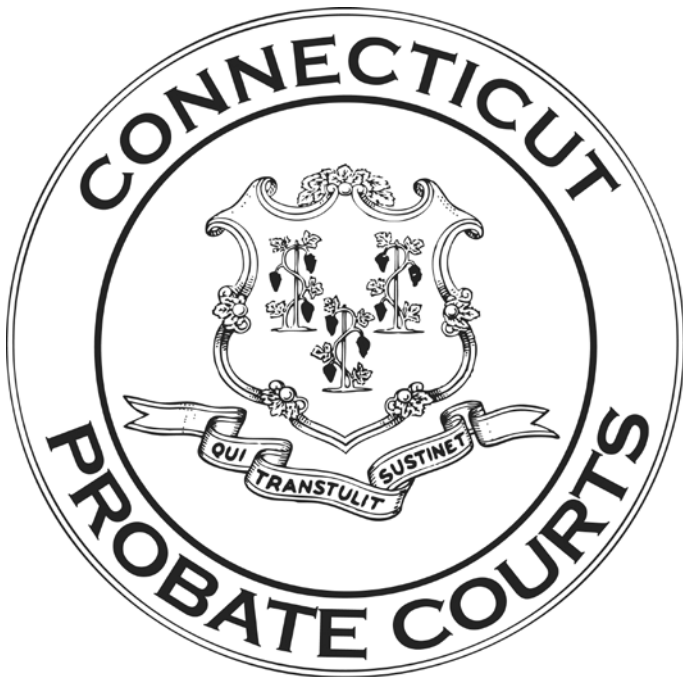


PROBATE COURT USER GUIDE

THE COUNCIL ON PROBATE JUDICIAL CONDUCT



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Introduction

The state legislature created the Council on Probate Judicial Conduct in 1975 to investigate complaints relating to the ethical and professional activities of probate judges. The Council also hears complaints against probate magistrates, probate attorney referees and candidates for probate judge.

The law specifies the types of complaints the Council may consider. Complaints must be in writing, using a *Complaint Form, PC-41*, which must be signed under the penalty of false statement.

Attorney Richard Banbury is the Executive Director of the Council on Probate Judicial Conduct. He can be contacted by mail at Rome, McGuigan, P.C., One State Street, Hartford, CT 06103 or by telephone at (860) 549-1000.

The *Complaint Form, PC-41* is available online at ctprobate.gov. Click on "Council on Probate Judicial Conduct." The Code of Probate Judicial Conduct and other information about the Council are also available on the website.

What type of complaint may be considered?

The Council on Probate Judicial Conduct focuses its investigations and findings on the ethical and professional conduct of a probate judge, probate magistrate, attorney probate referee or candidate for probate judge against whom a complaint has been filed.

Connecticut General Statutes section 45a-63(a) states that the Council shall investigate any written complaint alleging a probate judge has committed any of the following acts:

- (1) Violation of any law or canon of ethics applicable to probate judges.
- (2) Failure to perform properly the duties of the office.
- (3) Conduct prejudicial to the impartial and effective administration of justice that brings the judicial office in disrepute.
- (4) Final conviction of a felony or of a misdemeanor involving moral turpitude.
- (5) Disbarment or suspension as an attorney-at-law.
- (6) The wilful failure to file a financial statement or the filing of a fraudulent financial statement required under law.

Connecticut General Statutes sections 45a-63(b) and 45a-63(c) state that the Council shall investigate any written complaint alleging a probate magistrate, attorney probate referee or a candidate for probate judge has violated an applicable law or canon of ethics.

The Council is not a court. It is a special tribunal established by the Connecticut legislature with authority specified by statute. Complaints to the Council should concern misconduct of the type described and the Code of Probate Judicial Conduct.

The Council does not hear and decide matters that are properly the subject of an appeal to the Superior Court from a Probate Court. If concerns arise from a disagreement with a judge's decision in a proceeding, then the Council on Probate Judicial Conduct may **not** be the proper forum in which to resolve the merits of the dispute. The Council has no authority to overrule an order by a judge.

A person who believes that a probate judge's order should be overturned has the right to file an appeal to the Superior Court. The appeal must generally be made within 30 days of the issuance of the probate decree, but there are important exceptions to this rule depending on the circumstances and the nature of the proceeding. The user guides published by the Office of the Probate Court Administrator contain general information about the period for appeals in various matters. A person should consult an attorney for more specific information about the appeals process.

What is the Council on Probate Judicial Conduct?

The Council on Probate Judicial Conduct was established by law in 1975 for the purpose of receiving and investigating complaints alleging that a probate judge committed misconduct. Public Act 15-217 expanded the Council's authority to hear complaints against probate magistrates, attorney probate referees and candidates for probate judge.

The Council consists of five members who serve four-year terms. By law, the composition of the Council is as follows: one probate judge elected by the Probate Assembly, one state referee (retired Superior Court judge or retired Supreme Court justice) appointed

by the chief justice, one attorney appointed by the governor and two non-attorneys appointed by the governor. The Council elects the chairperson from among its members.

The names of the Council members are listed on the Probate Court website at ctprobate.gov (Click on “Council on Probate Judicial Conduct” on the main page). This information is also available in the State Register and Manual in your local library.

Is there a code of ethics that defines what is or is not proper conduct?

The Code of Probate Judicial Conduct encompasses canons of ethics by which probate judges are bound. Some, but not all, of the provisions apply to magistrates, referees and judicial candidates. The canons are ethical principles patterned primarily after the model code recommended by the American Bar Association.

The probate judges originally adopted the Code in January 1976. It is updated from time to time. A copy of the Code of Probate Judicial Conduct is available on the Probate Court website at ctprobate.gov.

What is the procedure for filing a complaint?

The confidential *Complaint Form, PC-41*, is available on the Probate Court website at ctprobate.gov. (Click on “Council on Probate Judicial Conduct” on the main page). The complaint form asks for the name of the judge, magistrate, referee or judicial candidate, the Probate Court where the matter is being heard, a description of the nature of the complaint and other facts that may be of assistance to the Council in conducting its investigation. The complaint must be brought within eight years of the date of the alleged misconduct. The completed complaint form should be sent

to the Council on Probate Judicial Conduct in care of Attorney Richard Banbury, the Executive Director and Legal Counsel for the Council. Mr. Banbury's address is Rome, McGuigan, P.C., One State Street, Hartford, CT 06103. Attorney Banbury's telephone number is (860) 549-1000.

If the Council determines that the complaint meets the criteria set forth in statute, it will investigate the complaint. The Council's legal counsel will facilitate the investigation and present the relevant documents to the Council.

A person filing a complaint against a judge, magistrate, referee or judicial candidate is referred to as a "complainant." A judge, magistrate, referee or judicial candidate against whom a complaint is made is referred to as a "respondent."

How will a person know what action is being taken on a complaint?

No later than five days after receiving the complaint, the Council will notify the complainant by registered or certified mail that the complaint was received. The respondent will receive similar notice. The respondent will also receive a copy of the complaint and may file a written response with the Council. A representative of the Council may contact the complainant to request additional information.

What happens at a probable cause hearing?

The Council may schedule a probable cause hearing if necessary to determine the validity of the complaint. The complainant, respondent and other relevant parties will be notified of the time, place and nature of the hearing

At the hearing, the complainant may bring witnesses and provide evidence to the Council regarding the alleged misconduct. The respondent may choose to be represented by an attorney, examine and cross-examine witnesses and present evidence in his or her defense.

After the hearing, the complainant and respondent will be notified within seven business days whether the Council has found probable cause that the respondent committed misconduct. If the Council finds probable cause does exist that the respondent committed misconduct, the Council will hold a full hearing concerning the complaint. The full hearing will be open to the public.

If the Council finds that the respondent did not commit misconduct, but that he or she acted in a manner that gives the appearance of impropriety or constitutes an unfavorable judicial practice, the Council may issue a private admonishment recommending a change in judicial conduct or practice. The complainant will be notified of the private admonishment. A private admonishment is confidential.

Are the probable cause hearing and investigation open to the public?

The investigation and probable cause hearing are confidential, unless the respondent requests that they be open. Anyone who appears before the Council at a probable cause hearing for the purpose of providing information is prohibited from disclosing knowledge of the investigation or the subject of any testimony to a third party.

What happens at the public hearing?

At the public hearing, the Council will hear evidence, under oath, from the complainant and other witnesses and will make a record of all proceedings. The respondent and his or her attorney will be allowed to examine and cross-examine all witnesses. The hearing is not conducted under the formal rules of evidence, but it will be conducted in a manner designed to promote the interests of justice.

The Council will publish its findings, together with a memorandum of its reasons, not later than 15 days after the close of the hearing.

What actions may the Council take?

After conducting the hearing, there are several possible actions the Council may take. The Council will exonerate the respondent if it finds that he or she did not engage in misconduct. If the Council finds misconduct, it may issue a public admonishment or public censure. The Council may also recommend that the House of Representatives of the General Assembly begin impeachment proceedings against a judge or that the Chief Justice suspend or remove a magistrate or referee from office. The Council may issue a private admonishment if it finds that the respondent did not commit misconduct but that he or she acted in a manner that gives the appearance of impropriety or constitutes an unfavorable judicial practice.

Within 20 days of receiving notice of public admonishment or public censure by the Council, the respondent may appeal the decision to the Connecticut Supreme Court. The respondent filing the appeal must notify the Council of its filing before the expiration of the time for filing an appeal.

Conclusion

A complaint filed with the Council will receive the serious attention it deserves. If the Council finds that a judge, magistrate, referee or judicial candidate has committed misconduct, the Council will impose an appropriate sanction and the complaint will have served the public interest. Careful consideration should be given before filing a complaint because a complaint found not to have merit may still demand considerable time and cause significant expense for the respondent.