

**Testimony of Judge Russell A. Kimes, Jr.**

**Judiciary Committee Public Hearing**

**March 19, 2008**

**Raised Bills 696 and 698**

Senator MacDonald, Representative Lawlor, members of the Judiciary Committee. Thank you for the opportunity to present testimony on the two proposed Probate Bills, 696 and 698.

I am the judge of the Probate Court for the District of New Canaan. I question the intent of Raised Bill 696 and oppose two sections of Raised Bill 698.

As has been the case for the past several years, your committee has again introduced probate court bills proposed by the Probate Court Administrator without any meaningful input from the Probate Assembly, thereby forcing the judges, like myself, to use this forum to express our concerns.

**RAISED BILL 696**

**AAC the Courts of Probate.**

Section 3 - Accountability of the Administrator:

The third section appears to remove the requirement that the Administrator obtain any approval from the Judiciary Committee whenever he proposes regulations. As you saw first hand this past month, the current regulation approval process works poorly at best and resulted in intense, last-minute negotiations between the Administrator and the Probate Assembly resulting in an unsatisfactory resolution that is still pending.

The change proposed in this bill will remove all constraints from the Administrator. We will no longer have a government of law; we will have a government by ruling and decree from the Probate Administrator who will remain unaccountable, answering only to God. I believe that Chapter 54, the Administrative Procedures Act, should apply to all regulations adopted by the Probate Court Administrator.

Section 5 - Health Insurance Costs:

The Probate Assembly also recommended that the Judges' and Clerks' group health insurance program under section 5-259 of the General Statutes be combined with the group insurance program enjoyed by state employees and the Members of the General Assembly under the same section. The thought being that by joining the larger group, the judges and clerks would experience a reduction in premiums. The proposed bill does not address this proposal maintaining the status quo.

Additionally, perhaps a majority of the Assembly also sought funding of the cost for judges and clerks from the General Fund. Section 5 of the bill does address that proposal but says nothing about contributions from the insured and unnecessarily retains the more costly separate probate court group.

**Recommendations:** Strike section 3, concerning regulations, modify section 5 to include the Judges and clerks in the larger state employee insurance group and require compliance with Chapter 54 for all the Administrator's regulations.

**RAISED BILL 698**  
**AAC the Calculation, Reduction and Waiver of Probate Fees.**

Out-of-state real property:

Raised bill 696 contains the recommendation of the Probate Assembly that out-of-state real property be excluded from the calculation of probate fees. However, the additional changes in bill 698 were neither recommended by nor discussed with the Assembly and may be unconstitutional under the Connecticut Constitution.

In Section 1 (b) (3) there is a provision allowing "the Court of Probate" to waive "costs" required by the law if, presumably, the judge, following guidelines from the Probate Court Administrator, obtains an affidavit that the estate contains no "cash assets" and consults with the Probate Court Administrator. The "why" and "what" they are supposed to consult upon is not spelled out.

While we laud all statutory requirements that the Administrator establish written "guidelines", here the requirement may constitute an unconstitutional delegation of legislative power. In *Adams v. Rubinow* a delegation of authority to the Probate Court Administrator to set fees was struck down by the Supreme Court, so by analogy it would seem that any attempt to delegate the power to waive fees would meet with the a similar unconstitutional fate or result.

0.1% Surcharge:

Unlike bill 698, this bill perpetuates a 0.1% surcharge on estates under \$600,000 that everyone agrees is unfair. The surcharge is deleted in 1 (b) (4) but it is added in 1 (d).

**Recommendation:** Strike section 1 (b) (3), the fee waiver, beginning with the words: "...except that..." through the end of the sentence. Strike section 1 (b) (4), the surcharge, in its entirety. Strike section 1 (m), the guidelines requirement as unneeded.

**BOTTOM LINE:** Once again this year the proposed probate bills are not well thought out. The proposed bills would give the appointed Probate Court Administrator, who is not accountable to the legislature, more unconstitutional powers. These powers were not proposed or recommended by anyone in the Probate Assembly. They will result in more litigation. Just as the bill you passed last year has forced me to bring an action in the Superior Court to declare Public Act 07-184 unconstitutional, so this year's proposal will unquestionably also result in litigation.

Respectfully submitted.

**Russell A. Kimes, Jr.**