



PAUL J. KNIERIM  
Probate Court Administrator

THOMAS E. GAFFEY  
Chief Counsel

HELEN B. BENNET  
Attorney

HEATHER L. DOSTALER  
Attorney

STATE OF CONNECTICUT  
OFFICE OF THE  
PROBATE COURT ADMINISTRATOR

186 NEWINGTON ROAD  
WEST HARTFORD, CT 06110

TEL (860) 231-2442  
FAX (860) 231-1055

**TO:** Senate Co-Chair John Fonfara  
House Co-Chair Jeff Berger  
Senate Ranking Member Scott Frantz  
House Ranking Member Chris Davis  
Honorable Members of the Finance, Revenue and Bonding  
Committee

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

**RE:** SB 13, An Act Reducing Certain Probate Court Fees

**DATE:** February 26, 2016

---

Thank you for the opportunity to testify on Senate Bill 13, An Act Reducing Certain Probate Court Fees. This office fully supports the effort to restore a cap on the fees on decedents' estates, **with the critical proviso that the resulting reduction in revenue be replaced with a general fund appropriation.**

By way of background, the biennial state budget adopted in June 2015 changed the way that Connecticut funds the Probate Courts in two major ways. First, the budget eliminated all general fund support for the Probate Courts. Second, in an attempt to make up for the lack of an appropriation, probate fees were increased. Fees on decedents' estates, which are calculated as a percentage of the decedent's assets, changed most drastically. The rate for estates larger than \$2 million was doubled from 0.25% to 0.5% and the fee cap (previously a maximum fee of \$12,500) was removed.

As a result of these changes, Connecticut probate fees are the highest in the nation, by a large measure. Probate fees on an estate – ostensibly a fee for using the services of the Probate Court – can now range into the millions.

The new fee structure is flawed for several reasons:

**1. Comparison to other states:**

Connecticut's status as having the highest fees in the nation results from the confluence of three factors: (1) the calculation of fees as a percentage of the decedent's assets; (2) the inclusion of non-probate assets in the basis for fees; and (3) the absence of a cap on fees. While each of these elements can be found in at least one other state, it is Connecticut's new policy of including all three in the fee structure – and its highest in the nation 0.5% marginal rate – that makes the state so far out of step with its peers.

We have researched probate fees in all 50 states. While fee structures vary across the country, 29 states charge filing fees that do not vary with the size of the estate. Of those states that base fees on the size of the estate, only North Carolina includes non-probate assets in its fees, but caps the fee at \$6,000. The remaining 20 states calculate probate fees only on the assets that are subject to Probate Court oversight. All but four in that category have a cap on fees, with maximum amounts ranging from \$1,056 to \$3,500. Top marginal rates for the four states without a cap range from 0.02% to 0.25%.

## **2. Out-migration effect:**

Probate fees have become a high visibility issue for Connecticut residents. Estate planning attorneys report that probate fees have become a focal point of discussions with their clients, who frequently react to the new structure as the "last straw" that will cause them to change their domicile to another state. If significant numbers of wealthy residents do relocate, the higher probate fees on decedents' estates will ultimately be self-defeating as a source of revenue for the Probate Courts and may also depress revenue from other state and local taxes.

## **3. No relationship between the fee and the service provided:**

The probate fee on decedents' estates, which is based strictly on the value of the decedent's assets, cannot be justified as a mechanism to recover the cost of providing the service. Fees from decedents' estates now make up 83% of the system's revenue. Decedents' estate matters, on the other hand, represent only 43% of court workload.

A fee that is based on a percentage of the decedent's assets bears no relationship to the judicial resources that an individual estate consumes. This problem is greatly exacerbated by application of the probate fee to non-probate assets, such as property held in joint survivorship and assets that pass by beneficiary designation. The disposition of non-probate assets occurs entirely outside of Probate Court supervision and without any assistance from a court. Nonetheless, the probate fee applies to all assets, even when the court provides absolutely no service.

## **4. Inconsistencies between the estate tax and the probate fee:**

In the overwhelming majority of cases, the probate fee on decedents' estates is calculated on the basis of the gross estate for tax purposes. Despite this close relationship with the estate tax, the probate fee calculation does not allow the same deductions as the estate tax. The result of this inconsistency is that many estates are subject to large probate fees even when exempt from the estate tax. For example, property passing between spouses is completely exempt from estate and gift taxes, but is subject to a probate fee calculated on the basis of one-half the value of the property. A decedent who leaves her entire estate to charity would be fully exempt from state and federal estate tax, but would pay a probate fee on the full value of her assets.

### **5. Volatility:**

Revenue from the estate tax is notoriously volatile. Very large estates from time to time boost estate tax revenue for a given year but are neither regular nor predictable occurrences. Probate fees, which are calculated using data from the estate tax return, can be expected to be similarly volatile under the new structure. While the now-repealed \$12,500 cap on fees meant that no single estate had a significant impact on overall revenues, fees from large estates will now contribute a large proportion of overall fee revenue.

### **6. Compliance:**

A tax authority responsible for collecting taxes or fees as large as the probate fee on decedents' estates would typically have a broad range of enforcement tools. Probate Courts lack those tools. The courts have no means of seeking out persons who have failed to file an estate tax return or to compel filing when a delinquency is identified. They likewise have no practical ability to determine whether all assets have been reported on the return or whether the values indicated for assets are accurate. It is reasonable to speculate that these structural weaknesses result in deficiencies in compliance.

### **Proposed \$20,000 Cap**

In light of these issues, this office recommends that a cap on probate fees be reinstated at \$20,000. The basis for this recommendation, while concededly unscientific, is twofold.

First, we contacted estate planning attorneys to ask what, in their view, is the largest fee cap amount that would not motivate clients to relocate to another state. Responses consistently hovered around \$20,000.

Second, a \$20,000 cap represents a reasonable increase from the \$12,500 cap that was in force until last year's fee changes. The \$7,500 increment is roughly equivalent to a 3% annual increase in the 18 years since the \$12,500 cap was established in 1998.

Further support for restoration of a cap comes from the work of the State Tax Panel, which recommended that the fees on decedents' estates reflect the cost of the service to court users. Although a \$20,000 cap does not achieve a "pure" user fee structure, it does represent progress towards that goal.

### **General Fund Appropriation**

Recognizing that this testimony is offered to the Committee on Finance, Revenue and Bonding – and not to the Appropriations Committee – I am nonetheless compelled to stress that reinstatement of a cap on probate fees is viable only if the state budget restores general fund support to the Probate Courts. For that reason, I want to make this committee aware that we are seeking a \$14 million appropriation for fiscal year 2016-17 to cover the actual expenditures that are necessary to perform the following five statutorily mandated functions:

- Conservators for indigent individuals (3,900 cases / \$4.5 million)
- Regional Children's Probate Courts (\$3.3 million)
- Kinship and Respite grants for guardians of children (2,600 children / \$2 million)
- Attorneys for indigent parties (\$2.8 million)
- Waived probate fees for indigent petitioners (6,400 matters / \$1.5 million)

Recognizing the huge budgetary challenges facing the state, I urge this committee to consider that the work of the Probate Courts in mental health, conservatorship and children's matters actually reduces the need for more expensive state services. A child placed by a Probate Court with grandparents or other relatives doesn't need the costly foster care system. Conservators provide structure and support for individuals with mental illness that reduce the incidence of hospitalization, arrest and incarceration for their clients. Seniors for whom a conservator arranges appropriate services can remain at home at far less expense than placement in a nursing home. Put in other words, the Probate Courts facilitate family-centered, cost effective solutions to these very real human service needs. A \$14 million investment in this core government function ultimately saves the state many millions.

I must also emphasize that the Probate Court system is lean. Since the courts restructured in 2011, we have achieved more than \$4 million in annual savings and have returned over \$16 million to the general fund. We seek every opportunity to cut costs without negatively impacting the quality of services. We are asking for an appropriation that amounts to less than 30% of our total budget.

Finally, I implore you to put aside any notion that the Probate Courts should be self-sufficient. If the Probate Courts were responsible only for the settlement of decedents' estates, funding the courts exclusively from user fees would make

perfect sense. But mental health cases, conservatorships, children's matters and guardianships for individuals with intellectual disability now represent well over half of the workload of the Probate Courts and consume two-thirds of our budget. In these cases, Probate Courts have a critical role in providing for the basic needs of our state's most vulnerable residents. That safety net function, and the cost-effective manner in which the Probate Courts perform it, fully justifies the funding that we seek.

Thank you for your consideration.