

**Quinnipiac University School of Law**  
**Health Law Clinic**

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**TESTIMONY BEFORE JUDICIARY COMMITTEE ON RAISED SENATE BILLS 1439,  
1453, AND 1272, AND IN SUPPORT, GENERALLY, OF CONSERVATORSHIP  
REFORM EFFORTS IN CONNECTICUT**

March 30, 2007

Good afternoon Senator McDonald, Representative Lawlor, and members of the Committee. My name is Royal Stark. I am the Director of the Health Law Clinic at the Quinnipiac University School of Law, a position I have held since 1998. In the years since becoming a clinical law professor I have handled a number of probate matters, appearing in probate courts around the state including Bridgeport, Hartford, Middletown, New Haven, New London, Newington, South Windsor and Waterbury, as well as handling probate appeals in the Superior Court and before the Appellate Court and Supreme Court. It is through my practical experience litigating probate cases, primarily cases regarding involuntary conservatorships, that I have come to understand the acute need for probate reform in Connecticut, especially in the area of conservatorships.

I am here today, as I was a year ago, to speak in support, generally, of improving the operations of the state's probate courts and in support of revising and reforming our statutory scheme regarding conservatorships. Over the past year I have been directly and significantly involved in debating and drafting much of the language before this committee regarding conservatorships. It is in that capacity that I testify today in support of the language in Senate Bills (S.B.) 1439, 1453 and 1272, as well as in support of language attached to my testimony that I urge this committee to adopt in lieu of that currently in S. B. 1439.

That language is the result of an intensive months-long effort by a Conservator Revision Committee formed at the behest of Judge Lavery and Judge Lawlor upon which I proudly serve. The language presented to you by that committee represents not only the consensus of opinion of the members of that committee, but also represents a growing and broad consensus that the statutes, regulations, rules, processes and procedures regarding conservatorships in Connecticut need to be revised and reformed. The language in the proposed legislation put forward by the Conservator Revision Committee represents many hours of thoughtful analysis, spirited debate, and good faith compromising by the various members of the committee whose names and affiliations have been provided to you by Judge Killian, the chair of our committee. The language attached to my testimony for your consideration is also the product of the thoughtful and artful drafting by David Bicklen, who, as you all know, is the former chair of the law revision commission.

My knowledge of, and opinion about a growing and broad consensus that conservatorship reform is needed comes out of my work over the past several months with a working group of the bar association which was formed initially to look at ways that the provisions of the Uniform Guardianship and Protective Proceedings Act of 1997 (UGPPA) could be implemented in Connecticut. The draft legislative proposals that came out of the debates and discussions of the members of that working group, which included individuals who hold or who have held high office in the bar association and its sections, formed the core of the language in S.B. 1439 as well as the language in the Conservator Revision Committee's proposed legislation; language that I urge the committee to approve by amending S.B. 1439, replacing the language therein with the language proposed by the Conservator Revision Committee, and voting the proposal out of committee.

Before going further into the conservatorship reforms I urge this committee to approve and move forward, I first want to state my support for the general probate reforms contained in S.B. 1272; reforms that will improve the probate courts and provide for greater oversight of the more than 100 probate courts doing business each week in Connecticut. I support giving the probate court administrator more authority to make and enforce regulations that will improve the operations of the court, the level of judging, and the overall effectiveness and fairness of the probate courts in Connecticut.

That being said, the primary purpose for my testimony is to urge that this committee approve and adopt language that is before the committee that is necessary and overdue, and that will drastically improve Connecticut's laws regarding conservatorships. I do not need to tell the members of this committee about the significant restrictions to rights and liberties that occur to disabled or elderly individuals who are adjudicated incapable and have an involuntary conservator appointed for the individual. Sometimes the appointment of an involuntary conservator is appropriate and serves to protect the individual brought before the court. However, in too many cases the appointment of an involuntary conservator is far too easy, and occurs without the allegedly incapable individual receiving the protections that the legislature has already recognized are required and that are consistent with our constitutional system of government which restricts intrusions into the lives of citizens, and our general notions of freedom, liberty and fair play. The proposed legislation brought before this committee is intended to, and will if enacted, properly enlarge the protections that an individual will get from the court system both at the outset of legal proceedings where the appointment of a conservator is sought, and throughout any subsequent period when an involuntary conservator has been appointed.

As mentioned above, over the past year I have had the weighty (and exhausting) privilege to work with groups that have been tirelessly seeking concrete and specific ways to revise, reform and improve our statutory scheme regarding conservatorships. In October of last year I had the honor of being one of many presenters at a day-long symposium put on by the Connecticut Bar Association on the topic of conservatorships, where I shared the dais with judges, professors and practitioners from around the

country who spoke of the reform efforts already enacted in parts of the country and the reforms still needed in Connecticut regarding conservatorships.

Through my work with the bar association UGPPA working group, I became aware that practitioners in this state with varied conservatorship experiences and a varied clientele, from wealthy elderly individuals to low-income mentally and physically disabled persons, shared concerns that our laws, procedures and practices in the area of conservatorships were inadequately protective of liberties and rights, that appointments by courts were too often too intrusive, and that attorneys involved in these cases needed to do more, needed to be held to high standards and needed, assiduously, to avoid any real or perceived conflicts of interest. Also, the need to revise, reform and simplify the probate appeals process was in the best interest of just about everyone, including lawyers, clients, judges, and court personnel.

These concerns were echoed in the lengthy meetings of the sub-committees and the full Conservator Revision Committee that I attended during the past four months. In order for the participants in conservatorship proceedings, and the public at large, to have faith in the judicial system that appoints conservators, and to see it as truly protective, and not punitive in nature, where only those restrictions on rights and liberties that are absolutely necessary occur, it is necessary for the reforms before this committee today be enacted by the legislature.

I concede that not everyone involved in these matters is in favor of every one of the provisions put forth for your consideration. Nonetheless, I know first-hand from my many discussions with stakeholders over the past several months that those who bring applications for involuntary representation, those who oppose or seek to limit them most of the time, those who serve as court-appointed conservators, those who work in the courts and those who evaluate and adjudicate the cases are in agreement that reform is needed. The proposals put forth in S.B. 1439 and the language in the proposal of the Conservator Revision Committee are the consensus work product of an awful lot of dedicated effort, thoughtful consideration, concern for the individuals who find themselves before the courts on both sides of these matters, and concern for justice generally.

Finally, although it is not a part of either S.B. 1439 or the proposal of the Conservator Revision Committee, I remain in favor of having a right to remove conservator cases from the probate court to the superior court, which is why I support the language in S.B. 1453 that goes to this issue. S.B. 1453 contains many good provisions that are worthy of the support of this committee. However, if the language of the Conservator Revision Committee is approved, a lot of what is in S.B. 1453 will become superfluous, but not all of it. Even if the reforms before you are forwarded by this committee and enacted by the full General Assembly, there will still be a need to allow persons in danger of losing rights and liberties in conservatorship proceedings to remove their cases from the probate courts. There also needs to be a re-established right to bring a writ of prohibition to contest the jurisdiction of the court entering a conservatorship order or orders. Even with the enactment of sweeping probate reform, the process of enacting

the reforms, and educating judges, court personnel, attorneys, litigants, and the general public about the legislative changes will be a somewhat slow process, as will the process of changing the culture in the probate courts regarding conservatorships. Having a right to remove cases to the superior court the same as is already allowed in certain cases in the probate courts regarding custody of children, will add another layer of protection that will be there immediately while the larger reforms proposed today are enacted and put into place and everyday practice in the courts.

The enactment of the reforms advocated today will move Connecticut closer to the standards set out in the Uniform Guardianship and Protected Proceedings Act of 1997 and will enhance the procedural protections to individuals who are brought involuntarily before courts, and will appropriately limit the effects of an appointment of an involuntary representative, such as a conservator, so that a conserved individual will lose only those rights and liberties that are required to be constrained by the court in order for the individual to be protected in core areas of existence, such as the acquisition of adequate nutrition, shelter and medical care, and the protection of financial assets. The appointment of an involuntary conservator should only be done when absolutely necessary when there is no less restrictive alternative available, should be limited in scope and duration so that no unnecessary loss of liberty or rights occurs, and should never be punitive in nature or effect.

Thank you.

Royal J. Stark

Attachments: go to SB-01439  
Probate Ct of Hartford  
Judge Robert K. Killian, Jr.