

JUDICIARY COMMITTEE

March 30, 2007

Testimony of Attorney Robert E. Byron in Support of Raised Bill 1439 and 1453.

Dear Senator McDonald and Representative Lawlor:

The referenced bills are up for public hearing today at 1:00. I respectfully ask that you support them. I am an attorney who represents alleged incapables in the probate courts. While most of my experiences in the probate system have been good, and I have found the probate judges to be honorable, capable and well-intentioned, I have also found the system itself to be heavily weighted against the subjects of applications for involuntary conservatorship. Justice, equity and the true interests of the alleged incapable are now far too dependent on the good will and discretion of the probate court. These bills will serve to codify the protections which are now unfortunately not a component part of the system.

I have had the unhappy experience of representing people for whom applications were filed for reasons other than my clients' actual mental capacity. In one case DSS filed to resolve a conflict between my client and her son, and obtained a report from a psychiatrist who did not personally meet with my client, but who nonetheless stated she was incapable, in the face of the care facility's reports, the testimony of her family, and the evidence of her manifest capacity to the contrary. DSS can always find a psychiatrist to do that; actually, anyone can. In another case, DSS sought to be named conservator over my client so as to deter him from pestering them for, if you can believe it, haircuts. Admittedly, he did this once a week, but still. The only way I could fend them off was to agree to have my client's son named conservator.

But family members themselves can be dangerous. I represented an 78-year old who had given her son power of attorney over her estate, with the understanding that she would live out her life in the home where she had lived for 35 years. But the son had other ideas and following a family fight got my client to the psychiatric facility at Yale, where she was put on antipsychotic medication, which impaired her cognitive faculties further, and which led to her being moved to a nursing home where she has been kept on a daily regimen of neuroleptic pharmaceuticals, to address her claimed anxiety. The son was named conservator and has, every year since, had funds transferred from his mother's estate to his children by way of court-approved gifts.

It is a very easy thing for someone to file an application, find a willing psychiatrist to issue a report, and get someone or themselves named conservator. It is a very hard thing to appeal that. It requires a full-blown civil action, with all the fees and delays that go along with that. Moreover, while the state will pay for representation at the probate hearing, it will not pay for an appeal.

These bills don't fix everything, but they advance the law and they will help people keep their independence when they are capable of doing so. As well, they will labor against the institutional bias in the system against people over 65, particularly the pernicious notion that dementia is a fate that awaits us. That is a false notion without scientific support, but it

permeates the system, especially in social services, where the refrain "dementia never gets better, it only gets worse" is a mantra. The mere inclusion of the word "dementia" in a report changes everything. The burden of proof, I find, shifts from proving incapacity before the age of 65 to proving capacity after. There is a presumption of dementia for people over 65 which is very, very hard to overcome, and almost impossible to do so under the system we have now.

The system needs changes and these bills provide some of the changes it needs. I ask that you grant them your support.

Respectfully,

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