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MEMORANDUM

TO: Hon. Eric Coleman, Co-Chair, Judiciary Committee
Hon. William Tong, Co-Chair, Judiciary Committee
Hon. John Kissel, Ranking Member, Judiciary Committee
Hon. Rosa Rebimbas, Ranking Member, Judiciary Committee
Honorable Members of the Judiciary Committee

FROM: Paul J. Knierim, Probate Court Administrator

DATE: October 22, 2015

RE: Probate Court Regulations

CC: Hon. Patrick L. Carroll, III, Chief Court Administrator
Hon. Sydney W. Elkin, President-Judge, Connecticut Probate Assembly

In accordance with C.G.S. section 45a-77 (b) (1), I respectfully request the Judiciary Committee's approval of the enclosed proposed amendments to the Probate Court regulations.

Section 1 (Amend) General Provisions

Section 5 (Repeal) Payments to Judges of Probate who Leave Office and Determination of Accounts Receivable on or before December 31, 2010

Section 5A (Repeal) Payments to Probate Judges who Leave Office and Determination of Accounts Receivable on or after January 1, 2011

Section 8 (Repeal) Definition and Utilization of Weighted Workload

Section 10 (Amend) Probate Court Records

Section 11 (Amend) Disposition of Files in Matters Closed before July 1, 1976

Section 14 (Amend) Court-Appointed Counsel and Interdisciplinary Panels in Sterilization Proceedings and Court-Appointed Counsel and Psychologists in Proceedings for the Placement of a Person with Intellectual Disability

Section 15 (Amend) Payments of Members of a Three Judge Court Appointed by the Probate Court Administrator

Section 21 (Repeal) Payment of Committee Fees Pursuant to C.G.S. section 45a-123
Section 22 (Amended) Mediation Panel

The Probate Assembly's Executive Committee approved the proposed regulations on October 14, 2015. The regulations will be posted on our website at www.ctprobate.gov.

Please feel free to contact me or Vincent Russo, legislative liaison, with any questions.

Enclosure

Section 1 of the Probate Court Regulations is amended as follows:

(Effective ninety days after submission to the Judiciary Committee of the General Assembly):

Section 1 General Provisions

1.1 Definitions and Abbreviations

[1.1.1] For the purposes of the Probate Court Regulations:

- (a) "Administration fund" means the Probate Court Administration Fund established under C.G.S. section 45a-82.
- (b) "Administrator" means the Probate Court Administrator.
- (c) ["Assessment" means the amount due from a judge of probate under the provisions of C.G.S. section 45a-92.
- (d) "C.G.S." means the general statutes of the State of Connecticut, Revision of 1958, as amended from time to time.
- (e) (d) ["Court of probate" or "probate court"] "Probate Court" means a court exercising the powers enumerated in C.G.S. section 45a-98.
- (f) "Estimated assessment report" means the estimate that each judge of probate is required to file by the provisions of C.G.S. section 45a-92.
- (g) (e) "Fee revenue" means the total of all monies received during the fiscal year for fees, costs, and charges under C.G.S. sections 45a-105 to 45a-110, inclusive; C.G.S. section 45a-111; C.G.S. section 45a-112; sections 447 through 458 of Public Act 15-5 (June 2015 Special Session); and passport fees.
- (h) "Form 1040" means Form 1040 of the Internal Revenue Service of the Treasury Department of the United States.
- (i) "Income report" means the net income report that each judge of probate is required to file by the provisions of C.G.S. section 45a-92.
- (j) "Income Tax Regulations" means the income tax regulations of the Internal Revenue Service of the Treasury Department of the United States.
- (k) "Judge of probate" means a person elected to hold a court of probate

in a probate district in the State of Connecticut.

(l) (f) “P.C.R.” or “regulations” means the Probate Court Regulations.

[(m)] (g) “Probate assembly” means the Connecticut Probate Assembly established under C.G.S. section 45a-90.

(h) “Probate judge” means a person elected to the office of judge of a Probate Court in the State of Connecticut.

[(n)] “Revenue procedures” means the revenue procedures of the Internal Revenue Service of the Treasury Department of the United States.

(o) “Schedule C (Form 1040)” means the form entitled “Schedule C (Form 1040) Profit (or Loss) from Business or Profession” of the Internal Revenue Service of the Treasury Department of the United States.

(p) “State Treasurer” or “Treasurer” means the Treasurer of the State of Connecticut.]

Approved by the Probate Assets
Executive Committee October 14, 2015

Section 5 of the Probate Court Regulations is amended as follows:

(Effective ninety days after submission to the Judiciary Committee of the General Assembly):

Section 5
Payments to Judges of Probate Who Leave Office and
Determination of Accounts Receivable on or before
December 31, 2010

[5.0A Repealer \(Effective ninety days after submission to the Judiciary Committee of the General Assembly.\)](#)

[Probate Court Regulation section 5 is repealed with respect to any fee revenue collected on or after January 1, 2011.](#)

5.0 Applicability

Probate Court Regulation section 5 applies only to the determination of accounts receivable payments under C.G.S. section 45a-93 with respect to fee revenue received by a court of probate on or before December 31, 2010. Probate Court Regulation section 5A applies only to the determination of accounts receivable payments under C.G.S. section 45a-93 with respect to fee revenue received by a court of probate on or after January 1, 2011.

5.1 C.G.S. section 45a-93 requires, subject to certain limitations set forth in the statute, that if a judge of probate leaves office or dies while in office, the successor to such judge shall pay to such judge or the personal representative of a deceased judge, a sum representing the net accounts receivable for payment to the court. The act established a limit on the maximum of the amount of such accounts receivable that may be so paid, prohibits any such payments being made unless and until the accounts receivable are collected by the successor judge, allows for a deduction from such payments the cost of collection thereof and expenses directly attributable to the outgoing or deceased judge's term of office, and restricts the period of time over which such payments may be made. C.G.S. section 45a-93 provides that determination of the basis for such accounts

receivable, including computation for work in process, shall be made in accordance with regulations promulgated by the Probate Court Administrator. The following regulations are issued under said authority.

5.1.1 In no event shall any such payments exceed the maximum allowed in any one calendar year by C.G.S. section 45a-92(c), and in the aggregate, in no event shall the total payments payable under this section exceed 100 percent of the average final compensation of the judge as defined in C.G.S. section 45a-34.

5.1.2 No payments shall be due or made after three calendar years, which years shall mean the calendar year in which the judge leaves or dies in office and the two subsequent calendar years.

5.1.3 A judge who was elected to a High Volume Court and who, upon the date of leaving or dying in office, was a judge in a High Volume Court shall not participate in this section, unless the judge did not earn the minimum compensation as defined in C.G.S. section 45a-92(k) for the last year in office and shall then participate only after the judge or judges, who succeed the judge who has left or died in office, has received the minimum compensation as defined in C.G.S. section 45a-92(k).

5.1.4 A judge who was elected to a court which became a High Volume Court after the date the judge was elected shall participate in this section, except that said judge or said judge's estate shall not be entitled to compensation until such time as the judge or judges, who succeed the judge who has left or died in office, has received the minimum compensation as defined in C.G.S. §45a-92(k).

5.2 Determination of accounts receivable.

5.2.1 Statutory charges and costs which have been billed by such court and remain unpaid, or which are to be billed by the court, for all matters which

are essentially completed as of the last court day in office of the judge of probate who leaves the court of probate or who dies while in office (hereinafter referred to as last court day) shall be considered accounts receivable, subject to adjustments for errors in billing and uncollectible bills, and subject to any reduction required by paragraph 5.4.1.

5.2.2 Statutory charges and costs attributable to uncompleted matters, hereinafter referred to as “work in process,” shall be considered accounts receivable for the purpose of complying with C.G.S. section 45a-93 and these regulations to the extent of the completion status of such work determined as below, as of such last court day in office.

5.3 Determination of completion status of work in process

5.3.1 For decedent's estates, each file shall be reviewed and the status of each such file determined as of the last court day. If administration has been granted on or before the last court day, then such file shall be considered to have been 25% completed. If the inventory for such estate has been filed as of the last court day, such files shall be considered as having been 50% completed; if the succession or estate tax return has been filed as of such last court day, such file shall be considered as having been 75% completed; if the final account has been filed and accepted as of such last court day, such file shall be considered as having been 100% completed.

5.3.2 In the case of small estates, affidavits with a succession or estate tax return, completion status shall be determined taking into consideration the proportion of work already done and the amount of work remaining to be done as of the last court day. If the small estates affidavit has been filed and accepted, as of the last court day, then such estate shall be considered as having been 25% completed; if the Decree on the small estates affidavit has been issued as of the last court day, then such estate shall be considered as having been 50% completed; if the succession or estate tax return has been filed as of the last

court day, then such estate shall be considered to have been 75% completed; if the tax computation has been received from the Department of Revenue Services or the judge has issued a finding of non-taxability and all necessary documents, such as tax certificates for the land records have been completed as of the last court day, then such estate shall be considered to have been 100% completed.

5.3.3 In the case of tax purposes only (T.P.O.) estates, if the succession or estate tax return has been filed, reviewed, and accepted and forwarded to the Department of Revenue Services, as of such last court day, such file shall be considered as having been 50% completed. If the Department of Revenue Services has cleared the estate and all necessary documents, such as tax certificate for the land records, have been completed as of the last court date, then such estate shall be considered to have been 100% completed.

5.3.4 The completion status of all matters other than decedent's estates shall be determined by agreement of the parties by estimating the percentage of completion of such files on the last court day.

5.4 Calculation of amounts due

5.4.1 The total fees and costs attributable to each file evaluated in paragraph 5.3 above shall be divided and allocated to the outgoing judge and the successor judge in proportion to the completion status of each such file, and the allocation as to each from all such files shall be aggregated. If the net amount of the aggregation so obtained is in favor of the departing judge, such net amount shall be reduced by the total of any fees and costs already received by the outgoing judge on any such files, and the remaining balance, if any, shall be the net accounts receivable attributable to work in process. If such reduction attributable to amounts already paid results in a negative remaining balance, that amount shall be due from and payable by the outgoing judge to the court within 180 days of the date said judge ceased to be the judge of that probate court. If

not paid within 180 days, interest shall be payable, in addition to said amount due, at the rate of interest applicable under C.G.S. section 12-76. Said interest is to be calculated from the date said judge ceases to be the judge of that probate court.

5.4.2 Subject to the provisions of C.G.S. section 45a-93 with respect to the maximum period of time over which the amount due under the statute and these regulations may be paid, said sums due may, at the discretion of the judge assuming office, be paid in installments, without interest, to avoid jeopardizing court operations for lack of adequate cash flow.

5.4.3 Prior to the payment of any amounts under these regulations, the computation of any amounts due and payable shall be audited by the Probate Administration office. Payments made without Probate Administration approval may be disallowed as deductions on PC-22.

5.5 Interim judges

5.5.1 Interim judges cited by the Probate Court Administrator to preside over a court, under the provisions of C.G.S. section 45a-120, may be compensated in a manner consistent with the relevant statutes and regulations, in accordance with a plan approved by the Probate Court Administrator, which plan shall be binding on any successor judge who assumes office following such interim appointment. Any payments made by the interim judge to the outgoing judge shall be deducted from any amounts due the outgoing judge under the provisions of these regulations.

5.6 Failure to agree on allocations

5.6.1 If the parties are unable to agree upon an acceptable method for determining accounts receivable under these regulations, then the matter shall be referred to the Probate Court Administrator who shall refer it to a committee of three persons consisting of the Probate Court Administrator, the Executive

Secretary of the Connecticut Probate Assembly and the President of the Connecticut Probate Assembly. The majority decision of such committee shall be binding upon the parties.

Approved by the Probate Assembly's
Executive Committee October 14, 2015

Section 5A of the Probate Court Regulations is amended as follows:

(Effective ninety days after submission to the Judiciary Committee of the General Assembly):

Section 5A
Payments to Probate Judges Who Leave Office and
Determination of Accounts Receivable on or
after January 1, 2011

5A.0 (NEW) Repealer *(Effective ninety days after submission to the Judiciary Committee of the General Assembly.)*

Probate Court Regulation section 5A is repealed with respect to any fee revenue collected on or after January 1, 2014.

5A.1 Authority

These regulations are issued pursuant to C.G.S. sections 45a-77, 45a-92, and 45a-93.

5A.2 Applicability

(a) Probate Court Regulation section 5A applies only to the determination of accounts receivable payments under C.G.S. section 45a-93 with respect to fee revenue received by a Probate Court on or after January 1, 2011.

(b) Probate Court Regulation section 5A does not apply to a probate judge who is elected for a term of office beginning on or after January 5, 2011.

5A.3 Work in process

(a) For purposes of P.C.R. section 5A:

(1) "Outgoing judge" means a probate judge who leaves office or who dies while in office.

(2) "Work in process" means fee revenue attributable to

uncompleted decedents' estates as of the outgoing judge's last day in office multiplied by the percentage completion of each such estate determined under P.C.R. section 5A.4. Work in process calculated under P.C.R. section 5A.5 shall be considered accounts receivable for the purpose complying with C.G.S. section 45a-93, as amended from time to time.

(b) Work in process shall be determined only on the basis of fee revenue attributable to uncompleted estates of decedents arising in the town or towns in the judge's district as it existed on January 4, 2011.

5A.4 Determination of completion status of work in process

(a) The completion status of each uncompleted decedent's estate subject to full administration shall be determined as follows:

- (1) If administration of the estate was granted on or before the outgoing judge's last day in office, the estate shall be considered to be 25% completed.
- (2) If the inventory for the estate was filed on or before the outgoing judge's last day in office, the estate shall be considered to be 50% completed.
- (3) If an opinion of no tax or an assessment was issued for succession or estate tax on or before the outgoing judge's last day in office, the estate shall be considered to be 75% completed.
- (4) If the final account was filed and accepted on or before the outgoing judge's last day in office, the estate shall be considered to be 100% completed.

(b) The completion status of each uncompleted estate being settled as a small estate under C.G.S. section 45a-273 shall be determined as follows:

- (1) If an affidavit in lieu of administration was filed on or before the outgoing judge's last day in office, the estate shall be considered to be 25% completed.
- (2) If the decree on an affidavit in lieu of administration was issued on or before the outgoing judge's last day in office, the estate shall be considered to be 50% completed.
- (3) If a succession or estate tax return was filed on or before the outgoing judge's last day in office, the estate shall be considered to be 75% completed.
- (4) If an opinion of no tax or an assessment was issued for the succession or estate tax on or before the outgoing judge's last day in office, the estate shall be considered to be 100% completed.

(c) The completion status of each uncompleted estate filed for tax purposes only shall be determined as follows:

- (1) If a succession or estate tax return was filed on or before the outgoing judge's last day in office, the estate shall be considered to be 50% completed.
- (2) If an opinion of no tax or an assessment was issued for the succession or estate tax on or before the outgoing judge's last day in office, the estate shall be considered to be 100% completed.

5A.5 Calculation of work in process amounts

(a) The administrator shall calculate work in process for each outgoing judge entitled to payments under C.G.S. section 45a-93 and P.C.R. section 5A.2 once each year for the calendar year in which the outgoing judge left office or died while in office and the two subsequent calendar years. Such calculations shall be made in accordance with P.C.R. sections 5A.5 (b) and (c).

(b) The administrator shall calculate each outgoing judge's gross work in process by:

- (1) allocating the fee revenue actually received for each uncompleted estate between the outgoing judge and the administration fund in accordance with P.C.R. section 5A.4 and
- (2) aggregating all such allocations.

(c) The administrator shall calculate each outgoing judge's net work in process by subtracting the following amounts from the outgoing judge's gross work in process as determined under P.C.R. section 5A.5 (b):

- (1) the total of any fee revenue received by the outgoing judge on any uncompleted estate before the judge left office or died while in office,
- (2) the total of any previous work in process payments made to the outgoing judge by any judge who succeeded the outgoing judge in office,
- (3) the cost of collecting the fee revenue for any uncompleted estate, and
- (4) any expenses directly attributable to the outgoing judge's term of office paid by the administration fund.

5A.6 Payments for work in process

(a) If an outgoing judge's net work in process determined under P.C.R. section 5A.5 is a positive amount, the administrator shall calculate the assessment due on such net work in process under C.G.S. section 45a-92 (c). The administrator shall deduct from the outgoing judge's net work in process the amount of such assessment, together with any outstanding assessment, penalty, or interest that such outgoing judge owes to the administration fund for fee

revenue received in previous periods, and shall pay the remaining balance to the outgoing judge from the administration fund. The administrator shall make such work in process payments on or before April 1 of the year following the year for which the work in process payment is calculated.

(b) If an outgoing judge's net work in process determined under P.C.R. section 5A.5 is a negative amount, the administrator shall subtract from the amount due from the outgoing judge an amount equal to the difference, if any, between the judge's actual compensation and the amount of compensation the judge would have received if the judge's compensation had not been capped at 72 times the annual weighted-workload of the court in accordance with C.G.S. section 45a-92 (c) for the calendar year in which the outgoing judge retired or died while in office and the preceding two calendar years, provided, however, that the reduction in the amount due shall in no event exceed the negative work in process amount. The administrator shall send the outgoing judge an invoice for the net amount due, payable not later than 30 days after the invoice is sent. The administrator may defer sending an invoice if the administrator determines that the net work in process amount is likely to be a positive amount in subsequent years.

(c) The annual amount payable to a probate judge for work in process shall not exceed the amount under C.G.S. section 45a-95a (a) (4) or the outgoing judge's average final compensation under C.G.S. section 45a-34, whichever is less.

(d) No payments for work in process shall be made after three calendar years, which means the calendar year in which the outgoing judge left office or died while in office and the two subsequent calendar years.

Section 8 of the Probate Court Regulations is amended as follows:

(Effective ninety days after submission to the Judiciary Committee of the General Assembly):

Section 8
Definition and Utilization of Weighted Workload

8.0 (NEW) Repealer *(Effective ninety days after submission to the Judiciary Committee of the General Assembly.)*

Probate Court Regulation section 8 is repealed for any period ending on or after July 1, 2013.

8.1 Authority

These regulations are issued pursuant to C.G.S. sections 45a-77, 45a-92 and 45a-95.

8.2 Applicability

(a) Probate Court Regulation section 8 applies only to the definition and utilization of weighted workload for any period ending on or before June 30, 2013.

(b) Probate Court Regulation section 8A applies only to the definition and utilization of weighted workload for any period beginning on or after July 1, 2013.

8.3 Weighted Workload

"The annual weighted workload " of a probate court, as that term is used in C.G.S. sections 45a-92 and 45a-95 and in P.C.R. sections 2, 6 and 7, is the product resulting from the multiplication of one of the whole numbers from one to five by the total number of each category of case handled by the probate court in a fiscal year, as reported pursuant to P.C.R. section 8.4, with the exception of passport applications. The whole number to be multiplied by each such category of case shall be that set forth in the Appendix to the regulation, which may be

modified from time to time by further regulation adopted in accordance with the provisions of C.G.S. section 45a-77.

8.4 Annual Weighted Workload Certification

(a) The annual weighted workload of a probate court shall be used to determine compensation of the judge of the court under C.G.S. section 45a-95.

(b) Each court shall enter the weighted workload data required by the administrator into the case management system of the courts of probate. The administrator shall track and periodically review the data for each court and make adjustments necessary to comply with this regulation. The administrator shall give the judge of a court an opportunity to provide additional information on any adjustment proposed by the administrator.

(c) Not later than December 1 of each year, the administrator, after considering additional information supplied by the judge under subsection (b), shall certify the annual weighted workload for each court for the preceding fiscal year.

Approved by the Probate Assembly
Executive Committee October 14, 2015

Section 10 of the Probate Court Regulations is amended as follows:

(Effective ninety days after submission to the Judiciary Committee of the General Assembly):

**Section 10
Probate Court Records**

10.1 Authority

These regulations are issued pursuant to C.G.S. sections 45a-77 (b) (1)[, 45a-8(e), 45a-9, and 45a-10].

[10.2 Definitions

As used in P.C.R. sections 10 and 11:

(a) "Collateral document" means a document not required to be recorded, including all correspondence, e-mails, court memoranda and notes, and any other miscellaneous writing or paper in a court file.

(b) "Court file" means all papers in a file in connection with a matter, including, but not limited to, original documents.

(c) "Digital record" means an official record of an original document that is recorded on electronic storage media and is readily accessible on a computer.

(d) "Microfilm" means a photographic reproduction of an original document on film that meets the standards established by the Public Records Administrator in accordance with C.G.S. sections 1-16 and 11-8.

(e) "Original document" means a document required to be recorded under P.C.R. section 10.3.

(f) "Probate records center" means a secure, fire-resistive facility, designated by the Probate Court Administrator and approved by the Public Records Administrator in accordance with C.G.S. section 11-8 for storage of original documents not on the premises of a probate court.

(g) "Record book" means an official record of an original document that is recorded in a hard cover book.

(h) "Recorded" or "recording" means the process under P.R.C. sections 10.5 and 10.6 by which a court creates an official record of a matter.

10.3 Types of documents to be recorded

(a) Each court shall record the following original documents for each matter:

- (1) Applications, petitions, and motions;
- (2) appointments of guardians ad litem, attorneys, and representatives of interested parties;
- (3) orders of notice, citations, and returns;
- (4) waivers of notice;
- (5) affidavits for filing a will not submitted for probate;
- (6) wills and codicils admitted to probate;
- (7) affidavits in proof of will;
- (8) appointments of judges as agents for service of process;
- (9) affidavits in lieu of administration;
- (10) certificates of devise, descent, and distribution;
- (11) opinions of no tax due;
- (12) returns and lists of claims;
- (13) certifications of notice to creditors;
- (14) inventories;
- (15) accounts;
- (16) bonds and bond waivers;

- (17) decrees and orders;
- (18) physicians' evaluations;
- (19) physicians' certificates;
- (20) assessment team evaluations under C.G.S. section 45a-674 and reports of assessment teams or Department of Developmental Services professionals under C.G.S. section 45a-681;
- (21) certificates issued by the courts, except fiduciary probate certificates;
- (22) reports filed by the Department of Children and Families or child placing agencies, including the health history of biological parents and blood relatives;
- (23) succession and estate tax returns not submitted to the Department of Revenue Services, including such attachments as the court considers necessary; and
- (24) any other document from the court file the court considers necessary to provide a complete record of a matter

10.4 Confidential records

(a) Each original document designated by law as confidential shall be recorded and maintained separately as a confidential record. Confidential records shall not be disclosed to the public but may be disclosed only to interested parties as permitted by law.

(b) All records in the following matters shall be confidential:

- (1) Commitment of a child;
- (2) commitment of an adult;
- (3) quarantine;
- (4) public health emergency;
- (5) commitment for treatment of tuberculosis;
- (6) guardianship of a person with mental retardation, pending on and after October 1, 2000, except for the identity of the guardian;

(7) removal of parent as guardian, including immediate temporary custody, temporary custody, visitation, and reinstatement;

(8) appointment of a guardian of the person of a minor;

(9) termination of parental rights;

(10) adoption on and after January 1, 1944;

(11) emancipation;

(12) sterilization;

(13) placement of a person with mental retardation; and

(14) shock therapy

(c) All of the following original documents shall be confidential:

(1) succession tax returns;

(2) estate tax returns; and

(3) evaluations by physicians pursuant to C.G.S. section 45a-650

10.5 Digital method of recording documents

(a) Each court shall create a digital record of each original document. The digital record must be made using digital document management software designated by the Probate Court Administrator. A backup of the original document shall be made on microfilm.

(b) Each court shall scan each original document not later than 30 days after completion of all proceedings in a matter. If a matter is ongoing, such as a conservatorship or trust, each original document shall be scanned at the conclusion of each significant stage in the matter, such as appointment of a conservator or approval of an interim account. The date on which the original document is scanned shall be indicated on the document.

(c) Each court shall obtain a certification from any vendor that provides microfilm services to the court that the microfilm of each original document is accurate and legible and meets the standards established by the Public Records

Administrator. The certification shall be scanned and placed on microfilm in the records of the court.

(d) Each court shall designate one or more staff members to ensure that each digital record is complete, accurate, and legible.

10.6 Method of recording documents on or after July 1, 1976 and before January 5, 2011

(a) Each court shall create a digital record or microfilm record of each original document filed on or after July 1, 1976, and before January 5, 2011. If a digital record is made, the record must be made using digital document management software designated by the Probate Court Administrator. If a microfilm record is made, the microfilm record shall be reproduced in a record book or retained in negative or positive film accessible to the public.

(b) A backup of the official record shall be made on microfilm. The backup on microfilm shall be completed not later than 90 days after the completion of a matter. If a matter is ongoing, such as a conservatorship or trust, each original document shall be recorded at the conclusion of each significant stage in the matter, such as appointment of a conservator or approval of an interim account.

(c) Each court shall designate one or more staff members to ensure that record books, digital records, and microfilm records are complete, accurate, and legible.

10.7 Storage of court files and records

(a) Except as otherwise provided in this section, each active court file, each original document in a closed file that has not been recorded and microfilmed, and each record book shall be kept in a secure and fire-resistive vault, safe, or cabinet meeting the requirements of C.G.S. sections 11-8 and 45a-10 and standards established by the Public Records Administrator.

(b) Each court shall store and back up digital records in a manner prescribed by the Probate Court Administrator.

(c) Backup of records on microfilm shall be stored off the premises of the court in a secure, fire-resistive facility that meets the standards established by the Public Records Administrator. Courts shall maintain a complete index of the records on microfilm in storage.

10.8 Public access to records

Except as provided in P.C.R. section 10.4, each court shall make its official records accessible to the public at the court or other location.

10.9 Retention and disposition of original documents in files open on or after July 1, 1976

(a) Except as provided in P.C.R. section 10.9(b), each court shall retain all original documents and collateral documents in court files that are active.

(b) If an original document in an active court file has been recorded and microfilmed, and certification has been received in accordance with P.C.R. section 10.5, the court may destroy such original document.

(c) Except as provided under P.C.R. section 10.9(d) and P.C.R. section 11.2, if a court file is closed, a court may destroy any original documents contained in the court file after such documents have been recorded and microfilmed, and certification has been received in accordance with P.C.R. section 10.5. A court may destroy collateral documents at such time as the court destroys the original documents.

(d) Except as provided in P.C. R. section 10.9(f) and P.C.R. section 11.2(c), each court shall retain all original wills.

(e) Notwithstanding P.C.R. section 10.9 (b) and (c), a court shall not destroy any original document until after the expiration of any applicable appeal period.

(f) Except for a confidential record under P.C.R. section 10.4 and wills not submitted for probate, a court may, in accordance with policies and procedures of the State Library, transfer to the library an original document in a closed file that has historical significance regardless of the date filed in court. Each court shall keep a complete index of original documents transferred to the library.

10.10 Probate records center

(a) A court may, in accordance with policies and procedures of the Probate Court Administrator, transfer only the following records to the probate records center: (1) original wills and (2) confidential original documents in files closed before July 1, 1976 that have been recorded but have not been microfilmed.

(b) Each court shall maintain a complete index of the records sent to the probate records center. A copy of the index shall be sent to the probate records center together with the records. The index shall contain a certification by the judge of the probate court that sent the records in substantially the following form:

I, _____, Judge of Probate for the district of _____ do hereby certify that the records listed on this index have been properly recorded in the records of this court in accordance with P.C.R. section 10. I further certify that this index is a complete list of those records being placed in the probate records center in accordance with these regulations.

(c) A party requesting any records from the probate records center shall pay the cost of retrieving the records.

10.11 Record book

(a) Unless a record book has been recorded as a digital record and recorded on microfilm, the court shall keep each such record book in a secure and fire-resistive vault, safe, or cabinet meeting the standards established by the Public Records Administrator.

(b) A court may transfer any record book created on or before December 31, 1920 to the State Library in accordance with C.G.S. section 11-4c and policies and procedures established by the library.

(c) A court may destroy or transfer title and custody of any non-confidential record book created on or after January 1, 1921 to a municipality, historical society, or other appropriate organization if: (1) the record book has been recorded as a digital record, (2) the record book has been recorded on microfilm and the location of microfilm has been verified, and (3) the Probate Court Administrator, the Public Records Administrator, and the State Archivist have authorized destruction or transfer of the record book.

(d) A court may destroy any confidential record book if: (1) the record book has been recorded as digital record, (2) the record book has been recorded on microfilm and the location of the microfilm has been verified, and (3) the Probate Court Administrator, the Public Records Administrator, and the State Archivist have authorized destruction of the record book.]

10.2 Definitions

As used in regulation sections 10 and 11:

(a) "Collateral document" means any document in a court file or electronic court file that is not listed in regulation section 10.3. Correspondence and exhibits are collateral documents unless necessary to provide a complete record of a matter.

(b) "Court file" means all papers in a file for a matter.

(c) "Electronic court file" for a matter means the images of all documents scanned under regulation section 10.5, stored on electronic media.

(d) "Exhibit" means a document that is:

- (i) submitted to the court to establish a fact in connection with a petition or motion; or
- (ii) marked for or offered into evidence.

(e) "Permanent official record" for a matter means the images of all documents listed in regulation section 10.3, created in accordance with regulation section 10.7, and stored on electronic media.

(f) "Microfilm" means a photographic reproduction of a document on film that meets the standards set forth in the microfilming policy established by the Public Records Administrator.

(g) "Probate records center" means a secure, fire-resistive facility, designated by the Probate Court Administrator and approved by the Public Records Administrator in accordance with C.G.S. section 11-8 for storage of documents not on the premises of a Probate Court.

(h) "Record book" means an official court record contained in a hard cover book.

(i) “Scan” or “scanning” means the process of creating an image of a paper document for storage on electronic media.

10.3 Documents required to be in the permanent official record

The permanent official record for a matter shall include each:

- (a) application, petition and motion;
- (b) will and codicil;
- (c) report and evaluation required by statute;
- (d) order of notice, citation and return;
- (e) probate bond and restriction on control of assets;
- (f) inventory, financial report, account and affidavit of closing;
- (g) decree, order and opinion;
- (h) certificate issued by the court, except a fiduciary probate certificate;
- (i) document that is on the list of document types that the Probate Court Administrator designates to be included in the permanent record; and
- (j) other document that the court considers necessary to provide a complete record of the matter.

10.4 Confidential records

(a) A document or file that is designated by law as confidential shall be maintained separately as a confidential record. Confidential records shall not be disclosed to the public but may be disclosed to parties and attorneys of record as permitted by law.

(b) All records in the following matters shall be confidential:

- (1) involuntary placement of a person with intellectual disability;
- (2) commitment for treatment of psychiatric disability;
- (3) administration of shock therapy;
- (4) medication for treatment of psychiatric disability;
- (5) appointment of a special limited conservator;

- (6) commitment for treatment of drug and alcohol dependency;
- (7) commitment for treatment of tuberculosis;
- (8) appointment of a guardian of an adult with intellectual disability;
- (9) sterilization;
- (10) removal of parent or guardian;
- (11) temporary guardianship;
- (12) termination of parental rights;
- (13) appointment of a statutory parent;
- (14) adoption;
- (15) emancipation of minor;
- (16) a hearing or conference, or part of a hearing or conference, that is closed under rule 16 of the Probate Court Rules of Procedure;
- (17) a request under C.G.S. section 45a-100 for relief from federal firearms disability; and
- (18) any other hearing or conference that is confidential under statute.

(c) The following documents, or parts of documents, in a non-confidential matter shall be confidential:

- (1) succession tax return and any other document containing succession tax information;
- (2) estate tax return and any other document containing estate tax information;
- (3) the part of a Probate Court form that contains a social security number;
- (4) hospital, psychiatric, psychological and medical records under C.G.S. section 45a-650; and

- (5) record, or part of a record, that is sealed under rule 16 of the Probate Court Rules of Procedure.

10.5 Creation of Electronic Court File

(a) The court shall create and maintain an electronic court file for each matter.

(b) Except as provided in regulation section 10.5 (d), each document filed with the court in paper form shall be scanned not later than one business day after receipt. The court shall transmit the scanned image of the document to the electronic court file for the matter as soon as possible.

(c) Each document listed in regulation section 10.3 that is generated by the court in paper form shall be scanned and the image transmitted to the electronic court file for the matter not later than one business day after the document is signed. An image of each court-generated document listed in regulation section 10.3 that is signed electronically shall be transmitted directly to the electronic court file for the matter immediately upon signing.

(d) The court is not required to scan an exhibit unless necessary to provide a complete record of a matter.

(e) The staff member who scans a document shall review the image to verify that it is a complete, accurate and legible copy of the document. The staff member who transmits a document generated by the court directly to the electronic court file shall review the image to verify that it is a complete, accurate and legible copy of the document.

(f) The Probate Court Administrator shall arrange for scanning equipment and software at each court that complies with the digital imaging policy established by the Public Records Administrator.

10.6 Microfilm of Documents

(a) The court shall contract with a microfilm vendor for the purpose of microfilming documents in accordance with this section. The court shall ensure that documents are microfilmed in compliance with the microfilming policy established by the Public Records Administrator.

(b) Except as provided in regulation section 10.6 (c), the court shall, not later than 90 days after completion of all proceedings in the matter, transmit to the microfilm vendor an image of each document listed in regulation section 10.3 that is contained in the electronic court file.

(c) In conservatorship, guardianship and trust matters, the court shall, not later than 90 days after the conclusion of each significant stage, transmit to the microfilm vendor an image of each document listed in regulation section 10.3 that is contained in the electronic court file and not previously microfilmed.

(d) The court shall obtain a certification from the microfilm vendor that the microfilm of each document is accurate and legible and meets the standards established by the Public Records Administrator. The court shall scan the certification.

(e) The court shall designate one or more staff members to ensure that all of the documents listed in regulation section 10.3 are microfilmed in each matter.

10.7 Creation of Permanent Official Record

At the conclusion of all proceedings in a matter, including any appeal, the court shall convert the electronic court file to the permanent official record by:

- (a) confirming that the electronic court file contains an image of each document listed in regulation section 10.3;
- (b) verifying that each document listed in regulation section 10.3 has been microfilmed as required under regulation section 10.6; and
- (c) deleting the images of collateral documents contained in the electronic court file.

10.8 Storage of files and records

(a) Except as otherwise provided in this regulation, records in paper form that have not been microfilmed, including court files and record books, shall be kept in a secure and fire-resistive vault, safe or cabinet meeting the requirements of C.G.S. sections 11-8 and 45a-10 and regulations adopted by the Public Records Administrator.

(b) Each court shall store and back up the electronic court file for each matter in a manner prescribed by the Probate Court Administrator.

(c) The microfilm shall be stored off the premises of the court in a secure, fire-resistive facility that meets the standards set forth in the microfilming policy established by the Public Records Administrator. Courts shall maintain a complete index of the records on microfilm in storage.

10.9 Public access to records

(a) Except as provided in regulation section 10.4 and rules 16 and 17 of the Probate Court Rules of Procedure, the court shall make its official records accessible to the public at the court or other location.

(b) The administrator shall maintain a computer at each Probate Court to provide public access to non-confidential electronic court files and permanent official records.

10.10 Disposition of documents in the court file

(a) For an open matter, the court may destroy a document in the court file, other than an original will, if the document:

- (1) has been microfilmed and certification has been received in accordance with regulation section 10.6;
- (2) is a collateral document that has been scanned;
- (3) is not required to be scanned under regulation section 10.5 (d); or
- (4) is an exhibit that the court is authorized to destroy under section 64.4 of the Probate Court Rules of Procedure.

(b) For a closed matter, the court may destroy all contents of the court file, if all documents listed in regulation section 10.3 contained in the file have been microfilmed and certification has been received in accordance with regulation section 10.6, except that the court:

- (1) shall retain the original will; and
- (2) may not destroy an exhibit unless authorized under section 64.4 of the Probate Court Rules of Procedure.

(c) Notwithstanding regulation section 10.10 (a) and (b), the court may not destroy any non-confidential document in a file that was closed before July 1, 1976. Disposition of documents in a file that was closed before July 1, 1976 is governed by regulation section 11.

(d) Except for a confidential record under regulation section 10.4 and wills not admitted to probate, a court may, in accordance with policies and procedures of the State Library, transfer to the library any document in a closed file that has historical significance, regardless of the date filed in court. Each court shall keep a complete index of the records transferred to the library.

10.11 Probate records center

(a) Except as provided in regulation section 11.2, the court may transfer original wills to the probate records center, in accordance with procedures established by the Probate Court Administrator. No other documents may be transferred to the probate records center without prior approval of the Probate Court Administrator.

(b) The court shall maintain a complete index of the records sent to the probate records center. A copy of the index shall be sent to the probate records center together with the records. The index shall contain a certification by the judge of the court that sent the records in substantially the following form:

I, _____, judge of the _____ Probate Court, do hereby certify that the records listed on this index have been properly recorded in the records of this court in accordance with regulation section 10. I further certify that this index is a complete list of those records being placed in the probate records center in accordance with these regulations.

(c) A party requesting any record from the probate records center shall pay the cost of retrieving the record.

10.12 Record book

(a) Unless a record book has been scanned and microfilmed, the court shall keep the record book in a secure and fire-resistive vault, safe or cabinet meeting the requirements of C.G.S. sections 11-8 and 45a-10 and regulations adopted by the Public Records Administrator.

(b) A court may transfer any record book to the State Library in accordance with C.G.S. section 11-4c and policies and procedures established by the library.

(c) A court may destroy or transfer title and custody of any non-confidential record book created on or after January 1, 1921 to a municipality, historical society or other appropriate organization if:

- (1) the record book has been scanned;
- (2) the record book has been microfilmed; and
- (3) the Probate Court Administrator, the Public Records Administrator, and the State Archivist have authorized destruction or transfer of the record book.

(d) A court may destroy any confidential record book if:

- (1) the record book has been scanned;
- (2) the record book has been microfilmed; and
- (3) the Probate Court Administrator, the Public Records Administrator, and the State Archivist have authorized destruction of the record book.

Approved by the Probate Assembly's
Executive Committee October 14, 2015

Section 11 of the Probate Court Regulations is amended as follows:

(Effective ninety days after submission to the Judiciary Committee of the General Assembly):

Section 11 Disposition of Files in Matters Closed before July 1, 1976

11.1 Authority

These regulations are issued pursuant to C.G.S. sections 45a-77(b)(1)[, 45a-8(e), 45a-9, and 45a-10].

[11.2 Retention and destruction of original documents in files closed before July 1, 1976

(a) Each court shall transfer all original documents and collateral documents in court files that were closed before January 1, 1900 to the State Library in accordance with rules and policies of the library. A court may, with the written agreement of the State Librarian, retain such court files within the rules and policies of the library.

(b) Except for a confidential document under P.C.R. section 10.4 and a judge's notes, each court shall transfer all original documents and collateral documents in court files that were closed on or after January 1, 1900 and before July 1, 1976 to the State Library in accordance with rules and policies of the library. A court may, with the written agreement of the State Librarian, retain such court files within the rules and policies of the library.

(c) A court may transfer any original will that has been admitted to probate to the State Library.

(d) Except for a confidential record under P.C.R. section 10.4 and wills not submitted for probate, a court may, in accordance with policies and procedures

of the State Library, transfer to the library an original document that has historical significance regardless of the date filed in court.

(e) Each court shall keep a complete index of original documents transferred to the State Library.

11.3 Probate records center

(a) A court may, in accordance with policies and procedures of the Probate Court Administrator, transfer only the following records to the probate records center: (1) original wills and (2) confidential original documents in files closed before July 1, 1976 that have been recorded but have not been microfilmed.

(b) Each court shall maintain a complete index of the records sent to the probate records center. A copy of the index shall be sent to the probate records center together with the records. The index shall contain a certification by the judge of the probate court that sent the records in substantially the following form:

I, _____, Judge of Probate for the district of _____ do hereby certify that the records listed on this index have been properly recorded in the records of this court in accordance with P.C.R. section 10. I further certify that this index is a complete list of those records being placed in the probate records center in accordance with these regulations.

(c) A party requesting any records from the probate records center shall pay the cost of retrieving the records.]

11.2 Disposition of court files for matters closed before July 1, 1976

(a) The court shall transfer all court files, including original wills admitted to probate, for matters that were closed before January 1, 1900 to the State Library

in accordance with rules and policies of the library. A court may, with the written agreement of the State Librarian, retain such court files within the rules and policies of the library.

(b) Except for a confidential document under regulation section 10.4 and a judge's notes, the court shall transfer all court files, including original wills admitted to probate, for matters that were closed on or after January 1, 1900 and before July 1, 1976 to the State Library in accordance with rules and policies of the library. A court may, with the written agreement of the State Librarian, retain such court files within the rules and policies of the library.

(c) Notwithstanding regulation sections 11.2 (a) and (b), the court shall not transfer any original will not admitted to probate to the State Library. The court may transfer an original will not admitted to probate to the probate records center in accordance with regulation section 10.11.

(d) The court shall keep a complete index of documents transferred to the State Library.

Approved by the Probate Assembly's
Executive Committee October 14, 2015

Section 14 of the Probate Court Regulations is amended as follows:

(Effective ninety days after submission to the Judiciary Committee of the General Assembly):

Section 14

Court-Appointed Counsel and Interdisciplinary Panels in Sterilization Proceedings and Court-Appointed Counsel and Psychologists in Proceedings for the Placement of [the Mentally Retarded] a Person with Intellectual Disability [and Interdisciplinary Panel Members in Proceedings for Sterilization]

14.1 Authority *(Effective ninety days after submission to the Judiciary Committee of the General Assembly).*

These regulations are issued by the Probate Court Administrator in accordance with C.G.S. [§§] sections 45a-694, 45a-695, 17a-274 and 45a-77.

14.2 Panel of Attorneys *(Effective ninety days after submission to the Judiciary Committee of the General Assembly).*

[14.2.1 There shall be a panel of attorneys from which courts of probate, whenever required by C.G.S. §§ 45a-694 and 17a-274 to appoint counsel for respondents, other than counsel selected by such respondents, shall appoint counsel. The court shall determine, as soon as reasonably possible after the filing with the court of any application for determination of ability to give informed consent, application for consent to sterilization or application for placement of the mentally retarded, if the respondent has not selected counsel and is, therefore, entitled to court-appointed counsel. If counsel has not been selected by the respondent or is not reasonably available, or declines to act, then counsel shall be appointed in accordance with § 14.3 below.

14.2.2 All attorneys, members of the Connecticut Bar, who reside in or maintain an office for the practice of law in Connecticut who wish to be included

on the panel and be on call for service as counsel for sterilization proceedings or placement proceedings by the probate courts may apply to the Probate Court Administrator in accordance with these regulations for inclusion on the panel. An attorney who wishes to restrict his availability to certain probate geographical areas should so notify the Probate Court Administrator.

14.2.3 Application for membership on the panel shall be in writing addressed to the Probate Court Administrator and shall indicate any restrictions on availability. Applications must be accompanied by a statement setting forth the date and place of admission to the Connecticut Bar and should state the employment or law firm affiliation of the applicant. The application may be in letter form.

14.3 Appointments by Courts from the Panel

14.3.1 Appointments by courts of probate shall be made from the panel furnished by the Probate Court Administrator. Each court making an appointment from the panel shall offer the appointment on each such application to the attorney whose name on the list next follows the name of the attorney last appointed by that court from the panel. Appointment of separate counsel in sequential order shall be made for each application received, provided, however, that the court may, at its discretion, appoint the next attorney from the panel to represent all respondents whose hearings are to be scheduled on the same day, and such representation shall include continuances from the originally scheduled hearing. If such attorney is unavailable or declines appointment, then the court shall go on to the next name on the list and proceed in like manner and continue on the list, in sequence, until appointment of counsel is made. In addition to departing from appointments in sequential order because of unavailability or declination, a court may depart from the sequential order of offering appointments to attorneys on the panel for sufficient cause having to do with the protection of the best interests of the respondent, but each such departure shall be reported to the Probate Court Administrator promptly, in writing.

14.3.2 The Probate Court Administrator may remove from the panel the name of any attorney for cause or who as of the date of the last offer of appointment shall have five times in succession declined appointments to serve, and any judge of probate may request the Probate Court Administrator to remove an attorney from the panel, and the Probate Court Administrator, after consulting with such attorney, may do so. Each probate court shall keep a record of the attorneys on the panel provided by the Probate Court Administrator which shall set forth the dates on which each attorney was declined or was appointed. When any such record discloses that any attorney has declined appointments from that court five times in succession, then the court shall report such fact to the Probate Court Administrator forthwith. Any attorney whose name has been removed from the panel may again be included on the panel only pursuant to application therefore and acceptance by the Probate Court Administrator. In the event the Probate Court Administrator removes the name of any attorney from the panel, such attorney shall be sent notice in writing of his removal.]

(a) Any attorney licensed to practice law in the state of Connecticut may seek membership on the panel of attorneys maintained by the administrator by submitting an application, in writing, addressed to the administrator. The application shall include:

- (1) The attorney's name, office address, telephone and fax numbers, Juris number, and email address;
- (2) the year of admission to the Connecticut bar;
- (3) employment or law firm affiliation of the attorney;
- (4) the geographical area in which the attorney wishes to serve;
- (5) areas of probate practice for which the attorney is willing to be appointed;
- (6) the attorney's willingness to accept pro bono assignments; and
- (7) such other information that the administrator may require.

(b) The administrator shall have discretion to place an attorney who is in good standing on the panel.

(c) The administrator, acting sua sponte or on the request of a court, shall have the discretion to remove an attorney from the panel of attorneys. If the administrator removes an attorney from the panel, the administrator shall send the attorney written notice of the removal.

(d) If a petition has been filed with a Probate Court for a matter under C.G.S. section 17a-274 to place an individual with developmental disabilities with the Department of Developmental Services or under C.G.S. section 45a-694 for sterilization proceedings, the court shall appoint an attorney from the administrator's panel for the individual, unless the individual has chosen an attorney. The attorney shall be appointed as soon as reasonably possible after the petition was filed. If the attorney chosen by the individual is not reasonably available or declines to act, the court shall appoint an attorney in accordance with this section.

(e) When the court appoints an attorney from the panel maintained by the administrator, the court shall, in accordance with provisions of the Code of Probate Judicial Conduct, appoint on the basis of merit, avoid favoritism and make only those appointments as necessary. The court shall try to match the unique abilities of the attorney with the unique needs of the individual to be represented.

(f) If a court, after due diligence, is unable to obtain a court-appointed attorney from the panel maintained by the administrator, the court may appoint an attorney in any other manner that will provide a qualified attorney as required by the statute. No such appointment shall be made without prior approval by the administrator. If the individual to be represented by the attorney is indigent, compensation of the attorney from the administration fund shall be paid in

accordance with regulation section 14.3.

(g) Each court shall keep a record of the name of each individual appointed as attorney, date of each appointment, and the name of the matter.

[14.4] 14.3 Compensation of Court-Appointed Counsel *(Effective ninety days after submission to the Judiciary Committee of the General Assembly).*

[14.4.1] (a) Reasonable compensation of a court-appointed [counsel] attorney shall be established by the court and charged to the respondent, provided, that if the court finds that the respondent is [unable to pay such compensation] indigent, it shall be paid from [funds appropriated to the Probate Court Administration Fund] the administration fund in accordance with procedures established by the administrator. [for sterilization cases and for the placement of mentally retarded. Counsel] An attorney whose [names are] name is listed on the panel will be advised at the time of notification of inclusion on the panel that the maximum rate of compensation that will be considered reasonable if the respondent is indigent shall be \$50.00 for each hour of preparation in each case, subject to a maximum of \$500.00 unless the judge's permission is received prior to the additional services being rendered. For court attendance on any one day, whether representing one or more than one respondent on that day, the maximum payment shall be \$75.00 per hour for the first hour or any portion thereof and an additional \$50.00 per hour for each subsequent hour or any portion thereof, subject to a maximum per diem payment of \$300.00. The above are the maximum fees which shall be considered reasonable compensation for a court-appointed [counsel] attorney representing an indigent client, whether [that counsel] the attorney is one appointed pursuant to the selection by the respondent or one appointed from the panel.

[14.4.2 While the standard for State payment of counsel in sterilization proceedings is inability to pay, and the standard for placement proceedings is indigency or inability to pay, for purposes of payment, there appears to be no

practical difference.

14.5 Panel Members for Interdisciplinary Team

14.5.1 There shall be a panel of physicians, psychologists, educators, social and residential workers from which courts of probate shall appoint panel members whenever required by C.G.S. § 45a-695. Each court shall be provided with a copy of said list by the Probate Court Administrator.

14.5.2 Appointments from the list shall be offered to such persons on the list in sequential order. The court shall select three persons from said list to serve on the interdisciplinary panel. The selection of panel members shall be made giving consideration to the appointment of three panel members from divergent disciplines. If any such panel member is unavailable or declines appointment, then the court shall go on to the next name on the list and proceed in like manner and continue on the list, in sequence, until the interdisciplinary panel of three has been appointed. In addition to departing from appointments in sequential order because of unavailability or declination, a court may depart from the sequential order of offering appointments to persons on the list for sufficient cause having to do with the protection of the best interests of the respondent, but each such departure shall be reported to the Probate Court Administrator promptly in writing.

14.6 Compensation of Interdisciplinary Team of Panel Members

14.6.1 Reasonable compensation of an interdisciplinary team of panel members shall be established by the court and paid from funds available from the Probate Court Administration Fund. The interdisciplinary team members whose names are listed on the panel will be advised at the time of notification of inclusion on the panel that the maximum rate of compensation that will be considered reasonable shall be \$50.00 per hour for physicians. The \$50.00 per hour rate applies to both examination (evaluation) time and court appearances.

14.6.2 Psychologists, educators, social workers and residential programmers shall be paid \$50.00 for each hour of work, subject to a maximum of \$500.00 unless the judge's permission is received prior to the additional services being rendered. For court attendance on any one day, whether regarding one or more than one respondents on that day, the maximum payment shall be \$75.00 per hour for the first hour or any portion thereof and an additional \$50.00 per hour for each subsequent hour or any portion thereof, subject to a maximum per diem payment of \$300.00

14.6.3 Sections 14.6.1 and 14.6.2 set forth the maximum fees which shall be considered reasonable compensation for panel members paid by the Probate Court Administration Fund whether that panel member is one appointed pursuant to selection by the respondent or one appointed from the panel.]

14.4 (NEW) Panel of psychologists for involuntary placement with Department of Developmental Services *(Effective ninety days after submission to the Judiciary Committee of the General Assembly).*

(a) The administrator shall establish a panel of psychologists from which a Probate Court shall appoint a psychologist when required by C.G.S. section 17a-274 to place an individual with an intellectual disability with the Department of Developmental Disabilities. The administrator shall notify panel members of their appointment to the panel and the maximum amount of compensation authorized under this section. The administrator shall provide each court with the list of panel members.

(b) If a Probate Court receives a petition to place an individual alleged to have an intellectual disability, the court shall appoint, from the panel established by the administrator under regulation section 14.4 (a), a psychologist to examine the individual.

(c) Payment of compensation of a court-appointed psychologist for

examination of an individual under this section shall be governed by C.G.S. section 17a-275. If the person responsible for payment is indigent, compensation of the psychologist shall be established by the court, subject to the provisions of regulation section 14.6, and paid from the administration fund in accordance with procedures established by the administrator.

14.5 (NEW) Panel members for sterilization proceedings. Interdisciplinary team *(Effective ninety days after submission to the Judiciary Committee of the General Assembly).*

(a) The administrator shall establish a panel of physicians, psychologists, educators, social workers and residential workers from which a Probate Court shall appoint an interdisciplinary team when required by C.G.S. section 45a-695 for sterilization proceedings. The administrator shall notify panel members of their appointment to the panel and the maximum amount of compensation authorized under regulation section 14.6. The administrator shall provide each court with the list of panel members.

(b) The court shall appoint three persons from the panel to serve on an interdisciplinary team as soon as reasonably possible after the filing of a petition under C.G.S. section 45a-694. Appointment of members for the interdisciplinary team shall be made giving consideration to the appointment of three team members from divergent disciplines.

(c) Reasonable compensation of a member of an interdisciplinary team shall be established by the court. Compensation shall be paid by the respondent unless the respondent is indigent.

(d) If the respondent is indigent, compensation of a member of an interdisciplinary team shall be established by the court, subject to the provisions of regulation section 14.6, and paid from the administration fund in accordance with procedures established by the administrator.

14.6 (NEW) Compensation where party responsible for payment is indigent.

(Effective ninety days after submission to the Judiciary Committee of the General Assembly).

(a) If the party responsible for payment is indigent, the reasonable compensation of a psychologist appointed under regulation section 14.4 or a member of an interdisciplinary team appointed under regulation section 14.5 for an individual who is indigent shall be established by the court, subject to the provisions of this section.

(b) The rate of compensation of a psychologist or a member of an interdisciplinary team shall be \$50.00 per hour for examination and evaluation time subject to a maximum of \$500.00, unless the appointing court determines that compensation exceeding the maximum amount is necessary due to extraordinary circumstances. In addition to compensation for examination and evaluation, the rate of compensation for court attendance shall be \$75.00 per hour for the first hour or any portion thereof and an additional \$50.00 for each subsequent hour or portion thereof, subject to a maximum of \$300.00 per day.

(c) A court-appointed psychologist or member of an interdisciplinary team shall file invoices for compensation with the appointing court not later than six months after the date the service was rendered. The administrator shall not pay any portion of an invoice covering services rendered more than six months before submission of the invoice to the court.

Section 15 of the Probate Court Regulations is amended as follows:

(Effective 90 days after submission to the Judiciary Committee of the General Assembly)

Section 15

Payment of Members of a Three Judge Court Appointed by the Probate Court Administrator

15.1 Authority

These regulations are issued by the [Probate Court Administrator] administrator in accordance with C.G.S. section 45a-20.

15.2 Appointment of Three Judge Panel

[15.2.1] Whenever the [Probate Court Administrator] administrator is required by statute to appoint a three judge [panel] court in any matter, compensation shall be paid in accordance with C.G.S. section 45a-20 and regulation section 15.3.

15.3 Compensation of Panel

[15.3.1] The compensation of each judge [so appointed] serving as a member of a three judge court shall be \$50.00 per hour or fraction thereof, including travel time[.], provided that [The] the maximum payment for any one day shall not exceed \$250.00[.], and provided further that compensation paid to a judge serving as a member of a three judge court, when added to the compensation of the judge established under C.G.S. sections 45a-95a and 45a-79b, shall not exceed the amount established under C.G.S. section 45a-95a (a) (4). In accordance with C.G.S. section 45a-20, the [judge of probate] judge in whose district the matter is being heard is not entitled to compensation. [Any payment made hereunder will be included as income to the receiving judge under C.G.S. § 45a-92.]

15.4 Certification for Payment

[15.4.1] Any request for payment hereunder shall be submitted to the [Probate Court Administrator] [administrator](#) on [a CO-17] [an](#) invoice form [and be certified as follows:

This is to certify that I was appointed as a member of the three judge panel in the _____ Probate Court, in the matter of _____ and that the dates and times of the hearing are as indicated above.

Signature of Judge/Date] [provided by the administrator.](#)

Approved by the Probate Assembly's
Executive Committee October 14, 2015

Section 21 of the Probate Court Regulations is repealed: *(Effective ninety days after submission to the Judiciary Committee of the General Assembly):*

Section 21 Payment of Committee Fees Pursuant to C.G.S. § 45a-123

21.0 (NEW) Repealer *(Effective ninety days after submission to the Judiciary Committee of the General Assembly.)*
Probate Court Regulation section 21 is repealed.

21.1 Authority

These regulations are issued by the Probate Court Administrator in accordance with C.G.S. § 45a-123.

21.2 Appointment of Committee

In any matter pending in any court of probate, the judge may appoint a committee of a disinterested person or a former probate judge to hear the matter. The former judge shall be selected from a panel of judges provided by the Probate Court Administrator.

21.3 Compensation of Panel

The committee's fees shall not exceed \$50.00 per hour or fraction thereof, or \$250.00 per diem. In no event the fees paid by an individual court to any one committee shall not exceed \$5,000 per year, unless prior approval has been given by the Probate Court Administrator. The fees shall be fixed by the court and shall be paid by the executor, administrator, trustee, conservator, guardian, or other party to the action unless the party is unable to pay the fees and files an affidavit with the court to that effect. In those circumstances, the committee's fees shall be paid by the court or by the Probate Court Administration Fund, as set forth in P.C.R. § 21.4.

21.4 Payment by the Court or the Probate Court Administration Fund

If a party is unable to pay the committee's fees and files an affidavit with the court to that effect, payment shall be made as follows:

1) Payment shall be made by the court if the court was above the eighty (80%) percent bracket or was a high volume court for assessment purposes for the prior calendar year. Such payment shall be deducted from the current year's income report.

2) Payment shall be made by the Probate Court Administration Fund if the court is not above the eighty (80%) percent bracket or is not a high volume court for assessment purposes for the prior calendar year.

If the payment is made to the committee by the court or the Probate Court Administration Fund, the amount paid shall not exceed \$50.00 per hour or each fraction thereof, or \$250.00 per diem. These are maximum fees that shall be considered reasonable compensation for a committee appointed by the court and paid by the court or from the Probate Court Administration Fund.

21.5 Procedure for Payment

All invoices for payment shall be rendered to the court for payment or approval no later than six (6) months from the date the service was rendered.

Section 22 of the Probate Court Regulations is amended as follows:

(Effective ninety days after submission to the Judiciary Committee of the General Assembly):

Section 22 Mediation Panel

[22.1 Panel and Qualifications

The Probate Court Administrator shall select qualified probate judges, either active or retired, to serve on a panel for the purpose of mediating difficult or complex contested cases in the probate courts. As a condition of their selection, they must agree to attend such educational programs on mediation, fact-finding and other relevant subjects as the administrator deems reasonably necessary or advisable.

22.2 Request for Mediation

Any probate judge may request a member of the panel to provide mediation services on any contested case in her or his court if all parties or their legal representatives have agreed to mediation and to the compensation of the mediator as hereinafter set forth. The mediator may decline to hear the matter for any reason. Mediation should proceed in a timely fashion, considering the personal or property interests at stake, and should be completed as expeditiously as possible. In no event shall mediation delay or defer statutorily-mandated deadlines except in accordance with law or by agreement of all parties.

22.3 Compensation of Panel

The mediator's fees shall not exceed \$50.00 per hour or fraction thereof, or \$250.00 per diem. In no event shall the fees paid by an individual court to any one mediator exceed \$5,000 per year, unless prior approval has been given by the administrator. The fees shall be fixed by the court and shall be paid by the executor, administrator, trustee, conservator, guardian, or other party to the

action unless the party is unable to pay the fees, and files an affidavit with the court to that effect. In those circumstances, the mediator's fees shall be paid by the court or by the administration fund, as set forth below.

If a party is unable to pay the mediator's fees and files an affidavit with the court to that effect on Form PC-184, payment shall be made as follows:

1) Payment shall be made by the court if the court was above the eighty (80%) percent bracket or was a high volume court for assessment purposes for the prior calendar year. Such payment shall be deducted from the current year's income report.

2) Payment shall be made by the administration fund if the court is not above the eighty (80%) percent bracket or is not a high volume court for assessment purposes for the prior calendar year.

All invoices for payment shall be rendered on a CO-17 form to the court for payment or approval no later than six (6) months from the date the service was rendered.

22.5 Budgetary Limitations

Except in cases in which the parties themselves have agreed to pay the mediator's compensation, this program may be suspended by the administrator, with prior notice to the probate courts, if the administrator's budgetary appropriations available funds are insufficient to support this program.

22.6 Multiple Mediation

Unless the parties to the dispute agree to a second or subsequent mediation and agree to pay the compensation of the mediator, no further mediation shall be allowed without the prior consent of the administrator.

22.7 Ex Parte Communications

Except for an explanation of the issues of the case by the probate judge to the mediator, the judge shall not discuss the merits of the case with the mediator, and the mediator shall not disclose to the judge or the court staff any aspect of the case while mediation is in progress. At the conclusion of mediation, the mediator shall report the terms of any settlement and submit any written agreement of settlement, to the court for appropriate action. In the event that mediation was unsuccessful, the mediator shall report that fact to the judge, but no other aspect of the case.

22.8 Scope of Authority

Subject to P.C.R. section 22.7, the mediator may speak privately or publicly to any party to the proceedings (but if represented by legal counsel, only with the prior consent of counsel), any attorney of record and any other person, as long as all parties are made aware that such discussions or communications are taking place.

22.9 Confidentiality

Except with the consent of the relevant parties and in conformity with law, no mediator shall disclose to any person any confidential information obtained by the mediator in the course of mediation.

22.10 Report to the Probate Court Administrator

At least annually, prior to February first of the year following the utilization of these mediation services, each probate judge shall report to the administrator on forms provided for such purpose the number of cases in which mediation was employed, the identity of the mediator, the compensation of the mediator and the manner in which the compensation was paid, the general outcome of the mediation and such other information as the administrator may reasonably require to administer this program.]

22.1 (NEW) Panel

Within available funds, the administrator shall establish a panel of probate judges and retired probate judges who are qualified to mediate contested probate cases.

22.2 (NEW) Referral to Mediation

(a) On motion of a party or on the court's own motion, the court may refer any contested probate matter to a member of the mediation panel for mediation if:

(1) the parties submit a mediation memorandum under which the parties:

(A) agree to participate in mediation;

(B) summarize the issues that will be the subject of mediation;

(C) select a mediator from the panel; and

(D) agree to an allocation of the mediation fees under C.G.S. section 45a-107 (j) or section 450 (e) of Public Act 15-5 (June 2015 Special Session) among themselves; and

(2) the mediator accepts the referral.

(b) If the court has granted a party's fee waiver petition under C.G.S. section 45a-111 (c), the court shall waive that portion of mediation fees that are reasonably allocated to the party under regulation section 22.2 (a) (1) (D).

22.3 (NEW) Mediation Process

(a) Immediately upon receipt of a mediation referral under regulation section 22.2, the mediator shall set a time and place for a mediation session. The mediation may be held at the court or at any other mutually convenient location within the state. The court shall give notice of the mediation session by regular mail to each party and attorney of record and to such other persons as the court determines. The notice shall instruct the parties to be available for a minimum of

eight hours from the starting time of the mediation.

(b) The mediator shall facilitate a voluntary resolution of the issues involved in the contested matter. While conducting the mediation, the mediator may speak to all parties and attorneys as a group, meet separately with one or more individual parties and their attorneys or meet separately with one or more attorneys, provided that all parties and attorneys are made aware of any separate discussions.

(c) The mediator may schedule additional mediation sessions upon concluding that further mediation will facilitate settlement and may terminate mediation at any time upon concluding that further efforts to mediate the dispute would be futile. The court shall give notice of additional mediation sessions in the same manner as provided in regulation section 22.3 (a). A party may withdraw from mediation at any time during the process after giving notice to the mediator, the court and each party and attorney of record. A party's notice of withdrawal shall serve to terminate the mediation.

(d) During the mediation process, the court shall adhere to all statutorily-mandated deadlines unless the court extends any such deadlines in accordance with law.

(e) At the conclusion of the mediation, the mediator shall submit a written report to inform the court whether a settlement was achieved. If the mediation resulted in resolution, the mediator shall attach a copy of any settlement agreement executed by the parties or briefly summarize the terms of the settlement. The court shall send a copy of the mediator's report to all parties and attorneys of record.

22.4 (NEW) Ex Parte Communications

Except as provided in regulation section 22.3 (e), the judge who refers a

matter to mediation and the mediator who conducts the mediation shall refrain from ex parte communications in all but administrative matters with respect to the case that is the subject of mediation.

22.5 (NEW) Confidentiality

(a) Mediation sessions and other meetings among the mediator and the parties related to the mediation shall be closed to the public, provided that the mediator may permit members of the public to observe sessions and meetings if all parties consent.

(b) All records relating to the mediation, including, but not limited to, all correspondence, exhibits, memoranda, statements and briefs, shall be confidential and shall not be open to public inspection, except that:

(1) the records shall be available to parties and attorneys of record;

and

(2) the following records shall be open to the public:

(A) orders of notice and notices given by the court to inform parties of the time and place of mediation sessions and other meetings relating to the mediation;

(B) mediation memoranda under regulation section 22.2 (a);

(C) mediator reports under regulation section 22.3 (e); and

(D) written settlement agreements submitted to the court.

(c) Except as otherwise provided by law or directed by the court, notes taken by the mediator in connection with a mediation shall be confidential and shall not be open to inspection by the judge, court employees, parties, attorneys or the public.

22.6 (NEW) Compensation of Mediator

(a) No member of the mediation panel who is currently serving as a probate judge shall receive compensation for conducting mediation under regulation section 22.

(b) A member of the mediation panel who is a retired probate judge may receive compensation for conducting mediation under regulation section 22 at the rate of \$50.00 per hour, not to exceed \$250.00 per day. The number of hours for which compensation is paid shall be included in the calculation of the maximum amount that a judge who is receiving pension benefits from the Probate Judges and Employees Retirement Fund may work in any year under C.G.S section 45a-42.

(c) A panel member who has conducted mediation under regulation section 22 shall submit an invoice to the administrator no later than six (6) months after the date of any service as a mediator. The administrator shall not pay the portion of any invoice that covers services rendered more than six (6) months before submission of the invoice to the court.

(d) Compensation under regulation section 22.6 shall be paid from the administration fund and is subject to availability of funds as budgeted and approved by the administrator each fiscal year.

22.7 (NEW) Continuing Education

Within available funds, the administrator shall arrange continuing education programs on mediation for members of the panel and may reimburse members for registration fees to attend approved programs on mediation sponsored by other organizations.