



Greater Hartford Legal Aid, Inc.

JUDICIARY COMMITTEE

February 8, 2008

Testimony of Attorney Veronica Halpine in Opposition to Proposed Probate Court Regulation
Section 27, Recording of Conservator Proceedings.

Senator McDonald, Representative Lawlor and members of the Committee:

I am an elder law attorney at Greater Hartford Legal Aid. I represent elderly clients in contested conservatorship proceedings. I am delighted with the 2007 amendment requiring probate courts to record conservatorship proceedings and believe that it will have a strong remedial effect on probate practice. As a result of that belief, I ask that you vote against section 27 of the proposed Probate Court Regulations. These are my concerns:

Probate Court Fee Waivers: the regulation requires an indigent appellant to file a fee waiver in probate court - the court that issued the offending order or decree - to cover the costs of the transcript necessary to obtain appellate review of the order. In many instances, indigent appellants would have to file fee waivers in both the superior court and the probate court. The Superior Court has a more efficient process for ruling on fee waivers and more reasonable guidelines for granting them, i.e., persons on welfare automatically qualify. Probate courts have a six month deadline for ruling on fee waiver applications. It is more likely than not that the application will not be granted within the time required to produce a transcript. Finally, and respectfully, it must be recognized that probate judges have a conflict of interest in granting fee waivers. The fees generated by the courts not only fund the running of the courts but determine the financial remuneration of the probate judge. Indigent appellants should be allowed to file a single fee waiver in the superior court that would cover the costs of the appeal. The cost can still be borne by Probate Administration.

Destruction of Recordings: Probate courts are public institutions with an obligation to safeguard evidence submitted in connection with the proceedings, including testamentary evidence. The Superior Court Records Center has stopped destroying the tapes sent by the court reporters and all tapes stored since 1994 are being preserved off site. (860) 741-3714.

Permitting probate judges to destroy the records of contested proceedings after one year, accords these proceedings the same degree of respect as the retention date for state employee desk calendars, the agendas for agency staff meetings, body logs (recording transportation of bodies to morgues), and inmate daily log sheets. See Records Retention Schedules for State Agencies at www.cslib.org/publicrecords. Lawyers are permitted to destroy most closed files after six years.

The Superior Court rules of practice assign different file retention dates that reflect not only the importance of the case decided by the court but also the "longevity" of the impact of the order. Small claims cases that were withdrawn or where the judgment has been satisfied can be destroyed after one year. Conn. Pr. Bk. § 7-10. Actions affecting "any right, title or interest in real property shall be retained for forty years in the office of the clerk", not even off site. Conn. Pr. Bk. § 7-12. The proposed regulations are silent as to the location where these recordings will be retained. Cases involving termination of parental rights are never destroyed. Conn. Pr. Bk. § 7-11.

Conservatorship cases affect parental rights and more. The low importance attributed to safeguarding evidence submitted in involuntary proceedings is, again, a sad reminder of the culture in this area of practice. There is no reason why, in a digital era, these recordings cannot be preserved economically and conveniently in perpetuity. However, if retention presents severe financial and space concerns, a compromise of forty years - the same required for proceedings affecting land and title - should be accorded proceedings involving individual liberty and property interests.

The Triggering Event: The clock should not start ticking toward the destruction of the file until the conservatorship has terminated. If the person continues under conservatorship, the evidence contained on those recordings is still pertinent. The statute of limitations on malpractice actions, for example, is 6 years.

Finally, the importance of preserving evidence cannot be understated. DNA evidence obtained from ancient files preserved by Greater Hartford Legal Aid resulted in an innocent man's release from prison.

Please take these concerns into consideration when voting on Section 27.

Section 27 Recording of Conservator Proceedings

27.1 Authority: These regulations are issued pursuant to C.G.S. §45a-77 (b)(1) as amended by P.A. 07-184, and sections 3 and 11 of P.A. 07-116

27.2 Proceedings to be recorded. Each court of probate shall cause an audio recording to be made of all hearings held under Conn. Gen. Stat. §§45a-644 through 45a-663 inclusive, which recording shall be part of the record of the court in the matter.

27.3 Transcription. (a) The court shall, in the event of an appeal, cause a transcript to be made of the recording within thirty days after service is made of the appeal.

(b) The cost of transcription shall be charged to the party who filed the appeal, provided that if such person is unable to pay and files with the court an appropriate application for waiver of fees pursuant to Conn. Gen. Stat. §45a-111 ~~52-259b~~ the court may waive the payment of such expenses, which shall be paid from the Probate Court Administration Fund.

(c) In instances in which no appeal has been filed, a transcript may be prepared and provided to any interested party upon their request and at their expense.

27.4 Retention and destruction of recordings. (a) All recordings shall be maintained until ~~one year~~ forty years after the termination of the conservatorship ~~close of all proceedings, including appeals, in the matter~~. Thereafter, such recordings may be destroyed in accordance with the rules promulgated by the Probate Court Administrator. ~~the discretion of the court.~~

(b) The court shall maintain an index of all such recordings, which shall include, where applicable, the date of destruction.

(c) All recordings shall be maintained by the court in a secure location that provides adequate protection from damage by fire, water or climatic conditions.

(d) In the event of a transfer of the file to another court in accordance with law, any recordings made under this regulation shall be transferred as part of the record of the court in the matter.

27.5 Recording equipment. (a) It shall be the responsibility of the judge to procure suitable recording equipment, capable of making an accurate and audible recording of the proceedings, and to insure proper maintenance and operation of the equipment.