

JUDICIARY COMMITTEE
OF THE GENERAL ASSEMBLY OF THE STATE OF CONNECTICUT

February 8, 2008

Testimony of Attorney Royal J. Stark Opposing the Proposed Probate Court Regulation
Regarding the Recording of Conservator Proceedings
(Section 27 of the Proposed Regulations)

Good Afternoon Senator McDonald, Representative Lawlor and members of the Judiciary Committee.

My name is Royal Stark and I am an attorney with Connecticut Legal Services, the immediate past Director of the Health Law Clinic at Quinnipiac Law School, and a member of the so-called "Killian Committee," the Conservatorship Revision Committee that submitted the proposed legislation that became P.A. 07-116.

I thank the members of this committee for all of their efforts last session passing P.A. 07-116 (as well as P.A. 07-184). The reforms contained in P.A. 07-116 have greatly improved the conservatorship laws in Connecticut.

Specifically, the requirement in P.A. 07-116 that all conservatorship proceedings in the courts of probate be recorded further enhances the due process protections contained in Connecticut's conservatorship statutes, and will go far towards improving the public perception and reputation of the probate courts in these matters.

Because recording all conservatorship proceedings helps ensure that procedural safeguards are heeded in the Probate Court, while also allowing for streamlined "on the record" appeals in the Superior Court, the Judiciary Committee should reject, as written, Section 27 of the Administrator's proposed regulations. Sections 27.3 and 27.4 should be amended prior to approval and enactment.

Pursuant to section 11 of P.A. 07-116 the recordings of hearings and other proceedings in the probate courts are part of the probate court record. Section 27.4 of the proposed regulations allows for the destruction of the recordings after only one year. This is an inadequate amount of time of retention, and seems to be the shortest retention period of any judicial record in the state. The Superior Court rules (Practice Book sections 7-10 through 7-15) set out time periods for the retention of the records of that court that range from 3 years (the shortest) for administrative appeals and summary process cases, to 20 years from the expiration of a sentence in a felony conviction, to 75 years for family support magistrate matters, to permanent retention in certain sexual assault tort cases. Given the personal liberty and property rights at stake in conservatorship proceedings the time of retention should not be less than that provided by this state for the retention of records in an eminent domain matter (10 years) or a contracts case (20 years).

Furthermore, the extended period of retention (whatever it ends up being well beyond the proposed mere 1 year period) should be defined, clearly, in cases where a conservator has been

appointed, as starting to run from the date of the final order by the Probate Court after the termination of the conservatorship. It may be that the phrase "close of all proceedings" in the proposed regulation contemplates the above, but the regulation should be amended to make crystal clear that "close of all proceedings" means the final order of the probate court after the termination of a conservatorship, and that all recordings made at any time during the period of the conservatorship are to be kept as part of the Probate Court record until the expiration of the retention period, which starts after the conservatorship has ended.

With regard to the cost of transcribing the recording, Section 27.3 should be changed to delete references to Conn. Gen. Stat. section 45a-111, and instead refer to Conn. Gen. Stat. section 52-259b, which is the Superior Court fee waiver statute. Under the new law, this is a perfectly appropriate, if not necessary, revision to the proposed regulation. Section 3 of P.A. 07-116 contains multiple references to both "Superior Court" and "Court of Probate." Subsection (a) of section 3 contains both phrases, but goes on to state simply that an appellant unable to pay the expense of transcription may file an affidavit demonstrating the inability to pay with "the court." The phrase "the court" should be read as the Superior Court. It is the only reasonable interpretation given that the obvious intention of P.A. 07-116 was to revise the probate appeal process by streamlining the procedure and eliminating the need for an appellant to go to both the Probate Court and the Superior Court in order to have an appeal heard. (P.A. 07-116 eliminates the previous need to file with the Probate Court a motion for a decree allowing appeal from probate, and a subsequent set of probate appeal papers in the Superior Court. Now, under the new law, the appeal is filed directly in the Superior Court, with a copy of the appeal papers served on the Probate Court shortly thereafter.)

As proposed, the regulation would result in an indigent appellant filing a fee waiver application in the Superior Court seeking to have the filing fee and service fees waived, and filing another, separate fee waiver application in the Probate Court to have the cost of the transcript of the recording paid for by the state. By reading "the court" in the public act to mean the Superior Court, an indigent appellant would file a single Superior Court form and have all fees and costs relevant to the probate appeal either waived or not, pursuant to an application by the Superior Court of the provisions of Conn. Gen. Stat. section 52-259b.

The fact that the law requires that the Probate Court Administration Fund cover the cost of transcription for an indigent appellant whose fee waiver has been granted, does not lead, inexorably, to the conclusion that in an appeal to the Superior Court the transcript fee waiver request needs to be presented to, and decided by a Court of Probate. The request for a waiver of the cost of transcription should be decided by the Superior Court pursuant to section 52-259b.

Respectfully submitted,

Royal J. Stark, Attorney
Conn. Legal Services, Inc.
872 Main Street
Willimantic, CT 06226
Tele: 860. 456-1761
Fax: 860. 456-7420