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JUDICIARY COMMITTEE

Testimony of Thomas Behrendt Regarding
Proposed Probate Court Regulations

February 8, 2008

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

I am an attorney with the Connecticut Legal Rights Project (CLRP), and am testifying to express my concerns regarding two key provisions in the proposed Probate Court regulations. A substantial number of CLRP's clients are now, or have in the past, been under conservatorship. Based on their experiences and ours, we have an abiding concern about the adequacy and uniformity of procedural protections accorded these individuals in the various probate courts around the state.

We were extremely happy with this Committee's work on the legislation that was enacted last session to amend the conservatorship statutes and reform probate procedures. I welcome the opportunity to comment on the proposed rules.

Retention of Recordings (Section 27.4)

It has been the practice in most probate courts to maintain records for only 30 days. The proposed Rule, which would allow for the destruction of recordings after one year, is still woefully inadequate. Connecticut's citizens face the loss of their most fundamental rights when they come before the probate courts in conservatorship proceedings. A one year retention period is out of step with long accepted standards, and it evidences a troubling lack of dignity and respect for persons with disabilities and for our elders.

We urge the adoption of a retention period of 40 years. A forty year period is in keeping with current provisions governing retention of court files in proceedings concerning real property. Additionally, the rule must explicitly state that the retention period is to be calculated from the date of the termination of the conservatorship. We urge the adoption of the following revision to the language under consideration:

27.4 Retention and destruction of recordings. (a) All recordings shall be maintained until ~~one year~~ **forty years** after the **termination of the conservatorship, or in the case of proceedings where applications for conservatorship are denied, for forty years after the** close of all proceedings, including appeals, in the matter. Thereafter, such recordings may be destroyed in **accordance with the rules promulgated by the Probate Court Administrator.** ~~the discretion of the court.~~

Logistically, all of these recordings will soon be in digital form and can readily be maintained and safeguarded. (Although the majority of probate courts have yet to make the transition to digital recording formats, the change to digital should be coming soon in light of the new reforms as well as the phasing out of analog technologies.)

Cost of Transcription / Fee Waivers [Section 27.3(b)]

We urge that the proposed rule under consideration be modified to provide that applications for fee waivers in connection with appeals to the superior court be filed in the superior court rather than the probate court. The superior court procedure is uniform and effective. Directing applications to this court streamlines a complicated process and avoids problems.

Requiring waiver applications to be filed in probate court makes the procedure much more daunting for indigent litigants. Separate waiver applications, made under differing sets of rules, would frequently need to be filed in both courts. In addition, because probate judges have a unique personal stake in the fees generated by their courts, they have conflicting interests. Also, we are familiar with situations where litigants have encountered probate judges who appear to regard the taking of an appeal as a personal affront, and who use their office to interfere with the prosecution of the appeal. For example, on more than one occasion, the right to appeal an unfavorable probate decree has been prejudiced by the probate judge failing to grant a timely motion for permission to appeal until the very end of the 30 day statutory time limit. We are confident that this and similarly inappropriate and petty acts would not be encountered in the superior court.

We support the following modification to Section 27.3 suggested by Greater Hartford Legal Aid:

27.3 (b) The cost of transcription shall be charged to the party who filed the appeal, provided that if such person is unable to pay and files with the court an appropriate application for waiver of fees pursuant to Conn. Gen. Stat. §~~45a-111~~ **52-259b** the court may waive the payment of such expenses, which shall be paid from the Probate Court Administration Fund.

We continue to be concerned with the lack of uniformity in probate procedures and in the handling of files. (Our clients have encountered incomplete files on numerous occasions, as well as blank or inaudible audio tapes of probate proceedings.) It is still of great concern that there appear to be as many differing sets of policies and procedures as there are probate courts. While the recent changes in the law are major positive steps, the proposed rules under consideration need to be modified along the lines suggested above.

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