

Testimony of Judge Robert K. Killian, Jr.
Conservators in Connecticut
Before the Judiciary Committee
March 30, 2007

My name is Bob Killian and for the past 23 years I have had the privilege of serving as Probate Judge for the District of Hartford, Connecticut's largest probate district.

I appear before you today in that capacity, but also as Chairman of the Probate Administrator's Committee to Review Connecticut Conservatorship Laws and Procedures. I want to report to you that this was a very hard-working committee. Hours of subcommittee work preceded many hour of plenary sessions at which proposed legislation, previously provided to you, was developed.

I also want to report that the ten members of this committee came to it from a number of different perspectives: Patient's Rights Advocates, Hospital Administrators, lawyers in private practice, a Medical Doctor specializing in geriatric psychiatry, a law professor with a well deserved reputation as a civil libertarian, representatives of DSS and two—only two—representatives of the Probate Courts, myself and Attorney Cynthia Blair.

Despite our differing perspectives, however, I am happy to report that this is not a "compromise" proposal. You see, there was unanimity among the committee members that our existing law had shortcomings in its procedural due process, substantive due process and—perhaps most importantly—in the philosophical underpinnings that dictate the role a conservator should take in serving the needs of a conserved individual.

Please allow me to highlight some significant changes.

Procedural due process safeguards enhanced in this bill relate to in hand service of process on the respondent as a jurisdictional safeguard and notice to other known necessary parties as a precondition to jurisdiction; a statutory definition of the right to counsel including when deference must be given to the respondent's selection of counsel, and a clearer understanding of what counsel must do to meet the constitutional requirement of effectively representing their client. Additionally, recording of all conservatorship hearings is mandated and appeals are streamlined, eliminating the need to go to the Probate Court for "permission" to appeal. Appeals are on the record and the bill establishes timetable for Superior Court action on the appeal. Venue for applications and appeals are thoughtfully defined with special attention to those relatively infrequent situations where a petition is filed for a non domiciliary who happens to be in Connecticut. Rules of evidence, historically relaxed in probate

proceedings, are mandated in these cases which involve important Constitutional issues.

Many of these changes are to bring our law into conformity with the proposals contained in the Interstate Compact on Conservatorships/Guardians, a significant proposal of the Uniform Law Commissioners that will be the subject of scrutiny in coming years.

Substantive Due Process changes include detailed findings which the court must make relative to the respondent's functional deficiencies and evidentiary standards clearly established in Conservatorship proceedings so everyone is aware that the burden of proof is on the petitioner to establish by clear and convincing evidence that a respondent requires a conservator. Normal rules of evidence, as promulgated for Superior Court proceedings, will pertain in these proceedings. Hearings must be scheduled at a time and place which will facilitate attendance at the hearing by the respondent. Courts must defer to appropriate surrogates such as health care agents or representative, powers of attorney or representative payees if that sufficiently and securely addresses the respondent's needs. Attorneys representing respondents can only be appointed their conservator upon nomination by the respondent. Respondent's may refuse medical exams ordered by the court in anticipation of a Conservatorship application. All medical evidence will be available to respondent's counsel in connection with the application.

Significantly, the respondent is assured of court hearings before institutionalization (except in limited emergency situations) and will be entitled to a review of appointment of a conservator, with the assistance of counsel, up to three times in any 12 month period as a matter of right and additional times if significant new evidence of capacity emerges.

Habeas corpus is immediately available for review of not only any orders of confinement, but also of any denial of access to financial resources. This may be either to the Superior Court or to a panel of three Probate Court Judges, all of whom will be lawyers and will receive special training.

Appointment of a conservator is intended to be an exercise of the state's parens patriae authority. The proposed legislation tries to set clear limits on conservators so the court assigns them only the authority necessary to address a demonstrated need of the conserved party. Conservator decisions that once made are difficult to undo, such as surrendering an apartment or permanently relocating a conserved party to a nursing home, will require prior court approval. Conservators must allow their charges to exercise as much independent decision making as they can muster. A respondent can challenge not only the Court's finding that a conservator is necessary, but the scope of the conservator's duties.

Over 4,000 new conservators are appointed every year in Connecticut. Over 19,000 people in Connecticut currently have a conservator. The bulk of these appointments are made in urban courts, such as mine, which appointed almost 10% of last year's conservators and has over 12% of the open cases. The overwhelming majority of the appointments is vital to the health and welfare of the conserved individual, who, but for the involvement of these fiduciaries, would often face serious deprivation, sometimes death. In most cases, where they are aware a conservator has been appointed, they welcome the assistance and, in many instances, ask for the help.

The operative word in the last sentence is help. It is the overriding philosophical goal of this proposed revision to try to insure that what a respondent gets is not more than they need; that their personal autonomy is intruded upon only to the extent absolutely necessary to insure their health and well being; and that decisions capably made by an individual are not rejected by a conservator only because of a disagreement about what level of risk can be assumed in the community or what standard for medical treatment is desired, or when an individual is prepared to accept the wisdom embodied in a simple statement from my Father, who in his last months of life, refused surgery because, in his words, "the parts aren't supposed to last forever."

Distinguished Chair, I am proud to transmit this proposal to you.

