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**TO:** Senate Co-Chair Eric Coleman  
House Co-Chair Gerald Fox  
Senate Ranking Member John Kissel  
House Ranking Member Rosa Rebimbas  
Honorable Members of the Judiciary Committee

**FROM:** Paul J. Knierim  
Probate Court Administrator

**DATE:** March 4, 2013

**RE:** RB 984 An Act Concerning Probate Court Operations

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Thank you for the opportunity to testify in support of RB 984 An Act Concerning Probate Court Operations, which the Connecticut Probate Assembly and the Office of the Probate Court Administrator jointly support. The bill would streamline court procedures and eliminate obsolete provisions in the Probate Court statutes. This testimony will summarize each section of the bill.

Throughout the statutes, the Probate Courts are described variously as "court of probate," "Probate Court" and "probate court." For consistency, we have substituted the phrase "Probate Court" for all other terms throughout the bill. It is our intention to use this terminology when drafting amendments to other statutes concerning the Probate Courts in the future.

Section 1 amends § 45a-78, which establishes the procedure by which rules of procedure for the Probate Courts are adopted. Last year, the Probate Court system finished an 18 month project to rewrite the rules of procedure in an effort to promote uniformity and make it easier for self-represented parties to use the courts. The compilation of the rules, which the Supreme Court adopted on November 7, 2011, have been renamed the Probate Court Rules of Procedure.

The amendment would simply conform the language of the statute to the new name under which the rules will be published.

Section 2 permits the use of a simplified method of accounting that is detailed under the new Probate Court Rules of Procedure. It authorizes the use of a short-form "financial report," instead of a complex detailed account, in a broader range of circumstances.

Section 3 eliminates obsolete language concerning appeals in psychiatric civil commitment proceedings.

Section 4 would streamline the probate appeals statutes. Under current law, an appeal from the appointment of a conservator is on the record, but an appeal from any other decision in a conservatorship proceeding requires a trial de novo. See *Follacchio v. Follacchio*, 124 Conn. App. 371 (2010). The result is cumbersome and confusing to parties and attorneys. The bill would establish a single, uniform process for all appeals in conservatorship matters and in the related areas of medication for treatment of psychiatric disabilities and electroconvulsive therapy. Note that section 11 dovetails with section 4 by requiring that the rules of evidence apply in all conservatorship proceedings.

Section 4 also seeks to eliminate confusion about the method by which an appeal from probate is commenced. Attorneys often interpret the current statute to require that the Probate Court or judge be named as a defendant in an appeal and be served with process. The amendment would clarify that the appellant need only mail a copy of the appeal to the Probate Court and further that the appellant should not name the court or the judge as a defendant.

Section 5 would add clarifying language to § 45a-295, which deals with the situation in which the court determines after admitting a will that the decedent had revoked the will. Whether the will was revoked is governed, in turn, by the provisions of § 45a-257. The language is necessary because § 45a-257 has been amended, and which version of the statute applies to a given case depends upon the date of execution of the will.

Section 6 would simplify the manner in which the deadline for action is under determined § 45a-436(c). The statute governs the spousal election, which is a mechanism by which a surviving spouse may take a defined statutory share of an estate rather than accepting the provisions of the will of a deceased spouse. Under the current statute, the election must be made within 150 days of the appointment of the first fiduciary. In some cases, the first fiduciary to be appointed is a temporary administrator. The appointment may occur well before the will is admitted to probate when there is a contest over the validity of the will. As a result, the surviving spouse may be placed in the position of having to decide whether to make an election against the will without knowing if the will is

to be admitted. The bill avoids the problem by providing that the period for making the election runs from the admission of the will.

Section 7 increases the maximum size of a trust that a Probate Court has discretion to terminate from \$100,000 to \$150,000, which is the current maximum for charitable trusts under § 45a-520.

Section 8 would permit parents of minors to petition the Probate Court for involuntary conservatorship up to six months before the minor's 18<sup>th</sup> birthday. To ensure that the court makes a decision based upon the minor's current mental status, the hearing must be held within 30 days of the birthday. This proposal parallels legislation adopted two years ago regarding the appointment of guardians for persons with intellectually disability.

Section 11 makes two updates to the conservatorship statutes. First, section 11 provides that the rules of evidence apply in all conservatorship proceedings. Second, to eliminate a frequent source of argument in conservatorship proceedings, section 11 would clarify that reports of physicians and other medical professionals are admissible into evidence, with the condition that a party has the right to call the author as a witness. The proposal includes an important safeguard by providing that the court shall not admit the report into evidence if the author fails to comply with a party's subpoena to appear at the hearing. That medical reports should be admissible seems implicit in the current language of the existing statute, which requires the petitioner to offer medical evidence (unless the court waives the requirement) and refers specifically to medical reports as a means of providing the evidence. Unfortunately, the absence of explicit language causes uncertainty over the issue. The admissibility of written medical reports in the conservatorship context is consistent with § 52-174, which permits the introduction of medical records as business entries.

Section 12 would extend to voluntary conservatorships the safeguards that apply when a conservator of a person under involuntary conservatorship seeks to change the residence of the conserved person or place the conserved person in a facility for long-term care to voluntary conservatorships. The requirements currently apply only to persons under involuntary conservatorship but should apply to all types of conservatorships in light of the importance of the issues involved.

Section 13 would improve the flexibility of § 45a-317a, which authorizes a Probate Court to appoint an estate examiner. The purpose of an estate examiner is to obtain information about a decedent when there is no estate proceeding and thus no executor or administrator with authority to request the information. The current statute permits appointment only when the information sought relates to a claim for benefits or potential lawsuit. The proposal would expand the statute to permit an estate examiner to obtain information about the deceased person's assets. The change would help families determine whether there are assets

requiring administration and whether the assets can be transferred using the simplified small estates procedure, thereby saving time and money.

Section 14 updates the statute dealing with disputed claims of creditors in decedents' estates. It would permit a creditor to petition to have a claim heard by a probate magistrate or attorney probate referee. This would replace language in the current statute providing for the appointment of a commissioner for the same purpose. The role of commissioner, typically an attorney appointed by a court for a particular case, is not well defined. The magistrate and referee role, in contrast, is detailed in statute and regulation and is ideally suited to hear matters of this type.

Sections 15 through 20 are technical.

Section 21 repeals several obsolete provisions. Sections 45a-190 and 45a-390 to 45a-419 governed claims against the estates of individuals who died prior to October 1, 1987. Sections 45a-726a and 45a-727b contain language that predates the recognition of same sex marriage in Connecticut and contain language that is contrary to current public policy.

On behalf of the Probate Court system, I respectfully request that the committee act favorably on the bill. Thank you for your consideration.