

## CONNECTICUT LEGAL RIGHTS PROJECT

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### Testimony of Sally R. Zanger, Staff Attorney, in Opposition to Proposed Probate Court Regulation Section 27, Recording of Conservator Proceedings

Connecticut Legal Rights Project (CLRP) urges the Committee not to approve Section 27 of the proposed Probate Court regulations and attaches suggested substitute language.

Senator McDonald, Representative Lawlor and members of the Committee:

CLRP is a legal services organization that advocates for low-income individuals who have, or are perceived to have, psychiatric disabilities. Many of our clients have been respondents in conservatorship proceedings and we were delighted with the changes in the statute enacted by P.A. 07-116, particularly the change requiring the recording of conservatorship proceedings. However, Section 27 of the proposed regulations may eviscerate the protections provided by the new statute. We oppose the sections on destruction of the recording of the proceeding and the mechanics of the fee waiver application.

**Fee Waiver Application:** As proposed, an indigent aggrieved person seeking to challenge a conservatorship in the Superior Court must obtain one fee waiver to file in the Superior Court, and an additional fee waiver in the same Probate Court whose order s/he is challenging, in order to obtain a transcript of the proceeding. No challenge can proceed without a transcript. The standards and procedure for such a waiver in probate court differ from and are more complicated than those of the Superior Court. Practice in Probate Court varies from town to town, and experience has been that fee waivers are not routinely granted in Probate Court the way they are in Superior Court, where there is a presumption that if a person is living on public benefits the waiver is granted. The time frame in Probate Court to grant such a waiver (up to six months!!) can cause an unconscionable delay in the proceeding. **We urge the committee to simplify the rules for the citizens of Connecticut and clarify that one fee waiver may be granted in Superior Court to cover all of the costs of such litigation, including the cost of the transcript of the Probate Court proceeding.**

**Destruction of Recording:** Permitting the recordings of the proceedings to be destroyed after one year eviscerates the many safeguards enacted in PA 07-116. Without a record of the proceeding, there is no way to determine whether the requirements of the statute have been met. Conservatorships frequently last a lifetime, ending in the death of the conserved person. Recording in the twenty first century can be stored digitally and take up very little space. Conserved individuals frequently have difficulty getting the assistance they need to challenge the action. Court proceedings to gain access to counsel over the objection of a conservator can take years (see *Phoebe G. vs. Solnit*, 252 Conn 68, 1999). These recordings must be accorded the same deference and care that all court reporters recordings receive and should not be destroyed until it is clear there will be no use for them. **Given the gravity of a conservatorship, the potential for harm in destroying the record and the importance of the record over time to the conserved person, we suggest that the recording be kept for forty years after the termination of the conservatorship.**

**The regulation is not explicit about the definition of “close of proceedings” and we recommend it be rewritten to clarify that the time limit runs from the termination of the conservatorship.**

## Section 27 Recording of Conservator Proceedings

**27.1 Authority:** These regulations are issued pursuant to C.G.S. §45a-77 (b)(1) as amended by P.A. 07-184, and sections 3 and 11 of P.A. 07-116

**27.2 Proceedings to be recorded.** Each court of probate shall cause an audio recording to be made of all hearings held under Conn. Gen. Stat. §§45a-644 through 45a-663 inclusive, which recording shall be part of the record of the court in the matter.

**27.3 Transcription.** (a) The court shall, in the event of an appeal, cause a transcript to be made of the recording within thirty days after service is made of the appeal.

(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.

(c) In instances in which no appeal has been filed, a transcript may be prepared and provided to any interested party upon their request and at their expense.

**27.4 Retention and destruction of recordings.** (a) All recordings shall be maintained until ~~one year~~ forty years after the termination of the conservatorship ~~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.~~

(b) The court shall maintain an index of all such recordings, which shall include, where applicable, the date of destruction.

(c) All recordings shall be maintained by the court in a secure location that provides adequate protection from damage by fire, water or climatic conditions.

(d) In the event of a transfer of the file to another court in accordance with law, any recordings made under this regulation shall be transferred as part of the record of the court in the matter.

**27.5 Recording equipment.** (a) It shall be the responsibility of the judge to procure suitable recording equipment, capable of making an accurate and audible recording of the proceedings, and to insure proper maintenance and operation of the equipment.