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**TESTIMONY BEFORE THE JUDICIARY COMMITTEE IN FAVOR OF RAISED
BILLS: 371 and 426 .**

March 12, 2010

Good afternoon members of the Judiciary Committee:

My name is Marilyn Denny, I am a staff attorney at Greater Hartford Legal Aid. As such, I represent elderly persons.

I am testifying in favor of Raised Bill 426: A Uniform Jurisdiction Act pertaining to conservatorship matters. Last year legal services representatives testified against such proposed legislation because it had not been reconciled with Connecticut's conservatorship statute and had the potential to erode, in the name of uniformity, the protections Connecticut offers its citizens. We worked with members of the private bar to correct the deficiencies we identified in the proposed legislation, and insofar as this year's bill reflects those agreements, we support it. We are in the process of answering some questions which have been raised recently with respect to the draft we all agreed to.

I am also testifying in favor of Raised Bill 371, but asking you to strengthen the protections it is designed to offer.

It is a basic principal of our governmental system that we have a separation of powers for the purpose of establishing checks and balances. While the judiciary is often the body that curtails excesses of the legislature or executive, the legislature must also safeguard the rights of individuals by structuring the judiciary so that it functions in the most professional way possible.

The Connecticut General Statutes mandate that probate judges cannot appear as an attorney in any probate court matter that is contested; furthermore, that partners and associates of a probate court judge cannot practice before that Judge. (45a-25, 26). This does not go far enough to avoid conflicts of interest. In its 2005 report, Program Review and Investigation recommended that "the position of probate judge shall be a full-time occupation." Proposed Bill 371 should be amended to require probate court judges to meet the standards of Superior Court Judges (C.G. S, 51-47) who are prohibited from engaging in the outside practice of law. I have attached this recommendation made by the Program Review and Investigation Committee to my testimony.

The recent "excesses" of at least one probate court judge have been documented by the Hartford Courant columnist, Rick Green, whose article is also attached to my testimony. But even conscientious probate court judges are, in my experience, at often a loss because they cannot individually professionalize the probate court system. Consolidation of the number of courts was an important first step towards helping these courts operate in a more effective manner. It was

undertaken, however, for financial reasons. It did not address the need of the courts to function in a manner which protects the rights of those who appear before them.

This recent consolidation is the major justification for requiring probate judges to work a 40 hour week, to not just be "on call" but to attend to court business on a full time basis. The legislature found that the probate courts could not be consolidated further; therefore, most courts should now have a significant workload. In addition, probate judges have to get the consolidated courts up and running. The probate system needs a comprehensive probate practice book. In short, the system needs to be professionalized.

In its 2005 report, Program Review and Investigation Committee made recommendations to help Probate Judges obtain more training and expertise, since there is almost no oversight of their practice - as there is with Superior Court judges. Among the recommendations of Program Review and Investigation was to have judges who received training in substantive areas demonstrate their competency by achieving a passing grade on an examination given by the Probate Court Administrator. This recommendation was not adopted (Raised Bill 5391). Neither was the recommendation that a judge be disqualified to hear a matter until competency requirements were met. Despite the fact that probate court judges are now lawyers, there is little oversight and evaluation of their competency by professionals. Superior Court judges are screened by the state Judicial Selection Commission and are evaluated as part of the re-appointment process.

Why should we pass this legislation now? This should not be postponed because probate court judges will be deciding whether to run for election or re-election and should understand what will be required of them. If this legislation is not passed, it will be a long time before Connecticut residents have their public servants work full time in deciding the matters before them. It has been 5 years since Program Review and Investigation made the recommendation that probate judges work full time. Legislation can be passed in a brief session; providing justice is a full time job which must be free of conflicts of interest and of the appearance of conflicts of interest.

Will this cost money? Probate Administration will use magistrates when the case load of a probate judge is too large, costing the system money. Increasing the work week of Judges should eliminate the need for magistrates. If probate court judges work a 40 hour week, perhaps they should be reimbursed as are the Commissioners of the Worker's Compensation Commission - based on longevity. (For their first year of service Commissioners receive a salary of \$6,000 less than the highest step level of a Superior Court judge; this decreases for every year until year 7, when the salaries are comparable). In exchange for pegging salaries to those of Superior Court judges, each commissioner "shall devote his entire time to the duties of his office and shall not be otherwise gainfully employed." Section 31-277.

My comments are not intended to criticize a particular probate court judge. We need to look at how the system is designed to function. Rick Green is correct, the current system is not designed to prevent conflicts of interest, to ensure competency of judges, or to ensure justice for the citizens of Connecticut. It is time for the legislature to move us closer to these ends. Thank you.

Availability of judges. The subject of part-time judges was an aspect of a number of issues including the accessibility of the courts, the judges' compensation (discussed earlier), and the potential for creating conflicts of interest. The issue of potential conflicts of interest was raised in public hearing testimony provided to the program review committee, in interviews conducted by program review committee staff and was mentioned by 4 percent of the probate attorneys in the committee survey. According to the various comments, the problem arises from the judge's ability to maintain a private business or other employment while conducting judicial work.

Some suggest the possibility that a judge can promote his or her private businesses through his or her judicial office raises at least an appearance of conflict of interest, if not an actual one. Another conflict of interest may occur when a part-time probate attorney judge practices law in another judge's probate court or other jurisdiction. Some attorneys believe

having to represent a client before a probate judge who they may be opposing in another venue is awkward and problematic. While probate judges are not allowed to practice law in contested probate cases under ethics rules, the attorneys' comments suggest it is easy for a judge to argue that a case is not really a contested one.

The program review committee survey asked both judges and attorneys whether the position of a probate judge should be a full-time occupation. Seventy-eight percent of the judges did not believe their position should be full-time while 54 percent of the attorneys thought it should.

Table III-7. Survey Responses Regarding Occupation Status of Probate Judges.

The position of a probate judge should be a full-time occupation.	Strongly Agree	Agree	Disagree	Strongly Disagree
Judges Response (N=93)	13%	9%	45%	33%
	22%		78%	
Attorneys Response (N=233)	27%	27%	38%	9%
	54%		47%	

Source: LPR&IC survey analysis

The program review committee staff believes there is a possible conflict of interest in almost every relationship that a judge has, whether or not the judge is an attorney. The potential for conflict is ever present, not only with attorney-judges, but also with accountant-judges or judges who are real estate agents. Therefore, the program review committee staff recommends the position of probate judge shall be a full-time occupation.

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It's Time To Stop Electing Probate Judges

Rick Green

Rick Green
March 9, 2010

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The problem with our probate courts is that many judges — some no more than politicians-in-robés — work part time and spend the rest of their days practicing law and making deals, creating the opportunity for conflicts of interest.

In the Southington case I told you about last week, Judge Bryan F. Meccariello — who has a busy law practice just down the street from his courtroom — is now under investigation by the Council on Probate Judicial Conduct for his decision to alter the will of Josephine Smoron. Meccariello effectively disinherited Sam Manzo, the longtime caretaker of Smoron's property, and instead handed the woman's farm to three Catholic churches. Three years ago, Meccariello was disciplined by the same council for mingling his vocations of judge, private lawyer and real estate investor.

See more topics » Later this week, the legislature's judiciary committee will consider a bill that would require all probate judges to work full time. This means they wouldn't be spending half their work week doing business with the same lawyers who appear before them in court.

"The conflicts of interest really are rampant," Thompson Probate Judge Kathleen Murphy told me.

"All other Connecticut judges are appointed after completing a thorough review and confirmation process, prohibited from having a law practice, and must work full time," she said. "The primary focus of probate judges should be serving 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."

Legislators, who responded to a plea from Gov. M. Jodi Rell and acted to shrink the court system dramatically last year, shouldn't stop at merely requiring full-time judges. A growing movement led by former U.S. Supreme Court Justice Sandra Day O'Connor is calling upon states to end the practice of electing judges.

We are the only democracy that still elects judges. In Connecticut, probate judges are elected and Superior Court judges must be nominated by the governor and approved by the General Assembly.

"The independence of the judiciary is something that we all ought to care about," Justice O'Connor told Maryland state legislators last week. "I believe so strongly that we should not be, as states, electing judges in partisan elections with campaign contributions and the rest of it."

Perhaps, but not here. Connecticut has been electing its probate judges for generations. Certainly this system gives us talented and qualified lawyers who perform admirably as probate judges. But it also gives us judges who create their own sense of justice.

In the Southington case, Meccariello notified almost no one when he held a hearing — with only himself present — and acted to supplant Smoron's will by creating two trusts benefiting the churches. The court record included two wills, dated 1996 and 2004, in which Smoron clearly indicated that she wanted her farm to go to Manzo.

Instead, a month before her death when she was confined to a nursing home and in the advanced stages of dementia, Meccariello approved a request creating the two trusts containing all of Smoron's property and benefiting Immaculate Conception Church in Southington and Sacred Heart and Holy Cross churches, both in New Britain. The conservator appointed by Meccariello was a deacon at one of the churches.

Meccariello resisted questions raised by Manzo's lawyer and waited eight months before recusing himself from the case. The chief probate administrator, Paul Kriner, told Manzo's lawyer that he had "no authority to intervene" in the case. And even as the Smoron farm dispute smoldered in Meccariello's courtroom, the town of Southington and a local developer began considering a major development for the property, at the intersection of Route 10 and I-84.

Meccariello, meanwhile, told me last week that he did nothing to change the will. In his letter to The Courant this past Sunday, he added that a probate court cannot "disinherit someone from a will."

No, Judge Meccariello was more sophisticated than that. He just made sure there was nothing left for Manzo to inherit.

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