

To the Honorable Members of the General Assembly

The role of the probate court system as a means of alternative resolution to litigation and as a means of providing additional social services is often overlooked. There is a tremendous distinction between the Superior Court and the Probate Court that is often missed, even by a counsel who practices in both courts. Unless your practice is primarily devoted to Probate Court, most counsel are unaware of the far-reaching role of the probate courts in Connecticut. Often looked upon as lesser courts, the probate system is less formal and its purpose is not to award money or place someone in jail. Nevertheless, our probate courts deal with life and death, and life-changing issues daily.

In Superior Court, a judge must weigh the evidence and arguments brought by the respective litigants, and make a finding as to which side should prevail. In almost all cases, probate courts do not have "sides," but rather have a single subject as the true party in interest. By the nature of the proceedings, the true party in interest cannot effectively participate in the presentation of their case. That is because the true party in interest falls into one of several categories. The true party in interest may be dead (a decedent estate), a minor (guardian matters), incompetent (conservatorships), have a mental illness (commitments) or be intellectually disabled. In each of these types of cases, the purpose of the probate court is not to choose the prevailing litigant, but to rule to protect the true party in interest who cannot advocate for themselves.

Even in cases such as a will contest, the outcome is not about the individual litigants, but rather, the decedent and what his or her true intention was to be. The probate court is designed to look out for those who cannot look out for their own interests. Therefore, the judge has to take on a distinctly different role in protecting those interests.

In a Superior Court matter, it is common for the courts to welcome the resolution of a matter between the litigants. In a Probate Court matter, even ones involving children, the Court has only limited interest in what the litigants decide, and instead must view any agreement and/or request to determine whether such agreement or request is in the best interests of the actual party of interest. There are many times when as a sitting judge, I will not accept a withdrawal of a petition or an agreement, knowing that the proposed resolution is not in the best interests of the true party in interest.

In order to protect the rights of our population that cannot protect themselves, the probate judge must have abundant patience, the ability to look beyond the positions of the litigants, and attempt to discern what is best and/or what was the true intent of the respondent. Accordingly, the probate courts do not adjudicate as much as they problem-solve. This requires a completely different skill set than what is necessary for the judges in the Superior Court, and more importantly require a distinctly different approach.

While some probate courts continue to deal primarily with estates, those types of matters are becoming an increasingly smaller part of the overall activities of the probate court system. In West Haven, for instance, estates comprise approximately 30% of our caseload. The rest is comprised of matters involving children, conservatorships wherein the Court must watch over the lives and affairs of the elderly and disabled individuals, guardianships of the intellectually disabled, and matters concerning the mentally ill. Since the Veterans' Administration Hospital is located in West Haven, our court handles the vast majority of cases involving veterans. Because of the prevalence of PTSD and other mental

illnesses, the workload continues to grow in that area. We are continually asked not only to retain our vets in the hospital in order to obtain mental health treatment (commitments), but then to follow up many of these cases with conservatorships in order to provide effective support for our vets when they return to the community.

The caseload of the probate system also continues to grow in the area of children. While the Superior Court has very limited options when it comes to children, the probate court system does not. In the family division of Superior Court, the choice is between the parents. In the Juvenile Division, the choice is typically limited to whether or not the child should be given to the Department of Children and Families for foster care. However, in the probate system, we are able to consider any resource that may be available in order to protect the child and provide for their best interest. Many times, we are able to include a parent in the care-giving plan as a way of developing parenting skills for certain parents, but still protecting the child.

The role of the probate system has evolved into an extension of the social service agencies without the constraints and limitations of bureaucratic policies. There are many times when a representative of DCF or DDS will make one recommendation, in writing, only to acknowledge that while a better alternative is available, it cannot be recommended due to such policies. Much like our criminal system that is continually looking to provide alternative in order to administer true justice, the probate system can look beyond a one-size fits all standard in order to solve a problem, not just push it down the line. Our probate courts, which are nationally recognized, act more like a social service agency than a forum for litigation in order to fashion individual plans to provide real assistance to those in our society that need it most, like the elderly, children and mentally ill.

Our probate courts have been given the resources to fashion many success stories in these areas. These resources allow our judges to think outside the box and come up with truly meaningful solutions. In the long run, these solutions create a huge savings to the State by way of taking care of our most vulnerable citizens. Without the proper funding, we would not be able to provide this type of in-depth, case-by-case, alternative resolution for many of the social issues and concerns faced by our State.

Please be sure to restore the proper funding to our probate courts so that we can continue serving our citizens that need to be watched over the most.

Respectfully Submitted,

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District of West Haven

PS I would be more than happy to share many of our success stories with members of the legislature.