

CONNECTICUT LEGAL RIGHTS PROJECT

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JUDICIARY COMMITTEE

March 12, 2010

Testimony from Sally Zanger and Thomas Behrendt

In support of SB426,

In support of SB 371

Sen. MacDonald, Rep. Lawlor, distinguished members of the Committee, Connecticut Legal Rights Project (CLRP) is a legal services organization that advocates for low-income individuals in institutions and in the community who have, or are perceived to have, psychiatric disabilities. We promote initiatives that integrate clients into the community. While we do not represent our clients in probate court proceedings where they have court-appointed counsel, frequently we do assist them and their counsel and we represent them on appeals of conservatorship proceedings. We certainly hear about their problems in probate court and try to help people correct them. Tom Behrendt, our legal director emeritus, worked with a diverse group of lawyers two years ago on the "Killian Committee" that drafted P.A.07-116 which repaired the conservatorship statutes in several ways. We present testimony today in support of SB 426 with technical changes and SB 371.

We start by reaffirming our support for PA 07-116, which came into being in part as a response to several terrible cases of overreaching by probate courts that conserved individuals over whom they had no jurisdiction. The act had several important aspects: It clarified and made very explicit already existing due process protections; it simplified the complex idiosyncratic probate appeal procedure to a simpler one that parallels the appeal process for administrative hearings; and it modernized key aspects of the conservatorship statute by changing the definitions of incapacity, the standards for imposing conservatorship and the duties of conservators. The result is Connecticut has a statute considered a model, state of the art conservatorship statute.

Last year, CLRP vigorously opposed SB-576, the Uniform Adult Guardianship and Protection Jurisdiction Act. We opposed it because as it was drafted at that time, it posed a threat to the important safeguards and reforms of P.A. 07-116. As a result of that opposition last session, we worked collaboratively with a diverse group of lawyers from Connecticut,

representing the CBA Elder Law and Estate & Probate Sections (and Uniform Law Commissioner Suzanne Brown Walsh), to develop this bill, SB 426, that incorporates the Uniform Adult Guardianship and Protective Procedure Jurisdiction Act while protecting P.A. 07-116 and Connecticut's conservatorship statute. That work was rigorous and took a tremendous amount of time and effort from all of the parties. Together, we negotiated every word. Our goal was to preserve the rights set out explicitly in our conservatorship statute. This was done in several ways, including retaining the Connecticut terminology, which differs from the terminology in the Uniform Act, to avoid confusion and to deliberately distinguish conservatorships established in accordance with the Connecticut statute from those imported from out of state.

These choices were made very deliberately, carefully discussed and vigorously negotiated last spring. These changes were made to deal with Legal Services' serious reservations about the proposed Uniform Act. **We were very pleased with the result of this collaboration and are pleased to be able to support the act now.** However, while we were in the process of working with LCO on the final draft of this language, we ran out of time and the language had to be submitted to this committee. The LCO attorney working with us had several additional questions that we were in the process of answering when this happened. She said she would "reserve some changes for later". We ask that you take this into consideration when considering this bill and approve substitute language that is still being worked on with LCO. This will ensure that any revisions are consistent with the intent of the language we negotiated. We will continue our work with LCO and make sure the finalized language is submitted as soon as possible.

There is another happy contrast from last session, when CLRP commented on the glaring omission from the many bills offered on Probate of a bill to require that probate judgeships be full time positions. **This session, CLRP supports SB 371 which encourages full time judgeships by only providing health insurance benefits to judges who work full time.** While this does not mandate full time judgeships nor prohibit the outside practice of law, to the extent that it increases both of those results, it will increase professionalism and avoid ethical issues and potential conflicts of interest. The current system, under which probate judges continue the private practice of law while their fellow attorneys and colleagues serve as attorneys,

administrators, and conservators in probate proceedings, undermines the office and the public perception of judicial independence and impartiality. We agree with arguments made eloquently before this committee in past years as well with numerous statements and position papers on the issue from national groups. Mandating that judgeships be full time and prohibiting the outside practice of law will enhance the reputation of and increase public confidence in the probate courts. SB 371 is a good step in the right direction and we urge this Committee to support it.

Thank you for your time and your attention to these important matters.

