

Testimony of Judge Edward G. McAnaney  
Probate Judge for Suffield-East Granby  
Committee Bill No. 6027  
March 9, 2009

I submit this written testimony in support of Section 12(h) of Committee Bill 6027 that would amend General Statutes section 45a-186. This section of the proposed bill alters the current appeals procedure of probate court decisions to allow for a referral of such an appeal to a special assignment probate judge. A superior court judge would make the referral.

I support this section of the proposed bill because I believe that it would, if enacted: enable the probate judges to establish a body of probate law, increase the professionalism of the courts and raise the profile of the probate court judges. There has been considerable criticism of the probate courts of late and, while I disagree with the criticism generally, I believe that section 12(h) of the proposed bill takes steps to blunt that criticism. The probate judges to whom appeals would be referred are nominated by the probate court administrator and appointed by the Chief Justice as judges who, by their experience and knowledge, are highly regarded. The Probate Assembly overwhelmingly endorsed the establishment of a probate appellate session.

While I support the language in the proposed bill, I believe that it doesn't go far enough in creating a probate appellate session. I think that providing a direct appeal to the probate appellate session and then to the Connecticut Appellate Court would better lead to the creation of a body of probate law within the current decisional law framework by those who deal with probate matters daily, the probate judges. I propose the following language to better reach that goal:

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Section. 1. Section 45a-186(a) (Appeals from probate. Venue. Service of process.) is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) Any person aggrieved by any order, denial or decree of a court of probate in any matter, except an appeal to the appellate session taken under section 4 of this act or unless otherwise specially provided by law, may, not later than forty-five days after the mailing of an order, denial or decree for a matter heard under any provision of section 45a-593, 45a-594, 45a-595 or 45a-597, sections 45a-644 to 45a-677, inclusive, or sections 45a-690 to 45a-705, inclusive, and not later than thirty days after mailing of an order, denial or decree for any other matter in a court of probate, appeal therefrom to the Superior Court. Such an appeal shall be commenced by filing a complaint in the superior court in the judicial district in which such court of probate is located, except that (1) an appeal under subsection (b) of section 12-359, subsection (b) of section 12-367 or subsection (b) of section 12-395 shall be filed in the judicial district of Hartford, and (2) an appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the superior court for juvenile matters having jurisdiction over matters arising in such probate district. The complaint shall state the

reasons for the appeal. A copy of the order, denial or decree appealed from shall be attached to the complaint. Appeals from any decision rendered in any case after a recording is made of the proceedings under section 17a-498, 17a-685, 45a-650, 51-72 or 51-73 shall be on the record and shall not be a trial de novo.

**Sec. 2. Section 45a-186a(a) (Appeal from probate court after a hearing on the record. Transcripts. Expense.) of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2009):**

(a) In an appeal from an order, denial or decree of a court of probate made after a hearing that is on the record, not later than thirty days after service is made of an appeal under section 45a-186, as amended by section 1 of this act, or under section 4 of this act, or within such further time as may be allowed by the Superior Court, the Court of Probate shall transcribe any portion of the recording of the proceedings that has not been transcribed. The expense for such transcript shall be charged against the person who filed the appeal, except that if the person who filed the appeal is unable to pay such expense and files an affidavit with the court demonstrating the inability to pay, the expense of the transcript shall be paid by the Probate Court Administrator and paid from the Probate Court Administration Fund.

**Sec. 3. Section 45a-186b (Appeal from probate court after a hearing on the record: Standard of review.) of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2009):** In an appeal taken under section 45a-186, as amended by section 1 of this act, or under section 4 of this act from a matter heard on the record in the Court of Probate, the Superior Court shall not substitute its judgment for that of the Court of Probate as to the weight of the evidence on questions of fact. The Superior Court shall affirm the decision of the Court of Probate unless the Superior Court finds that substantial rights of the person appealing have been prejudiced because the findings, inferences, conclusions or decisions are: (1) In violation of the federal or state constitution or the general statutes, (2) in excess of the statutory authority of the Court of Probate, (3) made on unlawful procedure, (4) affected by other error of law, (5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the Superior Court finds such prejudice, the Superior Court shall sustain the appeal and, if appropriate, may render a judgment that modifies the Court of Probate's order denial or decree or remand the case to the Court of Probate for further proceedings. For the purposes of this section, a remand is a final judgment.

**Sec. 4. (NEW) (45a-186c Appeals of certain probate matters. Heard on the record.) (Effective October 1, 2009):** (a) The Probate Court Administrator may establish a probate appellate session to hear appeals of probate matters permitted by this act.

(b) Notwithstanding the provisions of 45a-186, as amended by this act, and except for appeals in matters listed in subsection (c) of this section, a person may file an appeal directly to the probate appellate session in accordance with the times set forth in sections 45a-186 to 45a-188, inclusive, of the general statutes, as amended by this act, and pursuant to rules of the Connecticut probate practice book.

(c) The following matters may not be appealed to the probate appellate session under this section: appeals under sections 17a-75 to 17a-83, inclusive, of the general statutes; 17a-274; 17a-495 to 17a-528, inclusive; 17a-543, 17a-543a; 17a-685 to 17a-688, inclusive; children's matters as defined in subsection (a) of section 45a-8a; 45a-644 to 45a-663, inclusive, 45a-668 to 45a-684, inclusive; and 45a-690 to 45a-700, inclusive.

(d) An appeal heard under this section shall be de novo unless a record of such matter was made at the probate hearing. A hearing on the appeal shall be on the record.

(e) The filing of an appeal under this section shall not, of itself, stay enforcement of the order, denial or decree from which the appeal is taken. A motion for a stay may be made to the Court of Probate or to a judge hearing the matter at the appellate session.

(f) There shall be no right to further review except to the Appellate Court by certification for review, on the vote of four judges of the Appellate Court so to certify and under such other rules as the judges of the Appellate Court establish.

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It is my view that this proposal will better achieve the goals I have outlined above while still providing appellants an option of forum in which to bring their appeal. I do not see this as encouraging "forum shopping" as the same record would be established in both the probate appellate session and the superior court on appeal.

Thank you for the opportunity to address this legislation and I hope that this Committee will respond favorably to the establishment of an Appellate Session of the Probate Court.