



STATE OF CONNECTICUT
OFFICE OF THE
PROBATE COURT ADMINISTRATOR

PAUL J. KNIERIM, JUDGE
Probate Court Administrator

THOMAS E. GAFFEY
Chief Counsel

HELEN B. BENNET
Attorney

DEBRA COHEN
Attorney

186 NEWINGTON ROAD
WEST HARTFORD, CT 06110

TEL (860) 231-2442
FAX (860) 231-1055

To: Senate Co-Chair Andrew McDonald
House Co-Chair Michael Lawlor
Senate Ranking Member John Kissel
House Ranking Member Arthur O'Neill
Honorable Members of the Judiciary Committee

From: Paul J. Knierim, Judge
Probate Court Administrator

Re: HB 6626 An Act Transferring Jurisdiction of Contested Probate
Matters to the Superior Court

Date: March 9, 2009

The Office of the Probate Court Administrator strongly opposes this bill.

As the members of the Committee know, this is a most critical legislative session for the probate courts of this state. The Probate Assembly, members of the Bar, many legislators, the Governor, and this office have all worked to develop meaningful proposals to strengthen and improve the probate system. Those efforts are reflected in several important pieces of legislation before the Committee today. This bill, in contrast, would eviscerate the jurisdiction of the probate courts and set up a confusing and burdensome system under which individual cases would frequently bounce back and forth between the probate and Superior Courts.

The bill would make the Superior Court the sole court of original jurisdiction over all contested probate matters. The legislation goes on to define contested matter broadly as "any proceeding in which the legal rights, duties, property or privileges of a party are in dispute." As a result, the bill would apply to all areas of probate jurisdiction, including decedents' estates, trusts, children's matters, conservatorship, and psychiatric civil commitments. Although the bill ostensibly leaves the entire probate system intact, it would effectively prevent the probate

courts from acting as courts and exercising judicial authority. While that may be the intent of this bill, it is wholly inconsistent with current efforts to restructure and modernize the probate courts.

Quite apart from the fundamental policy issue involved here, this bill is unworkable for several reasons:

- The bill contains no provision for how, at what point, or who will determine whether a matter is "in dispute." The result would be widespread confusion on the part of courts and parties as to where a matter should be filed and the parameters of a court's jurisdiction in a particular case.
- Many probate matters are ongoing and involve multiple issues that arise over a period of time. For example, the administration of a decedent's estate involves, at a minimum, a determination of whether there is a valid will, the appointment of an executor or administrator, and the review of a final account. During the course of an estate settlement, issues may arise on a multitude of other issues, including questions about the inventory, the estate tax return, claims against the estate, support allowances for spouses and dependent children, and the distribution of the estate property. Some of the issues may be disputed while others are not.

Under the proposal, probate courts would retain their existing areas of jurisdiction, except as to specific issues that are "in dispute." Conversely, the jurisdiction of the Superior Court in the probate area would be limited to "contested probate matters." As a result, a proceeding might commence in a probate court, but then halt upon the emergence of some type of "dispute" while the parties pursue an action in Superior Court to resolve the issue. Once the Superior Court decides that issue, its jurisdiction would end, and the matter would return to the probate court for further proceedings. Matters involving multiple disputes would require an equal number of proceedings in the Superior Court.

- Many other types of probate cases address the affairs of an individual who is alleged to have a cognitive disability and are therefore inherently contested. Examples include petitions for involuntary conservatorship, psychiatric civil commitment, and the appointment of guardians for individuals with developmental disabilities. The bill, if enacted, would require that all of these matters be handled in the Superior Court.
- Apart from proposed jurisdictional changes, the bill does not change the existing statutes addressing the procedures to be used in probate matters or the authority of courts when handling probate matters. It appears, therefore, that the Superior Court will be acting with the more limited powers of a probate court when hearing contested probate matters.

Rather than advancing the cause of improving the probate courts, this bill would take a significant step backwards, imposing on the courts arcane procedures reminiscent of the past. Not long ago, if a question arose in the course of a decedent's estate as to whether an item of property was properly part of the estate, the matter was put on hold while the issue was litigated in the Superior Court. Similarly, if an executor or trustee believed that an interpretation of the will was required, an action in the Superior Court had to be initiated while the probate proceedings awaited the outcome. Nearly twenty years ago, the legislature recognized the inefficiencies of this approach, and vested the probate courts with the authority to make determinations of title and to construe instruments in matters otherwise before those courts. That jurisdictional change has streamlined the process, allowing estates to be concluded more quickly and at less cost.

The bill before you would reverse these advances by returning to a system of fragmented jurisdiction in which the continuity of cases is routinely disrupted. It would inevitably lengthen the time required for the completion of probate matters and would substantially increase the costs to the parties.

The bill would, in addition, impose significant new burdens on the Superior Court. Section 2(e) provide that Superior Court judges must "if practicable, devote full time to contested probate matters," and be assigned to hear such matters for at least eighteen months. Section 7 would direct "the judges of the Supreme Court, the judges of the Appellate Court and the judges of the Superior Court" to "adopt and promulgate . . . rules and forms regulating contested probate matters in the Superior Court." It is readily apparent that significant additional costs to the Judicial Branch would result from these proposals.

Notably, the probate system handled over 82,000 matters in 2007, any one of which could result in one or more disputed issues requiring resort to the Superior Court. These numbers clearly demonstrate the potential impact on judicial resources and additional cost to taxpayers.

We urge the Committee to reject this proposal.

