

PA10-121

SB426

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2010**

**VOL.53
PART 16
4949 – 5314**

rgd/md/gbr
HOUSE OF REPRESENTATIVES

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us in Connecticut, and the (inaudible) represent our constituents, work for them, we do what we think is better for them. Sometimes we make mistakes but that should never stop up.

I want to thank you, all of you for embracing me with open hands, you know, listen to my accent, this much (inaudible). If aggravated, I have no problem making speeches. And I thank you all, again, and I'm going to make all of you my companion managers in the districts. And thank you, very much.

SPEAKER DONOVAN:

Representative Joe Mioli. Thank you, Joe; all the best.

Well, that was great. All right, back to business. Thank you.

The chamber will come back to order.

Will the Clerk please call Calendar 473.

THE CLERK:

On page 23, Calendar 473, substitute for Senate Bill Number 426, AN ACT CONCERNING THE CONNECTICUT UNIFORM ADULT PROTECTIVE PROCEEDINGS JURISDICTION ACT, favorable report by the Committee on the Judiciary.

SPEAKER DONOVAN:

Deputy Speaker, Representative Godfrey, you have

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the floor, sir.

REP. GODFREY (110th):

Thank you, Mr. Speaker.

Mr. Speaker, I move acceptance of joint committee's favorable report and passage of the bill, in concurrence with the Senate.

SPEAKER DONOVAN:

Question is acceptance of the joint committee's report, passage of the bill.

Will you remark, sir?

REP. GODFREY (110th):

Yes, Mr. Speaker.

Mr. Speaker, the Clerk has a strike-all amendment, LCO Number 4830, previously designated Senate Amendment Schedule "A." Will the Clerk please call and then I be granted leave of the chamber to summarize.

SPEAKER DONOVAN:

Will the Clerk please call LCO Number 4830, which is designated Senate "A."

THE CLERK:

LCO 4830, Senate "A," offered by Senator McDonald and Guglielmo.

SPEAKER DONOVAN:

The Representative seeks leave of the chamber to summarize the amendment.

Any objection?

Hearing none, Representative Godfrey, you may proceed.

REP. GODFREY (110th):

Thank you, Mr. Speaker.

Mr. Speaker, the amendment makes the Town of Union part of a probate district, including Enfield, Somers, and Stratford -- and Stafford, excuse me, instead of the district including Ashford, Brooklyn, Eastford, Pomfret, Putnam, Thompson, and Woodstock.

I move adoption.

SPEAKER DONOVAN:

Question is on adoption.

Will you remark?

REP. GODFREY (110th):

Thank you, Mr. Speaker.

This -- the Town of Union had requested this change, unfortunately last September, a little bit too late to be included in the big probate bill. We're making that correction now.

This is a good amendment, and it ought to pass, Mr. Speaker.

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SPEAKER DONOVAN:

Thank you, Representative.

Would you care to remark further on the amendment?

REP. GODFREY (110th):

Okay.

SPEAKER DONOVAN:

Would you care to remark further on the amendment?

If not, let me try your minds. All those in favor of the amendment, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

Those opposed, nay.

REPRESENTATIVES:

Nay.

SPEAKER DONOVAN:

The ayes have it. The amendment is adopted.

Will you remark further on the bill as amended?

Remark further on the bill as amended?

If not, staff and guests please come to the well of the House. Members take their seats. The machine will be open.

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THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is taking a roll call vote. Members to the chamber, please.

(Deputy Speaker Altobello in the Chair.)

DEPUTY SPEAKER ALTOBELLO:

Have all members voted? Have all members voted?

Please check the board to make sure your vote is properly cast.

If all members have voted, the machine will be locked. Will the Clerk please take a tally, and will the Clerk please announce a tally.

THE CLERK:

Senate Bill 426, as amended by Senate "A," in concurrence with the Senate.

Total Number Voting	149
Necessary for Passage	75
Those voting Yea	147
Those voting Nay	2
Those Absent and not voting	2

DEPUTY SPEAKER ALTOBELLO:

Bill as amended is passing, concurrence with the

Senate.

Will the Clerk please call Calendar 113.

THE CLERK:

On page 5, Calendar 113, substitute for House Bill Number 5053, AN ACT CONCERNING TRANSPARENCY AND DISCLOSURE, favorable report by the Committee on Banks.

DEPUTY SPEAKER ALTOBELLO:

Representative Barry, of the 12th, you have the floor, sir.

REP. BARRY (12th):

Thank you, Mr. Speaker.

Can the -- I think you've called the wrong bill.

DEPUTY SPEAKER ALTOBELLO:

Representative Olson, for what purpose do you rise, madam?

REP. OLSON (46th):

Thank you, Mr. Speaker.

Mr. Speaker, I rise to move that we pass this item temporarily.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Question before the chamber is the passing of this item temporarily. Is there objection?

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GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
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mhr
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THE CHAIR:

The Senate will be in order.

Senator McDonald.

SENATOR McDONALD:

Thank you, Mr. President.

Mr. President, if there's no objection, might
this item be placed on the consent calendar?

THE CHAIR:

Without objection, so ordered.

Senator Looney.

SENATOR LOONEY:

Yes, thank you, Mr. President.

Mr. President, the next item, I believe, is
Calendar page 7, Calendar 343, Senate Bill 426.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calendar page 7, Calendar Number 343, File
Number 518, substitute for Senate Bill 426, AN ACT
CONCERNING THE CONNECTICUT UNIFORM ADULT PROTECTIVE
PROCEEDINGS JURISDICTION ACT, favorable report of the
Committee on Judiciary.

THE CHAIR:

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Senator McDonald.

SENATOR McDONALD:

Thank you, Mr. President.

Mr. President, I move acceptance of the Joint Committee's favorable report and passage of the bill.

THE CHAIR:

On acceptance and passage, do you care to remark further?

SENATOR McDONALD:

Thank you, Mr. President.

Mr. President, I believe the Clerk might be in possession of an amendment, and if he is, if he would be kind enough to be -- to call the amendment.

THE CLERK:

Mr. President, the Clerk is in possession of LCO 4830; it is offered by Senator McDonald, the 27th District, Senator Guglielmo of the 35th District, designated Senate Amendment Schedule A.

THE CHAIR:

Senator McDonald.

SENATOR McDONALD:

Thank you, Mr. President.

Mr. President, I move adoption of the amendment.

THE CHAIR:

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The question before the Chamber is the adoption of Senate Amendment Schedule A, LCO 4380.

SENATOR McDONALD:

Thank you, Mr. President.

Mr. President, the -- I want to say with respect to this amendment, the amendment would make certain changes with respect to the Probate Court districts in the State of Connecticut and in particular would address an item that had been brought to my attention by Senator Guglielmo. I want to thank him for his work on this issue.

I do need to just mention that we have just launched a new effort at Probate Court districting in the State of Connecticut and though that has not yet taken place because of the -- the election won't be until later this year, Senator Guglielmo has identified a rather discreet problem that needs to be addressed, in my opinion at least. And I say that because I'm cautious about changing the Probate Court designations in the state until we have had an opportunity to see how this new system works. But in my opinion, at least, Mr. President, Senator Guglielmo made a very convincing case why the Town of Union should be assigned to a different probate district.

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And so, Mr. President, it is my pleasure to support this amendment.

THE CHAIR:

Thank you, Senator McDonald.

Will you remark further?

Senator Guglielmo.

SENATOR GUGLIELMO:

Yes, thank you, Mr. President.

I just wanted to thank Senator McDonald for his courtesy in this matter. And as he said, the Town of Union was inadvertently changed from the probate district that it's been in since 1754. The Town of Union is the smallest town in my district and indeed the smallest town in the State of Connecticut; 694 people are affected by this.

And just as a way of explaining, Union does not have its own bank. It does not have its own Post Office. It's in the same Zip Code as Stafford. They use the same telephone exchange that we do in Stafford. Their youngsters go to Stafford High School. They play in all the youth sports teams in Stafford, from when they're little -- little guys and gals, and they have just a, really a community of interest with Stafford.

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I think it was an inadvertent change, and I do want to thank the good Senator for -- for listening and -- and helping me move forward with this. Thank you.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Will you remark further? Senate A is before the Chamber. Will you remark further on Senate A? If not, Chair will try your minds on the amendment. All those in favor of Senate Amendment Schedule A, please indicate by saying aye.

SENATORS: --

Aye.

THE CHAIR:

All those opposed, say nay.

The ayes have it.

Senate A is adopted.

Will you remark further on the bill as amended?

Senator McDonald.

SENATOR McDONALD:

Thank you, Mr. President.

Mr. President, that was a strike-all amendment, so the amendment becomes the bill. And if there's no

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further discussion or debate, might this item be placed on a consent calendar?

THE CHAIR:

Without objection, so ordered.

Senator Looney.

SENATOR LOONEY:

Yes, thank you, Mr. President.

Mr. President, if the -- the Clerk would call the second consent calendar.

THE CHAIR:

Would the Clerk please announce that a roll call vote is being ordered on a consent calendar.

THE CLERK:

Immediate roll call has been ordered on the second consent calendar. Will all Senators please return to the chamber. Immediate roll call has been ordered in the Senate on the second consent calendar. Will all Senators please return to the chamber.

Mr. President, those items placed on the second consent calendar begin on Calendar page 7, Calendar Number 343, substitute for Senate Bill 426, and Calendar page 14, Calendar 470, substitute for House Bill 5408.

Mr. President, that completes the items placed on

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the second consent calendar.

THE CHAIR:

The machine is open.

THE CLERK:

The Senate is now voting by roll call on the consent calendar. Will all Senators please return to the chamber. Immediate roll call has been ordered in the Senate on the second consent calendar. Will all Senators please return to the chamber.

THE CHAIR:

Senators, kindly check the board to make certain that your vote is properly recorded. If all Senators have voted, machine will be locked, and the Clerk may announce the tally.

THE CLERK:

Motion is on adoption of Consent Calendar

Number 2:

Total Number voting	34
Those voting Aye	34
Those voting Nay	0
Those absent and not voting	2

THE CHAIR:

Consent Calendar Number 2 is passed.

THE CHAIR:

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 5
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2010

I know that we have appointed each of our towns a justice of the peace to do so, and as well as clergy do this as a matter of course.

But I think that if there is anything standing in the way, a barrier to this, I hope we can find the proper legislative language to make this a part of our legislation, as flexible as possible, so that we can have that kind of liberty and flexibility with regard to couples getting married to have people closest to them that are official in other states, as we would recognize them here under our law.

And I think you raise a very good point, is that we want to make sure that they also would be deemed to be officially presiding so that that marriage would be covered under our law if they were to be married here.

Thank you.

SENATOR McDONALD: Thanks very much. We'll take a look at it. Any questions? Thanks very much.

Next is the Honorable Paul Knierim.

JUDGE PAUL KNIERIM: Good morning, Senator McDonald and members of the committee. I'm Paul Knierim, I'm probate court administrator and also judge of the [inaudible] probate court, and I very much appreciate the opportunity to speak with you this morning.

HB 5406
HB 5407
HB 5408
SB 371
SB 426

I think the probate stalwarts are assembled here this morning to have a look at these bills.

There are three bills that probate administration in collaboration with the probate assembly have asked this group to consider, and I'll spend a moment on those in

And again, it's not intended as a penalty, but instead to represent the time value of money.

A person who opts against paying the probate fee has the benefit of the assets for whatever period they don't pay that fee, and we think in fairness, the state should have a reasonable interest recovery on that late payment.

I would note also as drafted, the bill provides for an ability of a probate judge to defer the due date for the probate fee, and that would also stop the accrual of interest during that period, so hardship cases can be addressed in that way.

I have had conversations with members of the bar on this topic who have varying views of it, but I will simply say we stand ready on this topic to discuss further possible amendments to the language that we've proposed to address hardship situations, as the committee might think is appropriate.

I also have submitted written testimony concerning Senate Bill 371, which deals with the service requirements for probate judges in the area of health insurance.

And our position is that we do oppose that legislation and also have submitted testimony in support of Senate Bill 426, concerning the Uniform Protective Proceedings Jurisdiction Act that deals with interstate situations in conservatorship matters.

We are (inaudible) in support with that. We would like the opportunity to offer some minor revision language to that to help it fit better within the framework of other overall

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March 12, 2010
10:00 A.M.

conservatorship statutes, but we think that is a real positive.

One last note for the committee is to mention that we are revising in a comprehensive manner the regulations of the probate courts which deal mostly with the financial structure of the system; and under 45a-77, our regulations come before this committee for review, and also two of those regulations have come through that process.

(HB 5406)
(HB 5407)
(HB 5408)

And in the coming months, we would expect to be submitting a relatively large batch of additional regulations for your consideration.

So I thank the committee very much for your time and would welcome any questions.

REP. LAWLOR: Well, thank you to you, Judge.

Are there any questions from members of the committee? Representative Fox.

REP. FOX: Thank you. And good morning, your Honor, and it's good to see you here today.

JUDGE PAUL KNIERIM: Good morning.

REP. FOX: It's been a long year. I know you've done a lot to incorporate what we passed last year.

We have elections coming up in November, and then it's January that the new courts will take effect; is that --

JUDGE PAUL KNIERIM: That's correct.

REP. FOX: January 5th.

JUDGE PAUL KNIERIM: Yes.

courts open one, two days a week, a couple of afternoons, that kind of thing.

So there's certainly a lot more accessibility, and hopefully the transparency and the -- and the civic-mindedness of the judges will continue to follow.

REP. LAWLOR: No response?

JUDGE PAUL KNIERIM: I agree.

REP. LAWLOR: Now we're talking.

JUDGE PAUL KNIERIM: And if there was a question in there, my answer is yes.

REP. LAWLOR: That's good.

Are there any others questions? If not, thanks again, Judge. Pleasure to see you here.

JUDGE PAUL KNIERIM: Thank you very much. I appreciate your time and assistance.

REP. LAWLOR: Congratulations in all the progress you've been able to make over the last couple of years.

JUDGE PAUL KNIERIM: Thank you.

REP. LAWLOR: Now we're on to the public portion of the public hearing. Our first signed up is Tom Behrendt, and Mr. Behrendt will be followed by Judith Hoberman.

THOMAS BEHRENDT: Thank you. Senator McDonald, Representative Lawlor, distinguished members of the committee. I'm Tom Behrendt. I'm testifying on behalf of Connecticut Legal

SB 426
SB 371

Rights Project.

First, just some housekeeping. Your copy of my testimony indicates in support of S.B. 426, with substitute language. We have omitted the substitute language so as not to confuse things.

We've been working with LCO over the past week or so, and I'll cover it in a little more background, and we're much closer in the printout that we have -- that I have with -- with me today. So as not to confuse things, we're not presenting substitute language today.

I worked with a diverse group of lawyers and other stakeholders two years ago as a member of the Killian Committee, which drafted Public Act 07-116, which revised the framework for the conservator statute in a number of ways, so I'm presenting testimony in support of -- with that in mind, of S.B. 426, albeit with some anticipated technical changes, and also in support of S.B. 371.

Getting back to Public Act 07-116, in the wake of that enactment -- and I applaud the -- this committee and the General Assembly for that, the result is that Connecticut has a statute that's now considered a national model. And I know at least a couple of times every year since the summer of 2007, we've been asked to present before national groups on Connecticut's -- Connecticut's law.

Folks are very interested, and a number of states are looking at reforming their statutory teams.

Last year, Connecticut Legal Rights Project opposed S.B. 576, which was last year's

version of the Uniform Adult Guardianship and Protective Jurisdiction Act. We opposed it because as it was drafted at the time, it posed a threat to important safeguards that were enacted with Public Act 07-116.

So as a result of that, we worked collaboratively with a diverse group of attorneys from Connecticut who represented the bar association's Elder Law and Estate and Probate Sections -- Uniform Law Commissioner Suzanne Brown Walsh was among those individuals, and a representative of the legal services programs as well -- with the goal of developing current S.B. 426 that does incorporate the Uniform Adult Guardianship and Protective Procedure Jurisdiction Act, while simultaneously protecting and respecting Public Act 07-116's provision and Connecticut's unique conservatorship statute.

The work of this workgroup was rigorous. It took a tremendous amount of time and effort from all of parties involved. Together, we really negotiated every word in the draft that emerged.

And, you know, one of the major things that we needed to address was the fact that we needed to retain Connecticut terminology, which differs from the terminology in the Uniform Act, to avoid confusion and purposefully distinguish conservatorships established in accordance with the Connecticut statute from those imported from other jurisdictions.

These choices were made -- wording made very deliberately, carefully discussed and vigorously negotiated last spring. We were very pleased with the result of the collaboration, are pleased to be able to support the act now.

But I just need to note that while we were in the process of working with LCO on the final draft of this language, we all ran out of time. The language had to be submitted to the committee. The LCO attorney working with us had several additional questions that we are still in the process of responding to.

She had indicated that we -- she would reserve some changes for later and ask you now that you take this into consideration when considering this bill and approve substitute language that we expect will emerge shortly.

This will ensure that any revisions are consistent with the intent of the language that was negotiated last spring. We will continue to work with LCO expeditiously, make sure the finalized language gets to you promptly. And my sense is that we're quite close at this juncture.

I also want to indicate that Connecticut Legal Rights Project wholeheartedly supports Senate Bill 371, which encourages full-time judgeships by 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 these outcomes, it will increase professionalism and avoid ethical issues and potential conflicts of interest.

The current system -- almost done -- which -- under which probate judges continue the private practice of law while their fellow attorneys and colleagues serve as attorneys, administrators, conservators in probate

and I wasn't filling that role as an attorney. I was doing it as a lay family member in that situation, but it applies to everyone there, and I think we've greatly improved things with some of those measures as well.

REP. O'NEILL: And those all sound much better than taking away someone's health insurance benefits as an incentive. You know, I mean, I can think of other ways to incent people. You know, we can take away their car -- you know, if we want to put pressure on people --

THOMAS BEHRENDT: Again, we didn't draft this -- this bill.

REP. O'NEILL: No, I'm looking at your testimony that -- okay. All right. You're right. Thank you.

THOMAS BEHRENDT: I mean, we're dealing with the bill that's -- that's on your agenda.

REP. LAWLOR: Are there further questions? If not, thanks again.

THOMAS BEHRENDT: Thank you very much.

REP. LAWLOR: Next is Judith Hoberman, and Attorney Hoberman will be followed by Ann Follacchio.

JUDITH HOBERMAN: Good morning, Representative Lawlor, and members of the Judiciary Committee.

My name is Judith Hoberman. I am chair of the Connecticut Bar Association's elder law section, and I practice law in Hamden and reside in New Haven in Representative Dillon's (inaudible) district.

I am here today to testify on behalf of the

HB5407
SB426

Elder Law section in general support of House Bill 5407, An Act Concerning Probate Fees, as Judge Knierim had described, but ask that you consider it an amendment to provide for hardship exceptions to the interest provisions of that bill.

The elder law section does support the provisions of the bill that Judge Knierim described that prohibit -- that would prohibit probate courts from assessing fees with respect to a decedent's estate based on the value of real estate not situated in Connecticut, and to prohibit courts from assessing fees against ancillary estates based on estate assets not located in this state.

Our specific concern is that portion of this bill that seeks to amend the Connecticut General Statutes 45a-107, new subsection (1) of the statute.

That provision has language that will impose interest at the rate of half a percent a month, six percent a year, as Judge Knierim described, on unpaid probate costs for decedents who die on or after January 1st in 2011.

Our specific concerns are with an across-the-board implementation of this interest that may have harsh consequences that are not intended. While subsection (1)(3) of the raised bill provides for an extension for payment of costs at the discretion of the probate court, including interest, for reasonable cause shown, the bill fails to provide language that addresses a hardship exception of the interest all together.

We respectfully submit that the bill should contain additional language that provides

has to be filed and interest has accumulated over the many years since the first parent died, the second parent died, and now he needs those tax releases from the probate court.

Again, these are not probate estates. These are what we call tax purposes only where the certificate of -- of estate tax -- releasing the estate tax lien has to be obtained.

So these are situations where we would see hardship for individuals of moderate means who have not had to use the probate courts to actually probate a decedent's estate and yet find themselves years later filing a tax return that unbeknownst to them at the time of the death had to be filed:

And so we would hope that the bill -- as Judge Knierim said, we hope we'd be able to work towards adding language that would provide for a hardship waiver of the interest. That hardship waiver could include lack of counsel, lack of knowledge at the time of the death.

It could include a showing of financial hardship that the interest that has accumulated could be as much or half or equal to the probate fee itself on moderate -- on a moderate piece of real estate, but that might be the sole -- the only thing that's showing up on that CT-706.

So we ask your consideration of that, of that hardship waiver as you go forward with this bill.

I submitted written testimony in support of Senate Bill 426, which is -- you've heard testimony already, An Act Concerning the Connecticut Uniform Adult Protective Proceedings Jurisdiction Act. The elder law

section supports that bill, and I have no further comment, other than -- other than my testimony -- and the speaker who preceded me, Tom Behrendt, explained the importance of that bill and the consensus that was reached by a considerable -- considerable -- very hardworking group last year. Thank you.

REP. LAWLOR: Thank you. And are there any questions? If not --

REP. O'NEILL: Mr. Chairman?

REP. LAWLOR: Next is -- oh, I'm sorry.

REP. O'NEILL: May I be recognized?

No, this is not a question for you, although you're free to sit there if you want to.

SB371

I need to correct the record. In an earlier discussion with the previous witness to the one who just left, we had talked about a probate judge who had been a subject of an impeachment inquiry back in the mid-1980s, and we incorrectly identified that individual -- as Judge Killian. It was not Judge Killian or -- anyone with that name. It was Judge Kinsella who was that judge who was previously subject to an impeachment investigation.

And, you know, these Irish names are a little confusing, and it could have been Kennedy, it could have been, you know, Kerrigan, something beginning with a K. Turned out it was Judge Kinsella.

So I apologize to Judge Killian, and hopefully the record will now be corrected, and maybe we can even go back and edit the videotape as well.

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March 12, 2010
10:00 A.M.

will receive a salary increase of up to
80,000.

Norwich, I don't think which is touched by the
redistricting, made in 2008 \$87,000 and will
receive a nice increase up to 110,000.

So judges are receiving -- even though their
districts weren't touched by the redistricting
will be receiving a salary increase.

REP. O'NEILL: Okay.

Thank you, Mr. Chairman..

REP. FOX: Thank you.

Are there any other questions?

JUDGE KATHLEEN MURPHY: Thank you very much,
Representative Fox.

REP. FOX: Next is John Ivimey. Good afternoon.

JOHN IVIMEY: Thank you, Representative Fox and
members of the Judiciary Committee.

I'm John Ivimey. I'm vice chairman of the
Estate and Probate Section of the bar
association, and first I'd just like to on
behalf of the bar association draw your
attention to the written testimony of Suzanne
Brown Walsh, who apologizes for not being able
to be here, and she is writing on behalf of --
in support of Senate Bill 426, The Act
Concerning the Connecticut Uniform Adult
Protective Proceedings Jurisdiction Act.

HB5281

I am not an expert on the go-between on that
act, but I understand that there's been a lot
of discussions back and forth on that, and the
bar association certainly supports what the

Estate and Probate Section supports.

I'm here mainly to talk in support of House Bill 5281, An Act Concerning Amendments to the Connecticut Uniform Principal and Income Act.

We have a current version of the Connecticut Uniform Principal and Income Act, but a couple of years ago the Uniform Laws Commission proposed an amendment to the act which has been adopted in many states to raise two concerns with the existing law.

These are concerns that address a problem for our residents which arise because the drafting attorney of the trust didn't put in provisions or didn't think about situations that could arise.

The most important one is very often we draft trusts to qualify for the marital deduction to defer estate tax until the death of its surviving spouse.

If you have a retirement plan that's payable to that trust, the federal government requires that you have certain provisions in the trust agreement in order for the trust to qualify for the marital deduction.

It's very easy not to know about that provision and to leave it out, and so the amendment to the uniform principal and income act would just, in essence, write that into every -- every document.

What it concerns is the internal income -- a marital trust in order to qualify for the federal exemption has to pay out all the income to the surviving spouse.

The concern is what's the internal income --

reasons.

JOHN IVIMEY: And in -- in regards to the retirement plans and the new provision, that's only going to be applied -- it only applies to trusts that are -- are intent -- the intent of them is to qualify for the federal marital deductions, so that that has been contemplated.

REP. O'NEILL: Okay. Thank you, Mr. Chairman.

REP. FOX: Thank you.

Are there any other questions? Seeing none, thank you very much, sir.

JOHN IVIMEY: Thank you very much.

REP. FOX: Next is Marilyn Denny. Good afternoon.

MARILYN DENNY: Good afternoon, members of the Judiciary Committee.

SB371

My name is Marilyn Denny, and I am a staff attorney at Greater Hartford Legal Aid. As such, we -- I represent elderly people, and I have done a fair amount of work in the probate court system in the last year few years.

I'm here to testify in favor of Raised Bill 426, it's a Uniform Jurisdiction Act, but I am going to endorse the fact that I was one of many people who worked for a very long time with the private bar to change the proposal that was raised at the last legislative session to make it comport more with the conservatorship law that was recently passed by the Legislature.

And I think that there are some changes that were made by Legislature drafters, and there

wasn't enough time to really work out an agreement between the old bill, which we endorsed, that is the one that was originally presented to you, and the changes that were made.

So I endorse the idea, and I hope that we can come to some agreement which really preserves the safeguards that many people worked a very long time to put into the legislation.

I primarily would like to testify in favor of Raised Bill 371. I've submitted written testimony, which I hope people will take time to read, but I'd like to spend the few minutes I have addressing what I have heard as the major concerns for why at this time should we raise this bill, what will the cost be and what is the justification.

In terms of timing, I've attached to my testimony a page from the Program Review and Investigation Committee report of five years ago which recommended that the position of probate judge shall be a full-time occupation.

So we've been considering this prospect for five years.

And Program Review and Investigation actually did a survey of probate judges and of attorneys who practiced before the probate court, and they found that 22 percent of the judges favored this and 54 percent of the attorneys did to give the probate court the protection of being perceived as a professional court and avoiding a conflict of interest.

So this is really not a new issue. The other justification for doing it now is that given the new legislation consolidating the courts,

REP. GODFREY: They will be under the judicial code of conduct, which is much more stringent, because, of course, we want judges to be impartial, but we require attorneys to be partial for the clients.

It's a -- it's a completely different perspective, and that's what has made this system work for almost a thousand years.

I don't want to muck with stuff that -- if it ain't broke, I don't want to fix it.

MARILYN DENNY: I appreciate that. I accept it.
Thank you.

REP. GODFREY: Thank you.

REP. FOX: Thank you, Representative Godfrey.

Are there any other questions? Next is Sally Zanger.

And just before you begin, is there -- this is the last name that I have on the public comments --

SALLY ZANGER: Was this in alphabetical order? Was this just my luck?

REP. FOX: Just happened to work out that way.

Is there anyone else who would like to testify after -- thank you.

SALLY ZANGER: My name is Sally Zanger. I'm a lawyer with the Connecticut Legal Rights Project. My colleague, Tom Behrendt, testified earlier, and I think so many people have testified basically to the same thing that's in my written testimony, that I'm just going to say that, you know, I endorse the

SB426
SB371

testimony of Tom and of Marilyn Denny and Judge Murphy and others who went before me.

I -- I did want to say that I also worked on the S.B. 426, the -- the Uniform Protective Proceedings Act, to try and to bring it to protect our Connecticut conservatorship.

And I'm confident with the few technical changes, that we just didn't have time to finish working with LCO, we will have a -- a complete substituted bill to be able to give you.

And I also wanted to -- to support, as my testimony says, Senate Bill 371, the one that would require judges -- probate court judges to work 40 hours.

I think in order to be eligible for -- for insurance, I think it's a -- it's a good step in the -- in the right direction. And I think that just to respond to some of the issues about where is that smoking gun, I know that in -- I'm a legal services lawyer, but I know that when I -- when I talk to lawyers in the private bar who do a lot more probate work, court work than I do, they have stories that they will discuss privately that they can't discuss publicly for exactly the reasons that have been raised here, that people are going -- you know, have to go back to the courts.

And, you know, it's unfair to the -- to the very professional probate court judges who -- who are not engaging in this kind of thing to have the whole -- you know, the -- to have them sort of stained with that, because -- because it's out there, and it's -- if you're not working full time as a probate court judge, you have to be working part time at

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LINE 16**TESTIMONY BEFORE THE JUDICIARY COMMITTEE IN FAVOR OF RAISED
BILLS: 371 and 426**

March 12, 2010

Good afternoon members of the Judiciary Committee:

My name is Marilyn Denny, I am a staff attorney at Greater Hartford Legal Aid. As such, I represent elderly persons.

I am testifying in favor of Raised Bill 426: A Uniform Jurisdiction Act pertaining to conservatorship matters. Last year legal services representatives testified against such proposed legislation because it had not been reconciled with Connecticut's conservatorship statute and had the potential to erode, in the name of uniformity, the protections Connecticut offers its citizens. We worked with members of the private bar to correct the deficiencies we identified in the proposed legislation, and insofar as this year's bill reflects those agreements, we support it. We are in the process of answering some questions which have been raised recently with respect to the draft we all agreed to.

I am also testifying in favor of Raised Bill 371, but asking you to strengthen the protections it is designed to offer.

It is a basic principal of our governmental system that we have a separation of powers for the purpose of establishing checks and balances. While the judiciary is often the body that curtails excesses of the legislature or executive, the legislature must also safeguard the rights of individuals by structuring the judiciary so that it functions in the most professional way possible.

The Connecticut General Statutes mandate that probate judges cannot appear as an attorney in any probate court matter that is contested; furthermore, that partners and associates of a probate court judge cannot practice before that Judge. (45a-25, 26). This does not go far enough to avoid conflicts of interest. In its 2005 report, Program Review and Investigation recommended that "the position of probate judge shall be a full-time occupation." Proposed Bill 371 should be amended to require probate court judges to meet the standards of Superior Court Judges (C.G. S. 51-47) who are prohibited from engaging in the outside practice of law. I have attached this recommendation made by the Program Review and Investigation Committee to my testimony.

The recent "excesses" of at least one probate court judge have been documented by the Hartford Courant columnist, Rick Green, whose article is also attached to my testimony. But even conscientious probate court judges are, in my experience, at often a loss because they cannot individually professionalize the probate court system. Consolidation of the number of courts was an important first step towards helping these courts operate in a more effective manner. It was

CONNECTICUT LEGAL RIGHTS PROJECT

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

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JUDICIARY COMMITTEE

March 12, 2010

Testimony from Sally Zanger and Thomas Behrendt**In support of SB426, with substitute language****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.

To the General Assembly's Judiciary Committee:

My name is Joseph A. Egan, Jr. I am currently the Probate Judge for the District of Ridgefield but I am writing this in my capacity as a former President and Executive Committee Member of the National College of Probate Judges (NCPJ). The National College of Probate Judges is the only judicial organization in the country dedicated solely to probate law. A few years ago, when I served on the Board, NCPJ adopted a resolution in support of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act that is now before you as S.B. No. 426.

Simply stated NCPJ feels this bill will go a long way in resolving multi-state jurisdictional battles with a resulting savings in dollars and time. It is the feeling of NCPJ that the present lack of clear jurisdictional guideposts can facilitate "granny snatching" and other abusive actions.

I am attaching an article written by Judge Mike Wood of Houston, Texas that appeared in The Journal, Vol. 5 No. 2, published by the National College of Probate Judges. Judge Wood states NCPJ's position clearly and concisely. Speaking on behalf of NCPJ we strongly support this bill.

Judge Joseph A. Egan, Jr.
March 9, 2010

A Call to Action

by Hon. Mike Wood

An aging and increasingly mobile population has caused increased problems for the probate courts across the nation. As modern medicine has cured or found treatments for many diseases, Americans are living much longer. Alzheimer's-related dementia, virtually unknown before 1960, is affecting an increasing number of elderly people. Many elderly citizens are not able to make decisions about their finances and medical care, needful of help to care for themselves. As parents age, and as children grow up and leave home, the parents are dependent on the courts to find guardians for them. Oftentimes, children live in different cities and states, and disagree about which state should be home for mom or dad.

Guardianship or conservatorship is a relationship created under the law of the state in which a court gives to one person or entity (the guardian or conservator) the duty and power to make person and/or property decisions for another (the incapacitated person or ward). In our increasingly mobile society, adult guardianships often involve more than one state, raising complex jurisdictional issues. For example, many older Americans own property in more than one state. Family members who provide support may be scattered around the country. At-risk elderly individuals may need to be moved for medical or financial reasons. Thus, judges, guardians, and lawyers frequently are faced with problems about which state has initial jurisdiction, how to transfer a guardianship to another state, and whether a guardianship created in one state will be recognized in another.

These multi-state jurisdictional battles can take up vast amounts of time for families, courts and attorneys. Court hearings lasting days can use much of the resources of the proposed ward in fees of lawyers and the persons appointed to represent the ward's interest in the hearing. The cumbersome delays can

even interfere with timely medical treatment for the incapacitated individual. Jurisdictional tangles can exacerbate family conflict, aggravating sibling rivalry as each side must hire lawyers in every state in which the battle is proceeding, to litigate which state will hear the case and where the final order of guardianship will be lodged. Moreover, lack of clear jurisdictional guideposts can facilitate "granny snatching" and other abusive actions.

For several years, a Drafting Committee of the National Conference of Commissioners on Uniform State Laws worked on a solution to the problem of jurisdiction in interstate guardianships, culminating in 2007 with the approval of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"). The UAGPPJA seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas in which more than one state is involved, and to enhance communications between courts in different states.

Because UAGPPJA is jurisdictional in nature, it cannot work as intended – providing uniformity and reducing conflict – unless all or most states adopt it. Thus, there is a compelling need for education and outreach to all stakeholders involved in the care of elders who are unable to care for themselves. At the present time, according to the Uniform Law Commission, only three states have enacted UAGPPJA: Utah, Alaska, and Colorado. The proposed act has been introduced in only three other jurisdictions: District of Columbia, Missouri and Delaware.

In an effort to assist in the process of spreading the word about UAGPPJA, the American Bar Association Commission on Law and Aging has commenced a project, the *Joint Campaign for Uniform Jurisdiction*. The *Campaign* is funded by the ABA Section of Real Property, Trust and Estate Law, the American College of Trust and Estate Counsel Foundation, and the Uniform Law Foundation. The *Joint Campaign* will meet the

need for increasing education by: (1) developing a Web-based clearinghouse on the UAGPPJA; (2) conducting a national Web cast on the UAGPPJA; and (3) preparing and disseminating educational materials. The emphasis of the ABA Commission's *Joint Campaign* will be on how multi-state guardianship problems can affect the lives of vulnerable incapacitated individuals and their families, and how the UAGPPJA can address those problems.

Those of us, who preside in courts that have guardianship jurisdiction, have presided over fights between well-meaning siblings who cannot agree on where and how mother or dad should be cared for. It is difficult enough to resolve those disputes if everyone is in the same city. Add to the fight the fact that one sibling has removed their parent from the home in which they had lived for years, and has taken them to another state, for the convenience of the child who would be the caregiver. Obviously, several questions are presented, not the least of which is whether the proposed ward had the mental capacity to decide to change their residence. If not, are they sufficiently connected to the new state for that state to have jurisdiction? Two contesting guardianship proceedings in two separate states, with potentially contradictory results, is the very situation that UAGPPJA was designed to avoid. Even without the Act, the two judges could converse, and perhaps avoid the difficulty, but that oftentimes did not work. To avoid the problems from reoccurring, we should all work to get the Uniform Adult Guardianship and Protective Proceedings Act passed in our home states.

What steps should we each take?

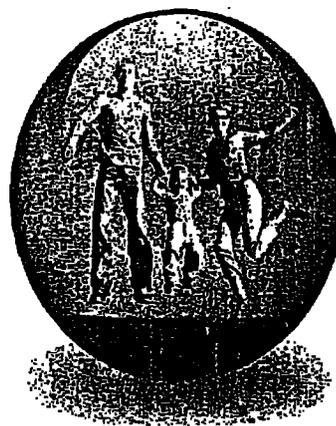
1. Familiarize yourself with the UAGPPJA. Copies are available on line from the National Conference of Commissioners on Uniform State Laws. The web address is www.nccusl.org, and the snail-mail is 211 E. Ontario Street, Suite 1300, Chicago, Illinois 60611. The Act can be downloaded in Word,

without comments, or the full text with the committee's comments can be downloaded (which is 36 pages long). The Act itself is not that long or hard to understand.

2. Contact the American Bar Association *Joint Campaign* at www.abanet.org, and get the benefit of the work they are doing.

3. Contact your state bar association, guardianship association, or elder group that has influence in your state legislature. Spend the time with them to get them on board to cause the Act to be introduced in your legislature. The Texas legislature only meets every other year, from January to May, and most State Bar of Texas bills have to go through a committee process by July of the previous year. The process might long and arduous, but the end is worth it.

No one who gives the subject very much thought will oppose the UAGPPJA. "No, I think it is better for the proposed ward and her family to spend \$50,000 to \$100,000 in attorneys' fees fighting in two states over the ward's care." The argument makes itself, but each of us needs to make the effort in our state to get the ball rolling.



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LINE 5

30 Bank Street
PO Box 350
New Britain
CT 06050-0350
06051 for 30 Bank Street
P: (860) 223-4400
F: (860) 223-4488

Testimony of Judith Hoberman, Esq.
Chair of the Elder Law Section
Connecticut Bar Association

IN SUPPORT OF
Senate Bill No. 426

**AN ACT CONCERNING THE CONNECTICUT UNIFORM ADULT
PROTECTIVE PROCEEDINGS JURISDICTION ACT**

Judiciary Committee Public Hearing

March 12, 2010

Representative Lawlor, Senator McDonald and members of the Judiciary Committee, please accept this written testimony on behalf of the Connecticut Bar Association's Elder Law Section in support of Raised S.B. Bill 426, An Act Concerning the Connecticut Uniform Adult Protective Proceedings Jurisdiction Act.

The members of the Elder Law Section support this consensus bill for the adoption of the Connecticut Uniform Adult Protective Proceedings Jurisdiction Act (UAPPJA). The adoption of this uniform act has been endorsed by AARP, the Alzheimer's Association, the American Bar Association Commission on Law and Aging, the National Academy of Elder Law Attorneys, the National College of Probate Judges, the National Guardianship Association, and the Center for Guardianship Certification.

Elder law attorneys, guardians, conservators, and judges are frequently faced with sorting out complex jurisdictional issues caused by our society's increasing mobility and the demographics of an aging population. Adult guardianship matters are called conservatorships in Connecticut. Matters involving simultaneous and conflicting jurisdiction over guardianship are increasing. Even when all parties agree, steps such as transferring a guardianship to another state can require that the parties start over from scratch in the second state. Obtaining recognition of a guardian's authority in another state in order to sell property or to arrange for a residential placement is often impossible. The UAPPJA will, when enacted, help effectively to address these problems.

The UAPPJA was approved by the Uniform Law Commission in the summer of 2007, with the corresponding commentary finished in late fall 2007. To date, twelve (12) states and the District of Columbia have enacted the Act. This year it is anticipated that an additional thirteen (13) states will act on this proposal. Jurisdictional issues for these matters commonly arise in situations involving

snowbirds, transferred/long-distance caregiving arrangements, interstate travel, and even the occasional incidence of elderly kidnapping. This act addresses the small number of contested interstate jurisdiction cases. This act also serves the much greater number of cases where there is no dispute in which citizens are seeking to facilitate transfers from state to state.

Because the U.S. has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian frequently arise because the individual has contacts with more than one state. In nearly all states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present, or has property.

Contested cases in which courts in more than one state have jurisdiction are becoming more common. Sometimes these cases arise because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a vacation home in another state. There is a need for an effective mechanism for resolving multi-jurisdictional disputes.

It is important to note that this act does not expand the jurisdiction of the probate courts. This uniform act in fact narrows the probate courts' jurisdiction in that it reduces the ability of probate courts to improperly grab jurisdiction over non-domiciliaries.

The UAPPJA addresses two issues that continue to impact guardianship law: multiple appointments due to jurisdictional issues and transferability of guardianships. The first objective of the Act is to create a jurisdictional scheme that solves the increasing problem of multiple states having the power to appoint a guardian. Under the current spectrum of state laws it is possible for two states to have a proper basis to exercise jurisdiction over a guardianship or conservatorship. Grants of jurisdiction based on an individual's domicile, present location, and property ownership have helped create numerous multi-jurisdictional disputes and have increased the amount of litigation. 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. The UAPPJA creates a process for determining which state will have jurisdiction to appoint a guardian if there is a conflict. It does this by designating that the individual's "home state" has primary jurisdiction, followed in priority by a state in which the individual has "significant connection." It eliminates the current festering problems created when parties use presence jurisdiction to forum shop.

To determine the court of primary jurisdiction, the Act utilizes a three level jurisdictional priority based upon an individual's "home state" followed by a "significant connection state" and lastly another state. An individual's "home state" is defined as the state in which the individual was physically present for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding. The home state has primary jurisdiction to appoint a guardian or conservator and this priority continues up to six months following a move to another state. A significant jurisdiction state has jurisdiction if an individual has not had a home state within the past six months or if the home state declines jurisdiction. If the home state and all significant connection states decline jurisdiction a court of another state can take jurisdiction.

Once a court has jurisdiction over the guardianship proceeding, the jurisdiction continues until the proceeding is terminated or transferred. Enacting a mechanism for continuing jurisdiction will reduce the number of multiple orders, reduce litigation costs, and provide individuals with orders that will be valid and accepted throughout the country.

The second objective of the UAPPJA is to provide procedures for the transferability of guardianships between states. Few states currently have procedures for transferring guardianships. Because of this deficiency in state law, it is often necessary for a family or a ward to initiate a new proceeding for the appointment of guardian. Appointment proceedings for a guardian are an expensive and time consuming process. A proceeding must comport with all due process requirements and individuals must often resubmit forms, such as medical records, necessary for the appointment to go forward. The Act specifies a procedure for transferring and accepting a guardianship to another state, helping to reduce expenses and conserve judicial resources while protecting incapacitated persons and their property from potential abuse. It helps facilitate enforcement of guardianship and protective orders in other states through a registration process. It also facilitates communication and cooperation between courts of different jurisdictions in sorting out these jurisdictional issues. Because of the current absence of ways to resolve these all too prevalent interstate jurisdictional quandaries, widespread passage of the act should result in significant judicial economy, reduction in wasteful litigation, and conservation of the incapacitated person's estate.

To transfer a guardianship, both the court transferring the case and the court accepting the case must issue a court order. Generally these orders will state that the individual will be moving permanently to the state, that arrangements have been made for the disposition of the individual's property, and that the sending court is satisfied the receiving court will accept the case.

Finally, in order to facilitate enforcement of guardianship orders, the UAPPJA allows a guardian to register the order in other states. Upon registration, the guardian may exercise all powers authorized in the order of appointment except those prohibited under the laws of the registering state. The registration procedure reduces the likelihood that a state will refuse a guardians authority and require the filing of a new petition.

It is expected that UAPPJA will be widely enacted throughout the nation in the coming year. The Elder Law Section of the Connecticut Bar Association urges this Committee to act favorably on the Act and commends this Committee for being on the forefront of the enactment effort for the UAPPJA.



30 Bank Street
PO Box 350
New Britain
CT 06050-0350
06051 for 30 Bank Street
P: (860) 223-4400
F: (860) 223-4488

TESTIMONY OF
SUZANNE BROWN WALSH

Estates and Probate Section
Connecticut Bar Association

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 UAGPPJA 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 UAGPPJA 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 UAGPPJA 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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LINE 9

STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATORPAUL J. KNIERIM, JUDGE
Probate Court AdministratorTHOMAS E. GAFFEY
Chief CounselHELEN B. BENNET
AttorneyDEBRA COHEN
Attorney186 NEWINGTON ROAD
WEST HARTFORD, CT 06110TEL (860) 231-2442
FAX (860) 231-1055

To: Senate Co-Chair Andrew McDonald
House Co-Chair Michael Lawlor
Senate Ranking Member John Kissel
House Ranking Member Arthur O'Neill
Honorable Members of the Judiciary Committee

From: Paul J. Knierim, Judge
Probate Court Administrator

Re: SB 426 An Act Concerning the Connecticut Uniform Adult
Protective Proceedings Jurisdiction Act

Date: March 12, 2010

The Office of the Probate Court Administrator supports adoption of this bill, which incorporates the provisions of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA).

This uniform law seeks to address problems that arise regularly in courts across the nation when individuals involved in a conservatorship proceeding have contacts in more than one state. These problems typically manifest in three scenarios:

- (1) Multiple jurisdictions. While domicile is typically the basis for a court's jurisdiction to hear a conservatorship petition, questions arise when the individual has contacts in more than one state. For example, an individual may maintain residences in two states, and the question of which of those states is the individual's domicile may be unclear. Domicile may also be unclear when an individual has recently relocated from one state to another. In both scenarios, courts need a mechanism to determine which state is the more appropriate forum to

hear the matter. The fact that the applicable law varies considerably from state to state makes resolution of these issues difficult.

- (2) Relocation after a conservatorship has been established. Relocation of an individual under conservatorship from one state to another poses other difficulties. There is currently no efficient mechanism to ensure that the conservatorship remains in place during and after a move. The result is often the complete re-litigation of the conservatorship appointment, along with the attendant delay and expense.
- (3) Interstate recognition of decrees. Most judicial decrees are entitled to full faith and credit in other states. An exception exists, however, for conservatorship matters. This poses a significant issue as our society has become increasingly mobile. Individuals frequently travel from one state to another, often to obtain essential medical treatment. The lack of consistent interstate recognition of conservatorship decrees can compromise the ability of the conservator to obtain the medical treatment that the conserved person needs or to address other issues that arise while the individual is temporarily out of state.

In the past, similar problems were encountered in connection with child custody determinations. This led to the Uniform Child Custody Jurisdiction Act, (UCCJA), and later the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which have now been adopted in most states. Portions of the UAGPPJA are modeled after the UCCJEA.

Like the UCCJEA, the UAGPPJA seeks to establish uniform and nationwide procedures to address the issues associated with interstate conservatorship matters. It would establish a mechanism to determine which state is the most appropriate to act on a request for the appointment of a conservator, thereby avoiding conflicting proceedings in multiple states. Procedures would be established to effectuate transfers between states in a specified and efficient manner. The bill would authorize states to recognize the conservatorship orders of another state and provide a mechanism to register out of state orders to ensure that the authority of a conservator appointed by another state is clear.

As we have seen in recent years, the number of instances involving interstate conservatorship issues is on the increase. The enactment of this bill is important to protect the interests of the disabled persons who are the subject of these orders, and to do so in the quickest, simplest, and most efficient way.

Of course, the UAGPPJA will only be truly effective if it is widely adopted among states. It has already been enacted in thirteen states. The act has garnered the support of many reputable national organizations, including the Alzheimer's Association, the National Guardianship Foundation, the National Academy of

Elder Law Attorneys, the Conference of Chief Justices and Conference of State Court Administrators, and the National College of Probate Judges.

We urge the Committee's favorable consideration of this bill. We would also appreciate the opportunity to offer some substitute language that will help the measure fit in our existing statutory framework.