

CONNECTICUT LEGAL RIGHTS PROJECT
P.O. Box 351, Silver Street, Middletown, CT 06457
Telephone (860) 262-5030 · Fax (860) 262-5035

March 15, 2010

JUDICIARY COMMITTEE

Testimony of Sally R. Zanger, Staff Attorney, in support of **S.B. 447 An Act Concerning the Appointment of a Guardian Ad Litem for an Adult who is subject to a conservatorship or a conservatorship proceeding.**

Sen. MacDonald, Rep. Lawlor, distinguished members of the committee, I am a staff attorney with the Connecticut Legal Rights Project (CLRP), which 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. 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 the problems and try to help people correct them.

I urge you to enact S.B. 447 which removes the broad discretion of the courts to appoint a guardian ad litem in those (limited) cases involving an adult who is represented by counsel AND either is a respondent in a conservatorship proceeding or already has a conservator.

Guardian Ad Litem (GAL)

Connecticut General Statutes §45a-132 authorizes a court of probate or a superior court to appoint a guardian ad litem (GAL) for “any minor or incompetent, undetermined or unborn person.” This is a discretionary appointment, without prerequisites or notice. This proposal sets out criteria for appointing a GAL in those limited cases that involve an **adult who is represented by a lawyer AND either is (1) a respondent in a conservatorship proceeding or (2) already has a conservator.**

This proposal does not affect children at all.

Further, this proposal does not affect people (including people involved in termination of parental rights) who do not have conservators or who do not have lawyers. A judge may appoint a GAL under this proposal unless a person has a lawyer AND is either a respondent in a conservatorship case, or already has a conservator. Even in those cases, there is an exception for the situation when a person’s attorney is unable to ascertain the preference of the person.

Rationale:

1. A conservatorship proceeding addresses the ability of the person to make and communicate decisions about his or her life. Appointing a GAL **prejudges** that case by assuming that the person is incapable or incompetent. Therefore, this proposal prohibits the appointment of a GAL in most conservatorship cases.
2. A conservator's duty is to act for the person in those areas where he or she has been found incapable. Adding a GAL when a conservator has already been appointed increases expenses without benefiting the conserved person. Therefore, this proposal prohibits the appointment of a GAL which is **duplicative** in most cases when a person already has a conservator.
3. There are **rare situations** when an attorney cannot determine the preference of the client. Therefore, under this proposal the court may appoint a guardian ad litem after canvassing the individual to determine his or her preference, or his or her inability to express that preference.
4. Currently, there is no language in the statute that specifies the **duties or responsibilities** of a GAL for an adult. Therefore, this proposal fills that void by tracking the conservatorship statute: The duty of a guardian ad litem appointed under the exception is to ascertain whether an attorney's proposed advocacy or a conservator's proposed course of action is the least restrictive and least intrusive means of addressing a respondent's or conserved person's affairs or personal care.
5. Currently, the GAL can remain on a case forever, and frequently does. Therefore, the proposal provides an **end date** to the appointment after a report is filed.

We understand that DMHAS and the Probate Court Administrator have reservations about this proposal. We have been in touch with both agencies and hope to meet quickly to try to resolve those issues.

Thank you very much for your time and attention.