

**Testimony of Deborah J. Tedford**  
**Raised Bill No. 5840**  
**An Act Concerning Conservators**  
**March 24, 2006**

Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee, thank you for allowing me to submit written testimony on Raised Bill 5840, An Act Concerning Conservators. My name is Deborah J. Tedford. While I am the Past President of the Connecticut Bar Association, past chair of the Estates and Probate and Elderlaw sections, and chair of the Task Force on the Future of Connecticut's Probate Courts, these comments are strictly my own observations based on over twenty-five years of experience and practice in the probate courts and do not represent the official statements of the Connecticut Bar Association.

The CBA has no formal position on Raised Bill 5840, and because of the shortness of time since the bill was raised and this hearing, the Bar has been unable to take a position on the act. However, because of the Bill's potential importance and effect on this area of practice, and because the bill has generated a great deal of discussion among members of the Bar, both for and against, I am offering these personal comments and observations based on my own experience and the informal discussions that have recently taken place.

The Connecticut Bar Association completed a study on Connecticut's probate courts in 2003 that found a number of areas for improvement in these courts, including a need for greater professionalism, a concern with perceived ethical issues due to part-time judges, and a need for greater financial accountability. The Bar Association is still concerned with the need for improvements in these areas, and these goals remain a current legislative position of the CBA. However, I understand that a long term solution will be complex and may take some time.

Raised Bill 5840 recognizes that Connecticut's probate courts handle many important cases, including those that involve the potential of depriving a citizen of liberty or control of his or her property. Not all probate courts are equipped to handle these difficult cases with the same level of training, background and resources because of the huge variety of courts across the state. Raised Bill 5840 would allow the respondent in a conservatorship matter to transfer these cases either to another probate court, presumably with more training and resources, or to the superior court.

Advocates for the disabled have raised questions about the ability of some probate courts to afford full due process rights for all citizens who are facing loss of liberty or control of their income and assets, and those concerns should be taken seriously. One alternative is to improve the probate courts that handle these (and other) difficult cases, providing better resources, education and training in the rules of evidence, due process and constitutional law, as well as requiring that conservatorship hearings in probate court be on the record. While informality may be desirable in some proceedings, advocates for the disabled are correct in pointing out that due process must come first, and that involves a record of the proceedings and other formalities. If a local probate court does not have the resources or ability to hold a conservatorship hearing on the record pursuant to these standards, it could be required to refer that case to another probate court that can do so. This may result in the creation of a division of probate courts akin in some respects to the model children's courts where resources are pooled and increased, and judges can work together to handle the more difficult cases.

Examining the other choice, Connecticut's superior courts have a long history of handling difficult, contested cases, and as a matter of course conduct all court hearings on the record, with highly qualified, full-time judges with no outside conflicts. They could certainly provide full due process rights, but my first concern with this alternative is whether or not the superior court system wants to handle these matters. Conservatorship proceedings are quite unlike most cases that come before the superior court; even in probate courts they are unique. These cases often involve people who by definition may have marginal or questionable legal capacity, and for them, dealing with a court system that is not user friendly could produce a well intentioned but very unfortunate result. On the other hand, if the superior court is interested in adapting to handle these types of cases, the key may be the establishment of a *separate division* of superior court. This is the process used in transfers of children's matters from probate court to superior court. Rather than being placed in the general jurisdictional basket of superior court, these matters go straight to juvenile court, a very separate and specialized division. While conservatorships are not appropriate for juvenile court, a new separate division could handle the transferred conservatorships files as well as all probate appeals, or any other related matter. This separate division could develop a system more suited to the needs of the parties and case types that might allay the concerns of those who fear the loss of a user-friendly and accessible system.

An example may explain this concern. An elderly client of mine who was suffering from Alzheimer's disease was arrested and charged with a minor criminal offense that he did not understand. The hearing was held in G.A. court, before an excellent judge with a great deal of experience in handling criminal matters, but who had difficulty dealing with an incapacitated person who, of course, made no logical sense and could not answer basic questions or follow simple instructions. The most telling feature of this experience was the inability of my client to even get into the courtroom, because he could not get through the metal detector. The marshal staff did not know how to deal with a person who could not understand or follow orders ("empty your pockets") and the marshal's rules would not allow us to help him. While I eventually got him into the court and the case against him dismissed, the situation revealed some profound differences between the two court systems, and how superior court would need to adapt and change in order to handle conservatorship proceedings on a regular basis.

In conclusion, the legislature will need to decide which court system(s) will handle conservatorship cases and what standards should apply. Whatever your decision, either the superior courts or the probate courts are likely to need to make some changes in order to handle these cases optimally. The superior court might need to establish a separate division and make its facilities, procedures and pleadings more user friendly and accessible for these cases, while the probate courts might consider the requirement to provide a record of the proceedings, provide more formalized protections for the rights of the alleged incapable person, and make certain that all judges who hear these cases are fully trained in the relevant law. My concern is that whatever choice the legislature makes, that it recognizes the uniqueness of conservatorship proceedings, and the likelihood that some change will be required in either court system in order to optimally handle these difficult cases with the due process and compassion that they deserve.

Thank you very much for your consideration of my comments.