I am writing on behalf of the Probate Committee of the Franklin-Grand Isle Counties Bar Association to express our opposition to those portions of the proposed "Lighten the Load" legislation, currently before the Judiciary Committee, that provide for direct appeals from the Probate Division to the Supreme Court.

Existing law directs probate appeals to the Civil Division, which is an intermediate step prior to reaching the Supreme Court. Such appeals are "de novo", meaning that the parties can now litigate the issues anew under the more stringent evidentiary and discovery rules applicable in the Civil Division, if those issues merit the higher level of review. This system has several advantages that would be lost under the proposed legislation:

1. The expensive and burdensome discovery rules used in the Civil Division would now have to apply in the Probate Courts. In every case, parties would be forced to exhaust such discovery methods because the Probate Court would be their only opportunity to produce a factual record. Appeals to the Supreme Court are on issues of law only. While lawyers would be able to adapt, average citizens would have no clue how to proceed. Many estates are done by family members acting pro se. They would simply be overwhelmed by the process.

2. The same result applies to the more relaxed evidentiary rules currently observed in the Probate Court. Again, due to the frequent use by pro se parties, the Probate Courts have generally been more "user friendly" in terms of the complex and confusing rules to which the Civil Division is subject.

3. Aside from the increased level of formality and difficulty the would obtain in Probate proceedings, the parties would see substantially increased costs. The cost of filing a Supreme Court appeal, which includes the preparation of a printed case, briefs and payments for transcripts, adds a significant financial burden to parties in Probate proceedings.

4. The lack of strict formality and relatively lower cost of Probate Court hearings on disputed issues currently provides parties with an opportunity to resolve these issues in less time and with lower costs. Not every dispute justifies the time and expense of a formal appeal. All these advantages would be lost if the process takes on the characteristics of full scale litigation.

Finally, the statistics simply do not support the need for such legislation. The number of Probate cases appealed to the Civil Division is within a couple dozen, with only a small fraction of those making their way to the Supreme Court. The additional cost burdens of this legislation would far outweigh any conceivable savings that would result.

Please share this with the full Committee, and let me know if I can provide any further information.

Sincerely,

Jesse D. Bugbee

Kissane Associates