

Memorandum

TO: Hon. Karen Jarmoc, Dr. Gary Lapidus
FROM: Donald E. Frechette, Esq.
DATE: November 16, 2015
RE: Draft Recommendations Affecting Probate Proceedings

Pursuant to our previous discussions, I have undertaken to prepare a draft of potential recommendations that relate to the operation of Connecticut's probate court system. In so doing, I have been guided by your instruction that, at least for the time being, these draft recommendations are to be confined to matters that were addressed at the public hearings conducted on October 6, 2015 and, in particular, the presentation by Hons. Paul Knierim, Beverly Streit-Kefalas and John Keyes, as well as Ms. Stephanie Janes. I have also had follow-up discussions, both by way of e-mail and telephone, with Judge Knierim to clarify certain aspects of the October 6 meeting minutes. I look forward to your comments and suggested revisions, and to the input of all of the other Task Force members.

Draft Recommendations -- Training

One recurring theme from the presentation was that professional training opportunities were invaluable, both with respect to probate judges, as well as personnel such as case workers. Of course, particularly in difficult budgetary times, training must be efficient, targeted, and offer consistency of message. Judge Knierim stated that the probate courts dedicate "enormous resources" to the issue of training, and that such training includes experts who discuss the issue of domestic violence. At the same time, though, he properly expressed that the probate courts wish to make certain that their training is appropriately focused on the concerns and issues of the communities served by them. Based on the foregoing, the following draft recommendations are submitted for consideration:

- A. A specific probate court training "module" should be developed to address the issue of domestic violence and, in particular, domestic violence that affects minor children. The development of such module would be the responsibility of the Office of the Probate Court Administrator ("OPCA"), working in conjunction with, among others, designees of the Connecticut Coalition Against Domestic Violence and, as appropriate, its member organizations. It is contemplated that, in preparing the module, the OPCA would be guided by the established experience of Connecticut's probate courts, as well as the experiences of relevant community service providers.
- B. The training module would further recognize the differing missions of judges, case workers, and other probate court personnel, and would tailor the offered training to the subject audience.
- C. At present, Connecticut's superior court judges have access to training offered by the National Judicial Institute on Family Violence ("NJIFV"). NJIFV training, which is provided on a grant basis thus minimizing the

expense associated therewith, should similarly be provided to Connecticut's probate court judges.

Draft Recommendations – Restraining Orders and the Issue of Standing

Under existing Connecticut law, children do not have standing to seek civil restraining orders (“CRO”). See Conn. Gen. Stat. § 46b-38a (2) (B). However, while children do have legal standing, they lack the ability to initiate court proceedings in their own name. Instead, such proceedings must be commenced by a parent or other legal guardian. There are, of course, situations where a parent may, despite the existence of ongoing violence, decline to pursue a CRO on a child's behalf. In such a case, while the child may have a legal “right,” s/he lacks, under present law, an effective legal remedy. Indeed, Judge Knierim offered that there have even been circumstances where an appointed guardian declined to pursue a CRO, even though such was arguably in the child's best interests. And, importantly, Judge Knierim also pointed out that the child's appointed attorney – unlike his/her appointed guardian – lacks the legal authority to commence an action to obtain a CRO on their behalf. Based on the foregoing, the following draft recommendations are submitted for consideration:

- A. The Legislature should undertake to determine whether, in certain limited circumstances, and subject to such restrictions and procedures as it deems advisable, children of a certain age should be permitted to independently seek a CRO.
- B. The Legislature should undertake to determine whether, in certain limited circumstances, and subject to such restrictions and procedures as it deems advisable, counsel appointed by any court of this state to represent a minor child should have standing, acting on behalf of such child, to independently seek a CRO.

Draft Recommendations – Date Sharing Between Probate, Family and Juvenile Courts

The Task Force was also presented with information to the effect that probate courts are often entirely dependent upon the parties to self-identify other relevant proceedings affecting the family, whether in family court, juvenile court, or otherwise. It was disclosed that the probate courts simply do not have electronic access to the records of these other branches of the judiciary. While Judge Knierim was quick to concede that complete electronic access to all of the files and documents of these other courts would likely be cost-prohibitive, he offered that simply having the ability to access a names database so as to identify the mere existence of a case would be enormously helpful. Armed with this information, Judge Knierim observed that probate judges could then, at a minimum, begin a more effective inquiry process of the parties with, as necessary, appropriate direct follow-up with the other relevant courts. Based on the foregoing, the following draft recommendations are submitted for consideration:

- A. An electronic database should be established that would allow probate court judges to determine the existence of any other pending proceedings involving the parties presently appearing before such probate judges.

As stated above, the foregoing recommendations are strictly premised on the materials presented at the October 6, 2015 session of the Task Force. The minutes, however, disclose a host of other areas where additional recommendations may be appropriate, and I look forward to discussing those with you further.