

**PA13-81**

SB0984

|           |  |           |
|-----------|--|-----------|
| House     | 6220-6226  | 7         |
| Judiciary | 1246-1248, (1250-1254),<br>1260-1264, 1298-1303,<br>(1326-1328), 1329-1364,<br>1366, 1367, 4584-4589 | 66        |
| Senate    | 2456-2464, 2495-2496   | 11        |
|           |  | <b>84</b> |

**H – 1167**

**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2013**

**VOL.56  
PART 18  
5882 – 6232**

Madam Speaker, in concurrence with the Senate,  
Senate Bill number 1029 as amended by Senate Amendment  
A.

|                        |     |
|------------------------|-----|
| Total Number Voting    | 138 |
| Necessary for Adoption | 70  |
| Those voting aye       | 138 |
| Those voting nay       | 0   |
| Absent and not voting  | 12  |

DEPUTY SPEAKER SAYERS:

The bill as amended passes in concurrence with  
the Senate. Will the Clerk please call Calendar  
number 6 -- oops, 619.

THE CLERK:

Madam Speaker, on page 35 of the Calendar,  
Calendar number 619, favorable report of the joint  
standing Committee on Judiciary, substitute Senate  
Bill number 984, AN ACT CONCERNING PROBATE COURT  
OPERATIONS.

DEPUTY SPEAKER SAYERS:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker. I move for the  
acceptance of the -- I move acceptance of the -- I  
move for acceptance of the joint committee's favorable

report and passage of the bill in concurrence with the Senate. I just -- I think I'm blanking out.

DEPUTY SPEAKER SAYERS:

The question is acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate. Representative Fox, you have the floor, Sir.

REP. FOX (146th):

Thank you, Madam Speaker. This is the bill that we get on an annual basis similar to the judicial branch's court operations the probate court also submits a bill that will make certain changes that would enhance the -- the operations of the probate court.

Amongst the changes that they're requesting this year it often includes a number of technical changes but also what they're looking for this year is certain changes in terminology. They'll be for example a financial statement they submit -- has been submitted. Now they're going to call it a financial report and have a little bit more specificity with it.

They're also going to talk about the -- or clarify the types of proceedings that need to be done on the record and what needs to be available for cases

that are pending appeal, the rules of evidence that would need to be applied and the parties would be subject to those rules.

Also they -- the bill that was proposed includes certain things like one of the examples that's in here is when an individual is involuntarily conserved and they're under 18 years old, they would be under their parents' supervision. But what happens when the individual turns 18 there's often a gap period because there's a time from when the individual turns 18 until there could be a hearing as far as that individual as an adult.

And what this does is it allows for an application to be filed at six months prior to the individual's 18 birthday which would allow the proceeding to be set up and be held shortly after the concerned person turned 18 years old. Madam Speaker, there's also an amendment that the Senate adopted. It's LCO number 7171. I would ask that that be called and I be given permission to summarize.

DEPUTY SPEAKER SAYERS:

Will the Clerk please call LCO number 7171.

THE CLERK:

Madam Speaker, LCO number 7171, designated Senate

Amendment A offered by Senator Coleman.

DEPUTY SPEAKER SAYERS:

The Representative seeks leave of the Chamber to summarize the amendment. Is there any objection to summarization? Is there any objection? Hearing none, Representative Fox, you may proceed with summarization.

REP. FOX (146th):

Thank you, Madam Speaker. I -- just -- the amendment does a couple of things. It changes the effective date of section two of the bill and it also incorporates some due process rights with respect to conservative proceedings and I move adoption.

DEPUTY SPEAKER SAYERS:

The question before the Chamber is adoption of Senate Amendment Schedule A. Will you remark on the amendment? Representative Rebimbas of the 70th.

REP. REBIMBAS (70th):

Thank you, Madam Speaker. And Madam Speaker, I do rise in support of the amendment that's before us. It certainly, rightfully that we're changing the effective date and also we're just really confirming regarding the conservatorship section 11 of going to the concerned person for a hearing when the concerned

person cannot make it to the probate court.

Many probate courts already do that probate judges will go to where the person is located because of let's say that they're in a convalescent home or homebound so certainly this just codifies most of the practice that's happening already. So I do stand in support of the amendment.

DEPUTY SPEAKER SAYERS:

Thank you, Representative. Will you remark? Will you remark further on the amendment that is before us? If not, let me try your minds. All those in favor of the amendment please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER SAYERS:

Those opposed, nay. The amendment is adopted. Will you remark further on the bill as amended? Will you remark further on the bill as amended?

Representative Rebimbas of the 70th.

REP. REBIMBAS (70th):

Thank you, Madam Speaker. And Madam Speaker, I do rise in support of the bill as amended. As Representative Fox had already highlighted and

summarized many of the key components of the bill that's before us certainly the probate court did a wonderful job in providing these probate court operation details and they're -- most of them are certainly technical but there's also a lot of things that make it that much more efficient in the protection of certain rights when it came to the rules of evidence, et cetera.

And I do want to note, Madam Speaker, that this bill that's before us although prior to its amendment passed unanimously in the Judiciary Committee and then certainly as amended passed unanimously in the Senate. So I do rise in support of the bill and ask for everyone to support the bill before us.

DEPUTY SPEAKER SAYERS:

Will you remark further? Will you remark further on the bill as amended? If not, will staff and guests please come to the well of the House. Will the members take their seats and the machine will be opened.

THE CLERK:

The House of Representatives is voting by roll  
call. Members to the Chamber please. The House of Representatives is voting by roll call. Members to

the Chamber please.

DEPUTY SPEAKER SAYERS:

Have all the members voted? Have all the members voted? Please check the board to see that your vote has been properly cast. If all the members have voted then the machine will be locked and the Clerk will take a tally. The Clerk will announce the tally.

THE CLERK:

Madam Speaker, in concurrence with the Senate, Senate Bill 984 as amended by Senate Amendment A.

|                        |     |
|------------------------|-----|
| Total Number Voting    | 140 |
| Necessary for Adoption | 71  |
| Those voting aye       | 140 |
| Those voting nay       | 0   |
| Absent and not voting  | 10  |

DEPUTY SPEAKER SAYERS:

The bill as amended in concurrence with the Senate. Will the Clerk please call Calendar 544.

THE CLERK:

Madam Speaker, on page 25 of the Calendar, Calendar number 544, favorable report of the joint standing Committee on Public Health, substitute Senate Bill number 366, AN ACT REQUIRING LICENSED SOCIAL WORKERS, COUNSELORS AND THERAPISTS TO COMPLETE

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**JUDICIARY  
PART 4  
1040 - 1378**

**2013**

61  
dr/mb/gbr JUDICIARY COMMITTEE

March 4, 2013  
10:00 A.M.

Thank you, sir; appreciate it.

We're alternating public private since that first hour is up, so next on the -- I'm sorry, not private, public official list, Paul Knierim from probate court.

Then next up will be from the public, Sally Zanger from the Connecticut legal rights project.

Thanks.

PAUL KNIERIM: Representative Ritter, Senator Kissel, members of the committee, good morning.

My name is Paul Knierim, I serve as probate court administrator. There are three bills on your agenda this morning. I'd like to speak in favor of all three of those bills; 984, Probate Court Operations; 986, Applicability Of Probate Court Orders To State Agencies; and 995, Court Support Services Division, Judicial Branch.

I'd like to put my principle focus on Senate Bill 984, AN ACT CONCERNING PROBATE COURT OPERATIONS. That is a -- a joint request on the part of my office as well as the Connecticut Probate Assembly, the Association of Judges, and essentially it's our annual omnibus bill with its principle focus on deleting obsolete provisions in our title of the statutes and making technical corrections, streamlining court procedures.

My written testimony includes a section-by-section summary of that bill, and I certainly won't belabor that since much of it's technical, but there are three topics that I'd just like to point out briefly for you this morning.

The first is that several sections of the bill, 1 and 2 principally deal with our new rules of procedure for the probate courts. I just mention that we recently completed a year-and-a-half-long project to comprehensively rewrite the rules of procedure; first time since 1974. Those new rules will become effective on July 1st in that making it easier to use the probate courts and -- and a strong effort to make it easy for self-representative parties to be able to use the probate courts.

There are a couple technical provisions in the bill to conform our new title for the rules of procedure to the statutes, and also to authorize a new simplified, streamlined form of accounting that is provided for in the new rules.

Second area to comment on is in the conservatorship arena. There are several provisions in the bill that deal with it. First, to mention the appeals statute with respect to conservatorships. The bill includes a proposal that would treat all appeals from conservatorship proceedings as record appeals rather than de novo appeals.

This follows an appellate court decision, Follacchio versus Follacchio in 2010 which interpreted the statute to limit the record appeals provision to the initial determination of incapacity and appointment of conservator, but that all other conservatorship matters would be de novo appeals.

We think that it streamlines things to treat all conservatorship appeals in the same manner. And I would note that the bill also makes sure that all the procedural safeguards are in place for record proceedings in the probate court, right to counsel, right to be present, rules of

evidence, administration (inaudible), all are included in the -- the provision.

A second conservatorship provision contained in Section 11 that I'd like to emphasize to you concerns the admissibility of reports of physicians. This principally occurs at the initial phase when the court is making a determination of incapacity. And our existing statute, 45a-650, has led to a good deal of confusion as to whether the written report of a physician, which is specifically provided for in the statute, is admissible or not.

The proposed language is intended to add clarity on that subject to expressly provide that it is admissible, but to provide the safeguard for the respondent that he or she has the right to call the physician for cross-examination. And on failure of a physician to show, the report wouldn't be admissible at all.

This is a topic that I know that the legal services community takes a great deal of interest in. We've been talking with them. I understand there'll be some objection on that front, and we'll certainly try to resolve those for you. It seems to me those issues are -- are very much resolvable.

The two other bills -- excuse me, there's one part, I wanted to comment on also dealing with appeals and the operations bill. In 2007 the Legislature changed our appeal statute, but there's some residual confusion about how one initiates an appeal. This would simply try to clarify that by saying the probate court need not be served; just a copy of the appeal sent to the court is adequate. And an express prohibition on naming the court or the judges for the defendant, we've had issues with that. Judges have had some problems with that.

you'll be next and then we'll go back to --  
Ralph Wilson will be after that. Thanks.

SALLY ZANGER: Good morning, members of the  
committee -- distinguished members of the  
committee.

(SB984)

I'm a staff attorney at the Connecticut Legal  
Rights Project 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. I'm the legal  
services -- one of the legal services people  
that Judge Knierim was referring to.

We promote initiatives that integrate our  
clients into the community and our legal  
director emeritus, Tom Behrendt, worked with  
the Killian Committee that drafted Public Act  
7-116, which reformed the conservatorship  
statutes.

And I'm testifying today in opposition to that  
part of Senate Bill 894 which, I think,  
threatens to undo much of the -- some -- much  
of the good work of that Public Act 07-116.  
The rights that were safeguarded by that act  
are at risk from the proposal -- the proposal  
today to permit the admission of physicians'  
reports without the physician or other  
-- other (inaudible) other health professionals  
also present.

So the act -- the actual Public Act 07-116  
clarified and made explicit lapse of due  
process rights, including the right to a  
recorded hearing where the rules of evidence  
apply. And the -- the proposal of -- in SB-894  
seems to extend that right to other  
conservatorship hearings, which is a great  
thing. We're really happy about that and in

exchange for the right to a trial de novo in superior court on appeal, it seems like a fair trade. When such hearings are recorded, there'd be no new trial if there is an appeal.

But in addition to that trade-off, this proposed bill exempts the single most powerful piece of evidence, the only required piece of evidence, from -- from the rules of evidence. So it's not as good a deal as it looks like.

Section (c) -- 11(c) of the proposed bill says a signed report of a physician, social work service of a general hospital, municipal social worker, director of social services, public health nurse, public health agency, psychologist or coordinating assessment and monitoring agency shall be admissible in evidence. And any party may call the author to report or testify. And as Judge Knierim said if the person doesn't show up, then it wouldn't be admitted.

But the change removed the major safeguard of the rules of evidence. How does a litigant normally prevent the admission of hearsay in any other court? By objecting to it. The burden is then on the proponent of the evidence to either show that it is not hearsay or to produce the author to testify, in which it makes not hearsay, or it won't be admitted.

Under this proposal, it's just the burden in a way that makes the person who's objecting to the evidence responsible for trying to authenticate it. So how does the -- the person who's objecting prevent the admission? They have to subpoena the author of the report, and this shifts the burden to the -- to the respondent, to the party objecting, and that's extremely unusual.

But there's more. A subpoena has to be served by a marshal, which requires money or a fee waiver. My clients don't have money. Obtaining a fee waiver isn't simple, it's not simple in probate court. Although, I'm happy to see that the new rules are going to have some clarity on that. We frequently find that some of our clients in probate court who are mostly living on disability income have to pay their conservators and lawyers out of their disability income.

So the service of that subpoena is going to cost \$50 or it's going to require them to -- to get the -- the fee waiver, which is complicated for some -- for some people.

In many cases -- in most cases the report is the only evidence in a conservatorship proceeding and it's generated on forms provided by the probate court, solely for the purposes of petitioning for a conservatorship or continuing a conservatorship or moving a person into a restrictive living situation. It's exactly what the hearsay rule is designed to prevent. It's an assertion of the critical fact of the case and it's not subject to cross-examination.

Conservatorship is a deprivation of liberty and property by the state and it's, you know, constitutionally protected due process of law is implicated there. And that would include clear and convincing evidence and the opportunity to challenge the evidence that's offered. So it has to be real admissible evidence.

The proposed exception isn't talking about medical records kept in the course of treatment, which are under the civil statute an exception to the hearsay rule. These are

solely for the purposes of this -- of this hearing. Sometimes the person who -- who writes the report has only met the client for -- the patient for maybe 20 minutes.

My written testimony has an error there. I wrote that they may never have met the patient and that's incorrect. On the form they have to have seen the patient, so I want to make that clear that that's a mistake.

A colleague of mine tells a story of a -- of a -- a 80-plus-year-old client and the report said the client had suddenly become paranoid because she said someone was taking control of -- had taken control of her money. And the doctor who had done the evaluation didn't notice she'd been conserved and that someone actually had taken control of her money.

So it's important not to underestimate the power of these reports and the power of the written word. These reports are made part of the record. In many cases, as I said before, they're the only evidence and they shouldn't come into a conservatorship proceeding without having the person who wrote the report available to answer questions.

So this is not a minor change. It's a major change, and it -- and it takes away a lot of the due process protection of the statute which is required by the Constitution.

So thank you for your time and attention.

REP. GERALD FOX: Well, thank you. Thank you very much for your testimony.

Are there questions from members of the committee? No --

SALLY ZANGER: I'd just like to add that, you know, the probate court has come a long way and under Judge Knierim continues to move forward in a beautiful way and they've done a lot of good work in the consolidation and in, again, in extending the -- some of these protections, but this would be a real step backwards and it would -- it would --

REP. GERALD FOX: Well, I mean, I know we've worked a lot over the years and Judge Knierim is still here so -- and he's listening and we're all -- we're all listening and we will continue to -- to listen as we go forward, so thank you.

Representative LeGeyt.

REP. LEGEYT: Good afternoon, Representative.

Good afternoon, Chairman Fox, Chairman Coleman, other honorable members of the Judiciary Committee.

I want to thank you for raising H.B. 6447, AN ACT CONCERNING THE OCCUPATIONAL TAX ON ATTORNEYS, as well as providing me an opportunity to speak about the bill in this public hearing context.

For the last several years, attorneys in Connecticut have been subject to the attorneys' occupational tax, which is levied upon attorneys in Connecticut with some exemptions. The tax has been \$450 for quite a while until two years ago when it was raised to \$565, where it has remained to date.

One of the exemptions in the law is for attorneys whose principal occupation is something other than practicing law and who may generate fee income during the calendar year under a certain threshold. For many years that

make sense. Thank you very much.

REP. GERALD FOX: Well, thank you. You talked about our two tree bills. I think there are only three bills so these are the bills that we had drafted and it's somewhat unusual for us to get too involved in trees, but we did have -- there were several legislators that requested these bills and we do appreciate your analysis, especially the distinction between the House Bill and the Senate Bill.

Are there questions from members of the committee?

Thank you. I appreciate your testimony.

RALPH E. WILSON: Thank you, Mr. Chairman.

REP. GERALD FOX: Next is Jean Aranha.

JEAN MILLS ARANHA: Good afternoon, Senator Coleman, Representative Fox and members of the Judiciary Committee. I'm Jean Aranha. I'm an attorney working in the elder and public benefits units of Connecticut Legal Services in Stamford. I'm submitting this testimony in opposition to a critical provision of Senate Bill 984 on behalf of the low-income individuals that we serve. And I'm here to ask you -- I endorse everything that Sally Zanger said I'm asking you not to undue the good work the Legislature did in 2007 to improve the conservatorship statute.

Subsection (c) of Section 11 of 984 threatens to (inaudible) the protections that were so recently enacted for a very vulnerable group and I urge you to eliminate this portion of the bill. As Judge Knierim testified, there are number of changes by Section 11. Subsection (b) provides that the rules of evidence shall apply to all conservatorship proceedings and

immediately following Subsection (c) then undercuts the protections of those very rules by providing that a signed report of a physician or other medical provider shall be admissible in evidence without requiring the presence of the author of the report for cross-examination.

Written report offered for the truth of its contents is class hearsay and clearly inadmissible under the rules of evidence unless an exception such as the one proposed here applies. This exception threatens the integrity of the entire conservatorship process. The finding of incapacity in a conservatorship proceeding is the necessary and sufficient antecedent to the appointment of a conservator, a significant deprivation of civil liberties. In these cases often the only evidence of a person's alleged incapacity is the medical report which is the subject of the proposed change. It's vitally important the person whose liberty is at stake has an opportunity to cross-examine the doctor providing this evidence. To make a blanket exception for this most pivotal evidence would seriously undermine the due process protections enacted.

It's true that the respondent may call the author of the report to appear, but this unfairly shifts the burden of producing the witness from the party offering the evidence to the respondent. In practice, the physician will generally not appear voluntarily or without being paid for his or her time. These realities create a burden for all persons in conservator proceedings and they create an especially difficult burden for low-income individuals that we represent. Furthermore, the only way to prevent the report from coming in is not simply to ask for the doctor to

appear, but to subpoena the doctor. There are many reasons why subpoena might be impossible to serve. The doctor might be out of town or out of the country. He may be intentionally avoiding service so he doesn't have to appear. Conservatorship proceedings often proceed quickly and there may not be time to subpoena the doctor or the person under threat of conservatorship not having the money to pay the marshal or time to obtain a fee waiver for the fees. In all of those cases, the report would be admitted without an opportunity to cross-examine.

This proposal goes against the trend of professionalism in the probate courts that Judge Knierim is such of part of requiring the judges be attorneys, the courts follow the rules of evidence and providing for continuing legal education. Admitting hearsay testimony about the ultimate issue in a conservatorship proceeding by statutory fiat is a terrible idea. The rules of evidence must be adhered to and it must be the burden of the proponent to call the clinician as a witness. Probate prides itself on running a user-friendly court system. That's a good and valid goal, but we should not dispense with the protections of due process of law for the convenience of petitioners, their counsel and busy physicians, particularly when the respondent is facing a tremendous curtailment of liberty.

As Judge Knierim mentioned, we have the opportunity with other advocates to discuss our issues with --

REP. GERALD FOX: Please proceed.

JEAN MILLS ARANHA: Thank you.

We have the opportunity to discuss this bill

with probate court administration and we reached consensus on a number of our concerns including inclusion of the provision in Section 10 that all conservatorship proceedings, which are recorded, would be on the record and not entitled to a trial de novo in the superior court of appeals. At the time of those discussions, however, the bill that we were discussing did not contain this change in the rules of evidence. If all proceedings are to be on the record, the record must be made under the rules of evidence. Those rules should be subverted by an exception which applies to the most essential evidence in a conservatorship proceeding.

As Judge Knierim said, all procedural safeguards must be adhered to and that's simply not the case if this provision is included. Thank you very much.

REP. GERALD FOX: Thank you. Thank you for your testimony. And thank you for all the work you're doing in Stamford, especially.

JEAN MILLS ARANHA: Thank you.

REP. GERALD FOX: The -- you heard what I said previously.

JEAN MILLS ARANHA: I did.

REP. GERALD FOX: And I am confident that the respective groups involved can work together here because I think we have worked well together over the last few years. I think they all respect each other's goals and each other's professionalism and I think that that will continue. So we'll continue to talk. We have these public hearings. I'm sure everyone is listening.

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dr/mb/gbr JUDICIARY COMMITTEE

March 4, 2013  
10:00 A.M.

JEAN MILLS ARANHA: Okay.

REP. GERALD FOX: And then we can see where we can agree and what we can do.

JEAN MILLS ARANHA: Thank you very much.

REP. GERALD FOX: Any others questions or comments?

Thank you very much.

JEAN MILLS ARANHA: Thank you.

REP. GERALD FOX: Anna Doroghazi.

Good afternoon.

ANNA DOROGHAZI: Good afternoon. Good afternoon, Senator Coleman, Representative Fox and members of the committee. My name is Anna Doroghazi and I am the director of public policy and communication at Connecticut Sexual Assault Crisis Services. CSACS is the coalition of the Connecticut's nine community-based sexual assault crisis services programs which provide sexual assault counseling and victim advocacy to men, women and children in all Connecticut towns. During our last fiscal year, our advocates throughout the state provided services to over 7,000 victims and survivors of sexual violence.

The written testimony that we have submitted today outlines our support for Raised Bill 870, AN ACT CONCERNING VICTIM COMPENSATION, and 871, AN ACT CONCERNING REVISIONS TO VARIOUS STATUTES CONCERNING THE CRIMINAL JUSTICE SYSTEM. I would like to use my time with you this afternoon to specifically address Section 3 of Raised Bill 871 which proposes revisions to Connecticut's voyeurism statute. Connecticut has seen several recent voyeurism cases in

Seeing none, thank you, Attorney Samowitz.

LEE SAMOWITZ: Thank you.

SENATOR COLEMAN: Marjorie Partch.

MARJORIE PARTCH: Good afternoon --

SENATOR COLEMAN: Good afternoon.

MARJORIE PARTCH: -- Chairman and members of the  
Judiciary Committee. My name is Marjorie  
Partch.

SENATOR COLEMAN: My apologies. I saw that "r"  
after I actually --

MARJORIE PARTCH: That's fine. Even when I say it,  
people don't understand. It's an English name.  
It was Patch before they added the "r."

I'm hear mainly in opposition to Bill Number 984, but also because I've been asking for a constitutional review of the new probate rules which have just been approved by the Supreme Court -- State Supreme Court. So I'm here in general to curtail the powers of the Probate Court, which I feel they're trying to expand. I'm a writer and a graphic designer. I was my mother's primary caregiver following her minor stroke from 2010 -- from 2003 to 2010. Our family home is in Norwalk. I have been personally concerned about the overall constitutionality of Probate Court proceedings for approximately two and a half years, as a result of my mother's involuntary conservatorship, fraudulently initiated by a nursing home in Wilton, Connecticut, Wilton Meadows, which succeeded in bypassing my legitimate authority as my mother's durable power of attorney and predesignated

conservatorship and so on, all without due process in the Norwalk-Wilton Probate Court in 2010.

I also want to say I support the two attorneys from legal aid, Sally Zanger and Gina (inaudible) testimony. There was no doctor present at my mother's initial conservatorship. She wouldn't have been in a conservatorship if they had followed due process.

So the process of attempting to restore my mother's constitutional rights and legal representation of her, I have brought civil and criminal complaints regarding my mother's case in point. At this point, the chief state's attorney is investigating the nursing home and is likely to over into the Probate Court officers for Medicaid fraud and other fraud stemming with the application for conservatorship. In addition, Assistant Attorney General Michael Cole, the Chief of the Antitrust and Government Program Fraud Department has requested whistle blower status for an investigation of the Probate Court system using our case as a case in point but reaching beyond to the larger picture.

SENATOR COLEMAN: If you would summarize the remainder of your remarks, that would be helpful to us.

MARJORIE PARTCH: Well, the State Auditor's Office claims that they don't have jurisdiction to investigate the Probate Court so then I'm saying well then who does? You know, when we do run into problems -- in my submission, I've documented there have been quite a number of cases that have very questionable. For me, the issue goes back -- I understand the Probate Courts are the oldest courts in the country. They go back 300 years and this has evolved

into a complete and unacceptable lack of accountability and oversight of these quasi-judicial entities as they have evolved.

This must be addressed before any greater authority is put upon these state sanctioned but unregulated and unsupervised agencies. If they are not subject to oversight by the state, then what are the Probate Courts? A fourth branch of government? If they are empowered and authorized to assist the state, the Probate Courts must be regulated by the state because the state is responsible for their existence.

I also appreciated what you were talking in integrating different bills at the same time and we're going to be raising a bill to support the strength of the power of attorney. There is another proposed amendment to the state condition requiring that judges be appointed rather than elected. So there are various motions going on at the same time and it seems like it would be prudent to integrate these rather than have all in competition or the first one there win the race.

SENATOR COLEMAN: Thank you.

Are there questions for Ms. Patch -- Partch?

Representative Adinolfi.

REP. ADINOLFI: I have a question. I've been through something similar, but didn't -- didn't the Probate Court give the nursing home permission? Because I went through a case with my mother where I was her power of attorney and when the hospital determined that she couldn't do things for herself, I was then -- I had to go to Probate Court, the Probate Court sent an attorney over to interview my mother and to agree that she needed a conservatorship and I

was then appointed conservatorship by the Probate Court.

MARJORIE PARTCH: Right.

REP. ADINOLFI: What happened here? I understand that.

MARJORIE PARTCH: They railroaded in a real estate attorney that they preferred to work with rather than myself. The nursing home suggested this real estate attorney to be my mother's conservator. I was her predesignated conservator.

REP. ADINOLFI: Who did that? The Probate Court?

MARJORIE PARTCH: The Probate Court went along with the nursing home's wishes and these are -- I have two copies for the chairman. This shows the paper trail -- the transcript of the initial conservatorship hearing is in here and it was a 10-minute briefing which is why the Attorney General's office is now monitoring our hearings. It wasn't -- it wasn't a hearing with due process. There was discussion of my fitness or my unfitness to continue as my mother's power of attorney or to be appointed as her conservatorship.

REP. ADINOLFI: Well, they are different. That's what I'm trying to say and usually the conservator is not appointed until the individual is -- that's being cared for is, you know, beyond doing anything for herself.

MARJORIE PARTCH: Okay.

REP. ADINOLFI: All right. I guess --

MARJORIE PARTCH: Well, it was the irregularities in the procedures that are the reason for my

complaint. But I didn't learn of the hearing until the day before. The nursing home -- the nursing home claims that my mother did not have a power of attorney or a health care representative even though I signed her in with that authority when she was transferred from the hospital after a stroke. I signed her in using the power of attorney. They acknowledge that in their admission papers which are in this paper. They show that they acknowledge me as her power of attorney, but they then went to the -- fraudulently went to the Probate Court and said my mother had no power of attorney or health care representative.

REP. ADINOLFI: Okay.

MARJORIE PARTCH: I don't know what other prejudicial things they might have said behind my back as hearsay, but there is nothing on the record about any discussion of my unfitness to continue as her power of attorney or to be appointed as her conservator.

REP. ADINOLFI: All right. I just wanted to know. I went through this I had to go to Probate Court and was interviewed and everything before I was appointed.

MARJORIE PARTCH: Well, that was a normal course of action and you were lucky.

REP. ADINOLFI: Thank you.

MARJORIE PARTCH: Thank you.

SENATOR COLEMAN: Are there questions? Any other questions?

Ms. Partch, you should not that -- and you're probably aware that Senator Leone has spoken to me on your behalf and he is an advocate for you

--

MARJORIE PARTCH: Thank you.

SENATOR COLEMAN: -- regarding this.

MARJORIE PARTCH: Thank you. So I will be back. This is hopefully an introduction for coming back when the bill that Senator Leone will be introducing. We're still working on the language. I sent these packages to both of chairs in November. If you don't have, I'm happy to leave you with copies. It documents everything that I'm saying. The paper trail is here. I have transcripts. I have all the work our attorney has done. We're just -- we've been -- for over year before a new judge, the first one was recused and it's just a delaying game right now. I'm petitioning to be appointed finally as the conservator along with an attorney who can handle any of the professional aspects of it. And we plan to sue the nursing home.

SENATOR COLEMAN: I do have a packet of documents that Senator Leone left with me and I'm assuming that they're same, but I'll take a look at what you have just to make certain.

MARJORIE PARTCH: Okay.

SENATOR COLEMAN: And I think the same is true of Chairman Fox.

MARJORIE PARTCH: Thank you. Thank you for your time.

SENATOR COLEMAN: Ms. Partch was the last person who signed the sign-up sheet in order to address the committee today. I'll inquire if anyone who is in the audience. Is there anyone in the audience who cares the address the committee

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March 4, 2013

JUDICIARY COMMITTEE

Testimony of Sally R. Zanger, Staff Attorney, OPPOSING SB-894

(SB984)

Senator Coleman, Representative Fox, Senator Kissel Representative Rebimbas, Representative Ritter, Senator Doyle, 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. We promote initiatives that integrate clients into the community. Tom Behrendt, our legal director emeritus, worked on the "Killian Committee" that drafted P.A.07-116 which reformed the conservatorship statutes. I am testifying today in opposition to SB 894 which threatens to undo much of the good work of P.A. 07-116. The rights that were safeguarded by P.A. 07-116 are at great risk from one of the proposals before you today.

PA 07-116 was in part a response to several terrible cases of overreaching by probate courts. The act clarified and made explicit already existing due process protections to respondents in conservatorship proceedings, including **the right to a recorded hearing where the rules of evidence apply**. The proposals in SB-894 appear to extend that right (to a recorded hearing where the rules of evidence apply) to all conservatorship hearings in exchange for removing the right to a new trial on appeal in superior court. A better hearing in Probate Court in exchange for no right to a trial de novo in Superior Court would be a fair trade, except that in addition to that trade off, **this proposed bill exempts the single most powerful piece of evidence—the only required piece of evidence, from the rules of evidence**. I am referring to Section 11 (c) of the proposed bill, that states:

A signed report of a physician, social work service of a general hospital, municipal social worker, director of social service, public health nurse, public health agency, psychologist or coordinating assessment and monitoring agency shall be admissible in evidence. Any party may call the author of the report to testify in court. If the author of the report fails to appear at the hearing after being served with a subpoena in accordance with law, the report shall not be admitted into evidence.

**This change removes a major safeguard of the rules of evidence.** How does a litigant prevent the admission of hearsay in any other court? By objecting. The burden is then on the proponent of that evidence to either show that it is not hearsay, or produce the author to testify. If not, the evidence, in this case, a report generated for the purposes of the litigation, will not be admitted. Under this proposal, how can a conserved individual or respondent prevent the admission of this hearsay in Probate Court? By subpoenaing the author of the report. **This shifts the burden of authenticating evidence from the proponent of the evidence to the one objecting to it, which is very unusual.** But wait, there is more: A subpoena must be served by a marshal, which requires money or a fee waiver. Obtaining a fee waiver is not a simple matter, and especially not in probate court, where we frequently find that our clients, who are almost all living on disability income, having to pay their conservators and lawyers out of that \$725 dollars a month. Service of that subpoena will cost about \$50.00.

**In many cases, this report is the only evidence in a conservatorship proceeding and is generated, on forms provided by the probate court, solely for the purposes of petitioning for or continuing a conservatorship or moving a person into a more restrictive living situation. It is exactly what the hearsay rules were created to limit. Assertions addressing the ultimate issue in the conservatorship proceeding must be subject to cross-examination and fundamental procedural protections.**

**Conservatorship is a deprivation of liberty and property by the state and implicates our constitutionally protected right to due process of law.** Due process in this context includes very strong rights to require the production of "clear and convincing evidence" and the opportunity to challenge the evidence offered. That evidence must be real, admissible evidence, and subject to cross examination. This proposed exception is not referring to medical records maintained in the course of treatment (which are exceptions to the ban on the admission of hearsay in certain cases in the civil statute.<sup>1</sup>) The reports sought to be admitted by the change in C.G.S. §45a- 650 are generated solely for the purpose of this litigation, sometimes by people who have never met the individual in question, or met him or her once, for 20 minutes. Thus, this bill, SB-894 would permit a conservatorship to be imposed against the will of the person who is the subject of the proceeding based on a form filled out by a physician who may not even know the respondent beyond a short interview or record review.

(A colleague of mine recalls a case with a report to the court made by a doctor in which the doctor found that my colleague's 80 plus year old client had "suddenly become paranoid because she said someone had control of her money." The examining doctor was not aware that she had been conserved and, indeed, someone **had** taken control of her money!)

The written word is very powerful. The reports are made part of the record. In many cases, they are the only evidence. Please don't let them come into the court record without a person to answer questions about the report.

In summary, this is not a minor change; it is a major change that mocks the due process requirements of the statute and of the Constitution. This bill gives with one hand the protection of requiring the rules of evidence in more conservatorship proceedings, but it takes that protection right back with the other hand, proposing a major exception to the rules of evidence that would admit the main item of evidence in those proceedings with no procedural protection.

Our probate court system has made significant progress toward professionalism over the past several years: the reforms of 2007, that I mentioned at the beginning of my testimony, court consolidation and other requirements for training for judges, the recently drafted Probate Practice Book. The present proposal, which would exempt probate proceedings from a fundamental procedural safeguard, would be a major step backward and a major mistake.

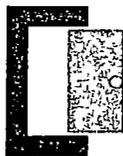
Thank you for your time and your attention to this important matter.

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<sup>1</sup> C.G.S. § 52-174 and 180. The special exception for certain medical reports, not applicable in Probate Court, refers to a signed report and bill for treatment of any treating physician, dentist, chiropractor,

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natureopath, physical therapist, podiatrist, psychologist, EMT, optometrist, physician assistant, or APRN for use in personal injury actions, later expanded to include family relations matters. **It is not for cases where liberty or property is at stake.** The case law makes clear that the report is referring to treatment, and not generated by a stranger for the purposes of proving someone's incapability. See *Bruneau v. Seabrook*, 84 Conn. App. 667, 2004: "The rationale for allowing self-authenticating documents from physicians in personal injury ... actions is to avoid trial delays due to the difficulty in scheduling doctors' appearances; especially because in the majority of cases the physician's testimony is consistent with his treatment report. . . . In the present case, the court found that the Ruwe letter was a document signed by Ruwe, who was the plaintiff's treating physician, and that it was on Ruwe's letterhead. The court also found that "[t]he letter expresses Ruwe's opinion based on the treatment he rendered [to the plaintiff], and it is consistent with Ruwe's contemporaneous [medical] reports." The court therefore concluded that, pursuant to 52-174(b), "it was unnecessary for [the plaintiff] to lay a foundation under the business record exception ... 52-180, for the admissibility of the letter" and that "when viewed in the context of Ruwe's entire treatment of [the plaintiff] ... the letter was not created for purposes of litigation nor is it unreliable. (internal citations omitted)." *Bruneau v Seabrook*, 84 Conn. App. 667, 671-672 (2004).



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**Testimony of Jean Mills Aranha, Connecticut Legal Services, Inc.  
In Opposition to Section 11 of SB 984:  
An Act Concerning Probate Court Operations**

To Senator Coleman, Representative Fox and Members of the Judiciary Committee:

My name is Jean Mills Aranha; I am an attorney working in the Elder Law and Public Benefits Units of Connecticut Legal Services in Stamford. I submit this testimony in opposition to a critical portion of Section 11 of Senate Bill 984, on behalf of the legal services programs in Connecticut and the low income individuals we serve.

I am here today to ask you not to undo the good work this legislature did in 2007 to protect the civil liberties of some of the most vulnerable of Connecticut's citizens – those subject to conservatorship proceedings. Subsection (c) of Section 11 of this bill threatens to subvert the protections so recently enacted for them, and I urge you to eliminate this portion of the bill.

Section 11 makes a number of changes to the statutes governing conservatorship proceedings. Subsection (b) provides that the rules of evidence shall apply to all conservatorship proceedings. Subsection (c) then undercuts the protections of those very rules, by providing that a signed report of a physician or certain other medical providers shall be admissible in evidence, without requiring the presence of the author of the report for cross-examination.

A signed report offered for the truth of its contents is classic hearsay – and clearly inadmissible under the rules of evidence unless an exception, such as the one proposed here, applies. This exception threatens the integrity of the entire conservatorship process.

The finding of incapacity in a conservatorship proceeding is the necessary antecedent to the appointment of a conservator-- a significant deprivation of civil liberties. In these cases, often the only evidence of a person's alleged incapacity is the medical report which is the subject of this proposed change. It is vitally important that the person whose liberty is at stake has an



opportunity to cross-examine the doctor providing this evidence. To make a blanket exception to the rules of evidence for this most pivotal evidence would seriously undermine the due process protections enacted in 2007 for these proceedings.

The proponents of this change to the statute have provided that the respondent may call the author of the report to appear. This unfairly shifts the burden of producing the witness from the party offering the evidence to the respondent. In practice, the physician or other medical professional will generally not appear voluntarily or without being paid for his or her time. These realities create a burden for all persons defending their civil liberties in conservatorship actions, and they create an especially difficult burden for low income individuals.

Subsection (c) could have provided that the medical report will not be admitted if the author does not appear. Instead, the proposed language adds yet another burden on the respondent. It states that the medical report shall not be admitted into evidence if the author of the report does not appear after being served with a subpoena. There are many reasons why a subpoena may be impossible to serve. The doctor may be out of town or out of the country; he may be intentionally avoiding service so that he does not have to appear. Conservatorship proceedings often proceed very quickly, there may not be time to subpoena the doctor, or the person under threat of conservatorship may not have the money to pay the marshal, or time to obtain a fee waiver for his fees. In all those cases, the report would be admitted without an opportunity to cross examine.

This proposal goes against the trend toward professionalism in the probate courts – requiring that all judges be attorneys, that courts follow the rules of evidence, and providing for continuing legal education for judges. Admitting hearsay testimony about the ultimate issue in a conservatorship proceeding by statutory fiat is a terrible idea – particularly because individual liberty is at stake. The rules of evidence must be adhered to, and it must be the burden of the proponent to call the clinician as a witness.

The probate assembly prides itself on running a “user-friendly” court system. That’s a good and valid goal, but we should not dispense with the protections of due process of law for the convenience of petitioners, their counsel, and busy physicians – particularly when the respondent is facing a tremendous curtailment of liberty.

Finally, you should know that Legal Services had a number of other concerns with this bill when it was first drafted. We had the opportunity with other advocates to discuss our issues with Probate Court Administration. We were able to reach consensus on a number of our concerns, including the inclusion of the provision in Section 10 that all conservatorship proceedings which were recorded would be “on the record” and not entitled to a trial *de novo* in the Superior Court if appealed. At that time, however, this provision changing the rules of evidence was not

part of the bill. If all proceedings are to be "on the record", the record must be made under the rules of evidence. Those rules should not be subverted by an exception which applies to the most essential evidence in a conservatorship proceeding.

I implore you to reject the change proposed for subsection (c) of Section 11 in this bill. It seriously diminishes the work this legislature has done to protect the rights of some of the most vulnerable of our citizens, and it threatens their civil liberties.

Thank you for your time and attention.

## Proposed Substitute Language for

### Sections 4(d)(2) and 11(c) of SB 984, AAC Probate Court Operations

Sec. 4. Section 45a-186 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) Except as provided in sections 45a-187 and 45a-188, any person aggrieved by any order, denial or decree of a [court of probate] Probate Court in any matter, unless otherwise specially provided by law, may, not later than forty-five days after the mailing of an order, denial or decree for a matter heard under any provision of section 45a-593, 45a-594, 45a-595 or 45a-597, sections 45a-644 to 45a-677, inclusive, or sections 45a-690 to 45a-705, inclusive, and not later than thirty days after mailing of an order, denial or decree for any other matter in a [court of probate] Probate Court, appeal therefrom to the Superior Court. Such an appeal shall be commenced by filing a complaint in the superior court in the judicial district in which such [court of probate] Probate Court is located, or, if the [court of probate] Probate Court is located in a probate district that is in more than one judicial district, by filing a complaint in a superior court that is located in a judicial district in which any portion of the probate district is located, except that (1) an appeal under subsection (b) of section 12-359, subsection (b) of section 12-367 or subsection (b) of section 12-395 shall be filed in the judicial district of Hartford, and (2) an appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in any superior court for juvenile matters having jurisdiction over matters arising in any town within such probate district. The complaint shall state the reasons for the appeal. A copy of the order, denial or decree appealed from shall be attached to the complaint. Appeals from any decision rendered in any case after a recording is made of the proceedings under section 17a-498, 17a-543, 17a-543a, 17a-685, [45a-650] 45a-644 to 45a-667v, inclusive, 51-72 or 51-73 shall be on the record and shall not be a trial de novo.

(b) Each person who files an appeal pursuant to this section shall [mail a copy of the complaint to the court of probate that rendered the order, denial or decree appealed from, and] serve a copy of the complaint on each interested party. The failure of any person to make such service shall not deprive the Superior Court of jurisdiction over the appeal. Notwithstanding the provisions of section 52-50, service of the copy of the complaint shall be by state marshal, constable or an indifferent person. Service shall be in hand or by leaving a copy at the place of residence of the interested party being served or at the address for the interested party on file with [said court of probate] the Probate Court, except that service on a respondent or conserved person in an appeal from an action under part IV of chapter 802h shall be in hand by a state marshal, constable or an indifferent person.

(c) In addition to the notice given under subsection (b) of this section, each person who files an appeal pursuant to this section shall mail a copy of the complaint to the Probate Court that rendered the order, denial or decree appealed from. The Probate Court and the judge of probate that issued the order, denial or decree appealed from shall not be made parties to the appeal and shall not be named in the complaint as parties.

[(c)] (d) Not later than fifteen days after a person files an appeal under this section, the person who filed the appeal shall file or cause to be filed with the clerk of the Superior Court a document containing (1) the name, address and signature of the person making service, and (2) a statement of the date and manner in which a copy of the complaint was [served on] sent to [the court of probate and] each interested party and mailed to the Probate Court that rendered the order, denial or decree appealed from.

[(d)] (e) If service has not been made on an interested party, the Superior Court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify any necessary party not yet served.

[(e)] (f) A hearing in an appeal from probate proceedings under section 17a-77, 17a-80, 17a-498, 17a-510, 17a-511, 17a-543, 17a-543a, 17a-685, 45a-650, as amended by this act, 45a-654, 45a-660, 45a-674, 45a-676, 45a-681, 45a-682, 45a-699, 45a-703 or 45a-717 shall commence, unless a stay has been issued pursuant to subsection [(f)] (g) of this section, not later than ninety days after the appeal has been filed.

[(f)] (g) The filing of an appeal under this section shall not, of itself, stay enforcement of the order, denial or decree from which the appeal is taken. A motion for a stay may be made to the [Court of] Probate Court or the Superior Court. The filing of a motion with the [Court of] Probate Court shall not preclude action by the Superior Court.

[(g)] (h) Nothing in this section shall prevent any person aggrieved by any order, denial or decree of a [court of probate] Probate Court in any matter, unless otherwise specially provided by law, from filing a petition for a writ of habeas corpus, a petition for termination of involuntary representation or a petition for any other available remedy.

[(h)] (i) (1) Except for matters described in subdivision (3) of this subsection, in any appeal filed under this section, the appeal may be referred by the Superior Court to a special assignment probate judge appointed in accordance with section 45a-79b, who is assigned by the Probate Court Administrator for the purposes of such appeal, except that such appeal shall be heard by the Superior Court if any party files a demand for such hearing in writing with the Superior Court not later than twenty days after service of the appeal.

(2) An appeal referred to a special assignment probate judge pursuant to this subsection shall proceed in accordance with the rules for references set forth in the rules of the judges of the Superior Court.

(3) The following matters shall not be referred to a special assignment probate judge pursuant to this subsection: Appeals under sections 17a-75 to 17a-83, inclusive, section 17a-274, sections 17a-495 to 17a-528, inclusive, sections 17a-543, 17a-543a, 17a-685 to 17a-688, inclusive, children's matters as defined in subsection (a) of section 45a-8a, sections 45a-644 to 45a-663, inclusive, 45a-668 to 45a-684, inclusive, and 45a-690 to 45a-700, inclusive, and any matter in a [court of probate] Probate Court heard on the record in accordance with sections 51-72 and 51-73.

Sec. 11. Subsections (b) and (c) of section 45a-650 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(b) The rules of evidence in civil actions adopted by the judges of the Superior Court shall apply to all hearings pursuant to [this section] sections 45a-644 to 45a-667v, inclusive. All testimony at a hearing held pursuant to [this section] sections 45a-644 to 45a-667v, inclusive, shall be given under oath or affirmation.

(c) After making the findings required under subsection (a) of this section, the court shall receive evidence regarding the respondent's condition, the capacity of the respondent to care for himself or herself or to manage his or her affairs, and the ability of the respondent to meet his or her needs without the appointment of a conservator. Unless waived by the court pursuant to this subsection, evidence shall be introduced from one or more physicians licensed to practice medicine in the state who have examined the respondent within forty-five days preceding the hearing. The evidence shall contain specific information regarding the respondent's condition and the effect of the respondent's condition on the respondent's ability to care for himself or herself or to manage his or her affairs. The court may also consider such other evidence as may be available and relevant, including, but not limited to, a summary of the physical and social functioning level or ability of the respondent, and the availability of support services from the family, neighbors, community or any other appropriate source. Such evidence may include, if available, reports from the social work service of a general hospital, municipal social worker, director of social service, public health nurse, public health agency, psychologist, coordinating assessment and monitoring agencies, or such other persons as the court considers qualified to provide such evidence. The court may waive the requirement that medical evidence be presented if it is shown that the evidence is impossible to obtain because of the absence of the respondent or the respondent's refusal to be examined by a physician or that the alleged incapacity is not medical in nature. If such requirement is waived, the court shall make a specific finding

in any decree issued on the application stating why medical evidence was not required. [A signed report of a physician, social work service of a general hospital, municipal social worker, director of social service, public health nurse, public health agency, psychologist or coordinating assessment and monitoring agency shall be admissible in evidence. Any party may call the author of the report to testify in court. If the author of the report fails to appear at the hearing after being served with a subpoena in accordance with law, the report shall not be admitted into evidence.] Any hospital, psychiatric or medical record or report filed with the court pursuant to this subsection shall be confidential.

**Thank you, Mr. Chairman, and Members of the Judiciary Committee, for allowing me to share my testimony in opposition to Bill # 984 with you this morning [March 4, 2013].**

SB 487  
(HJ 17)

My name is Marjorie Partch. I am a writer and graphic designer, and I was my mother's primary caregiver following a minor stroke, from 2003–2010. Our family home is in Norwalk, Conn. I have been personally concerned about the overall Constitutionality of Probate Court proceedings for approximately 2 1/2 years, as a result of my mother's Involuntary Conservatorship, Fraudulently initiated by a nursing home in Wilton, Conn., Wilton Meadows, which succeeded in bypassing my legitimate authority as my mother's Durable Power of Attorney, Health Care Representative, Attorney-in-Fact, and Pre-Designated Conservator ~ all without Due Process, in the Norwalk-Wilton Probate Court in July 2010.

In pursuing the restoration of my mother's Constitutional Rights and my legal representation of her ~ in order to bring her home where she belongs, and to bring suit against Wilton Meadows ~ I have brought several Civil and Criminal Complaints regarding my mother's Case-in-Point [**Exhibit A**]. The Chief State's Attorney's Office is currently investigating the nursing home and very likely the Officers of the Probate Court for Medicaid and other Fraud. In addition, Assistant Attorney General Michael Cole, the Chief of the Antitrust and Government Program Fraud Department has also requested Whistle Blower status for an investigation of the Probate Court System [**Exhibit B**].

The State Auditors' Office claims, however, that they do not have the jurisdiction to authorize such an investigation. (My question is: Then who does?) It remains to be seen whether or not the Attorney General's Office will investigate the Probate System regarding my mother's Case-in-Point, and my larger Complaint regarding the Unconstitutionality of the new Probate Rules of Procedure [**Exhibit C**]. I have also brought this larger Complaint and request for investigation to both the Judiciary Committee and the Regulations Review Committee.

In addition to these concerns, I would like to point out the immediate concern that various new Probate Legislation and Rules are being rushed into becoming State Law, without proper consideration, apparently because the State of Connecticut, and the Probate Courts in particular, are currently in the national limelight due to questions surrounding the Newtown Massacre, and the State's sealing of the Medical and Probate Records of the alleged shooter, Adam Lanza [Exhibit D].

The State of Connecticut is embroiled in this controversy for a variety of reasons, and surely it is self-evident that any new Statutes deserve thorough evaluation, and the fully informed consideration of as-yet unavailable but pertinent facts ~ until these records are released.

It would be Unconstitutional for the State to revise Probate Laws at this time, when so many questions remain as to the causative factors behind the Newtown mass murder and suicide, including Probate proceedings for the commitment of Adam Lanza; as well as the other pending investigations I have mentioned. Surely, it would far more prudent to limit the scope of their unregulated authority in the meantime, rather than expanding it.

It seems fair to say, that if reforms in Gun Safety Laws have not yet been implemented in the wake of the December 14 shootings, other changes to State Statutes can also wait until all the relevant facts are in.

Additionally, given that there are several opposing Probate Bills (e.g., #487) and a proposed Amendment to the State Constitution (HR #17) yet to be evaluated by the General Assembly, it would stand to reason that these various Legislative efforts should be integrated, rather than introduced and perhaps passed in conflict with one another. This also should not just be a race to the finish line, but a thoughtful process, especially when there is so much demand for Guardianship / Probate Reform across the country [Exhibit E], given the Courts' unchecked authority, with absolutely no accountability, to terminate the Constitutional Rights of perfectly innocent, law-abiding United States Citizens. The Citizens of Conn. deserve to be notified of the

(HJ 17)

threats posed to their Constitutional Rights in the New Probate Rules of Procedure, in statewide press releases with explanatory notes from neutral experts in Constitutional Law, and not just empty reassurances from self-serving private Elder Law Attorneys.

Given the many cases of impropriety in Conn. Probate matters that have come to light in recent years ~ who knows how many more lurk in the shadows of these closed-door proceedings ~ full consideration of Constitutional safeguards for our Citizens must be explored before any *greater* autonomy or authority is conferred upon these "Courts," which currently function entirely without accountability or oversight. We have had too many mishandled cases, such as the wrongful Conservatorship Daniel Gross [Exhibit F], which had to go to the U.S. Supreme Court five years after his death to achieve "Justice" ~ and a new Rule of Law: Probate Court-Appointed Conservators and Attorneys can finally be sued for wrongdoing. But too many more cases linger in recent memory, if not the legal textbooks: That of Mary Gennotti, who mysteriously re-married her abusive ex-husband with an "X" after she had been conserved; her brother Robert Jetmore's case; and of course the notorious case of Samuel Manzo's inheritance of the Josephine Smoron Farm [Exhibit G]. Even with no legal question as to his being the rightful heir, and the public censure of the Probate Judge and formal reprimand of the Court-Appointed Conservator / Executor in question, Attorney John Nugent, the case is still languishing in Legal Limbo ~ as is my mother's. This is Kafka Meeting Dickens in the 20th Century Constitution State.

I personally know of at least a dozen highly questionable Probate cases in Southern Conn. But there is nowhere to turn, but a prohibitively expensive Civil Appeals process. This is especially prohibitive when the Probate Officers are able to seize the assets in question without Due Process FIRST. They are in essence permitted to commandeer the assets, in order to defend their claim to the assets, leaving the family and friends of the person targeted for Guardianship, or "Conservatorship," to raise additional funds to defend the Constitutional Rights of the

individual in question. Meanwhile, the "Conserved Person" is isolated behind lock and key ~ literally imprisoned, WITHOUT DUE PROCESS, while they and their rescuers are at the mercy of all the attendant expenses and delays of Civil Due Process. That process should be required to terminate a Citizen's Constitutional Rights, not to RESTORE them after the fact.

Here lies the issue, going back probably throughout all 300 years of the Probate Courts' existence: the complete, and unacceptable, lack of accountability and oversight of these quasi-Judicial entities. This must be addressed, before any greater authority is conferred upon these State-sanctioned, but unregulated and unsupervised agencies. If they are not subject to oversight by the State, then what are the Probate Courts? A fourth branch of Government? If they are empowered and authorized to exist by the State, then Probate Courts must be regulated by the State, because the State is responsible for their existence.

\* \* \*

My mother was a public high school English teacher in Norwalk for 20 years, retiring in 1994. She is now 82 years old, and currently the victim of an Involuntary Conservatorship fraudulently brought by Wilton Meadows Nursing Home in Wilton, Conn., who claimed that my mother had no Durable Power of Attorney, Attorney-in-Fact, Health Care Representative, or Pre-Designated Conservator. The facility knew full well that I held all of these authorities, but preferred to work with a real estate attorney as my mother's Conservator, upon their discovery of assets in her name. These assets can be valued at \$6-800,000, depending on the market value of the home we have shared since 1970; which depends in turn upon the "selling condition" in which the Court-Appointed Conservator is marketing our home for sale. Until the discovery of the assets in my mother's name, the facility had been trying to push my mother out of their care, given the impending expiration of her Medicare coverage ~ following their failure to provide adequate rehabilitation for the major stroke that she had experienced earlier in 2010. But upon

the discovery of assets in her name, Wilton Meadows reversed their discharge plans, and determined to keep my mother, as well as her assets [Exhibit A].

The entire bill for services at Wilton Meadows could not be said to be more than \$100,000 before the Conservator qualified my mother for Medicaid. Wilton Meadows has even been reimbursed by now, by garnishing my mother's State pension (leaving the [unnecessary] mortgage unpaid). For nearly nine months now, my mother, and our home, and I have all been approved for her transfer to home care under the Medicaid Program "The Money Follows the Person," with the approval of the Southwestern Conn. Agency on Aging. But the nursing home, Wilton Meadows, has been delaying this transfer ~ along with my appointment as her Co-Conservator with a well known Westport attorney, Rick Ross ~ with endless Objections based on nothing but their fraudulent hearsay allegations. These Objections have been entertained in the Probate Court *ad nauseum* for the past year, since the recusal of the initial Probate Judge, who ignored my Objections when I pointed out that I held the Durable Power of Attorney, etc. The interminable delays amount to a *fait accompli* for Wilton Meadows, according to the Assistant Attorney General now monitoring our Probate Hearings.

As I mentioned above, in addition to several Civil Actions, I have requested a Criminal Investigation of Fraud from the Chief State's Attorney's Office, and that is currently underway; and also for Whistle Blower status from the Attorney General's Office. Assistant Attorney General Michael Cole has requested this status from the State Auditors, but as of last Wednesday, that approval did not appear to be forthcoming. The Administrative Auditor I spoke with claimed that the State Auditors do not have the "jurisdiction" to recommend that the Attorney General's Office undertake an Investigation of the Probate System and their New Rules of Procedure. My question is then: Who Does? Does this mean that the Conn. Probate Courts are immune from Criminal Investigation and Prosecution? If the Chief of the Antitrust and Government Program Fraud Department cannot conduct an Investigation ~ because of lack of

jurisdiction ~ then what are the Probate Courts, exactly? A fourth branch of the State (and Federal) Government, immune to any oversight? Where are the Checks and Balances?

I have raised these questions to the State Auditors [**Exhibit H**], and I am raising them now to the State Legislature, through the Judiciary Committee. The Administrative Auditor with whom I spoke last week advised me to look here, to the Legislature, for resolution and change.

As I have said, I have also requested a full Legislative Review of the new Proposed Probate Rules of Procedure to be conducted in light of the obvious conflicts between these "New Rules" and Constitutional Law. This certainly cannot be left to the discretion of the State Supreme Court, given the "rubber stamp" that they have just issued in November.

**The 14th Amendment of the U.S. Constitution** clearly outlines the limits on States' interference with Constitutional Rights, which obviously transcend any "Rules" of our "self-regulated" and locally State-sanctioned Probate Courts:

**Section 1.**

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

I hereby recommend and request that all the activities of the Probate Courts of Conn., past, present and proposed, be subjected to Constitutional Scrutiny by a Special Committee, to be appointed by the Judiciary and Regulations Review Committees.



Marjorie Partch /for/ Dorothy S. Partch  
20 Devil's Garden Road  
S. Norwalk, CT 06854  
203.912.3528

GEORGE C. JENSEN  
ATTORNEY GENERAL



Office of The Attorney General  
State of Connecticut

55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120  
Tel: (860) 808-5040  
Fax: (860) 808-5033

February 7, 2013

The Honorable John C. Gerogasian  
The Honorable Robert M. Ward  
Auditors of Public Accounts  
210 Capitol Avenue, Rooms 114 & 116  
Hartford, CT 06106

Attn: Stephen R. Eckels, Deputy Auditor

*RE: C-13-1645 – Marjorie Partch – Alleged Elder Abuse by Probate Court System*

Dear Messrs. Ward and Gerogasian:

Attached you will find a complaint that our office received from Ms. Marjorie Partch regarding her mother, Dorothy S. Partch, a resident at Wilton Meadows Health Care Center and actions taken by the Probate Court System.

We are referring this complaint to you for whatever investigation pursuant to Conn. Gen. Stat. §4-61dd or action as authorized by Conn. Gen. Stat. § 4-61dd (b) you deem appropriate.

Very truly yours,

A handwritten signature in black ink, appearing to read "MEC", written over a printed name.

Michael E. Cole  
Assistant Attorney General  
Chief, Antitrust and Government Program Fraud  
Department

MEC/sm  
Enc.

cc: Patricia Wilson, Administrative Auditor

EXHIBIT B



EXHIBIT D

## MOTHER'S PLANS TO COMMIT ADAM LANZA MAY HAVE DRIVEN MASSACRE



by BREITBART NEWS / COLUMNISTS / BREITBART NEWS | 18 Dec 2012 | [LINK](#) | [POST A COMMENT](#) / [BIG-GOVERNMENT/2012/12/18/REPORT-FOX-NEWS-FLASHMAN-AN-LANZA-COMMITTEE-CONSPIRACY](#)

According to Joshua Flashman, 25, an acquaintance of the Lanza family and son of a pastor at an area church, Adam Lanza may have snapped (<http://www.foxnews.com/us/2012/12/18/fear-being-committed-may-have-caused-connecticut-madman-to-snap/>) due to his mother's plans to involuntarily commit him. "From what I've been told," Flashman said to Fox News, "Adam was aware of her petitioning the court for conservatorship and (her) plans to have him committed. Adam was apparently very upset about this. He thought she just wanted to send him away. From what I understand, he was really, really angry. I think this could have been it, what set him off."

Law enforcement officials involved in the investigation told Fox News that rage at his mother over "future mental health treatment" was a factor being examined in the investigation. The *Washington Post* reported earlier that Nancy considered moving to Washington state to put Adam in a special school.

Flashman said that Nancy Lanza, Adam's mother, had filed paperwork to have him committed. No court had heard about Adam's case yet, which would have been the next step in involuntarily committing him.

Flashman also connected Adam Lanza to Sandy Hook Elementary School; Nancy was close friends with the school's principal and psychologist, whom he murdered. She also reportedly worked with first graders and kindergarteners at the school. Flashman explained: "Adam Lanza believed she cared more for the children than she did for him, and the reason he probably thought this [was because] she was petitioning for conservatorship and wanted to have him committed. I could understand how he might perceive that - that his mom loved him less than she loved the kids, loved the school. But she did love him. But he was a troubled kid and she probably just couldn't take care of him by herself anymore."

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<http://www.breitbart.com/Big-Government/2012/12/18/Report-Fox-News-Flashman-Lanza-...> 3/3/2013



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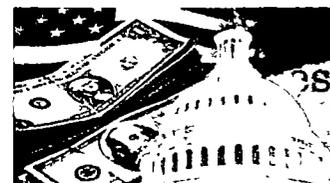


EXHIBIT E

**National  
Association  
to**

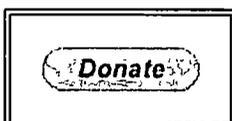


**Guardian  
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**NASGA's  
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and Other NASGA  
Writings**



*Protecting Our Citizens From Unlawful and Abusive (*

**Reform of Unlawful and Abusive  
Guardianships and Conservatorships  
and  
Abuse by Courts and Fiduciaries**

Guardianship, a form of civil commitment, can be dangerous to the health and wealth of all Americans! It has grown in epidemic proportion, and threatens the vulnerable elderly, disabled – and even the veterans of the current war on terror.

Historically, protective proceedings were described as "lunatic" proceedings. Today, "guardianizing" an innocent vulnerable person for nefarious purposes is becoming increasingly easier due to the generally vague and incomplete language of the law.

"Incapacitated" now replaces "incompetent" in a number of state statutes, thereby exposing even persons with minor or temporary physical disabilities to a complete and potentially permanent loss of life, liberty and property, most often to the day they die.

Many proceedings involve rights violations and lack of due process at the inception. Once "guardianized," a "ward of the state" does not even have the right to complain! These "wards" are treated as chattel.

## the Courts

- Special TV Reports

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- In Memoriam
- Victims

When the family fights to protect their loved ones, they are maligned and treated as interlopers. They feel betrayed by government, after being forced into useless litigation which can run through generations (like Dickens' "Bleak House"). Many families are bankrupted and left drained emotionally and physically, possibly never to recover.

Although the states have "protective" statutes in place, which require "least restrictive alternative" and "family first," those basic elements are not adhered to in most cases; the courts will often appoint professional fiduciaries instead. These third-party strangers then engage in exorbitant overbilling and easily bleed the estates for their own self-enrichment. Their fee applications are rubberstamped by uncaring, overworked or corrupt judges. Advance directives, wills and trusts can be ignored or overturned without concern for rules of procedure or evidence.

In the present economy, criminal activity by fiducianes is increasing. A few states have begun to enhance criminal penalties for guardians and other fiduciaries.

**Guardianship abuse is clearly elder abuse and exploitation and must be recognized as such.**

While the original purpose of guardianship was to "protect" and "conserve," those elements appear to have been forgotten. Despite the growing trend and availability of community services, court-appointed fiduciaries will quickly remove wards from their homes for purposes of sale (sometimes to insiders at low prices), and dispose of their wards' personal property (often destroying irreplaceable photographs and family heirlooms in the process). Wards are forced into nursing facilities for the rest of their lives, against their will, despite family objections. When families complain, corrupt guardians often restrict or stop visitation altogether, effectively isolating their wards, causing them to feel abandoned or unloved by their family. Brainwashing techniques can be employed at this juncture. Judges most often allow the cruel isolation, relying on conclusory statements by fiduciaries against family, who are often prevented from defending themselves against these unproven allegations accepted by a judge as evidence, contrary to law.

Government, professional organizations and media have been reporting on guardianship problems for more than 20 years now, during which time guardianship has grown into a new major industry. In fact, guardianship is replacing family law as the new 'bread and butter' of the organized Bar. Although the major problems - lack of monitoring and oversight - have long been

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pointed out, they continue unabated. The time spent studying and discussing the problem has not brought any significant protection to the increasing number of innocent victims of fiduciary exploitation. The future for Boomers is bleak unless talk is replaced by action.

A growing problem is the "emergency" or temporary guardianship, which easily morphs into a permanent guardianship. There is often no notice prior to "hearings," which can take but five minutes, while control of a person's life and property is quickly given to strangers by the courts.

There is no accountability - neither the appellate process nor the grievance process provide relief to victims or their families desperately trying to free them.

Guardianship has become a lifetime sentence to innocent people who have committed no crime, yet are afforded less rights and liberties than convicted felons.

In an appalling and paradoxical twist, when a ward's assets are fully drained by the fiduciary, the newly indigent ward becomes the financial responsibility of the American taxpayer, who now is forced to pick up the tab for the ward's remaining lifetime care through Medicaid. One of the indisputable ironies we are presenting here for resolution is the fact that the American taxpayer was also supposed to be protected by guardianship law, but has now become a victim as well.

Because complaints to various agencies and officials - both state and federal - fall on deaf ears, Congressional intervention is critically needed to force reform.

Our Table of Contents highlights the specific problems of unlawful and abusive guardianship and conservatorship.

See "[An Open Letter To Congress and the White House](#)"

## A Review of Unlawful

## 'Emergency' Guardianships

The Medicaid crisis grows more critical every day and threatens our recovering economy. Rather than government concentrating on eliminating Medicaid fraud and making the system more efficient, the people fear government's efforts to plug the Medicaid drain will cause them reduction of services.

Although various state attorneys general are now pursuing actual provider fraud more vigorously, another gaping hole exists, allowing billions of dollars of loss to the economy and although well known, remains unplugged and flowing freely.

The legislative intent of state protective statutes is to:

- GUARD the protected person from harming him/herself or anyone else;
- CONSERVE the person's assets (with prudent investments); and
- PROTECT the taxpayers from the ward becoming a public charge.

State courts have jurisdiction to appoint fiduciaries to protect individuals who are adjudicated as "incompetent." State courts, however, are not monitoring or adequately monitoring the activities of those fiduciaries, who are left free to misuse, misapply, or manipulate the law for their own self-enrichment.

Operating the proceedings as a profit-making enterprise under color of law, the court-appointed fiduciaries can financially deplete a ward's estate, create a false indigence, and leave the ward's lifetime Medicaid care to the taxpayers, even though the protective statutes are supposed to prevent the ward from becoming a public charge.

Simply put, without total monitoring and oversight, the states' "protective" plans can be operated like "The Protection Racket."

We are asking Congress to deal with misuse of the "protective" statutes because:

- 50 states with 50 different sets of laws have long failed to protect their citizenry from unlawful and abusive guardianships and

conservatorships, despite numerous studies, meetings, and hearings over the years;

- Federal rights and protections are being ignored by state-court judges;
- Federal funds are involved; and
- Baby Boomers, turning 65 this year, constitute 28% of our population today.

See "[An Open Letter To Congress and the White House -2](#)"

### **The Fleecing of Medicaid and the American Taxpayer**

It is not just Medicaid fraudsters who are filing claims with government and cheating the taxpayers. Exploited guardianships are a direct and growing menace to the health and wealth of our vulnerable elderly and disabled - and to our nation's economy!

The "conserve" directive of guardianship law is all but totally ignored in a growing number of courts across the country. Judges, the ultimate decision makers and protectors of wards of the state, fail to monitor their appointed fiduciaries and guardian cases adequately, permitting unethical guardians to deplete their wards' assets by means of excessive, exorbitant and even fraudulent fee billings for legal, administrative or nonexistent "services."

Without meaningful oversight by court administrators and strong law and enforcement by the legislative and executive branches, previously ample estates can be systematically "protected" into indigence. The guardians then place these wards on Medicaid for the remainder of their lives - leaving the American taxpayers holding the bag.

This appalling practice is not Medicaid fraud *per se*. It is, however, an unaddressed breach of fiduciary duty, resulting in an unforeseen and improper load on the Medicaid system and an unlawful burden on the American taxpayers who are supposed to be protected against this very thing happening - a primary purpose of the "protective" statutes.

Additionally, the excessive cost of needlessly supporting individuals who don't belong on Medicaid threatens those persons without adequate assets who need essential Medicaid services, which are now jeopardized by threatened budget cuts during our country's economic crisis.

See "[An Open Letter to Congress and the White House -3](#)"

## **Boomers Beware of Guardianship Abuse and Conservatorship Abuse**

**PICTURE THIS:** A knock on the door - the police are there to forcibly take you from your home - in handcuffs if you protest! You don't know why; you're not a criminal! By the time you find out what's going on, you're no longer in control of your life, liberty or property; and you have not been served with any legal documents of any kind!

That – and more – happened to NASGA member Danny Tate, a young and vibrant musician/composer in his '50s. When he was finally served with a notice to come to court on a later date, he had no control over his assets, could not hire a lawyer, and the judge refused to give him any adjournment to get help! The conservatorship - built on fraud by his estranged older brother

and brother's lawyer - and aided and abetted by the judge, devoured his \$2.5 million estate and plunged him into debt. The conservator made sure the lawyers were paid, but breached fiduciary duty by not paying Tate's obligations, including his child support payments, and home and health insurance. When Tate complained in open court that the conservatorship harmed him, the judge admonished and shut him down.

Similarly frightening scenes play out all across the country today: the beginning of a potentially lengthy and emotionally, financially, and physically draining nightmare, which can leave the victims pauperized, drugged to death, or in inadequate Medicaid facilities at taxpayer expense.

This growing profit industry, milked by professionals and nonprofit organizations alike, is operated under color - and cover - of law, ironically described as "protective" statutes and commonly known as "guardianship" and/or "conservatorship proceedings."

**Welcome to "The Protection Industry."**

You're on the victim list if you don't know your rights and don't learn how to protect yourself against this growing menace which feeds on greed.

See:

**Boomers Beware of Guardianship Abuse**

and

**Boomers Beware of Conservatorship Abuse**

**Judicially Sanctioned  
Financial Exploitation  
of  
Vulnerable Elderly and Disabled  
Citizens**

## by Non-Family Court-Appointed Fiduciaries

The recent MetLife study<sup>11</sup> on the comprehensive subject of elder abuse once again focuses on theft by family members rather than by court-appointed fiduciaries<sup>12</sup> who too freely liquidate entire estates by means of exorbitant or fraudulent billings and proceedings.

The cold reality is that keeping the focus and the spotlight on families<sup>13</sup> enables the continued milking of the helpless by "professionals" appointed by the courts to protect them. How can MetLife and others almost completely overlook this entire category of elder abuse? How can Congress continue to ignore it, especially after GAO's<sup>14</sup> September 2010 report<sup>15</sup> clearly substantiating this growing problem?

"Most of the allegations we identified involved financial exploitation and misappropriation of assets. Specifically, the allegations point to guardians taking advantage of wards by engaging in schemes that financially benefit the guardian but are financially detrimental to the ward under their care. Also, the allegations underscore that the victim's family members often lose their inheritance or are excluded by the guardian from decisions affecting their relative's care."

NASGA has addressed guardianship<sup>16</sup> abuse by fiduciaries in three previous white papers to Congress and the White House<sup>17</sup>; yet, when any legislator has come forward to champion the cause of guardianship reform and propose legislation, the focus of said reform continues to concentrate on family members as guardians and is limited to suggestions of grants for certification, training, background checks – none of which addresses the growing threat of professional for-profit and "not-for-profit" fiduciaries freely bleeding their victims into indigence and onto Medicaid, at the expense of the currently unsuspecting taxpayers.

[1] "Elder Financial Abuse. Crimes of Occasion, Desperation, and Predation Against America's Elders," June 2011, <http://www.metlife.com/mmi/research/elder-financial-abuse.html>

[2] Nonfamily members, court-appointed guardians and attorneys .

[3] NASGA acknowledges that sadly, and perhaps more than ever due to the current economic conditions, some families do financially exploit and abuse their vulnerable elderly and/or disabled through misuse of powers of attorney and other financial controls or even in guardianships and conservatorships, while fiduciary abuse has become an actual industry. We applaud media's growing attention to the general category of "elder abuse" and increasing response of various state legislators.

[4] Government Accountability Office

[5] "Guardianships – Cases of Financial Exploitation, Neglect, and Abuse of Seniors," September 2010, <http://www.gao.gov/new.items/d101016.pdf>

[6] "Guardianship," as used here, is meant to include conservatorship

[7] "Reform of Unlawful and Abusive Guardianships and Conservatorships and Abuse by Courts and Fiduciaries" <http://www.AnOpenLetterToCongress.info>;

"A Review of Unlawful 'Emergency' Guardianships," <http://www.AnOpenLetterToCongress-2.info>,

and

"The Fleecing of Medicaid and the Taxpayers," <http://www.AnOpenLetterToCongress-3.info>

See: [AnOpenLetterToCongress-4.info](http://www.AnOpenLetterToCongress-4.info)



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## EXHIBIT F

## The Law

By Emily Sachar

## The Issue: Can court-appointed conservators be sued?

**D**aniel Gross, 85, was suffering from a leg infection when he visited his daughter in Waterbury, Conn., in 2005 and had to be taken to a local emergency room. After Gross spent nine days in the hospital, a hospital social worker asked the Connecticut probate court to appoint a conservator for him.

The judge agreed, and from there, things spun out of control. Gross was sent to a nursing home

actions because they were appointed by a probate court. The case then went to the 2nd Circuit Court of Appeals, which concluded in October 2009 that the case should be resolved in state court. In April, the Connecticut Supreme Court sided with Gross. The high court did carve out an exception—that immunity could be granted to a conservator if a probate court approves his or her actions. But it also ruled that the conservator can be sued for harm or loss to the person under conservatorship.

"The court's decision protects older people with disabilities who have lost their most fundamental personal rights while under conservatorship," said Stacy Canan, senior attorney for AARP Foundation Litigation, which filed a friend-of-the-court brief in the case. "The ability to sue for wrongdoings greatly improves accountability and protects individuals against abuse and neglect." Sally Zanger, an attorney with Connecticut Legal Rights Project, added, "I hope that lawyers who are appointed to represent people will represent the inefficient zealously and follow their clients' instructions."

Attorneys for the conservator, the nursing home and the court-appointed lawyer declined to comment.

The case is expected to be referred to the trial court where it began. A jury will then decide whether to hold Gross' court-appointed lawyer, the conservator and the nursing facility liable.

**What it means to you:** If you or a loved one becomes incapacitated and needs the protection of a conservator or guardian, contact your state or local bar association and learn about the guaranteed rights afforded to people under such protection. Reliable resources include guardian ship.org, eldersandcourts.org and americancourts.org/aging.

Emily Sachar is a journalist and author based in Brooklyn, N.Y.

'He was treated like an inmate, not a patient.'

—Carolyn Dee King, about her father's stay in a nursing home



and kept there for more than 10 months, unable to freely visit with his family. At one point he was attacked by his roommate, a convicted felon.

"He was treated like an inmate, not a patient," said Carolyn Dee King, Gross' adult daughter. "His fundamental dignity was stripped away at a time when he was perfectly capable of taking care of himself and wanted to do so."

An attorney won his release, but before Gross died in 2007, he sued his lawyer, the conservator and the nursing home. According to legal briefs, his attorney failed to challenge the conservatorship despite Gross' request, and his conservator failed to oversee Gross' financial affairs.

The federal District Court threw out the lawsuit in the spring of 2008, saying that Gross' conservator and his lawyer could not be held liable for their

## Ask the Experts

SHOULD THEY CHECK BOTH ARMS?



**Q** I read that blood pressure should be checked in both arms. Is that important?

**A** Yes, because if the readings for the left and right arm have very different top numbers, it could be a sign of a blocked artery. Guidelines say doctors should routinely check both arms. Unfortunately, most doctors don't. In Britain, fewer than half of all doctors do—and it's probably not much better here. No matter which arm had the lower or higher reading, it's the difference that's important. It could indicate that an artery is more blocked on one side than the other. Doctors who measure only one arm may be falsely assured that a patient's blood pressure is normal. —Candy Saxon

**Q** I have a credit card I don't use much anymore. Will canceling that card hurt my credit score?

**A** It could, especially if the closed account has a high credit limit. About 30 percent of your credit score is based on your balances-to-limits ratio, the amount you owe compared to your overall available credit limits. Canceling a card reduces your limits—and could lower your score. Another 15 percent of your score is based on how long you've held your credit card accounts; the longer you have them, the better for your score. Unless you're burdened by a card's annual fee, it's best just to pay it without canceling the account and store that plastic in a sock drawer. —Sid Kickhafer

Send your questions to Ask the Experts, 300 Hudson St., 15th floor, New York, N.Y. 10014. We'll answer as many as we can. Send photos if they help us understand your question. We reserve the right to edit questions for clarity and brevity. Send your questions to ask@nytimes.com.

EXHIBIT G

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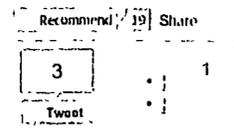
Farm Was Supposed To Go To Caretaker

November 19, 2012 | By RICK GREEN, The Hartford Courant

In a nearly empty courtroom in Hartford on Monday, a half-dozen lawyers continued to fight over the dying wishes of a Southington woman who wanted to give her farm to the man who helped her care for the place for decades

Incredibly, Sam Manzo, the caretaker, is still the loser in the Smoron Farm controversy. He lives in an unheated trailer on a farm he was supposed to inherit three years ago.

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www.garysest.com

Instead of the probate court system making sure Manzo inherited the farm — what Josephine Smoron explicitly stated in her 2004 will — the controversy drags on, bouncing about dreary courtrooms, waiting for a judge to take charge and right a monumental wrong.

"My client is in desperate need to have this go forward," Eliot Gersten, one of Manzo's lawyers, told Superior Court Judge William H. Bright on Monday morning, complaining that bills aren't getting paid. "This delay is hurting my client. He is living without heat."

The case has landed in Judge Bright's courtroom because the man appointed as conservator for Smoron, Southington lawyer John Nugent, has refused to step aside and admit his error. Nugent still controls two trusts that he set up in 2009 — unbeknownst to the dying Smoron or Manzo — that contain the estate's assets.

The plan might have gone unchallenged if Manzo hadn't complained to court authorities, who eventually ruled that Nugent abused his position as conservator. The Southington probate judge who appointed him, Bryan Meccanello, was censured by the Council on Probate Judicial Conduct for allowing Nugent to set up the trusts, which circumvent Smoron's will. Meccanello did not run for re-election in 2010.

The trusts remain, and efforts to restore Manzo's inheritance have stalled.

Nugent "knew that Ms. Smoron had a will that left her estate to [Manzo]," the Statewide Grievance Committee concluded earlier this year, declaring that Nugent "sought to intentionally deceive and defraud Ms. Smoron." The panel, which had no power to overturn creation of the trusts, found that Nugent sought to "develop a mechanism that would give him control over Ms. Smoron's estate after her death and allow him to determine who would inherit her estate."

Despite this, Nugent is fighting attempts to resolve the mess created when Judge Meccanello ignored or overlooked Josephine Smoron's will and allowed Nugent to take the estate's assets and place them in the trusts, effectively disinheriting Manzo. Also joining the fight is Richard P. Weinstein, lawyer for a Southington developer who signed an agreement with Nugent in the fall of 2008 — while Smoron was still alive — to buy the farm. Upon Smoron's death, money from the sale of the property was to be distributed to three area Catholic churches.

The contract, which Manzo and Smoron were never told about, was never approved by probate court.

Nugent, in a court brief, argues that Manzo had failed to take care of the farm and "the creation of the trusts were necessary to protect that property." Selling off the farm had to be done in case Smoron, who was in her early 90s at the time, required "long-term hospitalization," Nugent said in the court papers.

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Smoron died in June 2009, a month after creation of the trusts that gave Nugent control of the old farmer's estate. Nugent, by the way, never spoke to Smoron, an eccentric woman who treated the cows as pets on her dilapidated farm off I-84 near Queen Street in Southington.

Judge Bright, who has the power to return the entire estate back to where it was before Nugent created the trusts, is faced with sorting out what started out as a very simple matter: an elderly Polish farmer wanted to leave her farm — and particularly her beloved cows — to Manzo, her rough-hewn caretaker.

"I really want to get this matter resolved," Bright said at one point during Monday's hearing. "We are spinning our wheels."

Tuesday, Nugent's lawyer will begin presenting evidence and calling witnesses in a misguided effort to defend his actions and keep the farm out of Manzo's hands. The basic facts that I have been reciting for more than three years remain the same.

Josephine Smoron's final wishes were ignored. Sam Manzo's inheritance was taken from him. Anybody with a will ought to be scared out of their wits.

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EXHIBIT H

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**Subject:** PROBATE REFORMS**From:** "Marjorie Partch" <map@marjoriepartch.com>**Date:** Fri, Mar 01, 2013 12:42 pm

**To:** "Michael Bloom" <michael.bloom@cga.ct.gov>, "Jemar Smith" <jemar.smith@cga.ct.gov>, patricia.wilson@cga.ct.gov  
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**Bcc:** [REDACTED]**Attach:** Partch Auditors Referral.pdf

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Dear Mr. Smith and Friends of Probate Reform,

There are several Bills before the Judiciary Committee concerning changes to STATE STATUTES governing Probate Courts being proposed on Monday morning. We want to ask the Judiciary Committee (at 10:00 a.m. on Monday) to slow this process down, and order a Special Committee to conduct a thorough and formal Review of the Constitutionality of all the Probate Courts' activities ~ past, current and proposed.

This proposed amendment to the State Constitution looks like another excellent idea (if we must keep Probate Courts at all), and it seems that State Representative David Kiner would be an excellent ally to work with, in effecting significant change. Hopefully he can join us on Monday morning in Room 1D at the State Legislative Office Building, 300 Capitol Avenue in Hartford.

[http://www.cga.ct.gov/asp/cqabillstatus/cqabillstatus.asp?selBillType=Bill&bill\\_num=hr17&which\\_year=2013](http://www.cga.ct.gov/asp/cqabillstatus/cqabillstatus.asp?selBillType=Bill&bill_num=hr17&which_year=2013)

I would hope this would include the requirement that the (appointed) Judges also resign their private law practices ~ and that all the recommendations of Yale Law Professor John Langbein are incorporated, especially the most important: The need to remove the profit motives from the Probate Courts' rulings.

<http://www.law.yale.edu/faculty/1766.htm>

It seems to me, again, that such profound decisions terminating vulnerable and law-abiding Citizens' Constitutional Rights should not be made without the benefit of fully trained Judges, well versed in Constitutional Law, and with the benefit of a Jury Trial, open to oversight and public scrutiny.

It also seems to me that the Statute that currently permits the Probate Assembly to "write its own Rules" requires serious review and amendment. That is the point of entry for all the abuses that are occurring ~ with the State's permission. The Probate system is consistently attempting to broaden its scope, when it must be contained and reigned in:

[http://www.cga.ct.gov/asp/cqabillstatus/cqabillstatus.asp?selBillType=Bill&bill\\_num=SB00984&which\\_year=2013](http://www.cga.ct.gov/asp/cqabillstatus/cqabillstatus.asp?selBillType=Bill&bill_num=SB00984&which_year=2013)

I will give the following as my Testimony on Monday as to why we need a sweeping Review of all the Probate Court Statutes, Rules and Procedures for their Constitutionality. I am requesting that a Special Committee be appointed by the Judiciary Committee to conduct this Constitutional Review.

This reason for this is:

The futility of seeking any oversight or Checks & Balances in the System as it is now permitted to operate. The State Auditors' Office just told me on Wednesday that they have "no jurisdiction" over the Probate Courts. If this is true, it has got to change.

~ Marjorie.

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**TESTIMONY FOR MONDAY, 3/4/12**

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**Dear Ms. Wilson,**

**Administrative Auditor, State Auditors' Office**

Thank you for taking the time to review my Complaint seeking Whistle Blower status, referred to you by Assistant Attorney General Michael Cole, and to speak with me on Wednesday, and for your willingness to consider additional arguments to the State Auditors, below.

I am naturally very disappointed that you have informed me that at this point the State Auditors are not planning to recommend an Investigation of my mother's Case-in-Point to the Attorney General's Office. I am baffled by your statement that the State Auditors do not have "jurisdiction" over the Probate Courts. If Probate Courts are not "State Agencies," then those of us who have been subjected to their seemingly absolute power are wondering what in God's name they are.

If the State Auditors have no jurisdiction over their potential systemic wrongdoing ~ then who does? If the Attorney General is not responsible for enforcing State Laws, and protecting our Senior Citizens from harm, then who is?

Does this mean any Probate Judge can declare any U.S. / Connecticut Citizen "incompetent" and thereby seize all of their assets, with no accountability ~ or, as I am requesting, Criminal Investigation?

That is, if the State is going to authorize Probate Courts to exist, as it does, then there *HAS* to be some oversight ~ with consequences ~ by the State when it comes to Citizens' Constitutional Rights ~ and *THE* most fundamental Right of all in America is the Right to Due Process. For *COURTS* to systematically violate those Rights is beyond the beyond. For law-abiding Citizens to have to buy their way out of this "self-regulated" closed circle is incomprehensible ~ especially when they are prevented by their State-empowered captors from using their own funds to do so.

**There can be no Justice where there is inherent Conflict of Interest, such as we have until now tolerated in the part-time, elected Probate Judges, Court-Appointed Guardians and Attorneys standing to garner the assets of the U.S. Citizen in question, and the subsequent self-motivation to declare such Citizens incompetent, and to dismiss Citizens' express wishes and intentions, including their Duly Designated Representatives; and alternatives for their care that would better serve their needs.**

If the State refuses to monitor the highly questionable and even-now hermetically sealed and clandestine practices of the Probate Courts (let alone under their "New Rules"), then the State is conferring carte blanche upon them *TO* operate as what Yale Law Professor John Langbein so rightly describes as a racketeering franchise ~ and offering more protections to these State-assisted (or even created) predatory profiteers than to their helpless victims ~ the Citizens, especially our vulnerable Senior Citizens with assets.

<http://www.law.yale.edu/faculty/1766.htm>

~ If Probate Courts are "Not Part of the Judiciary" [please click on attached sound recording], then what are they? Exactly how then, are they authorized to terminate U.S. / Connecticut Citizens' Constitutional Rights ~ without Due Process? Why are the States conferring this questionable authority, in the form of absolute power over quality of life and even death to these non-State-regulated and undefined "authorities" or "agencies"? By authorizing the existence of these "Courts" and *NOT* regulating their practices, the State is directly responsible for the terrible harm being perpetrated against our most vulnerable Citizens in this "Fee Arrangement," as Yale Law Professor John Langbein described Conn.'s Probate Courts to the State Legislature in 2005.

The new Probate Rules Book, and recent Legislative efforts by the Probate Assembly as well, clearly demonstrate their intention to function as a risk-free hedge fund for themselves, at the expense of their victims. This is becoming their clearly stated mission; their *raison d'être*.

As soon as their "Wards" have been rendered destitute at their hands, they are placed on Medicaid, and can be relegated to any old State-run nursing home that their "Conservators" (really, State-appointed Liquidators) choose, and then the "Conservators" resign. So this can hardly be claimed to be in the best interests of the "Conserved Person."

If the extensive recordings I sent you as evidence of the Probate Court System's cynicism toward Due Process and Superior Court Procedure do not play on your computer ~ I would hope that you would recommend that this evidence be heard by someone who *CAN* hear it, before it is dismissed.

Probate Courts are currently bound by State Statute to follow Superior Court Procedure ~ and the "Transcript" of my mother's Conservatorship hearing clearly demonstrates this failure and deficiency. And even worse, the new proposed "Probate Rules of Procedure" deliberately circumvent and brazenly flout Superior Court Procedures, particularly around Notification, Rules of Evidence, Due Process, Due Diligence, and Attendance. The recordings that I sent you of the Rules Revision Meetings prove this contempt beyond any doubt ~ but if you literally cannot hear this evidence, how can you determine that it is immaterial? (I would hope that Assistant Attorney General Michael Cole and his Department would be permitted to play them ~ along with many other recordings that we can provide.)

If not as "State Agencies," perhaps Probate Courts should be regulated as a private franchise then, and subject to statutes concerning Unfair Trade Practices. That would be a significant improvement.

As it stands now, given the way Probate Courts are permitted to operate, these "Officers of the Court" automatically obtain immediate control of the assets in question by magical default; or, actually, by State-conferred Fiat ~ and then the victims' rightfully designated Representatives are challenged to come up with additional funds to defend the now "Conserved Person" and their Rights, in endless Civil proceedings, after the fact ~ when the Probate players are using the assets in question for their own self-defense. In their own "self-regulated" closed system ??? Please. With no responsibility for their own opportunistic wrongdoing? Because nobody has "jurisdiction"?

Do we have to go to the FBI, the United Nations, our local Grand Jury, or what ~ please tell me, to whom should we turn?

To say that the "recourse" is to appeal to Superior Court is a slap in the face of Reason. *THEY* should have to go through that Due Process to *REMOVE* someone's Constitutional Rights and Legal Representative in the first place; we should not have to pay out of our own pockets and wait for years to *RESTORE* those Constitutional Rights! Those Rights are guaranteed by the Constitution. They can't be snatched away behind closed doors, or traded to the highest bidder, or simply forfeited in a Battle of Attrition ~ with the Citizen's own funds being used against them.

These are not purely Civil matters. These are Criminal matters, which deprive law-abiding Citizens of their Human Rights to their Freedom and Property ~ and the end-of-life care that they legally Pre-Designate.

The State should finance the restoration these Rights, immediately and automatically, when they have been violated. Families and friends can't be expected to finance these endless Civil litigations against professional attorneys! Especially when the Ward's assets have been wrongfully commandeered to the other side of the battle.

The State must prosecute these violators to the fullest extent of the Law, *ESPECIALLY* when they are Officers of the Court violating Due Process. The State will recover enormous costs to the already over-burdened Medicaid system if it pursues this course of action ~ in our case, approximately \$700,000. Multiply this by the number of occurrences, and it is a staggering debt to the U.S. Government and American taxpayer.

This travesty is all over Facebook and the Internet. I am wondering if some additional references to the larger picture may be helpful for you in contextualizing my mother's individual Case-in-Point. Many families never even *SEE* their loved ones again ~ and the elder dies in tragic isolation, their needs and wishes neglected, feeling abandoned by their families, not even knowing that their families are trying desperately to rescue them, or at least even see them. If not outlandish hearsay accusations, such as in our case, then the usual formula is for the facility / Guardians to claim that the family "upsets" the Ward. They can essentially make any claim they choose, there being no Due Process, and no oversight.

Why are these life-destroying decisions not being made at least in the light of day of Superior Courts? With fully qualified Judges, and disinterested Juries, who do not stand to acquire the assets in question? That's a birthright of each and every American Citizen. How can our elders be deprived of this basic Human Right? In such a systemic manner? BY state-authorized entities?

Where are Citizens to turn, when Probate Courts do not follow the procedures of Superior Courts, as they are required to, by State Statute?

If there is no enforcement by the State ~ then what are we to do? Are we to seek assistance for these Civil Rights Abuses from the United Nations? The United States Government would resist any "interference." The States would resist. Then, why are States, namely, Connecticut, the Constitution State ~ not conducting their own Investigations?

I am personally aware of several more cases in Southern Conn., and there is an advocate who probably has at least 100 cases statewide. Simply scrolling through the Probate dockets will reveal countless more. There are several extremely black-and-white cases that have been covered in depth by investigative journalist Rick Green in the Hartford Courant in the past several years, which I believe also warrant serious Criminal Investigation for Fraud:

**Please Google:**

rick green hartford courant probate

Just one example of many ~ Mr. Green actually really helped Daniel Gross regain his Rights and freedom:  
[http://articles.courant.com/2011-10-24/news/hc-green-supremecourt-1025-20111024\\_1\\_probate-court-conservators-daniel-gross](http://articles.courant.com/2011-10-24/news/hc-green-supremecourt-1025-20111024_1_probate-court-conservators-daniel-gross)

I mentioned this case to you, in connection with Judiciary Discipline. It has become a routine occurrence: ignoring and changing the Will of a Conserved (or Deceased) Person. Isn't that Fraud?:  
[http://articles.courant.com/2012-11-19/news/hc-smoron-farm-probate-20121119\\_1\\_josephine-smoron-sam-manzo](http://articles.courant.com/2012-11-19/news/hc-smoron-farm-probate-20121119_1_josephine-smoron-sam-manzo)

[judge-meccanello](#)

The "Discipline":

<http://courantblogs.com/capitol-watch/this-actually-happened-in-probate-court/nugent-reprimand/>

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**AARP Covered the Precedent-Setting Gross Case Last Year (Meaning that Court-Appointed Officers Can Be Sued):**

<http://pubs.aarp.org/aarbulletin/20120708?folio=40#pg58>

**Here is the Case Law:**

<http://www.jud.ct.gov/external/supapp/Cases/ARQcr/CR304/304CR42.pdf>

[http://www.narpa.org/Gross\\_v\\_Rell-NDRN\\_AmicusBrief.pdf](http://www.narpa.org/Gross_v_Rell-NDRN_AmicusBrief.pdf)

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**From Facebook:**

**Status Update**

**By Boomers Against Elder Abuse**

"When it comes to the elderly, there is a "national pattern of Guardians gone wild causing pain and suffering to loved ones of the victim, with no accountability to anyone. And while the family is forced to watch as the abuse is escalating and the ward is alive, family and relatives do not have 'standing' to take any actions in a guardianship/conservatorship situation. No legal authority to file a complaint and/or take any legal civil actions. We need to remember that word: STANDING. The courts can allow for 'standing' to family after the ward has departed from this earth." Sylvia Rudek, NASGA (National Association to Stop Guardianship Abuse.)

<http://www.facebook.com/boomersbeware?ref=stream>

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**Our story is on the NASGA site a few times:**

<http://stopguardianabuse.org/>

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**As well as this big-picture site:**

<http://www.estateofdenial.com/2013/02/12/editorial-exposing-guardian-devils-n-1-supreme-court-lightens-watch-of-guardians/>

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**And this story ~ another Conn. family ~ breaks my heart:**

<http://www.sosorrymom.com/>

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**Another tragic story in New York:**

<http://judicialdestructionofdorothy.wordpress.com/about/>

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Well, thank you again, Ms. Wilson, for our telephone discussion, and for your willingness to consider these additional arguments.

I am not an attorney, but I do believe the term is "Fraud Upon the Court," based on the precept that "the Judge is not the Court."

"NO APPEAL IS NECESSARY."

From my "dream language" for the new Bill we are exploring in the Legislature:

**Conservatorships and Guardianships are among the most life-altering decisions that can ever be made on behalf of any Citizen of the United States of America or the State of Connecticut. Because these decisions carry such profound implications, often even the difference between life and death, essentially terminating a law-abiding Citizen's Constitutional Rights ~ to their Freedom, their Property, their Right to choose their own Medical Care, where they live, to keep**

**their homes, their associations ~ these decisions must be made with the same weight and care that we hope as a Civilized Society to bring to the imposition of any punitive criminal sentence.**

**Accordingly, the incarceration of any innocent, disabled or elderly Citizen in an institutional care setting, involuntarily and indefinitely, must follow the same Rules of Evidence and Due Process required for any other life sentence terminating an American Citizen's Constitutional Rights. The facts and alternatives must be weighed by an impartial and fully trained Judge in a Superior Court, who is well versed in Constitutional Law, and an impartial Jury of Peers, using all their combined powers of Due Diligence.**

**Any Fraud or failure to follow Due Process and exercise Due Diligence in the making of these permanently life-altering decisions regarding the termination of any U.S. Citizens' Constitutional Rights should be treated as a Felony Crime, with swift prosecution and mandatory penalties. No Appeal is necessary, and all authorities improperly superseded shall be immediately and automatically reinstated, and any and all assets improperly seized shall be fully reinstated, with triple restitutions and damages paid to the injured parties.**

Hopefully the Chief State's Attorney's Investigation of our case underway since December 2012 will dovetail with any Investigation by the Attorney General's Office; and the Legislature's Review of the new Probate Rules Book, along with new (additional) protective Legislation as well ~ will culminate in urgently needed Reform for the sake of "The Greatest Generation." Hopefully within their remaining lifetimes, and before all their assets are bled dry. (And warning: We Baby Boomers are next.)

Sincerely,

Marjorie Partch.

203.912.3528 (c)

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STATE OF CONNECTICUT  
OFFICE OF THE  
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**TO:** Senate Co-Chair Eric Coleman  
House Co-Chair Gerald Fox  
Senate Ranking Member John Kissel  
House Ranking Member Rosa Rebimbas  
Honorable Members of the Judiciary Committee

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

**DATE:** March 4, 2013

**RE:** RB 984 An Act Concerning Probate Court Operations

---

Thank you for the opportunity to testify in support of RB 984 An Act Concerning Probate Court Operations, which the Connecticut Probate Assembly and the Office of the Probate Court Administrator jointly support. The bill would streamline court procedures and eliminate obsolete provisions in the Probate Court statutes. This testimony will summarize each section of the bill.

Throughout the statutes, the Probate Courts are described, variously as "court of probate," "Probate Court" and "probate court." For consistency, we have substituted the phrase "Probate Court" for all other terms throughout the bill. It is our intention to use this terminology when drafting amendments to other statutes concerning the Probate Courts in the future.

Section 1 amends § 45a-78, which establishes the procedure by which rules of procedure for the Probate Courts are adopted. Last year, the Probate Court system finished an 18 month project to rewrite the rules of procedure in an effort to promote uniformity and make it easier for self-represented parties to use the courts. The compilation of the rules, which the Supreme Court adopted on November 7, 2011, have been renamed the Probate Court Rules of Procedure.

The amendment would simply conform the language of the statute to the new name under which the rules will be published.

Section 2 permits the use of a simplified method of accounting that is detailed under the new Probate Court Rules of Procedure. It authorizes the use of a short-form "financial report," instead of a complex detailed account, in a broader range of circumstances.

Section 3 eliminates obsolete language concerning appeals in psychiatric civil commitment proceedings.

Section 4 would streamline the probate appeals statutes. Under current law, an appeal from the appointment of a conservator is on the record, but an appeal from any other decision in a conservatorship proceeding requires a trial de novo. See *Follacchio v. Follacchio*, 124 Conn. App. 371 (2010). The result is cumbersome and confusing to parties and attorneys. The bill would establish a single, uniform process for all appeals in conservatorship matters and in the related areas of medication for treatment of psychiatric disabilities and electroconvulsive therapy. Note that section 11 dovetails with section 4 by requiring that the rules of evidence apply in all conservatorship proceedings.

Section 4 also seeks to eliminate confusion about the method by which an appeal from probate is commenced. Attorneys often interpret the current statute to require that the Probate Court or judge be named as a defendant in an appeal and be served with process. The amendment would clarify that the appellant need only mail a copy of the appeal to the Probate Court and further that the appellant should not name the court or the judge as a defendant.

Section 5 would add clarifying language to § 45a-295, which deals with the situation in which the court determines after admitting a will that the decedent had revoked the will. Whether the will was revoked is governed, in turn, by the provisions of § 45a-257. The language is necessary because § 45a-257 has been amended, and which version of the statute applies to a given case depends upon the date of execution of the will.

Section 6 would simplify the manner in which the deadline for action is under determined § 45a-436(c). The statute governs the spousal election, which is a mechanism by which a surviving spouse may take a defined statutory share of an estate rather than accepting the provisions of the will of a deceased spouse. Under the current statute, the election must be made within 150 days of the appointment of the first fiduciary. In some cases, the first fiduciary to be appointed is a temporary administrator. The appointment may occur well before the will is admitted to probate when there is a contest over the validity of the will. As a result, the surviving spouse may be placed in the position of having to decide whether to make an election against the will without knowing if the will is

to be admitted. The bill avoids the problem by providing that the period for making the election runs from the admission of the will.

Section 7 increases the maximum size of a trust that a Probate Court has discretion to terminate from \$100,000 to \$150,000, which is the current maximum for charitable trusts under § 45a-520.

Section 8 would permit parents of minors to petition the Probate Court for involuntary conservatorship up to six months before the minor's 18<sup>th</sup> birthday. To ensure that the court makes a decision based upon the minor's current mental status, the hearing must be held within 30 days of the birthday. This proposal parallels legislation adopted two years ago regarding the appointment of guardians for persons with intellectually disability.

Section 11 makes two updates to the conservatorship statutes. First, section 11 provides that the rules of evidence apply in all conservatorship proceedings. Second, to eliminate a frequent source of argument in conservatorship proceedings, section 11 would clarify that reports of physicians and other medical professionals are admissible into evidence, with the condition that a party has the right to call the author as a witness. The proposal includes an important safeguard by providing that the court shall not admit the report into evidence if the author fails to comply with a party's subpoena to appear at the hearing. That medical reports should be admissible, seems implicit in the current language of the existing statute, which requires the petitioner to offer medical evidence (unless the court waives the requirement) and refers specifically to medical reports as a means of providing the evidence. Unfortunately, the absence of explicit language causes uncertainty over the issue. The admissibility of written medical reports in the conservatorship context is consistent with § 52-174, which permits the introduction of medical records as business entries.

Section 12 would extend to voluntary conservatorships the safeguards that apply when a conservator of a person under involuntary conservatorship seeks to change the residence of the conserved person or place the conserved person in a facility for long-term care to voluntary conservatorships. The requirements currently apply only to persons under involuntary conservatorship but should apply to all types of conservatorships in light of the importance of the issues involved.

Section 13 would improve the flexibility of § 45a-317a, which authorizes a Probate Court to appoint an estate examiner. The purpose of an estate examiner is to obtain information about a decedent when there is no estate proceeding and thus no executor or administrator with authority to request the information. The current statute permits appointment only when the information sought relates to a claim for benefits or potential lawsuit. The proposal would expand the statute to permit an estate examiner to obtain information about the deceased person's assets. The change would help families determine whether there are assets

requiring administration and whether the assets can be transferred using the simplified small estates procedure, thereby saving time and money.

Section 14 updates the statute dealing with disputed claims of creditors in decedents' estates. It would permit a creditor to petition to have a claim heard by a probate magistrate or attorney probate referee. This would replace language in the current statute providing for the appointment of a commissioner for the same purpose. The role of commissioner, typically an attorney appointed by a court for a particular case, is not well defined. The magistrate and referee role, in contrast, is detailed in statute and regulation and is ideally suited to hear matters of this type.

Sections 15 through 20 are technical.

Section 21 repeals several obsolete provisions. Sections 45a-190 and 45a-390 to 45a-419 governed claims against the estates of individuals who died prior to October 1, 1987. Sections 45a-726a and 45a-727b contain language that predates the recognition of same sex marriage in Connecticut and contain language that is contrary to current public policy.

On behalf of the Probate Court system, I respectfully request that the committee act favorably on the bill. Thank you for your consideration.



## STATE OF CONNECTICUT

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**TO:** Senate Co-Chair Eric Coleman  
House Co-Chair Gerald Fox  
Senate Ranking Member John Kissel  
House Ranking Member Rosa Rebimbas  
Honorable Members of the Judiciary Committee

SB984

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

**DATE:** March 4, 2013

**RE:** RB 986 An Act Concerning the Applicability of Probate Court  
Orders to State Agencies

The Office of the Probate Court Administrator supports RB 986 An Act Concerning the Applicability of Probate Court Orders to State Agencies.

The bill would simply confirm the binding effect of the decisions of Probate Courts. It is, in effect, a statement of current law. It adds specificity by eliminating any question that a state agency, like any other party to a Probate Court proceeding, is bound by the court's decision.

Of course, the effect of the bill would be limited to those circumstances in which the Probate Court has subject matter jurisdiction and in which a state agency is a party. Unlike the Superior Court, which is a court of general jurisdiction, Probate Courts have jurisdiction only over matters specified by statute.

The bill also confirms existing law that a state agency, like any party that is aggrieved by a Probate Court decision, has the right to appeal to the Superior Court. The agency would be subject to the same time limitations in filing an appeal as any other party. The bill would amend the appeals statute, section 45a-186, to require that any such appeals be filed in the Hartford Judicial District, rather than the district in which the Probate Court is located. This language appears to require that an appeal in any matter in which a state agency is a party would have to be filed in Hartford. Since a party other than the state agency may initiate an appeal, and since the state agency may not always have an interest in

the appeal, we suggest that this language be amended to permit filing in the local judicial district but to give the state agency the right to change venue to Hartford.

Lastly, we note that RB 984 An Act Concerning Probate Court Operations, which is also on the committee's agenda today, would amend other provisions of section 45a-186. We would be pleased to assist in drafting language to incorporate the provisions of both bills in a single proposal.

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**JUDICIARY  
PART 14  
4478 - 4765**

**2013**

Thank you, Mr. Chairman, and Members of the Judiciary Committee, for allowing me to share my testimony in opposition to Bill # 984 with you this morning [March 4, 2013].

My name is Marjorie Partch. I am a writer and graphic designer, and I was my mother's primary caregiver following a minor stroke, from 2003-2010. Our family home is in Norwalk, Conn. I have been personally concerned about the overall Constitutionality of Probate Court proceedings for approximately 2 1/2 years, as a result of my mother's Involuntary Conservatorship, Fraudulently initiated by a nursing home in Wilton, Conn., Wilton Meadows, which succeeded in bypassing my legitimate authority as my mother's Durable Power of Attorney, Health Care Representative, Attorney-in-Fact, and Pre-Designated Conservator ~ all without Due Process, in the Norwalk-Wilton Probate Court in July 2010.

In pursuing the restoration of my mother's Constitutional Rights and my legal representation of her ~ in order to bring her home where she belongs, and to bring suit against Wilton Meadows ~ I have brought several Civil and Criminal Complaints regarding my mother's Case-in-Point [Exhibit A]. The Chief State's Attorney's Office is currently investigating the nursing home and very likely the Officers of the Probate Court for Medicaid and other Fraud. In addition, Assistant Attorney General Michael Cole, the Chief of the Antitrust and Government Program Fraud Department has also requested Whistle Blower status for an investigation of the Probate Court System [Exhibit B].

The State Auditors' Office claims, however, that they do not have the jurisdiction to authorize such an investigation. (My question is: Then who does?) It remains to be seen whether or not the Attorney General's Office will investigate the Probate System regarding my mother's Case-in-Point, and my larger Complaint regarding the Unconstitutionality of the new Probate Rules of Procedure [Exhibit C]. I have also brought this larger Complaint and request for investigation to both the Judiciary Committee and the Regulations Review Committee.

In addition to these concerns, I would like to point out the immediate concern that various new Probate Legislation and Rules are being rushed into becoming State Law, without proper consideration, apparently because the State of Connecticut, and the Probate Courts in particular, are currently in the national limelight due to questions surrounding the Newtown Massacre, and the State's sealing of the Medical and Probate Records of the alleged shooter, Adam Lanza [Exhibit D].

The State of Connecticut is embroiled in this controversy for a variety of reasons, and surely it is self-evident that any new Statutes deserve thorough evaluation, and the fully informed consideration of as-yet unavailable but pertinent facts ~ until these records are released

It would be Unconstitutional for the State to revise Probate Laws at this time, when so many questions remain as to the causative factors behind the Newtown mass murder and suicide, including Probate proceedings for the commitment of Adam Lanza; as well as the other pending investigations I have mentioned. Surely, it would far more prudent to limit the scope of their unregulated authority in the meantime, rather than expanding it.

It seems fair to say, that if reforms in Gun Safety Laws have not yet been implemented in the wake of the December 14 shootings, other changes to State Statutes can also wait until all the relevant facts are in.

Additionally, given that there are several opposing Probate Bills (e.g., #487) and a proposed Amendment to the State Constitution (HR #17) yet to be evaluated by the General Assembly, it would stand to reason that these various Legislative efforts should be integrated, rather than introduced and perhaps passed in conflict with one another. This also should not just be a race to the finish line, but a thoughtful process, especially when there is so much demand for Guardianship / Probate Reform across the county [Exhibit E], given the Courts' unchecked authority, with absolutely no accountability, to terminate the Constitutional Rights of perfectly innocent, law-abiding United States Citizens. The Citizens of Conn. deserve to be notified of the

threats posed to their Constitutional Rights in the New Probate Rules of Procedure, in statewide press releases with explanatory notes from neutral experts in Constitutional Law, and not just empty reassurances from self-serving private Elder Law Attorneys.

Given the many cases of impropriety in Conn. Probate matters that have come to light in recent years ~ who knows how many more lurk in the shadows of these closed-door proceedings ~ full consideration of Constitutional safeguards for our Citizens must be explored before any *greater* autonomy or authority is conferred upon these "Courts," which currently function entirely without accountability or oversight. We have had too many mishandled cases, such as the wrongful Conservatorship Daniel Gross [Exhibit F], which had to go to the U.S. Supreme Court five years after his death to achieve "Justice" ~ and a new Rule of Law: Probate Court-Appointed Conservators and Attorneys can finally be sued for wrongdoing. But too many more cases linger in recent memory, if not the legal textbooks: That of Mary Gennotti, who mysteriously re-married her abusive ex-husband with an "X" after she had been conserved; her brother Robert Jetmore's case; and of course the notorious case of Samuel Manzo's inheritance of the Josephine Smoron Farm [Exhibit G]. Even with no legal question as to his being the rightful heir, and the public censure of the Probate Judge and formal reprimand of the Court-Appointed Conservator / Executor in question, Attorney John Nugent, the case is still languishing in Legal Limbo ~ as is my mother's. This is Kafka Meeting Dickens in the 20th Century Constitution State.

I personally know of at least a dozen highly questionable Probate cases in Southern Conn. But there is nowhere to turn, but a prohibitively expensive Civil Appeals process. This is especially prohibitive when the Probate Officers are able to seize the assets in question without Due Process FIRST. They are in essence permitted to commandeer the assets, in order to defend their claim to the assets, leaving the family and friends of the person targeted for Guardianship, or "Conservatorship," to raise additional funds to defend the Constitutional Rights of the

individual in question. Meanwhile, the "Conserved Person" is isolated behind lock and key ~ literally imprisoned, WITHOUT DUE PROCESS, while they and their rescuers are at the mercy of all the attendant expenses and delays of Civil Due Process. That process should be required to terminate a Citizen's Constitutional Rights, not to RESTORE them after the fact.

Here lies the issue, going back probably throughout all 300 years of the Probate Courts' existence: the complete, and unacceptable, lack of accountability and oversight of these quasi-Judicial entities. This must be addressed, before any greater authority is conferred upon these State-sanctioned, but unregulated and unsupervised agencies. If they are not subject to oversight by the State, then what are the Probate Courts? A fourth branch of Government? If they are empowered and authorized to exist by the State, then Probate Courts must be regulated by the State, because the State is responsible for their existence.

\* \* \*

My mother was a public high school English teacher in Norwalk for 20 years, retiring in 1994. She is now 82 years old, and currently the victim of an Involuntary Conservatorship fraudulently brought by Wilton Meadows Nursing Home in Wilton, Conn., who claimed that my mother had no Durable Power of Attorney, Attorney-in-Fact, Health Care Representative, or Pre-Designated Conservator. The facility knew full well that I held all of these authorities, but preferred to work with a real estate attorney as my mother's Conservator, upon their discovery of assets in her name. These assets can be valued at \$6-800,000, depending on the market value of the home we have shared since 1970; which depends in turn upon the "selling condition" in which the Court-Appointed Conservator is marketing our home for sale. Until the discovery of the assets in my mother's name, the facility had been trying to push my mother out of their care, given the impending expiration of her Medicare coverage ~ following their failure to provide adequate rehabilitation for the major stroke that she had experienced earlier in 2010. But upon

the discovery of assets in her name, Wilton Meadows reversed their discharge plans, and determined to keep my mother, as well as her assets [Exhibit A].

The entire bill for services at Wilton Meadows could not be said to be more than \$100,000 before the Conservator qualified my mother for Medicaid. Wilton Meadows has even been reimbursed by now, by garnishing my mother's State pension (leaving the [unnecessary] mortgage unpaid). For nearly nine months now, my mother, and our home, and I have all been approved for her transfer to home care under the Medicaid Program "The Money Follows the Person," with the approval of the Southwestern Conn. Agency on Aging. But the nursing home, Wilton Meadows, has been delaying this transfer ~ along with my appointment as her Co-Conservator with a well known Westport attorney, Rick Ross ~ with endless Objections based on nothing but their fraudulent hearsay allegations. These Objections have been entertained in the Probate Court *ad nauseum* for the past year, since the recusal of the initial Probate Judge, who ignored my Objections when I pointed out that I held the Durable Power of Attorney, etc. The interminable delays amount to a *fait accompli* for Wilton Meadows, according to the Assistant Attorney General now monitoring our Probate Hearings.

As I mentioned above, in addition to several Civil Actions, I have requested a Criminal Investigation of Fraud from the Chief State's Attorney's Office, and that is currently underway; and also for Whistle Blower status from the Attorney General's Office. Assistant Attorney General Michael Cole has requested this status from the State Auditors, but as of last Wednesday, that approval did not appear to be forthcoming. The Administrative Auditor I spoke with claimed that the State Auditors do not have the "jurisdiction" to recommend that the Attorney General's Office undertake an Investigation of the Probate System and their New Rules of Procedure. My question is then: Who Does? Does this mean that the Conn. Probate Courts are immune from Criminal Investigation and Prosecution? If the Chief of the Antitrust and Government Program Fraud Department cannot conduct an Investigation ~ because of lack of

jurisdiction ~ then what are the Probate Courts, exactly? A fourth branch of the State (and Federal) Government, immune to any oversight? Where are the Checks and Balances?

I have raised these questions to the State Auditors [Exhibit H], and I am raising them now to the State Legislature, through the Judiciary Committee. The Administrative Auditor with whom I spoke last week advised me to look here, to the Legislature, for resolution and change.

As I have said, I have also requested a full Legislative Review of the new Proposed Probate Rules of Procedure to be conducted in light of the obvious conflicts between these "New Rules" and Constitutional Law. This certainly cannot be left to the discretion of the State Supreme Court, given the "rubber stamp" that they have just issued in November.

**The 14th Amendment of the U.S. Constitution** clearly outlines the limits on States' interference with Constitutional Rights, which obviously transcend any "Rules" of our "self-regulated" and locally State-sanctioned Probate Courts:

**Section 1.**

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

I hereby recommend and request that all the activities of the Probate Courts of Conn , past, present and proposed, be subjected to Constitutional Scrutiny by a Special Committee, to be appointed by the Judiciary and Regulations Review Committees.

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**S - 659**

**CONNECTICUT  
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SENATOR BARTOLOMEO:

Thank you, Mr. President. And if there is no objection I would ask that we put this on our Consent Calendar please.

THE CHAIR:

Without objection, so ordered. Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, if the Clerk would call as the next item, item previously marked go back on Calendar page five, Calendar 232, Senate Bill 984. And if he would also mark as the -- the next go item after -- after that, Calendar page 27, Calendar 561, House Bill 6641. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Mr. Clerk.

THE CLERK:

On page five, Calendar 232, substitute for Senate Bill 984, AN ACT CONCERNING PROBATE COURT OPERATIONS, favorable report of the Committee on Judiciary.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

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 will you remark, Sir?

SENATOR COLEMAN:

Mr. President, the Clerk should be in possession of an amendment, LCO 7171. I'd ask that the Clerk please call that amendment.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO number 7171 Senate Amendment Schedule A offered by Senator Coleman.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. I move adoption of the amendment and I seek leave to summarize.

THE CHAIR:

On adoption will you remark?

SENATOR COLEMAN:

Mr. President, the amendment before us would do a couple of things. It first would change the effective date of the bill in order to bring it to July 1, 2013 and in section ten there are provisions regarding the rules of evidence with respect to conservator proceedings in probate court. And the purpose of this amendment is to remove that section to create a new section so that this would not be buried -- these provisions would not be buried under the rules of evidence that may apply to proceedings in superior court.

And similarly with section 11 this amendment would take provisions that apply to considerations of due process for concerned persons and make a new section in our statutes with the thought that they may be more readily accessible if again not buried under provisions that relate to due process in connection with hearings in superior court. I think the

amendment represents thoughtful public policy and I would ask my colleagues to support the amendment. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. Just a couple quick questions regarding the amendment, through you.

THE CHAIR:

Please proceed, Sir.

SENATOR KISSEL:

First of all I'm just wondering if the amendment has been reviewed by the Office of the Chief Court -- the Chief Probate Court Administrator and if they're -- they're okay with this. Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. Mr. President, through you to Senator Kissel. I have had discussions with representatives of the Chief Court Administrator's Office. They are aware of the amendment and I think it would be fair to say that they have no objection to the amendment. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Very good. Thank you. And my second question, through you, Mr. President, is you know we spent a lot of time with this in the Judiciary Committee and I'm just wondering how we came about to make this -- these

particular revisions to the underlying bill. Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Mr. President, to Senator Kissel. I suppose candidly it was the attorneys in LCO that brought to my attention that there may be some not confusion maybe obfuscation unless we separated out the provisions that relate to probate court hearings and the rules of evidence that might apply to those hearings.

And as well the due process considerations for concerned persons might similarly be confusing and obfuscated if not separated out into a new section in the General Statutes. That's the reason for the amendment. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And I think the Chair of the -- Senate Chair of the Judiciary Committee is far too humble, that's why we have a LCO and they act as a backstop and a lot of good legal minds up there. But it's good when we actually take their advice and -- and incorporate into our statutory structure.

And so it seems to me that with this amendment it will clarify that the rules are going forward so that all the parties involved feel -- will feel that they have been treated fairly and that council involved will know exactly what they need to muster evidence and present their cases and their -- their claims. So with that I'm happy to support the amendment.

THE CHAIR:

Thank you, Senator. Will you remark further on the amendment? Will you remark further on the amendment? If not, I'll try your minds. All those in favor signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

All those opposed, nay. The ayes have it. Senate A is adopted. Will you remark further on the bill as amended? Will you remark further on the bill as amended? Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. Mr. President, the bill as amended seeks to accomplish some technical changes for the sake of uniformity and consistency. For example one of the things that it does is bring about consistency when referring to probate court. In various sections in our statutes the reference is a court of probate and some other places probate court. And so for uniformity and consistency sake the statutes in those places will consistently and uniformly refer to this court as probate court.

Additionally there are changes regarding the name of the -- what is commonly called currently the probate practice book will now become the rules of procedure for the probate courts. And the publication of that book will be funded through the proceeds from the sale of the book as well as from the fund that was established in connection with other legislation that we passed with respect to the probate court reform. Additionally in the bill as amended fiduciary would not be permitted to file a financial statement instead of a final accounting.

Additionally any person or relative or friend of a person who may be found to have psychiatric disabilities by a probate court may appeal that finding to the superior court. Additionally the bill as amended would require a person who files an appeal to serve a copy of that complaint on all interested

parties and in connection with the filing of an appeal that person would also be required to mail a copy to the probate court. The bill as amended also requires a person who files an appeal to within in 15 days file a document with the clerk of the court indicating the name, address and signature of the person who affected service of that appeal.

In some other sections when it appears that a will submitted for the settlement of a decedent's estate had previously been revoked the probate court shall have the power to revoke, annul or set aside any order approving that will.

And with respect to the statutory election that statutory share election would now be permitted to be made 150 days after the mailing of the decree admitting the will to probate rather than 150 days after the appointment of the first fiduciary. And with an application for involuntary representation that application may be filed by the parent or guardian of a minor child up to 180 days prior to the minor child obtaining the age of 18 years. And finally generally a hearing on application for involuntary representation the courts shall hold a hearing not more than 30 days after the receipt of that application.

Again the purpose of the bill and the amendment is to bring about some consistency and to make some technical changes in probate court procedure. It is supported by the Probate Court Administrator's Office as well as other interested parties with respect to probate court rules and procedures. I would urge support of the bill as amended. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill as amended? Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. Just a couple questions through you to the proponent of the bill. I'm just -- my recollection is that there was no

testimony in opposition to the bill. Is that accurate? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. Your recollection, Senator, is probably better than mine but I'm not aware of any opposition to the bill either at public hearing or otherwise.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And my -- my last question, Mr. President, is sort of from 30,000 feet. Does the Probate Court Administrator's Office bounce these ideas off of the probate court assembly or individual probate judges or -- I'm just wondering if the good Senator is aware of how these changes are arrived at such that I may get a sense as to how widely and happily these changes will be for the various probate judges throughout the State of Connecticut. Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I think -- through you, Mr. President. Generally speaking the Probate Court Administrator's Office probably collaborates with the probate court judges that make up the system as well as at least elicits the opinion of some of the practitioners that utilize the probate court and I think that's how decisions in general and decisions with respect to this bill have come about. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And I said that was my last question so I'll stick by that. I guess I was just wondering whether the probate court system has a rules committee similar to what the superior court has but I can always ask that when we're done with this particular matter. A lot of technical changes. A lot of procedural changes. Nothing that jumps out as extraordinarily monumental.

I -- I -- it does appear that we're moving towards a more rationalized probate court system. And again it's getting to mirror more and more our superior court system as the years go forward and I think that's beneficial for the folks that litigate and bring their claims to the probate court while at the same time as a snapshot here in 2013 we are maintaining the family friendly and the -- the atmosphere that this particular court is not quite as cumbersome to proceed through and is more accommodating to a variety of personal needs of families that have difficult issues that they're trying to work through as well as folks that are facing financial hardships that are facing difficult issues that they're trying to work through.

So if there's one institution that has gone through an awful lot of change in the last ten years or so I would say it would be the probate court system. And they really are charting in a way that shows that institutions can change, can be rationalized and still maintain their commitment and purpose and strengths as they serve the good people in the State of Connecticut. And for those reasons I'm happy to support the bill. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill as amended? Remark further on the bill as amended? Senator Coleman.

SENATOR COLEMAN:

Mr. President, if there's no objection I'd ask that this bill as amended be placed on our Consent Calendar.

THE CHAIR:

Without objection, so ordered. Mr. Clerk.

THE CLERK:

On page 27, Calendar 561, substitute for House Bill number 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF A PERSON WHO IS PHYSICALLY HELPLESS OR WHO'S ABILITY TO CONSENT IS OTHERWISE IMPAIRED, favorable report of the Committee on Judiciary.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. I move acceptance of the joint committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

On acceptance and passage in concurrence will you remark, Sir?

SENATOR COLEMAN:

Mr. President, this bill does two fairly important things in response to a superior court decision that caused some controversy. The Fourtin case was a prosecution for sexual assault and it was sexual assault of a female who suffered from cerebral palsy and couldn't speak and was very limited as far as communication is concerned.

And unfortunately when the case was appealed to the appellate court the issue of consent was before the court and I guess the outcome and decision was that the court felt that it could not determine whether there was consent or not because while the victim or

THE CHAIR:

The bill passes in concurrence with the House.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, if would mark all items previously marked go should be marked passed retaining their place on the Calendar. And if the Clerk would call the items on the Consent Calendar so that we might proceed to a vote on the Consent Calendar.

THE CHAIR:

Mr. Clerk. Mr. Clerk.

THE CLERK:

On page five, Calendar 229, Senate Bill 1027, Calendar 232, Senate Bill number 984. On Calendar page nine, Calendar 336, House Bill 6529, Calendar 337, House Bill 5310. Also on page nine Calendar 338, House Bill 6313 and Calendar 339, House Bill 6315. On page ten, Calendar 345, House Bill 5970. And on page 13, Calendar 393, Senate Bill number 872. Page 18, Calendar 468, House Bill 5388. Page 27, Calendar 561, House Bill 6641 and Calendar 565, House Bill 6346. And on page 40, Calendar 302, Senate Bill 1016.

THE CHAIR:

Thank you, Mr. Clerk. The machine will be opened, vote on a Consent Calendar.

THE CLERK:

Immediate roll call has been ordered in the Senate. Senators please return to the Chamber. Immediate roll call on today's Consent Calendar in the Senate.

THE CHAIR:

Have all members voted? Have all members voted?  
Please check the board and make sure your vote has accurately recorded. If all members have voted the machine will be closed and the Clerk will announce the tally.

THE CLERK:

On today's Consent Calendar.

|                             |    |
|-----------------------------|----|
| Total Number Voting         | 36 |
| Necessary for Adoption      | 19 |
| Those voting Yea            | 36 |
| Those voting Nay            | 0  |
| Those absent and not voting | 0  |

THE CHAIR:

Consent Calendar 1 passes. Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, before moving for moving for adjournment for today would like to announce that we will likely be in -- in session next week Tuesday, Wednesday and Thursday and also possibly Friday so members should reserve those four days next week as -- as possible or probable session days. At this point, Mr. President, would yield the floor to members for announcements of committee meetings or for other points of personal privilege.

THE CHAIR:

Thank you, Senator. Before we do that I would like to just to take the privilege of -- May is a big birthday month and we have one of our members who is celebrating her birthday tomorrow. I would like to wish Senator Bye a happy birthday tomorrow and I'm trying to figure out if her birthday wish was granted as she's not here as she would have liked to have been here. But happy birthday.

And there is a bipartisan fruit in the caucus room for Senator Bye because she didn't want a cake so we got her some fruit that's -- that she requested. So