

Testimony of Suzanne Brown Walsh, Esq.
Judiciary Committee Public Hearing
Comments on House Bill 5840, An Act Concerning Conservators
March 24, 2006

My name is Suzanne Brown Walsh. I am a Principal of Cummings & Lockwood in West Hartford. While I am currently Vice Chair of the Connecticut Bar Association's Estates & Probate Section and a co-chair of its Uniform Laws Subcommittee, am past chair of its Elder Law Section, and one of Connecticut's eight appointed Commissioners on Uniform Laws, these comments are strictly my own observations based on over sixteen years of experience and practice in the Connecticut probate courts and do not represent the official statements of the Connecticut Bar Association.

Because of the shortness of time since the bill was raised and this hearing, neither the CBA nor the Estate and Probate Section have considered or taken a formal position on Raised Bill 5840. I offer these general, personal comments on the jurisdictional changes proposed in Raised Bill 5840, which would permit a contested, involuntary conservatorship application to be transferred to the superior court. My comments are based on my own experience and the informal discussions that have recently taken place.

As I have testified previously for the CBA, I join the members of our Section in firmly believing that Connecticut's probate court system needs to be modernized and reformed. Specifically, we have previously testified in support of addressing the present system's jurisdictional limitations, fiscal accountability, ethics and professionalism, and with the present probate fee structure.

By now you have heard testimony from many legal services attorneys, who have collectively outlined their very real and grave concerns over probate court cases involving the deprivation of liberty, such as involuntary commitments and conservatorships. Essentially, I share their concern that the lack of professionalism, ethics, jurisdiction and fiscal accountability adversely affects the due process rights of individuals in probate courts. Therefore, I support proposed statutory changes that would include increased judicial training and court uniformity and professionalism and I applaud this committee for its consideration of these issues.

However, I am concerned with the effect that the proposed transfer of some conservatorship cases to Superior Courts (meaning, I assume, the local G.A. courts), will have on the frail elderly. I doubt any elderly person would enjoy sharing a courtroom with petty criminals, and many respondents will have sufficient awareness to be distressed at this. Further, judges accustomed to dealing with large volumes of criminal matters and the criminal code will obviously need to be trained to deal with the very different law and procedures involved with conservatorship proceedings, and how to sensitively deal with the elderly and their families.

However, I also share the concerns that prompted the submission of the bill. I handled one case, for example, where the probate judge, or the clerk, failed to appoint the respondent's existing attorney to represent her in a conservatorship proceeding, and did not catch the error until the day of the hearing. Since there was \$1,000 per day in hospital costs at issue in that matter, any delay would have been be incredibly expensive. The

judge's solution was to call a kind, local attorney over to the courtroom and then announce, upon his arrival, "I just want you to know that I am granting this application." This is just one real life illustration of the lack of due process in our current, and imperfect, probate system.

In any case, I would also like to see the bill address the ongoing supervision of the conservator, if the application is granted. (Will the cases be transferred back to Probate court? If so, when and how?) And, while the committee considers the issue of which of Connecticut's courts is best suited to handle these cases, I ask that you consider the needs of the elderly when considering the superior courts (perhaps a separate division?) and probate courts (again, perhaps limits on which courts could hear conservatorship cases would work), and when weighing the alternatives.

Thus, while I applaud the efforts of this committee and the legal services community to address the problems of the probate court system, I am concerned that this particular solution might not be the best one, and I would be happy to work with the committee further as it considers this issue.