



PAUL J. KNIERIM  
Probate Court Administrator

THOMAS E. GAFFEY  
Chief Counsel

HELEN B. BENNET  
Attorney

HEATHER L. DOSTALER  
Attorney

STATE OF CONNECTICUT  
OFFICE OF THE  
PROBATE COURT ADMINISTRATOR

186 NEWINGTON ROAD  
WEST HARTFORD, CT 06110

TEL (860) 231-2442  
FAX (860) 231-1055

**TO:** Senate Co-Chair Mae Flexer  
House Co-Chair Joseph C. Serra  
Senate Ranking Member Kevin C. Kelly  
House Ranking Member Mitch Bolinsky  
Honorable Members of the Aging Committee

**FROM:** Paul J. Knierim  
Probate Court Administrator

**RE:** RB 5361, An Act Concerning a Protected Person's Right to Interact with Others

**DATE:** March 3, 2016

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Thank you for the opportunity to testify on Raised Bill 5361, An Act Concerning a Protected Person's Right to Interact with Others. This bill would establish rules and procedures governing visitation in conservatorship matters. While some aspects of the bill are beneficial, we are concerned that other provisions may be unduly burdensome for a conservator who reasonably limits visitation to protect an individual from exploitation or abuse.

Conservatorship is a framework intended to provide support and protection for seniors and other persons with dementia, cognitive deficits and debilitating illnesses and for individuals with mental illness or intellectual disability. Probate Courts are responsible for the appointment of conservators and supervision of their work on an ongoing basis. As part of that oversight, the courts regularly deal with disputes about visitation with the conserved person. Probate Courts have authority to issue orders to prohibit visitation, set up restrictions on contact or compel a conservator to permit contact.

As a general rule, the appointment of a conservator should not in any way impair the ability of the person under conservatorship to interact with friends and family of his or her own choosing. On the other hand, the primary impetus for many conservatorship cases is the need to protect an individual who has been subject to exploitation or abuse. In these circumstances, it may be an entirely appropriate

exercise of the conservator's discretion – if the duties assigned to the conservator include management of personal relationships – to limit access for the protection of the person under conservatorship.

This bill would eliminate any discretion on the part of the conservator by requiring a conservator to seek a court order before establishing a restriction on visitation. The cost of obtaining such an order, including court fees, attorney fees and the conservator's compensation, would fall upon the conserved person. If the conserved person is indigent, those expenses would be paid from public funds. We believe that the current model, under which the court becomes involved only if there is a dispute, is preferable to a structure that automatically necessitates court involvement.

In addition, we ask the committee to consider the following specific concerns with the proposal as drafted:

- Section 1 (a) references C.G.S. section 45a-644 to define "conservator." That statute, in turn, defines the term to include conservators appointed in both voluntary and involuntary proceedings. This is inconsistent with the bill's definition of the "protected person" as a person who is incapable of meeting his or her essential needs. A determination of incapacity is made only in involuntary conservatorships; no such determination is made for a person who voluntarily requests a conservator. It is unclear, as a result, whether the bill applies to voluntary conservatorships.
- Section 1 (f) provides that the court must conduct a hearing on a motion regarding visitation within 60 days of filing. The goal of the Probate Courts is to address all matters in a prompt manner. Given the importance of the issues involved, we suggest that this deadline be shortened to 30 days.
- Section 1 (g) provides for an emergency hearing when the conserved person's health is in significant decline or death may be imminent. It requires the court, upon request, to order supervised interaction pending the hearing, without regard to any other circumstances. It is our view that the decision whether to issue such an order is more appropriately left to the discretion of the court in light of the facts of the particular case.
- Section 1 (h) requires that notice of a hearing on visitation and copies of the resulting court order be personally served on the protected person and any person named in the motion. Because the cost of engaging a marshal to deliver the documents would be borne by the conserved person (or by public funds if the person is indigent), we suggest that notice be provided by mail instead. We note also that there are no other types of probate cases for which personal service of the court's decision is required.
- Section 1 (i) authorizes the court to impose sanctions, including court costs and attorney's fees, on a conservator for violating the act. We believe that the prospect of this extraordinary remedy may serve only to expand these highly personal disputes. We are also concerned that the threat of such a severe financial penalty may further constrict the already

limited pool of those willing to accept appointment as conservator. Even without this provision, the court has authority to remove a conservator and to impose a financial surcharge to make the conserved person whole from any losses suffered as a result of a conservator's breach of fiduciary duty.

- Section 2 requires a conservator to notify relatives of certain events involving the conserved person. We recommend deletion of section (a) (1) because C.G.S. section 45a-656b already establishes a court approval process before a conservator changes the conserved person's residence. In addition, we suggest that section (a) (3) be modified to specify a minimum time period before a conservator is obligated to notify relatives that a person is temporarily staying at a location other than his or her residence.

We appreciate your consideration and would be happy to work with the proponents to address these concerns.

