probate court's jurisdiction?

Allowing transfer to the Superior Courts will result in increased cost, delay, and complication for matters that are extremely time sensitive. Delay in these cases is never in the best interests of the ward. Is the intent to assure competent legal representation of the incapable and infirm? Is the intent to assure full employment for attorneys? What other possible reasons could there be for requiring that a writ, summons and complaint be attached to each and every probate court application?

A great deal of testimony before your committee last year dealt with a failure by some legal counsel, appointed by the probate courts, to adequately represent the interests of these people who, for one reason or another, were incapable of handling their own affairs. This problem was not addressed last year and is not addressed in this bill. One possible solution is contained in the other bill, 1439, this would be the creation of a Panel of Attorneys qualified to represent the incapable and infirm similar to the existing panel for commitment proceedings, probable cause hearings, quarantine, and commitment of alcohol or drug-dependent individuals.

Testimony last year indicated that "the majority of the cases where DSS files petitions [for conservators] are in the Greater Hartford area" and indeed the decision in *In re Angela Robinson v. Probate Appeal Hartford*[ii] that found the appointment of two conservators illegal and invalid came out of the Hartford Probate District.

S.B. 1453 reflects an ignorance of the effectiveness and efficiency of the local probate courts and is an overreaction to the incessant barrage of selective, opinionated reporting in the press resulting from **two** unfortunate cases, one from Waterbury and one from Manchester and neither justified from what I have read in the Superior Court files. A transfer of cases to the Superior Court is not in the best interests of Connecticut's aged and infirm, and 1453 should be rejected.

Respectfully submitted,
Russell A. Kimes, Jr,.

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[i] 157 Conn. 150, 251 A.2d 49 (1968)