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**Testimony by Attorney Lisa Nachmias Davis
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**In SUPPORT of
SB 143, An Act Concerning State Agency Compliance with Probate Court Orders**

**Judiciary Committee
February 19, 2016**

My name is Lisa Nachmias Davis. I have practiced elder law and the law of trusts and estates in Connecticut for nearly twenty-five years. I have served on the Executive Committee of the Connecticut Bar Association Elder Law Section for nearly twenty years, and submit this written testimony on behalf of the Elder Law Section of the Connecticut Bar Association.

The Elder Law Section of the CT Bar Association strongly supports SB 143, An Act Concerning State Agency Compliance with Probate Court Orders.

SB 143 mandates that the State of Connecticut Administrative agencies adhere to and comply with "any order, denial or decree of a Probate Court that is applicable to any determination made by the state agency in a contested case," but clarifies that in any such case, the affected administrative agency has standing to appeal the Court's ruling.

A major goal of SB 143 is to allow the Probate Courts to exercise their statutory primary jurisdiction over matters such as conservatorships, guardianships and estates, without having their decisions ignored and second-guessed by state agencies which have declined to participate in court proceedings. It restores the authority of the Probate Court as a vital part of the judiciary, as the decision-maker over disputed questions of fact and law in matters where it has jurisdiction.

The Probate Court has been in existence for nearly 400 years in Connecticut. Traditionally informal and cost-effective, Probate Court proceedings were overhauled in 2013 to increase transparency, fairness, and accountability. New rules require that notice to be given to interested state agencies and in many cases, require parties to provide those agencies with copies of pleadings and other documents in advance of any hearing. The Court then gives the affected agency notice of the hearing and an opportunity to be heard. As a matter of common practice, the Probate Courts defer to state agencies when scheduling difficulties arise, and are eager to receive information and advice from state agencies. Once a hearing is held, the Court will take all the evidence. In conservatorship matters, rules of evidence must be followed, and the proceeding is recorded. Once the Court issues its ruling, all parties have an opportunity to appeal the ruling, including affected state agencies.



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In recent years, practitioners have observed that state agencies, although noticed, will not appear or express an opinion to the Court on the subject, but when the issue arises later on, for example, in the context of an application for Medicaid, the agency will reach a contrary result.

For example: conservators may not make gifts of a conserved person's assets without prior approval, and may not do so if the purpose is to qualify for Medicaid. However, a conservator may sell or transfer a person's assets for fair consideration. If the conservator seeks to sell the person's assets to a related party, the Court may be asked to determine whether the proposed consideration is fair. With no input from the agency, the Court may decide that the consideration is full and fair, and the transaction is then accomplished. Later -- sometimes many years later -- when the conserved person applies for Medicaid, the agency may declare that the consideration was not fair, and that a penalty will be imposed, denying Medicaid coverage and subjecting the conservator to potential liability. Had the agency participated in the hearing, the Court might have reached a different conclusion. Had the Court reached the same conclusion, the agency could have appealed the decision and the issue would have been resolved before any harm was done.

In a recent case, I had this very situation. When purchasing her house in 2011, the aging mother and father had added their son's name to the deed as a testamentary substitute. Years later, the son had a car accident and needed to apply for Medicaid benefits. The mother, who was his conservator, sought probate court approval to convey her son's title interest in the home back to herself, explaining that she had provided consideration by paying for the home, and subsequently paying all mortgage, taxes and insurance in the intervening years, all of which was fully documented. The judge found that she had provided ample consideration for the transfer, but asked me if I had "heard from the State." I responded that we had noticed the State, and had provided the State with all documents and evidence submitted to the Court, but had heard nothing; that I had fully expected the state agency to participate in the proceeding, but apparently it had neither appeared, nor asked for a delay to consider the evidence. The judge said "I'll grant your motion, but good luck with the State." He knew that the state agency would disregard the Court's finding of "fair consideration" and that the mother would have to pursue an entirely separate negotiation with the State. The judge was right. The State threatened to cut off the boy's Medicaid if the conveyance was made. Negotiations took roughly six months and a demand by the State to pay \$15,000 before the State's consent would be given. During this time, the State refused to allow the son to return home with long-term care services until the issue of the home was resolved. Not only was the Probate Judge's authority disrespected and the judicial system ignored, but the affected members of the public -- a mother and her brain-injured son -- were held hostage to the state agency's belief that it was not required to participate in Probate Court proceedings.

Disregard of Probate Court Proceedings and disrespect towards Court rulings creates confusion for judges and participants. The rule of law requires that all parts of government, including executive branch agencies, respect the court system and the judicial process as the proper means of deciding disputed matters of fact and law. It may be easier and more "efficient" for a state agency to ignore



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the courts and make its own determinations and decisions, but doing so upsets the balance of power in our constitutional system of government.

SB 143 directs the agencies of the executive branch to honor the decisions reached by the Probate Court, or if they disagree, to appeal -- like every other interested party. At a time when we expect the public to contribute to the costs of maintaining the Probate Court system by paying increased fees for access as well as a "probate fee" at death, it makes no sense to have executive branch agencies ignore the decisions of elected Probate Court judges. I request that you support SB 143, and urge its passage.