

TESTIMONY BEFORE THE JUDICIAL COMMITTEE  
SUBMITTED BY ATTORNEY MARILYN DENNY  
MARCH 9, 2009

IN SUPPORT OF H.B. 6626; H.B. 6629; H.B. 6385 and

IN OPPOSITION TO S.B. 576; H.B. 6027

I am an attorney with Greater Hartford Legal Aid. As such, I represent elderly and disabled clients in the Greater Hartford area who will be affected by the committee's vote on these bills.

I want to speak in support of H.B. 6626: An Act to Transfer Jurisdiction Over All Contested Probate Cases to the Superior Court.

The legislature has read and heard a great deal about contested cases in Probate Court. It passed legislation in 2007 which increased greatly the protections available to people who are subject to conservatorship proceedings. At that time, there was much discussion about this being the first step and that "culture change" would be required in order to see these protections realized. In my experience, this "realization" has been slow or non-existent. Therefore, transfer of such cases to the Superior Court, where culture change is not required, must be considered. In addition, transfer of contested cases must be part of the current discussion on court consolidation. Such transfer would give contested proceedings heightened procedural protections when serious deprivations of liberty and property are being considered.

I also want to testify in support of H.B. 6629: An Act Concerning Guardian Ad Litem and Conservatorships.

The bill eliminates the appointment of a Guardian Ad Litem in conservatorship cases. GALs have no place in these proceedings. An attorney is appointed to represent the person for whom a conservator is proposed; if required a conservator is appointed who must report to the Probate judge; a GAL is not required by the Probate Rules unless a person does not have a court-appointed attorney. The statutory changes made in 2007 mandate use of a substituted judgment standard in these cases, while the GAL operates under the now obsolete standard of "best interest." The appointment of a GAL results in burdening the modest estates of the person and often adds an element of unhelpful and unnecessary interference in the lives of the conserved person and/or the conservator, especially when the conservator is a family member. Elimination of the GAL from conservatorship proceedings will make the process more consistent and more cost effective- the latter by eliminating taxation to either the Probate funds for indigents or to the limited resources of conserved people. A good probate judge through use of the many resources available to it, can find the means to obtain any information a GAL could obtain.

I also want to support the governor's efforts to reform the probate system. H.B. 6385: An Act Concerning Reform of the Probate Court System, is a thoughtful plan. It is long overdue. At a time when we are reducing supports for some of the frailest of our citizens, administrative revisions that are cost- saving are critical. What the Governor proposes would make such savings and would not impair the protections afforded to those who need the assistance of our court system.

I want to speak in opposition to S.B. 576: An Act Concerning the Connecticut Uniform Protective Proceedings Jurisdiction Act.

About a month ago I was invited by some who favor this act to join a discussion of its merits and limitations. This proposed act has not been properly vetted. It was presented to the Elder Law Section of the CBA without time to review it, and it was supported by that section by a narrow vote. At a minimum, it must be discussed by all of the "stakeholders" including people in the disability community and other attorneys who practice in the probate courts. It does not harmonize with our existing laws; it will undermine the protections and reforms implemented by P.B. 07-116; it will make Connecticut residents vulnerable to the conservatorship laws of other states which do not offer the protections that our laws do. It abrogates the responsibility of Connecticut to protect its citizens and those entering our state to adequate due process protections concerning the curtailment of their civil liberties. For the convenience of a few, it jeopardizes the place Connecticut now holds in terms of having an advanced statute which guarantees due process.

Along with other colleagues, I am attaching to my testimony substitute language for S.B. 576, which would provide heightened protections against conserving individuals who are not residents or domiciliaries of the probate district, while allowing probate courts limited authority to appoint a temporary limited conservator in emergency situations. In this sense, it makes modest changes to what the legislature endorsed in 2007, while taking into account some of the objections to that legislation raised by attorneys who currently support the Uniform Protective Proceedings Jurisdiction Act. It addresses some of their concerns without undermining our statutory scheme.

I also opposed S. B. 6027: An Act Concerning Probate Court Reforms. The probate courts should not be given appellate jurisdiction; the financial emergency which we face does not allow time to study consolidation – a study which has been going on for as long as I can remember, with little in the way of positive results.

Thank you for your time and attention.