

Testimony of
Deborah J. Tedford
Raised Bill 1272 and 1439

Senator McDonald, Rep. Lawlor, Rep. Wright and distinguished members of the Judiciary Committee, thank you for allowing me to testify before you today. Although I am past President of the Connecticut Bar Association and past Chair of its Estates and Probate and Elderlaw Sections, I am not testifying on behalf of the Bar Association today, but rather on my own behalf.

As you all may know, I am concerned with the future of the Probate Courts in our state, and have consistently testified in favor of improving these courts by increasing their professionalism, providing for financial accountability and overall management and control. In the last few years, attorneys for various legal services and civil rights organization for the disabled have raised serious due process concerns over the probate courts' handling of involuntary conservatorship proceedings. These concerns are valid. The legislature should take them seriously and look to remedy any shortfalls.

Raised Bill 1272 sets forth a number of administrative proposals for the probate courts. I would particularly like to commend Section 7, setting minimum opening hours and staffing requirements for your consideration. Unlike other courts in this state, probate courts currently are not required to adhere to any particular schedule. As a result, some courts are open full time and others are open only several hours per week. While local courts can be a positive thing, courts that are open only four hours per week are not accessible to the public. Section 7 would require courts to be open each day for a minimum total of twenty hours per week, and have a minimum of one staff person available during those hours. I think this is a reasonable first step in improving their accessibility and providing basic, common sense standards for these courts.

I also commend to your attention Section 5 of the Bill that would allow the Chief Justice to select special assignment judges who would be available to add their expertise to difficult or challenging cases. Please keep in mind that the probate courts handle many cases other than the routine processing of decedent's estates, so that special expertise in mental health cases, conservatorships for the disabled or the infirm elderly, or contested trust or estate matters with complex tax or legal issues could now be handled by a judge with training or background in the subject matter of the case. In addition, Section 2 (b) provides for arranging the logistics of the recording system for the courts, which is important for Raised Bill 1439 regarding conservatorships.

There are other administrative provisions of Raised Bill 1272 for your consideration; I would urge you to look at the probate courts seriously, and first have a vision of where you would like these courts to be in the next five years, in the next ten years, and beyond. I often tell my clients, "If you don't know where you are going, you will never get there." I would urge you to take some time to first imagine what you would like our courts to be in the long term and then make decisions along the way that will help the probate courts to become a model, not a source of frustration, for our state. Otherwise I fear that we will never have a comprehensive plan for improving the quality of justice afforded Connecticut's citizens, and we will waste the money, time and emotional fortitude of those who use these courts.

The most important bill before you today is Raised Bill 1439 regarding conservatorship procedures in this state. It is my understanding that Raised Bill 1439 has been amended by agreement of the drafters, and a substitute bill (Killian #8) has been proposed in its place. The substitute bill is a significant improvement over the original, and although there are some provisions that need re-working in order not to cause inadvertent problems, I believe that there are many important and sound ideas in this bill that I strongly urge you to consider.

The positive changes in the proposed bill include improvements to the appeals process, improved mandatory notice provisions, the right to an attorney of the respondent's choice, an improved definition of incapacity based on function, the requirement that the hearing should be recorded and that the superior court, for the first time in a probate matter, would have the opportunity to actually review what took place in the court below. This latter provision is critical to avoiding the long term or serious problems we keep hearing about in regard to this legal procedure in Connecticut. I also support a provision that would require the Connecticut rules of evidence be followed; this is the existing law, but it is honored more in the breach than in the observance. Finally, the emphasis on less restrictive forms of conservatorship where appropriate is a very significant benefit of this bill which I strongly support.

There are still technical issues that need to be worked out, including how many powers a person who is conserved retains, especially the power to make gifts or transfer assets. This could allow potential elder abuse to continue in some cases, or create serious problems with later Medicaid applications, for example. Other issues still to be worked out include the lack of clarity on the relative roles of the conserved person, the health care representative and the conservator of the person. I believe one simple solution may be to require the judge, if he or she appoints a conservator of the person different from the health care representative, to articulate in the order the reasons for the decision and the relative responsibilities of each, keeping in mind the statutory priority of the health care representative under the existing Living Will law. There are also technical problems with "*in rem*" conservatorships for Connecticut real estate owned by persons who have been declared incapacitated under the laws of other states that we believe can be resolved by additional drafting. Finally, there are concerns with permanent (not temporary) jurisdiction based simply on "location" rather than domicile that is contradictory to a proposed new, national uniform guardianship act based on best practices around the country, and the importance of courts honoring the advance designation or choice of a conservator, but again,

I believe that these provisions can be either worked out through discussion or deferred to another year.

One important provision of Raised Bill 1272 mentioned at the outset of my testimony concerns recorded hearings. These are vital for the record needed in the conservatorship bill, and at least parts of the two bills accordingly need to be considered together. Recordings in probate court need not be expensive. The local tribal court for the Mashantucket Pequot Tribe, for example, conducts all of its hearings on the record by using a simple, inexpensive digital recording system that can be activated by the court judge or clerk. The recordings can be transcribed in the event of an appeal, a relatively infrequent event. Other examples of this simple, cost effective approach include Zoning hearings, which use an inexpensive recording device, and administrative hearings under the Uniform Administrative Procedures Act.

In summary, I would urge the Judiciary Committee to look at the best provisions of Raised Bills 1272 and 1439, and incorporate them, with the assistance of the Bar and the concerned attorneys from the legal services organizations, into one or more bills that will help to improve our probate courts and improve the seriously flawed conservatorship process that is currently mandated in Connecticut.

Thank you very much.

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