

CONNECTICUT LEGAL RIGHTS PROJECT, INC.

P.O. Box 351, Silver Street • Middletown, CT 06457

(860) 262-5030 • Fax: (860) 262-5035

JUDICIARY COMMITTEE

Testimony of Thomas Behrendt Regarding Raised Senate Bill No. 1439:

AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS

March 30, 2007

Senator McDonald, Representative Lawlor, and members of the Committee:

I am the Legal Director of the Connecticut Legal Rights Project, and am here to address Raised Senate Bill No. 1439, An Act Concerning Conservators and Probate Appeals. I am testifying in support of the proposed substitute language submitted by Judge Killian (rather than the language of the bill as printed). A copy of the bill is attached to my written testimony.

I am testifying as a member of the "Conservatorship Revision Committee" convened by Judge Lavery and chaired by Judge Killian and Judge Lawlor. This multidisciplinary committee worked on this bill intensively over the past four months. It is acknowledged by the bench and bar by most of you, as well as the public – the users of our courts – that the current statutes are in need of revision. The proposal before you will bring our statutory scheme up to date and remedy the problems in current law. It adds needed safeguards to minimize the intrusion upon fundamental liberty and autonomy while it assures that vulnerable individuals are protected and well served.

The nucleus of this legislation – and the starting point for the Committee's work – was a draft from the Connecticut Bar Association's "Uniform Guardianship and Protective Procedures Act (UGPPA) Study Group." That work group met in recognition of the need to revise our statutes and as an outgrowth of discussions about last year's conservatorship bill (HB5840, which was not enacted).

The bill is the product of the efforts of many dedicated individuals working long and hard. We consulted with experts on guardianship, including the Director and Assistant Director of the ABA Commission on Law and Aging, and members of the National Conference of Commissioners on Uniform State Laws. In drafting this bill, we have had the able assistance of David Bilken, the former Director of the Law Revision Commission.

An overarching principle of the legislation is "**least restrictive means of intervention**" — that conservatorship be imposed only if there are no less restrictive means available, and that in appointing a conservator, the court limits the conservator to those duties and authorities that are necessary. This is an important change for Connecticut. Present statutes, which some characterize as archaic, are out of step with our current understanding of recovery, with the ADA, and the Supreme Court's decision in *Olmstead v. L.C.* The proposal before you respects existing law and custom, and practice, but makes necessary – and overdue – changes to update and improve the statutory framework governing conservatorship. This bill is largely based on

accepted national model laws, including the “Uniform Guardianship & Protective Procedures Act” (1997) and the Model Probate Code (most recently amended in 2006). One by one, states have been revising their statutes to adopt many of the provisions and principles found in these model laws. (The groups that drafted and support them include the National College of Probate Judges, the ABA Commission on Law & Aging, the National Guardianship Association., the National Association of Elder Law Attorneys, and the National Conference of Commissioners on Uniform State Laws.)

The proposed legislation would enhance procedural safeguards in the legal proceedings (“due process of law”). It remedies problems in our current law. For example:

- A recording of the proceedings would be required.
- Provisions for notice and the right to counsel would be clarified.
- The legislation would mandate that testimony be given under penalty of false statement.
- It clarifies the right to a prompt hearing whenever an emergency temporary conservator is appointed ex parte as well as in situations where there is a plan to relocate a conserved individual to a nursing home or long term care institution.
- It also adds standards lacking in current law concerning the procedure for the termination of conservatorships.
- In addition, the legislation would streamline the currently daunting appellate process. Appeals would be conducted as “on the record” reviews, with an expeditious process similar to those used for administrative appeals. The bill would also clarify the right to habeas reviews and allow for timely review by a three judge Probate panel.

An additional benefit of this legislation is that it would provide much needed guidance and uniformity to probate judges and the attorneys who practice in their courts. At present, each court and each judge handles the various aspects of conservatorship matters differently. It feels as if there are 117 separate and distinct sets of rules of practice and procedure in Connecticut’s probate courts. Despite the fact that there are many excellent courts and judges, uniform standards and fundamental procedural safeguards are lacking in our probate system.

The current statutes need to be revised, and the legislation before you is an excellent proposal to accomplish this. It is the product of thoughtful, thorough, and intensive review. I hope that we have your support.

Thank you for your attention to this matter and for the opportunity to testify.

Thomas Behrendt, Legal Director
Connecticut Legal Rights Project
P.O. Box 351, Silver Street
860-262-5034