

Testimony of:

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**And President of the Connecticut Probate Judges Association
for Local Courts, Inc.**

before the

Judiciary Committee

of the Connecticut General Assembly

Hearing on Bills 696 and 698

Probate Court fees and the authority of Probate

Court Administrator to issue regulations

March 19, 2008

Senator MacDonald, Representative Lawlor, members of the Committee. Thank you for the opportunity to present testimony on the two proposed Probate Bills 696 and 698. I am Joseph P. Secola, Judge of Probate for the District of Brookfield and President of the Connecticut Probate Judges Association for Local Courts, Inc., an organization of over 30 probate judges, who are committed to preserve the local court features of our probate system. I am in agreement with the written testimony of Judge Pearl and will focus my remarks on Sections 3 and 4 of Bill 696. I would note that the same reservations expressed by Judge Pearl about reducing the billing ability and hence the revenues of the probate courts, especially removing life insurance, apply equally to Bill 698, which also reduces probate court fees.

In its statement of purpose, Bill 696 states in pertinent part: [T]o: . . . (3) revise the approval process for certain regulations, (4) revise an alternate method of calculating a probate judge's compensation, . . .". Section 3 of Bill 696 attempts to dramatically change the compromise legislation of last session, which significantly expanded *Conn. Gen. Stat. § 45a-77*. Last session, the Association I represent agreed to the compromise bill Public Act 07-184 because several provisions checked the expanded authority given to the Probate Court Administrator to issue and enforce regulations. The main check was review by this Committee of any regulations proposed by the Administrator and approved by the executive committee of the probate assembly.

The present language of Section 3 overturns this external check on the Administrator by eliminating the review of this Committee for regulations issued. I have set forth last years marked up P.A. 07-184 to illustrate the major changes made to *Conn. Gen. Stat. § 45a-77*. The new proposed addition in subsection (b)(1) of Section 3 of Bill 696 is capped in 16 point.

P.A. 07-184: Sec. 502. Section 45a-77 of the general statutes is repealed and the following is

substituted in lieu thereof (*Effective July 1, 2007*):

(a) The Probate Court Administrator may attend to any matters [which] that the Probate Court Administrator [deems] considers necessary for the efficient operation of the courts of probate and for the expeditious dispatch and proper conduct of the business of [those] such courts. The Probate Court Administrator shall administer and enforce the provisions of this chapter, sections 503 to 505, inclusive, of this act and the regulations issued under this section, and shall ensure performance of the duties of judges of probate and clerks of the courts of probate in accordance with the provisions of this chapter, said sections and such regulations. The Probate Court Administrator may make recommendations to the General Assembly for legislation for the improvement of the administration of the courts of probate.

(b) (1) The Probate Court Administrator may issue and shall enforce regulations, provided such regulations are approved in accordance with [this] **SUBDIVISION (1) OF** subsection (c) of this section. Such regulations shall be binding on all courts of probate and shall concern [the auditing,] the following matters for the administration of the probate court system: (A) Auditing, accounting, statistical, billing, recording, filing and other court procedures; (B) reassignment and transfer of cases; (C) training of court personnel and continuing education programs for judges of probate and court personnel; and (D) the enforcement of the provisions of this chapter, sections 503 to 505, inclusive, of this act and the regulations issued pursuant to this section, including, but not limited to, recovery of expenses associated with any such enforcement, as permitted by such regulations.

(2) The Probate Court Administrator may adopt regulations, in accordance with chapter 54, provided such regulations are approved in accordance with [this] subsection (c) of this section. Such regulations shall be binding on all courts of probate and shall concern: [the] (A) The availability of judges; [,] (B) court facilities, [court] personnel and records; [,] (C) hours of court operation; and (D) telephone service.

[(3)] (c) (1) Either the Probate Court Administrator or the executive committee of the Connecticut Probate Assembly may propose [such] regulations authorized under subsection (b) of this section. Any regulation proposed by the Probate Court Administrator shall be submitted to the executive committee of the Connecticut Probate Assembly for approval. Any regulation proposed by the executive committee of the Connecticut Probate Assembly shall be submitted to the Probate Court Administrator for approval. If either the Probate Court Administrator or the executive committee of the Connecticut Probate Assembly fails to approve a proposed regulation, such proposed regulation may be submitted to a panel of three Superior Court judges appointed by the Chief Justice of the Supreme Court. The panel of judges, after consideration of the positions of the Probate Court Administrator and the executive committee of the Connecticut Probate Assembly, shall either approve the proposed regulation or reject the proposed regulation.

(2) Any proposed new regulation and any change in an existing regulation issued under this section on or after the effective date of this section shall be submitted to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary for approval or disapproval

in its entirety, provided, if more than one proposed new regulation or change in an existing regulation is submitted at the same time, said committee shall approve or disapprove all such proposed new regulations and changes in existing regulations together in their entirety. Unless disapproved by said committee within ninety days of the date of such submittal, each such regulation shall become effective on the date specified in such regulation, but not in any event until ninety days after promulgation.

Presently the expanded authority given to the Probate Court Administrator to issue and enforce regulations contained in subsection (b)(1) is limited "in accordance with subsection (c) of this section", which includes both (c)(1) - executive committee approval and (c) (2) Judiciary Committee review/approval. The new bill only limits the authority by reference to the executive committee approval - subsection (c)(1); this clearly allows a bypass of subsection (c)(2) - the Judiciary committee.

Building on this elimination of Judiciary Committee review of any proposed regulations, Section 4 of Bill 696 gives the Administrator the ability to reduce a judges's compensation through unchecked regulation. The Supreme Court has already opined that such a delegation is unconstitutional in *Adams v. Rubinow*.¹ Recently, the direct oversight of this Committee and a public hearing set up to review proposed regulations was essential to the compromise reached on the said regulations. Why change a process that is working.

¹ **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 ss 1-5; Statutes of Connecticut (Rev. of 1849), tit. 46, p. 563 s 2, p. 569 s 18; General Statutes (Rev. of 1958) s 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 **65 even an administrative, function. The judges of the Supreme and Superior Courts have always recognized the exclusive prerogative of the General Assembly in this field and have, in the exercise of their inherent rule-making power, carefully refrained from attempting to fix court fees. The mere fact that the fees or costs involved are to be charged by a lower (probate) court cannot transform a legislative function into a judicial one.

It has been already pointed out that the separation of powers provision of our constitution forbids the imposition upon a judge of the Superior Court of clearly nonjudicial powers or duties. Yet, s 19 of the Act purports to do this very thing. We think that this clearly constitutes an unconstitutional attempt by the General Assembly (however well motivated) to impose legislative powers and duties on the probate court administrator. (Emphasis added).
ADAMS V. RUBINOW, 157 CONN. 50, 174-175 (1968).