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To: Senate Chair Andrew McDonald
House Chair Michael P. Lawlor
Honorable Members of the Judiciary Committee

From: Kathleen J. Murphy, Judge, District of Thompson

Re: SB 371

Date: March 12, 2010

Thank you for the opportunity to testify about SB 371, An Act Concerning Service Requirements For Probate Judges. This bill, which requires probate judges to work at least forty hours per week, on average, to qualify for health insurance benefits, would amend Substitute House Bill No. 6385, Public Act No. 09-114 Section 7 (h), which specifies that effective January 5, 2011, to be eligible to participate in the hospitalization and medical and surgical plan for probate judges, a probate court judge must work as a probate judge an average of twenty hours per week, on a quarterly basis and certify to that fact on forms provided by and filed with the probate court administrator, on or before the fifteenth day of April, July, October and January, for the preceding calendar quarter.

A main justification for consolidation was the need for probate courts to be open forty hours per week as are superior courts. However, Substitute House Bill No. 6385, Public Act No. 09-114, which will go into effect on January 5, 2011, requires probate judges to work, on average, twenty hours per week. This means that a probate judge may work less than twenty hours some weeks, which is inconsistent with every other state employee who must work a minimum of twenty hours per week in order to receive health insurance. Further, this allows the majority of probate judges to receive a salary of \$110,000 per year, free health insurance, and pension benefits while continuing to work in their private practice of law. This contrasts with all other Connecticut judges who are prohibited from having a law practice and must work full-time.

PA 09-114 requires that the number of Connecticut probate courts be reduced from one hundred seventeen to fifty, resulting in a loss of sixty-seven probate judges. The new legislation also creates other types of probate judges including magistrate judges, referee judges, and appellate judges. With respect to magistrate judges, "Some of the probate judges losing their jobs could find themselves working in the system as magistrates. They would be available to fill in as needed on probate dockets that are too heavy for one judge to handle." (*Connecticut Law Tribune*, May 25, 2009). "The idea was that the pool of judges would include those who lost their jobs in the redistricting, but it could include any former probate judge as long as they're not 70 years old," said Judge Knierim, Probate Court Administrator (*Connecticut Law Tribune*, May 25, 2009).

In essence, PA 09-114 will enable a probate judge to work, on average, twenty hours per week, receive \$110,000 per year, free health insurance, and pension benefits, continue the practice of law, and freely call upon magistrate judges. The principal driving forces behind PA 09-114 were cost savings and increased professionalism. Allowing probate judges to work twenty hours per week,

receive \$110,000 per year, free health insurance, and pension benefits, and allowing probate judges who lose their jobs through consolidation back into the system are inconsistent with providing cost savings. Permitting probate judges to practice law and to work in other probate courts only continues the conflicts of interest that are present in the existing system. Further, there is already acknowledgement that some probate districts created by the new legislation have a very large docket. The primary focus of a probate judge in these mega-districts and in all probate districts should be serving constituents and interested parties that come before them on a full-time basis without having the outside distractions, preoccupations, and conflicts of interest associated with operating a private practice.

In testimony before the Connecticut Legislative Committee on Program Review and Investigations on October 7, 2005, Professor John H. Langbein, Sterling Professor of Law and Legal History at Yale Law School argued that many probate judges "are part-timers who practice law when they are not serving as judges. The result is rampant conflict-of-interest.... If you are the probate judge in Bethany on Monday and I am the probate judge in Woodbridge on Tuesday, and we each practice law before each other, or our partners practice there, abuse is invited. I am reluctant to rule against you or your partner, because I know that you could rule unfavorably against the case that my partner or I am handling before you. The danger of favoritism in such circumstances is ever present."

By requiring probate judges to work full-time, SB 371 takes a step toward eliminating the dangerous appearance of "favoritism" as well as the conflict of interest described by Professor Langbein. Further, with the substantial salary increase most judges will receive under the new legislation, economic hardship is no longer a viable reason to allow part-time probate court judges.

I believe that a sufficient basis exists for this change in the service requirements of probate judges as proposed by SB 371. Thank you for your consideration. Please do not hesitate to contact me with any questions or if additional information is needed.

Respectfully Submitted,

Kathleen J. Murphy