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OFFICE OF THE
PROBATE COURT ADMINISTRATOR

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Honorable Members of the Judiciary Committee

From: Paul J. Knierim, Judge
Probate Court Administrator

Re: HB 6027 An Act Concerning Probate Reforms
HB 6385 An Act Concerning Reform of the Probate Court System

Date: March 9, 2009

Thank you for the opportunity to testify about House Bills 6027 and 6385, which are the two key proposals before this Committee that would comprehensively restructure Connecticut's probate courts. I am grateful to the Committee for dedicating a public hearing to the important issues affecting the probate system.

To be direct, this is a "sink or swim" legislative session for the probate courts. The probate system is steadily moving towards bankruptcy, and the pace of our financial decline will doubtless accelerate in the coming months as the impact of declining asset values takes its toll on probate fee revenue. Unless prompt action is taken now, the probate system will be insolvent and unable to meet its financial obligations during the coming fiscal year.

Should the probate system be saved? My answer is a resounding yes. It is a user friendly court that is uniquely well suited to handle the sensitive family matters that the General Assembly has assigned to it over the years. Probate courts have a demonstrated capability in handling pro se matters, and typically resolve matters more quickly and at less expense to the parties than is possible in more formal proceedings. The probate courts can and should be made more

efficient, more uniform, and stronger professionally, and you have before you legislation that can accomplish those goals. But please do know the system will surely collapse, at a great disservice to the people of this state, unless we are able to implement significant structural changes. General fund support for the system is a necessity.

HB 6027 embodies the Strategic Plan for the Probate Courts and it represents the joint efforts of the Probate Assembly and my office. HB 6385 is the Governor's plan for restructuring the probate system. These two bills – which share several important elements but which differ in other key respects – have framed the debate on how best to modernize the probate system and therefore I will address them both in this testimony.

Before I review some details on these two proposals, I'd like to offer a very brief background on the finances of the probate courts. The probate system is funded principally by the statutory fees that the courts collect. It has been operating with a growing budget deficit since fiscal year 2005. The current year deficit is \$4.4 million; the projected deficits for fiscal years 2010 and 2011 are \$7 million and \$8.4 million, respectively. The system has continued to operate despite these deficits by drawing down on the probate administration fund. We are currently projecting that the fund balance will have fallen to \$3 million by June 30 and will be exhausted before December 31, 2009.

There are several causes of the probate system's deficit and the depletion of the probate administration fund. Three factors are most significant.

First, the caseload of the probate courts has been changing. I know that the members of this Committee are fully aware of the broad scope of the jurisdiction of Connecticut's probate courts, but it bears reiterating that probate courts do much more than estate and trust work. Cases involving children, the elderly, and individuals with mental illness represent a growing proportion of the workload in many courts. These social service matters generate less probate fee revenue but demand significant judicial resources.

I am personally proud to represent a court system that has been so responsive to changing societal needs. We recently established, for example, five regional children's probate courts. These courts empower extended families to care for children when a parent cannot. Children who would otherwise be relegated to the far more costly foster care system are able to remain in their own communities. Similarly, Melissa's Project helps conservators implement a support structure for individuals with mental illness living in the community. It has proven a great success in reducing both hospitalizations and arrests. These two programs not only demonstrate the critical role of the probate courts in protecting some of our state's most vulnerable citizens, but also the innovative and cost effective solutions implemented by the probate courts in response to these difficult issues.

A second cause of the system's financial problems is the dramatic increase in indigent expenses at the same time that the state has discontinued general fund support for it. Indigent expenses include the cost of providing the constitutionally mandated services of attorneys, marshals, and physicians for people who are unable to pay. It also includes the compensation of conservators who work on behalf of indigent persons. Historically, the state appropriated funds to cover all or a portion of these expenses, but funding has been negligible since fiscal year 2003. In the current year, the state appropriated only \$25,000 for indigent expenses, while the total cost to the probate administration fund is \$4.5 million.

Third, the state has transferred a total of \$20 million from the probate administration fund to the general fund, \$5 million in 1991 and an additional \$15 million in 2002. While these transfers are not the cause of the current deficit, they have accelerated the urgency of the situation.

Turning now to proposed solutions to these problems, I'd like to highlight some of the similarities and differences between our Strategic Plan and the Governor's proposal:

- 1) Central Financing: Presently, each probate court handles its own finances, including all banking, payroll, and accounting functions. The cost of this arrangement approaches \$500,000 annually. Under both the Governor's proposal and our own, the accounting functions would be centralized under Probate Court Administration to ensure uniformity and improve efficiency.

Both proposals would also establish cost control mechanisms. The Strategic Plan calls for a committee comprised of the Probate Court Administrator and two judges selected by the Probate Assembly to establish system-wide pay ranges for staff positions and to determine authorized staffing levels and budgets for each court. The Governor's proposal would vest this authority in the Office of the Probate Court Administrator.

- 2) Judicial Compensation: The judges' Strategic Plan would replace the existing compensation system for probate judges, which is based principally on court revenue, with a plan based upon population and court workload. In the first year of implementation, the proposal would save approximately \$530,000. It would establish a more equitable compensation plan that correlates with the amount of work performed. The Governor's bill recommends a similar approach.
- 3) Court Consolidation: While both proposals stand for the proposition that the number of probate courts should be reduced, the plans differ significantly in the means by which consolidation would be accomplished.

The Strategic Plan seeks to promote voluntary court consolidations. We propose that the General Assembly establish regional probate planning committees charged with helping communities develop plans to establish regional probate courts that fit their particular needs. The committees would include all judges and municipal CEOs in the region, along with representation from court clerks, attorneys, and members of the public. The Strategic Plan recommends the following incentives to promote voluntary court consolidation: (a) a one-time financial incentive to municipalities that participate in a court consolidation in the form of a \$2 per capita grant to their senior centers; and (b) an additional retirement incentive for probate judges and court staff whose districts merge. A November 15, 2009 deadline for committee work would ensure that consolidations could be implemented prior to the next four-year term for probate judges, which begins on January 5, 2011.

The Governor's proposal, in contrast, would replace the existing 117 courts with 36 districts that would share boundaries with the senate districts. We are concerned that a consolidation of this magnitude will be counterproductive from a facilities standpoint. Because these larger courts cannot not in many cases be accommodated in city and town halls, municipalities will be faced with the added expense of leasing commercial space. Some senate districts are simply too geographically large to function as probate districts. Other senate districts divide cities and towns into multiple jurisdictions.

Without question, court consolidation is a means by which the probate system can reduce expenses. It can also promote proficiency by affording judges and court staff a more regular flow of cases. And it will facilitate proper staffing and better accessibility through regular business hours.

At the same time, any approach to consolidation should be sensitive to the needs of the users of our courts. We should be especially careful to locate courts in places that are readily accessible to those who need our services, particularly considering that many of the users of the probate courts are elderly or disabled. We should seek to locate regional courts with reference to existing communities of interest among cities and towns. The availability of suitable space within municipal facilities should be another key consideration.

We respectfully urge this Committee to consider all of these goals as it determines how best to address court consolidation.

- 4) Appeals from Probate: The plan would establish a new mechanism for appeals from certain types of probate matters by giving Superior Court judges the option of referring an appeal to a special assignment probate judge, in much the same manner as matters are referred to referees. This proposal would take advantage of the expertise of special assignment probate judges,

who are appointed by the Chief Justice pursuant to legislation adopted in 2007.

- 5) Attorney Judges: The Governor proposes adoption of a requirement that candidates for the office of probate judge be attorneys with ten years of experience. Throughout the long history of the probate courts in Connecticut, there has been no requirement that judges be attorneys. This has been the subject of much debate over the years, and there are strong feelings on both sides of the issue.

There are currently 26 Connecticut probate judges who do not hold law degrees. Many of them have been judges for years and have developed considerable expertise and knowledge in the area of probate law. All judges, whether or not attorneys, benefit from the mandatory educational programs offered by probate administration and the Probate Assembly.

During the months long process of developing the Strategic Plan, the issue of requiring that judges be attorneys was debated extensively, and proved to be extremely divisive. Following the debate, I urged that the issue be tabled so that the Probate Assembly could adopt a plan that enjoyed broad support among the judges. In the end, more than 80% of the judges voting supported the Strategic Plan.

My position has not changed, and accordingly I neither support nor oppose this aspect of the Governor's proposal. We would point out, however, that the Governor's bill does not provide for currently sitting judges to be "grandfathered." Historically, the legislature has not sought to impose new qualifications on officials currently holding office. Should the Committee deem it appropriate to adopt such a requirement that judges be attorneys, we would urge consideration of a provision to permit non-attorney judges currently in office to continue their service.

- 6) Retirement Incentive: Existing law grants a 4 year pension credit to a probate judge whose district is merged. The Strategic Plan recommends including court staff in this program and increasing the credit amount to 6 years. The enhanced 6 year credit would sunset in January 2011, at the end of the current term. We urge consideration of this proposal to facilitate consolidation and to afford those whose jobs are eliminated a transition to retirement.
- 7) Court Staffing: The Governor's plan assumes that court consolidation will yield a 20% reduction in court staff. We do not consider such a contraction to be realistic considering that the workload of the courts will remain the same, regardless of the number of facilities.
- 8) General Fund Support: Notwithstanding the anticipated savings resulting from these proposals, the fact is that the probate system will require general

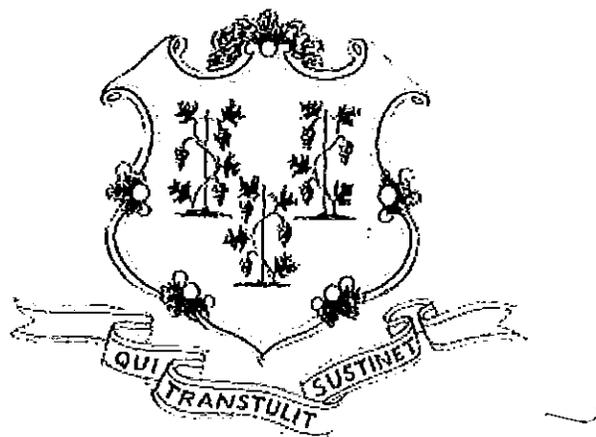
fund support. While the Governor argues that the system should be funded exclusively from probate fee revenue, it is our view that self-sufficiency is neither practically achievable nor philosophically appropriate.

It bears critical emphasis that none of the savings from restructuring under either plan can be realized until January 2011, because all probate judges are currently serving 4 year elected terms that run until then. An investment of general fund support is therefore essential to bridge the period from now until implementation can be completed.

Furthermore, the method of using the fees on estates and trusts to finance all the functions of the probate courts is no longer appropriate. Much of the work of our courts is now focused on social service matters involving children, the elderly, and mental health issues, and it is in these areas that our caseload is growing. We urge the General Assembly to restore support for the system's indigent expenses – much of which results directly from our social service cases. We also respectfully request that the general fund assume responsibility for the payment of health insurance for retired judges and employees, in the same way that it covers that expense for every other state agency.

I'd like to close by observing that, while we are facing great challenges, we are at the same time presented with the best opportunity ever to strengthen and improve our probate courts. All three branches of state government are engaged in this important discussion, and I sense a strong commitment on the part of all involved to build on the strengths of the probate courts and the people who serve in them.

I welcome the opportunity to work with the members of this Committee to resolve the differences between the Strategic Plan and the Governor's proposal that I've just outlined.



Strategic Plan for the Probate System

March 1, 2009

The Connecticut Probate Assembly
and the
Office of the Probate Court Administrator

The probate system has been operating with a budget deficit since fiscal year 2004-05. The system has sustained itself by drawing down on the probate administration fund, but the fund is expected to be exhausted by mid-year 2010. Unless prompt action is taken now, the probate system will be insolvent and unable to meet its financial obligations in the next fiscal year.

The Probate Assembly and Probate Court Administration have worked collaboratively over the past several months to develop solutions to financial challenges confronting the system and to strengthen the professionalism of the courts.

The Strategic Plan set forth in the following document addresses these concerns. It represents the joint efforts of the probate judges and the administrator's office. At the January 6, 2009 meeting of the Probate Assembly over 80% of the judges present voted in favor of these initiatives

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Table of Contents

Executive Summary	Page 4
Strategic Plan Proposals	
1. Central Accounting	Page 7
2. Probate Court Planning Committees	Page 8
3. Judicial Compensation	Page 9
4. Probate Appellate Docket	Page 9
5. General Fund Appropriation Requests	Page 10

EXECUTIVE SUMMARY

THE FINANCIAL STATUS OF THE PROBATE SYSTEM

The Connecticut probate system, which is funded principally by the statutory fees the courts collect, has been operating with a growing budget deficit since fiscal year 2004-05. The current year deficit is \$4.3 million; the projected deficits for fiscal years 2009-10 and 2010-11 are \$6.9 million and \$8.3 million, respectively. The system has remained solvent despite these deficits by drawing down on the probate administration fund. With only \$6.1 million remaining on hand as of December 31, 2008, the probate administration fund is expected to be exhausted in early 2010.

There are several causes of the probate system's deficit and the depletion of the probate administration fund. Three factors are most significant.

First, the caseload of the probate courts has been changing. Cases involving children, the elderly and mental health issues represent a growing proportion of the workload in many courts. These social service matters generate less probate fee revenue but demand significant judicial resources.

Second, the system has seen a dramatic increase in indigency expenses at the same time that the state has discontinued general fund support for it. Indigency expenses include the cost of providing the constitutionally mandated services of attorneys, marshals, and physicians for people who are unable to pay. It also includes the compensation of conservators who work on behalf of indigent persons. Historically, the state appropriated funds to cover all or a portion of these expenses, but funding has been negligible since fiscal year 2002-03. In the current year, the state appropriated only \$25,000 for indigency expenses, while the total cost to the probate administration fund is \$4.5 million.

Third, the state has transferred a total of \$20 million from the probate administration fund to the general fund, \$5 million in 1991 and an additional \$15 million in 2002. While these transfers are not the cause of the current deficit, they have accelerated the urgency of the situation.

PROPOSED SOLUTIONS

The Probate Assembly and Probate Court Administration have developed several remedies to these fiscal challenges. Strengthening the professionalism of the courts has been an equally important goal.

The five parts of the proposal are:

1. **Central Accounting**: Presently, each probate court handles its own finances, including all banking, payroll, and accounting functions. Courts make their own determinations about staffing levels and operating costs. Court finances are subject to annual audits by probate administration.

Under this proposal, the accounting function would be centralized under Probate Court Administration to ensure uniformity and improve efficiency. A committee would be established to set system-wide pay ranges for staff positions and to determine authorized staffing levels and budgets for office expenses. This measure would eliminate a significant administrative burden in the courts and ensure appropriate cost controls.

2. Probate Court Planning Committees: To facilitate voluntary court consolidations, it is proposed that the General Assembly establish nine regional probate planning committees. These committees would help municipalities develop plans to establish regional probate courts that fit the needs of their communities. A November 15, 2009 deadline for committee work would ensure that consolidations could be implemented prior to the next four-year term for probate judges, which begins on January 5, 2011.

The following two incentives are recommended to promote voluntary court consolidation: (a) a one-time financial incentive to municipalities that participate in a court consolidation in the form of a grant to their senior centers equal to \$2 per capita, not to exceed \$50,000; and (b) an additional retirement incentive for probate judges and court staff whose districts merge.

3. Judicial Compensation: The proposal replaces the existing compensation system for probate judges, which is based principally on court revenue, with a plan based upon population and court workload. In the first year of implementation, this proposal would save approximately \$530,000 and would ensure that judges' pay correlates with the amount of work performed.
4. Probate Appeals: The plan would establish a probate appellate docket to hear appeals from certain types of probate matters. Parties could still appeal to Superior Court, but would have the option of being heard by a special assignment probate judge. This proposal would take advantage of the expertise of special assignment probate judges and would promote the development of appellate authority on probate matters. It would have minimal financial impact on the system.
5. General Fund Appropriation Request: The proposals outlined above will make the probate system more cost effective in the long term. However, significant savings may not be achieved before January 2011 when the judges' current terms of office end. In addition, these proposals involve significant structural changes that will require time to plan and implement.

As recently as January 2008, it appeared that the probate system would not require any funding until FY 2011. Latest fiscal indicators, specifically the decline in the stock market and property values, project the probate administration fund's bankruptcy occurring in FY 2010. The probate system will require and appropriation of approximately \$4 million in FY 2010 and approximately \$8.3 million in FY 2011.

That funding would cover two areas of significant expense. First, the general fund should assume responsibility for indigency expenses, as it has in the past. These costs are constitutionally mandated and will exist even if the probate system becomes insolvent. Secondly, the proposal seeks an appropriation to pay for health insurance for retired judges and staff because the probate system is the only state agency that pays this expense directly from operating funds.

CONCLUSION

Connecticut's probate courts are a vital part of the safety net for many of our state's most vulnerable citizens. Cases in probate court involve the care of children, the elderly, and individuals with mental illness and developmental disabilities. Probate matters also entail the challenging issues that can arise in the settlement of decedent's estates and the management of trusts.

Probate courts were established specifically to handle these sensitive family matters. The courts are readily accessible to the communities they serve. The judges are specialists who handle their cases with fairness and compassion and who strive to resolve cases as quickly as possible. Many families are comfortable appearing in the probate court without an attorney because court staff is highly service oriented and hearings are relatively informal.

The strategic plan offered by the Probate Assembly and Probate Court Administration seeks to make court operations more efficient and promote uniformly high professional standards throughout the system. It will also preserve the essential qualities of the system and enable communities to help shape the future structure of the probate system. While the need for financial assistance comes at a very difficult time for the state, an investment now will ultimately save considerable expense.

STRATEGIC PLAN PROPOSALS

1. CENTRAL ACCOUNTING

Proposal:

- Probate administration will perform certain accounting and payroll functions presently handled by individual courts.
- The courts will continue to be responsible for billing and collecting fees. Courts will deposit receipts into the central system bank account administered by probate administration.
- Court staff will continue to be employees of the courts, and judges will have exclusive authority to hire and manage court staff. Judges will determine employees' wage and salary rates within established ranges in a compensation plan.
- Probate administration will conduct all payroll functions on behalf of the courts, including preparation of checks and filing and payment of all payroll taxes. This function will likely be outsourced.
- Courts will be allocated budgeted amounts for miscellaneous office expenses.
- A committee will be established to determine the compensation plan for staff, staffing levels, and budgets for miscellaneous office expenses.

Notes:

- The central accounting proposal will ensure efficient and uniform management of the courts' administrative and financial functions. It seeks to transform the present arrangement of 117 separately managed courts into a more cohesive system.
- An additional benefit of the proposal is to reduce the administrative burden on the courts. There are several benefits for the courts:
 - Ensure accurate and timely payment and filing of payroll taxes.
 - Simplify payments for health insurance.
 - Eliminate the need for income reports, quarterly assessment payments, and interest and penalties for underpaid assessments.
 - Eliminate the need to maintain working capital at year's end.
 - Eliminate the complexity of the court subsidy / temporary funding process.
 - Significantly reduce the work and expense associated with court audits.
- In 2007 the courts spent over \$300,000 for accountants, payroll services, and bank charges. Bookkeeping activities conducted by court staff represent an

additional expense. Considering the cost of probate administration staff and contract auditors who are involved in the audit process, the total annual cost for these activities under the present arrangement is estimated to be in excess of \$500,000.

2. PROBATE COURT PLANNING COMMITTEES

Proposal

- Establish nine Probate Court Planning Committees based on the existing probate regions to facilitate voluntary consolidations. These committees would explore opportunities to consolidate probate courts, taking into consideration public access to the courts, availability of municipal facilities, the shared interests of communities, and the populations served.
- Committee membership:
 - Each probate judge in the region
 - Each municipal CEO or designee
 - 3 clerks appointed by CAPC Executive Committee
 - Probate court administrator or designee
 - 1 attorney designated by the CBA Estate and Probate Section
 - 1 attorney designated by the CBA Elder Law Section
 - 4 members of the public appointed by the 4 legislative leaders
 - 1 member of the public appointed by the Governor
 - 1 member each designated by the Council of Small Towns and the Connecticut Conference of Municipalities
- Regional planning agencies to provide staff to facilitate discussions.
- Senior Center Grants: Municipalities that participate in a consolidation will receive a \$2 per capita grant for their senior centers. The maximum grant per town will be \$50,000. Municipalities involved in a merger can also agree to split the funding in a different manner.
- Under current law, when a probate district merges with another district and a judge is not re-elected, the judge receives an enhanced retirement benefit of four years of credited service or a reduction in retirement age. That benefit would be increased to 6 years and include clerks. It would sunset in January 2011.
- Planning Committees will report to the General Assembly by November 15, 2009.

Notes:

- This process facilitates structural change that achieves long-term cost savings while avoiding a top-down mandatory consolidation policy.

- The process will empower municipalities to develop plans, where appropriate, for local-regional probate courts that address their communities' unique needs.

3. JUDICIAL COMPENSATION

Proposal:

- Establish salary bands based on population and weighted workload (WWL). WWL is a factor only where it is disproportionately high relative to the population of a district, to compensate for unusual demands on a given court (e.g., workload generated by a hospital or mental health facility in the district). Districts comprised of four or more towns are shifted to the next higher band to reflect the challenges of serving multiple communities spread over large geographic areas.
- Salaries are based on a percentage of the statutory amount paid to Superior Court judges and will automatically adjust when that amount changes.
- The proposed compensation plan would be phased in beginning with the next four-year term, which commences in January 2011. During that term, pay reductions would be capped at 20% and no judge would receive an increase in compensation. The compensation plan will become fully effective in January 2015.
- This part of the plan saves approximately \$531,000 per year during the phase-in.

Notes:

- The proposal significantly improves the equity of the compensation plan for judges. Compensation under the proposal would be driven by population and workload, which are criteria more closely related to work performed than the current revenue based computation.
- The tabulation of weighted workload will be reviewed by the probate court administrator prior to the implementation of the new salary bands and updated where appropriate.

4. PROBATE APPELLATE DOCKET

Proposal:

- Establish a probate appellate docket within the existing Special Assignment Judge framework to enable probate judges to handle appeals.
- Application to various types of appeals:

- De Novo Appeals: Appellant has the option of appealing to probate appellate docket or Superior Court.
 - Record Appeals: Matters heard on the record in Probate Court will continue to be record appeals in Superior Court.
 - Children's Matters: Children's matters will continue to be heard de novo in Superior Court Juvenile Matters.
 - Will Contests (which involve jury rights): If any interested party claims the matter for a jury trial, the Probate Court will decline jurisdiction and the appellant has 30 days from date of declination to file the appeal.
- Any appeal taken from the decision of a Special Assignment Judge will be a record appeal to the Appellate Court.

Notes:

- The proposal attempts to keep the appeal process revenue neutral.
 - Compensation: Special Assignment Judges' compensation is fixed by Probate Regulations sections 25.4(b), and 3.4.4b.
 - Fees:
 - Entry fee of \$250 paid by the appellant.
 - Statutory hourly fees will be assessed in accordance with 45a-106 (\$25 per hour).
 - Fees are payable to the probate administration fund, because the fund pays the compensation of the Special Assignment Judges.
 - The judge will have the discretion to apportion the charges among the parties, as provided by current law.
- Since most appeals under this plan will involve estate and trust matters, the impact of this process on indigency expenses should be negligible.

5. GENERAL FUND APPROPRIATION REQUESTS

Proposal:

- Request appropriations from the general fund for indigency expenses and the cost of health insurance for retired judges and staff.
- The specific amount of the appropriation request for each fiscal year will be equal to the operating deficit of the probate system, net of funds available from the probate administration fund. Based upon current budget projections, the necessary additional appropriation would be \$4 million in FY 2009-2010 and \$8.3 million in FY 2010-2011.

	<u>PAF Operating Deficit</u>	<u>PAF Balance AT YEAR END</u>	<u>Requested Appropriation</u>
FY 2009-10	\$6,935,293	(\$3,904,326)	\$4,000,000
FY 2010-11	\$8,247,696	(\$8,247,696)	\$8,300,000

- These figures reflect the projected budgets for FY 2010 and FY 2011 before the implementation of any changes contemplated in the plan. These changes, together with modifications to the probate administration budget and updates to our revenue projections, will likely necessitate adjustment of these figures.

Notes:

- The amount on hand in the probate administration fund has been steadily declining due to several factors:
 - Changing caseload: Cases involving children, the elderly, and mental health issues represent a growing proportion of the workload in many courts. These social service matters generate less probate fee revenue but demand significant judicial resources.
 - Transfer of \$5 million from the fund to the general fund to help cover a budget shortfall in 1991.
 - Transfer of an additional \$15 million from the fund to the general fund in 2002.
 - Decline in interest income: At its peak, the fund was generating approximately \$2 million annually in interest. By comparison, interest revenue in the current fiscal year is projected at \$223,000.
- A significant portion of indigency expense is made up of the fees of attorneys, marshals, and physicians who perform constitutionally mandated services for individuals who are unable to pay. As a result, the general fund would bear this expense if the probate system is unable to cover it.
- The probate system is the only agency of state government that pays the cost of health insurance for its retirees from its operating budget. The cost of retiree health insurance is paid from the general fund for every other state entity.