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TESTIMONY OF
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Estates and Probate Section
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IN SUPPORT OF
SENATE BILL 426

AN ACT CONCERNING THE CONNECTICUT UNIFORM
ADULT PROTECTIVE PROCEEDINGS JURISDICTION ACT

Judiciary Committee
March 12, 2010

Senator McDonald, Representative Lawlor, and Members of the Judiciary Committee:

My name is Suzanne Brown Walsh, and I am submitting this written testimony on behalf of the **Estates and Probate Section of the Connecticut Bar Association** and as one of Connecticut's Uniform Law Commissioners, in SUPPORT of SB 426, AAC The Connecticut Uniform Protective Proceedings Jurisdiction Act (also referred to as CT UAPPJA). I am the immediate past chair of the CBA's Estates and Probate Section and a former chair of its Elder Law Section.

The Act deals with what we in Connecticut call Conservatorships. However, the majority of American states use two terms to describe this role: their laws refer to a "Conservator" of an adult's estate, but use the term "Guardian" of the adult's person. To make this understandable to parties coming to Connecticut from other states, and to parties in Connecticut as well, the act employs a "translation" definition in Section 2(3) to explain that references to "guardian" in the Act are meant to be to "Conservator of the Person" in Connecticut. The Estates and Probate Section members felt that was a better solution than amending each and every existing statutory reference to Conservator of the person to refer back to this act, and felt that it made sense since most attorneys and judges reading the Connecticut act will be doing so from other states.

The CT UAPPJA fills three major gaps in the existing conservator/guardianship laws of every state: there are no or few state laws for facilitating **transfers** of guardianship or conservatorship cases from state to state; there are few or no state laws for simply **registering an**

order from one state in another, as where the incapacitated person is temporarily being treated in a residential facility in another state (and full faith and credit does not apply to such orders); and there are no procedures for **resolving disputes over which state is the proper forum for an underlying guardianship hearing**, either where the respondent has no real home state, or the initial proceeding is begun outside the home state, or for any reason you have parties in two states arguing the case should be heard in both states at the same or nearly the same time.

I was honored to have the opportunity to serve as a member of the Uniform Law Commission's drafting committee for this Act (called the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act," or "UAGPPJA" in all other states) during its two year drafting process. The drafting committee contained Observers from the National Academy of Elder Law Attorneys ("NAELA"), AARP, and the National Guardianship Association, who are the leading thinkers and experts nationally on interstate guardianship matters. In addition, most of the litigators involved in the *Glasser* case, a famous interstate kidnapping and jurisdiction case, served on the committee as observers, and we often tested the provisions we were drafting using the facts of that real case, among others. One of the drafting committee members was a sitting trial judge, and she provided much input into the sections on court communication.

The UAGPPJA was approved by the Uniform Law Commission in the summer of 2007, with the corresponding commentary finished in late fall 2007. To date, 13 jurisdictions (Alaska, Colorado, Delaware, District of Columbia, Illinois, Minnesota, Montana, Nevada, North Dakota, Oregon, Utah, Washington and West Virginia) have enacted UAGPPJA, and this year it is anticipated that an additional 13 states will introduce and possibly enact it.

In addition to our bar section support here in CT, the UAGPPJA has been endorsed nationally by the National Guardianship Association, the Center for Guardianship Certification, the National College of Probate Judges, the Alzheimer's Association, and NAELA. This is because elder law attorneys, guardians, conservators, and judges are frequently faced with sorting out complex jurisdictional issues caused by our society's increasing mobility.

A primary cause of much of the confusion regarding what court has, or should have, jurisdiction is the absence or disarray of statutory guidance on jurisdictional issues. Only a few states have statutory provisions to sort out either the initial, recognition, or transfer jurisdictional questions, and none have all three. Connecticut's initial jurisdiction provision, for example, grants jurisdiction over nondomiciliaries by mere presence in all cases, not just temporarily as the CT UAPPJA would provide. It then attempts to ameliorate the damage this causes by providing a set of provisions for providing a means of return to the home state, which might work for a capable respondent with sufficient assets, but provide little to no practical benefit for an incapable or poor respondent. The bill would change this by limiting jurisdiction by mere location to 90 days, which is long enough to deal with an emergency, but no longer.

I believe that CT UAPPJA clarifies the law by delineating rules for where the typical "granny snatching" cases should be heard and maintained. Under current law the jurisdictional rules are blurry and lead to arguments for domicile and jurisdiction that are misguided and are often abused to suit litigants' needs, instead of the best interests of the incapacitated person. **The clearer the rule, the less likely it will be manipulated and abused. CT UAPPJA provides that much needed clarity.**

In addition, by facilitating court communications, the bill will reduce the length and therefore the cost of such litigation, both to the parties, and to the state. The bill's **transfer provisions** seek to reduce costs associated with the need to move a supervised guardianship from one state to another (for example, where better and more affordable care is available in the state where another child might live). Finally, its **registration provisions** will reduce the costs associated with dealing with out of state property or dealing with a health care provider who refuses to recognize the authority of an out of state order.

Widespread passage of the act should result in significant judicial economy, reduction in wasteful litigation, and conservation of the incapacitated person's estate. Additionally, it has no budgetary impact and does not change the substantive Conservatorship law.

I would be pleased to answer any questions from the committee, so I have provided my contact information, below.

Feel free to contact me at 860-313-4928 or by e-mail at swalsh@cl-law.com.

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