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**TESTIMONY BEFORE JUDICIARY COMMITTEE ON RAISED HOUSE BILL 5840  
AND PROBATE PRACTICE IN CONNECTICUT**

March 24, 2006

Good Morning Senator McDonald, Representative Lawlor, and members of the Committee. My name is Royal Stark. I am the Director of the Health Law Clinic at the Quinnipiac University School of Law, a position I have held since 1998. Prior to becoming a member of the law faculty at Quinnipiac I worked for several years in various legal services offices in Connecticut.

I speak in support, generally, of Raised H. B. No. 5840, a bill that would improve the handling of conservatorship proceedings in Connecticut, but I urge the legislature to consider other ways to ensure that the rights of persons at risk for losing their liberty, autonomy, and self determination be adequately protected in practice, as well as on paper in the statute books. In that regard, my testimony today will echo, somewhat, my testimony earlier this month before the Program Review and Investigations Committee.

My probate practice is limited almost exclusively to handling cases for individuals in conservatorship proceedings. During my time at the clinic I and the law students I supervise in the clinic have handled cases for individuals in probate courts throughout the state; large courts, such as Bridgeport, Hartford and New Haven, medium courts such as West Haven, Middletown, Newington, and smaller courts such as Colchester and South Windsor, to name some. I also have represented clients in appeals from probate before the Superior Court, the Appellate Court and the Connecticut Supreme Court.

The clinic recently achieved a significant victory for conserved persons by virtue of a decision handed down by the Connecticut Supreme Court a few months ago, in the case of Lesnewski v. Redvers, that confers on involuntary conserved individuals increased direct access to the courts to redress grievances. Perhaps most noteworthy for the transfer provisions in Raised H. B. 5840 is the fact that the court was persuaded that conserved persons should not, and now do not, have a lesser right than children to bring actions in the Superior Court.

I, and the law students I supervise in the clinic, represent individuals before the probate courts who seeking to avoid being involuntarily conserved, as well as those conserved persons who seek to have their liberty restored by getting the involuntary conservatorship terminated. We also represent persons in fee disputes stemming from a claim for fees by persons appointed by probate courts, that, arguably, at least, are

inflated and unreasonable. We are involved in such cases at the trial level (before the probate courts and the Superior Courts), and beyond.

Prior to starting at the law school I did not have any experience practicing before the probate courts. My work at legal services simply didn't call for me to practice before these courts. As a result, I was ignorant of the fact that virtually anyone could seek to have another resident of this state declared incapable and involuntarily conserved. I was also ignorant of the scope of the loss of liberty that flows from being involuntarily conserved, such as the loss of the right to decide where one lives, the loss of the right to decide whether or not one's home or other property should be sold or disposed of, the loss of the right to direct, unfettered access to the courts, and, perhaps most significantly, the loss of dignity that flows from losing the right of self-determination and no longer being able to make one's own decisions (even if some of those decisions are not ones that some or all persons would agree were "correct").

Before beginning my probate practice, I did not believe that any court in this state would cavalierly handle matters regarding personal liberty. However, I now know first hand that persons before probate courts who are alleged to be incapable and in need of a conservator, are too often ill-served by the court and mis-treated by a judicial system that is supposed to be offering protection, both procedural protections in the form of due process of law, and substantive protections, for example, in the form of protecting the assets of the wards of the court, including from fiduciaries appointed by the court.

The Connecticut General Assembly is to be commended for the statutory enactments that require, for example, that unrepresented respondents in an involuntary conservatorship proceeding be appointed counsel, that the need for an involuntary conservator because of incapacity be proved by clear and convincing evidence, that medical evidence presented to the court in support of a claim of incapacity be up-to-date. However, in my experience, in too many courts those statutory protections are not put into practice.

Since experiencing first hand how the probate system works, I have become increasingly horrified by the lack of due process afforded individuals at risk of having their liberty deprived by probate court decree. I have also been sickened by the poor quality of the work done by attorneys appointed by the court to represent clients, and appointed to serve as conservators. I have routinely encountered attorneys who seem to think that because they are appointed by the court to represent an individual they are not bound by the rules of professional conduct, specifically the duty of confidentiality and the duty of loyalty to one's client. These professional duties, which have been described as two of the most important duties of an attorney, are forsaken in favor of acts that serve the court, but do not serve the subjective desires and interests of the clients. Sometimes the poor quality of work seems to be due to ignorance and a lack of training - inadequate training of the probate judges and inadequate on the job training by the judges of the attorneys appearing before them, who can assist attorneys in understanding the difference in being appointed a guardian ad litem, and being appointed as an attorney, which requires advocating the subjective desires of the client.

Sometimes it seems to be the product of laziness, or even out-and-out venality. Other times it seems that attorneys are fearful, either consciously or unconsciously, of biting the hand that feeds them their probate appointments, and, as a result, the attorneys refrain from zealous advocacy before the probate courts because of a perceived need to “go along to get along.”

While it may not be easy to identify the cause of poor practice by some attorneys who appear before the probate courts, it is clear to me that the egregious conduct I have seen and heard about in the probate courts would not be tolerated by a judge of the Superior Court.

I do not mean to impugn each and every probate court, probate judge, or attorney who practices in the probate courts, whether court appointed or retained. For example, Judge Dennis O’Brien, the Willimantic probate judge, was one of my mentors at legal services. I respect him and I know that he understands and appreciates the need for due process of law in conservatorship proceedings. Other probate judges similarly understand what is required by their courts in these cases. However, I am concerned that the so-called “neighborliness,” and “user-friendliness” of the probate courts can result in the necessary, strict procedures and protections intended by the legislature, and required by our state and federal constitutions, being ignored, or glossed over, or simply given lip service; with the result being that liberty and self-determination are judicially constrained without due process of law, and without a “user-friendly” appeals process that the involuntarily conserved individual can invoke to contest the liberty constraint put in place by the probate court.

Being able to transfer one’s involuntary conservatorship proceeding out of the probate court and into the Superior Court is a very big and necessary step towards ensuring that the paper protections of the law are put into place in the courts. It will not help those who, for whatever reason, including the possible ineffective assistance of court-appointed counsel, do not have their cases transferred from an informal court where no record of the court proceedings is kept, to a more formal court where, for example, witnesses testify under oath, and other procedural protections are more assiduously provided. However, it will allow those at risk of being conserved, who do not feel that the probate court is capable of protecting their interests, to take their case to the Superior Court. In this way, the conservatorship system will mirror the system in place for contested children’s matters that are brought in the probate court, but which can be transferred to the Superior Court upon motion made to the court.

The appellate courts of this state have stated that children and conserved persons are legally similar. While I and many of my colleagues hate the fact that senior citizens and disabled adults can be legally converted into children by being conserved (especially if the underlying incapacity is the result of only physical problems or ailments), I am very pleased that the legislature is considering an enactment that will ensure that conserved adults have the same transfer rights and access to the Superior Court as do the children, and the parents of children, who have contested cases in the probate court.

I support the provisions of Raised H. B. 5840 that provide for the transfer of contested conservatorship proceedings from the probate court to the Superior Court, and I support the provisions of the bill that clarify how a conserved person may become “unconserved” by the courts. I hope that the General Assembly will enact these proposals and will continue to look at ways that the conservatorship system in Connecticut can be improved, and how additional mechanisms can be put in place to ensure that legal protections guaranteed in the law are practically applied in the courts.

Thank you.

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