

Probate court taps private bar for help tackling calendar

by Patrick Thornton

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3-month case delays inspire pilot project

Like other parts of the state's judicial system, the Hennepin County Probate Court has more work to do than resources to effectively do it. Judge Jay Quam, the chief judge of the court, said many of the fundamental functions of probate court, like appointing guardians and conservators, was taking too long because the court's schedule was so backed up it could be three months or more before a petitioner could get in to see a referee or judge to process the petition.

These "uncontested" matters make up about 90 percent of the cases the court handles each year. Quam decided that this timeline was unacceptable and reached out to private practice probate lawyers to help him do something about it.

This month a pilot project starts in the Hennepin County Probate Court. Lawyers will be sworn in as adjunct judicial officers and hear uncontested cases a few mornings a week to free up the court's judicial officers to tackle the contested cases.

Quam said the idea was born out of desperation and a realization that the status quo will not be improving any time soon without some creative thinking.

"I was trying to think of some ways to deal with the budget reductions we've had and to deal with the resources issues," he said. "We need to find ways to serve people effectively. We can't just throw up our hands and say 'We don't have enough people; we can't do what we used to do anymore.' We need to find ways to continue our work and if that means bringing in resources from the legal community, I'm willing to try."

Quam petitioned the Minnesota Supreme Court to let him roll out the pilot project. He needed an exception to the Minnesota Code of Judicial Conduct to allow attorneys who practice probate law to hear the probate cases. The court granted the exception, and the program will be reviewed in a year to gauge its effectiveness.

He said the key for success is if participants in the probate court don't notice a difference in quality while getting their matter heard by a volunteer attorney versus a regular judicial officer and if the wait time for a hearing is reduced. The cases the volunteer attorneys will hear will involve issues like appointing a parent as guardian for an 18-year-old child with severe autism or other mental health issues or appointing a parent as conservator for an elderly parent with dementia.

Quam asked a panel of three lawyers to help him screen and interview applicants to serve as adjunct judicial officers. That panel received about 20 applications and recommended six names. All six lawyers will participate.

"I had zero input on to who was selected," Quam said. "And we recruited people from outside Hennepin County to avoid a built-in advantage for anyone. There might be some issues, but I



Six lawyers will serve as adjunct judicial officers for the Hennepin County Probate Court in a pilot program created by Chief Judge Jay Quam (center). The lawyers are (left to right) Robert A. McLeod, Timothy O. Davis, Karen L. Tarrant, Marya P. Robben, Ann O'Reilly and Terry L. Slye. (Staff photo: Bill Klutz)

didn't want to miss out on an opportunity to help the people who come in to our court because someone thinks there might be an unfair advantage."

Attorneys John Degnan, Susan Link and Alan Silver served on the selection committee. Silver said there was some discussion among lawyers about potential downsides of the program before it got started. For instance, the group worried about the reality that many of the volunteer judicial officers could be deciding cases from the bench one day and then back in court as an advocate the next day. He said that because the program was voluntary, lawyers could request a "regular" judge or referee at any point in the proceedings if they were worried about conflicts or biases. He was also impressed by the quality of the applicant pool, which will go a long way toward ensuring that the parties don't feel they are getting a lesser service, he said.

"The No. 1 criteria for selection was we wanted good, solid lawyers," he said. "We wanted people who were experienced in probate matters because when you put a robe on somebody you are giving them a fair amount of power. And when people come to probate court it's usually with fairly complex family issues that can be quite emotional, even when it's uncontested. It is important to treat those people with empathy. ... Uncontested doesn't mean these cases are routine. Someone with experience has to be there to oversee what is happening."

One lawyer who was accepted was Karen Tarrant of St. Paul. She said pro bono work was an important part of her career going back to law school, and she was looking for an opportunity to do more than serve on a committee but not have to make the tough decisions in contested cases that judges are trusted with. She said that the ongoing review of the pilot will give all the parties involved an insight into how the participants and the lawyers feel about the project, which is important to its overall success.

"This is one tiny little piece of the overall picture where I thought I could help out," she said. "It's part of the commitment to my profession and the larger society to see that people's cases get heard respectfully, timely and appropriately. I can help make sure the rules are followed and people's rights are respected."

Minneapolis lawyer Marya Robben's first day hearing cases is Sept. 29. She said she was intrigued by the pilot project and applied without hesitation.

"As an attorney in private practice I am in court advocating for my client, but I can't problem-solve for the whole court," she said. "I have had uncontested cases where the family is in complete agreement, and we can't get a hearing. The clients will call and say, 'What's going on?' And you try to explain to them that it's no one's fault it's just that the court is swamped. The clients don't understand why."

Minneapolis lawyer Tim Davis is another attorney who volunteered. He said he, too, thought Quam's pilot project was a great idea. He said he is not interested in becoming a judge but wanted to be a part of a possible solution to a larger problem and has thought a lot about what the job will entail even if for only a few hours a month.

"When you put on the robe you drop the advocacy role that we have been trained to do since law school. You are not pushing for a client or seeking a result; now you are on the other side of the bench and you must be careful to follow the procedure and listen to all the evidence presented. To give people their chance to be heard," he said.

St. Paul lawyer Terry Slye, Minneapolis lawyer Robert McLeod and South St. Paul lawyer Ann O'Reilly will also serve as adjunct judicial officers as part of the pilot.

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