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**Testimony of Deborah J. Tedford
Estates and Probate Section
Connecticut Bar Association's**

**Raised Bills Nos. 6027, 6625, 6626, 6627 and 6629
Senate Bill 570 and Senate Joint Resolution 63.**

**Judiciary Committee
March 9, 2009**

Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee, my name is Deborah J. Tedford and I thank you for allowing me to testify regarding the state of the probate courts today and various proposals to modify or reform them. By way of background, I am a past President of the Connecticut Bar Association, Chair of the CBA's Probate Court Task Force and the Uniform Laws Committee of the Estates and Probate Section, Past Chair of the Estates and Probate and Elder Law Sections of the Bar and a fellow of the American College of Trusts and Estate Counsel (ACTEC). I also practice in Connecticut's probate courts on a daily or weekly basis.

As you know, there have been a number of independent studies of Connecticut's probate courts in recent decades. In September 2003, the Casey Family Foundation released a Final Report on "The State of Connecticut's Probate Courts and the Management of Children's Matters Involving Custody and Guardianship." This study found that our State had too many probate courts handling children's matters, leading to a lack of resources and expertise in too many cases. That report resulted in the establishment of the Children's Courts in Connecticut, which have received national commendation for innovation and quality.

In May 2003, the Connecticut Bar Association, concerned with both financial and professional issues facing the courts, issued its own Task Force's study of the probate system, also recognizing that there are too many courts in the state, again resulting in resources being spread over too wide an area which adversely affect the system from both professional and financial perspective. This report recognized the benefits of the informality and problem solving nature of the existing system, but recognized that in contested and other matters, a higher degree of judicial standards is desirable. In 2007, the legislature enacted reforms to the conservator statutes that helped raise the standard of judicial proceedings in this area, and by requiring a taped record of the hearing, is also beginning to provide some level of information and accountability.

In May 2005, the legislature ordered a study of the probate courts by its own Program Review and Investigation Committee that made many findings similar to those in the Connecticut Bar Association Task Force report. Because of apparent political considerations, no significant changes have yet resulted from that report.

Perhaps not surprisingly, the matter of what to do about Connecticut's probate courts is now a pressing concern because the predictions of financial distress for the probate system are in fact becoming critical. The Bar has recognized for years that a solution for the probate court's financial problems is a necessary part of any fix, but also believes that financial concerns are only one part of the many problems facing Connecticut's probate courts. We believe that reform needs to include:

- Increased professionalism, including a legally trained and accountable judiciary, preferably appointed and not elected, with powers coextensive with the boundaries of the State so that judges can be assigned and preside where they are most needed;
- the elimination of conflicts of interest that result from judges both practicing law or other professions in addition to that of probate judge;
- increased jurisdiction, including the ability to order full remedies in difficult matters and not require an expensive second *de novo* trial on appeal;
- increased uniformity and financial accountability so that the system's limited funds are spent wisely – all of these should be part of the solution, not just the financial matters.

Like Judge Knierim, we ask that you not resolve this crisis by placing band aids on the finances while the rest of the systemic flaws continue. We ask that you consider the fact that the probate courts serve a very different set of population and problems from that of the Superior Court. The population may be elderly, frail, sometimes suffering from cognitive impairment or dementia; or young, vulnerable, in difficult family circumstances with relatives other than parents providing the primary care. These types of cases benefit by a different approach from that of the Superior Court system. Judge Kneirim's leadership of the probate courts has been exemplary, and we strongly recommend that you not throw the baby out with the bathwater by eliminating the probate system altogether.

A number of bills have been proposed in regard to our probate courts. The most far-reaching, Senate Joint Resolution 63, would amend the State Constitution to eliminate reference to the probate courts. This does not mean that the probate courts would disappear, of course, since they are statutory courts created by the legislature. It is my understanding that the effect of this constitutional amendment would be to eliminate the requirements that probate judges be elected and must reside in their district, which could provide the legislature with greater flexibility in working to improve the probate system in the long run.

Raised Bill 6027 is a thoughtful bill that would create bands for probate judicial compensation, with courts serving a smaller population area receiving lower judicial salaries than larger courts. This bill, however, still contemplates probate judges serving

part-time with outside employment, thereby not solving the conflicts of interest inherent in the current part-time judicial system. This bill also does not solve the expensive two trial systems that currently plagues the system, and only addresses this by allowing parties to use a "special assignment probate judge" for the second *de novo* trial rather than a Superior Court judge. While we believe the idea of having qualified probate judges act as initial appellate judges has merit, the bill does not provide for a real appeal, simply a *de novo* or second trial. We believe that holding contested matters on the record before qualified judges will ultimately save the cost of two trials. While the bill helps to restructure judicial compensation and costs, it does not address the professionalism, ethical and jurisdictional issues of the current system, and thus should go farther in implementing reform.

Raised Bill 6626 is more draconian, providing for all contested probate matters to become part of the sole and original jurisdiction of the Superior Court. Probate courts presumably would continue to exist but be limited to handling purely administrative matters. How this would work in practice depends on the willingness of the Superior Court to suddenly develop an expertise in probate matters, which are unique and unusual, and develop much more expedited means of handling conservatorship, children and other matters than has been possible to date. We fear that this burden would not be welcome by the Superior Court system, and that simply folding contested matters into Superior Court will likely result in increased costs for families and less timely disposition of time sensitive cases. We worry that the new and praiseworthy Children's Court system would not fit into such a system. Further, it is not clear that the Superior Court, which has its own serious financial issues, would be in a position to take on a large array of cases quite unique and distinct from anything the system currently handles. New Superior Court judges with special expertise in the legal problems of the elderly, the disabled, and contested Wills and trusts would need to be hired, and new facilities considered. This could be a costly undertaking. The Bar's concern is that the unique and positive attributes of the probate system would be lost in this more drastic proposal.

The best approach may be to combine the best features of several of these bills. Eliminating the requirement that probate judges be elected and reside in their districts (unless the legislature expands each judge's district to be coextensive with the boundaries of the State) is certainly a good first step. Proposals have been made that all probate judges in Connecticut be licensed attorneys with at least ten years experience, and we support such a requirement. If the legislature wishes to continue the probate courts as a separate and distinct court system from the Superior Court, Bill 6027 provides for financial relief but does not solve other longstanding problems. We would suggest that the legislature consider a separate probate court system with larger districts, between 30 and 40 in number, designed to provide speed and accessibility to the public. These larger probate courts could have full time appointed judges who could move among the districts as needed and be both more professional and responsive to the public. Raised Bill 6027, however, perpetuates the existing system of multiple small probate districts, limits the ability of the Probate Administrator to assign judges to where they are needed, and does not require that a probate judge who will hear contested

matters be formally educated in the law and admitted to practice in this State. It continues the tradition of part-time elected judges with other occupations that may conflict with their service as probate judges. My concern is that even if the financial issues are resolved temporarily, these other very important issues will fade from the legislature's view and continue into the indefinite future.

Raised Bill 6629 is a new bill, and the Bar has not had an opportunity to take a formal position on it. The bill would prohibit a court from appointing a guardian ad litem in conservatorship matters if the respondent in the conservatorship proceeding is represented by an attorney. I would like to personally point out that there may be some serious practical difficulties with this bill as it ignores the fact that in some conservatorships matters the respondent is sufficiently disabled that he or she may not be able to communicate with the court appointed attorney, thereby rendering that attorney's services of little use or benefit to the respondent. I personally express great concern about this bill.

As measured by the variety of proposals that have been offered in this Session, we are hopeful that a consensus is emerging that the time has arrived for meaningful probate court reform in Connecticut. We urge that in addressing the fiscal exigencies, we not miss the opportunity to improve the efficiency and professionalism of the system, but that in doing so we retain the attributes that enable the probate courts to best help individuals and families in need.