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Connecticut

Judges and Lawyers Debate Probate System

By JANE GORDON

WILL ROGERS once said, "The only difference between death and taxes is that death doesn't get worse every time Congress meets."

Obviously, he was not talking about Connecticut.

When Gov. M. Jodi Rell signed into law a bill that redefined estate taxes last June, she also raised probate court fees, a move that made it more costly to die in Connecticut.

While the new fees made it more expensive for an estate to be probated in Connecticut, the increase also intensified a debate over the structure of the courts themselves.

Critics have long said that the courts were a mess, bloated, often open only part time, subject to conflicts of interest and run by judges who have never been to law school. And even estates covered by a will must go through the system.

A report issued by a legislative committee in December, six months after Mrs. Rell signed the bill, recommended several changes, including more legal education for judges. A month later, the Connecticut Bar Association issued a position statement on the courts asking for changes that included formal training for judges, standard operating hours, fiscal accountability and a closer look at ethical issues.

John H. Langbein, a professor at Yale Law School and an authority on probate and estate matters, in October called Connecticut's probate courts "a national scandal" during testimony before the legislative panel, the Program Review and Investigations Committee, which examines the effectiveness of state government programs.

"Why is there so much opposition to reform?" Mr. Langbein said in an interview. "It's the few against the many: A handful of people with lucrative vested interests imposing what amounts to a tax on decedents' estates and their beneficiaries. These judges are lavishly overpaid in cash compensation and then lavishly overpaid in perks, obtaining Cadillac-level health insurance for a part-time job of a few hours a week."

Supporters of the probate system say the courts provide a valuable system, distributing an estate's assets to heirs, appointing conservators, determining guardians and temporary custody of children, and terminating or upholding parental rights and adoptions. They handle the commitment of mentally retarded children and adults, and the guardianship of people with mental retardation. They also process name changes.

"I have strong feelings about preserving the accessibility of the probate court system," said Joel Helander, the probate judge in Guilford. "We don't need wholesale reform. There's a personal dimension to the probate court, often referred to as the people's court. We are accessible."

The state has 123 probate courts, run by 123 separate judges, who are elected. Some are lawyers, others are not. Most work as probate court judges part time. They receive health insurance and they and their staff members are paid through the fees that estates pay the court, fees that can be just a few hundred dollars to thousands, depending on the size of the estate.

Critics of the courts said they had become veritable fiefdoms, with judges receiving tens of thousands of dollars in fees and working so little that they are sometimes hard to find.

In testimony before the investigations committee in October, Greg R. Barringer, a past member of the bar association's Task Force on the Future of Connecticut Probate Courts, testified that there were several problems with the courts.

"I have had hearings where another party is represented by a probate judge from a neighboring town in which I often appear on other matters," Mr. Barringer told the committee. "I have had clients who have been given advice by a judge, clerk or staff that was flat wrong. I have had matters in courts where it can take a month or more to schedule a requested hearing, and from which it can take several weeks to obtain orders and documents because these courts are rarely open. The sad truth is what has led me to conclude that Connecticut is in dire need of a reform of our probate system."

The courts are answerable to the state probate court administrator, but James J. Lawlor, the current administrator and a former Waterbury probate judge, said he had little power. He has been fighting to wrest some control through the Legislature.

"My authority is little to none," Mr. Lawlor said.

In one case, Mr. Lawlor received a call from a funeral director who was trying to get custody of a body. The funeral director needed the probate court's permission, but the probate judge could not be found for a week. Mr. Lawlor didn't have the authority to release the body.

"In that case, we just wanted to make sure services were provided to the community," he said. "But each judge is fully independent in performing the duties of the office. I have to take the position that these people are elected, and we have to be careful not to interfere with the charge of the electorate. If the people in the community want a judge who doesn't show up, that's their business."

Last year, Mr. Lawlor's office fielded 40 complaints about the courts. Some he referred to the Council on Probate Judicial Conduct, which

investigates complaints against judges. A total of 86 complaints regarding judicial misconduct were filed to the council from 2000 to 2004, but no probate judges were publicly reprimanded.

Over the years, there have been reports criticizing the probate courts, but bills that have made it to the Legislature rarely pass.

"None of them have gone anywhere," Mr. Lawlor said.

Bob Killian, the probate court judge in Hartford, also said the system needed to be fixed. He said the probate courts drum up busywork to justify what he said were excessive fees.

"In Connecticut, we require everybody who has joint assets to come into the probate courts," he said. "Why? So we can command a fee. I take great pride in the work I've been able to do in 22 years, but I take great embarrassment from the fact that I fund the good work of the court by abusing widows and orphans."

About 10 percent of the work of Mr. Killian's court concerns estates, and it is that work that pays for his and his staff's salary, along with the other 90 percent of the court's work. Mr. Killian likened his court to a social-service agency more than an estate court. He also found fault with the number of courts.

"The system is unnecessarily bloated, with 123 courts and 123 judges, all of who I know are good people, do their best, do a good job," he said. "But they get an income that bears in many instances no relation to the amount of work they do. They're working a few hours a week and making \$60,000 to \$70,000 a year with health benefits."

Deborah Pearl, the probate judge for Essex, said that the probate courts in Connecticut were working fine, with only a little tweaking needed. Ms. Pearl, a part-time judge who said she generally works full time, is not a lawyer. She said she made \$60,000 last year as a judge.

"We're fighting anything that is being forced on a town," said Ms. Pearl, who was part of a coalition of probate judges who hired a lobbyist to represent their interests to the Legislature last year. "The leadership is pro-attorney, pro-consolidation. That was very frustrating, because we in the local courts were being attacked all the time. We all believe in the philosophy of direct community service to people, of keeping the courts local."

The battle, Ms. Pearl said, is between lawyers and judges.

"This is really what the crux of it is all about," she said. "The Connecticut Bar Association is very much against us local probate judges doing all this lovely work and they're not getting the work."

Brad Gallant, the chairman of the Estates and Probate section of the Connecticut Bar Association, said that was not true.

"It certainly is not an attempt by the Connecticut Bar Association to drum up more business for itself and its members," Mr. Gallant said. "I talk to probate judges every day, and many are aware of the system's shortcomings, and many lawyers are aware of the system's incredible strengths. I'd like to see the system preserved if it can be preserved and improved."

Some probate judges are practicing lawyers, and that sometimes leads to conflicts. Judges have received estate work for their law firms through recommendations from other probate judges. In some small towns, the local probate judge and the probate lawyer are one and the same.

Mary A. Ackerly, a former probate judge in Norfolk, decided in 1994 not to run for re-election because she was a lawyer in a small town.

"I would have been the probate judge and the lawyer in many cases," she said. "I saw the handwriting on the wall. If I'm taking on clients in Norfolk now, eventually I would have to both disqualify myself as the judge and as the lawyer representing the estate."

The report from the Program Reviews and Investigations Committee in December recommended that the smaller probate districts merge. The panel found that such a move would allow for full-time hours and increased staff, while maintaining a community atmosphere. It also found that a lack of administrative controls affected probate finances and court operations.

"A need exists for the establishment and enforcement of fiscal accountability and minimum operating standards," the report said. "The committee staff believes certain structural changes to the Connecticut probate system are necessary to improve its ability to function in the 21st century with the increasing demands placed on it."

But on Jan. 10, when the investigations committee met to decide what changes to recommend to the Legislature, members decided against recommending that the courts be forced to consolidate. Representative J. Brendan Sharkey, a Democrat of Hamden and a chairman of the committee, opposed consolidation and said there were few conflicts of interest in the courts.

"There are certainly isolated and anecdotal issues," Mr. Sharkey said. "Judges in small towns who also are in legal practice create some difficult situations ethically. They may appear in front of a judge in one town, and they may be the judge in another. Those types of situations do occur, and it seems to be well confined to certain towns with certain demographics in certain situations, and I think that reform along those lines certainly make sense: creating more professional standards for the ongoing operations for probate court, mandating standard operating hours that would serve as a minimum for all probate courts. I'm not convinced that a probate judge needs to be an attorney. I think that's somewhat of an elitist position."

Ms. Pearl said she would support limited change.

"There are some systemic changes that do need to be made, and we're all for it," she said. "We're 100 percent behind higher education. I think certifying judges would be great. Let's get us all on the same plan."