



PAUL J. KNIERIM  
Probate Court Administrator

THOMAS E. GAFFEY  
Chief Counsel

HELEN B. BENNET  
Attorney

HEATHER L. DOSTALER  
Attorney

STATE OF CONNECTICUT

OFFICE OF THE  
PROBATE COURT ADMINISTRATOR

186 NEWINGTON ROAD  
WEST HARTFORD, CT 06110

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

**TO:** Senate Co-Chair Paul Doyle  
Senate Co-Chair John Kissel  
House Co-Chair William Tong  
House Ranking Member Rosa Rebimbas  
Honorable Members of the Judiciary Committee

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

**RE:** R.B. 976, An Act Concerning Conservator Accountability

**DATE:** March 13, 2017

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Thank you for the opportunity to testify in support of R.B. 976, An Act Concerning Conservator Accountability. The bill reflects the joint efforts of the Connecticut Probate Assembly and Probate Court Administration, together with numerous partner organizations and legislators, to strengthen the conservatorship system in our state.

Conservatorship is a legal framework designed to provide support and protection for adults who are unable to care for themselves and unable to manage their finances. For individuals with dementia, intellectual disability, mental illness and traumatic brain injury, conservatorship is an essential tool to arrange needed care and financial management.

All conservatorship matters are handled in the Probate Courts. The Probate Courts are responsible for determining whether an individual needs a conservator and, if so, who should serve in that critically important role. When a conservator is appointed, the Probate Court supervises the conservator's activity on an ongoing basis.

R.B. 976 has two components. First, it enables the Probate Courts to promote the highest level of competence and professionalism for conservators by adopting written standards of practice. Second, it seeks to prevent conservator misconduct by authorizing random audits of the accounts that conservators file to document how they have managed a conserved person's finances.

Before addressing the substance of this legislation, it bears critical emphasis that the proposal is not an expression of dissatisfaction with the thousands of individuals who serve as conservators in our state. To the contrary, we owe our state's conservators a debt of gratitude for the compassionate support they provide to some 20,000 of our state's citizens who have conservatorships. Most of those conservators are family members and friends who volunteer their time. Those who serve as professional conservators often work for minimal pay. Their efforts represent public service to our state.

The bill, instead, recognizes the significant responsibility that we impose on conservators and the need to provide better support and guidance for those who take on this critically important role. It also confronts the unfortunate reality that seniors with dementia and persons with disabilities are highly vulnerable to abuse and financial exploitation. While conservator misconduct is rare, a recent report published by the Government Accountability Office documents the significant financial losses that individuals across the nation have suffered when preyed upon by dishonest conservators, guardians and powers of attorney – both family members and professionals. Connecticut is not immune from this phenomenon. The standards of practice and additional oversight tools contemplated by this bill will enhance conservator accountability and ensure the integrity of our state's conservatorship system.

### **Standards of Practice**

Section 2 of the bill authorizes the Probate Courts to adopt standards of practice for conservators. Standards of practice are written guidelines that contain the following elements:

- Ethical principles
- Rights of persons under conservatorship
- Fiduciary duties of conservators
- Criteria on which decisions should be based
- Best practices for various situations

The adoption of written standards of practice will provide needed guidance for conservators in how to handle the myriad challenges that confront them. The standards will also help individuals and families understand what they should expect when a conservator is appointed.

Our state will not need to reinvent the wheel in developing best practices because a comprehensive set of standards is currently available from the National Guardianship Association (NGA), a non-profit organization dedicated to promoting professionalism among conservators and guardians in all states. (The terms "conservator" and "guardian" are synonymous in this context.) We have already incorporated the NGA standards into our continuing education programs and the full text of the standards is available on our website ([ctprobate.gov](http://ctprobate.gov)).

## **Audits of Conservator Accounts**

The audit provisions of this bill build on the mechanisms embodied in existing law by which Probate Courts oversee the work of conservators who are appointed to manage the finances of conserved persons. (In Connecticut, there are two types of conservatorship. A conservator of the person is appointed to make decisions about the personal care of a person under conservatorship. A conservator of the estate manages the financial affairs of a conserved person. Depending on circumstances, an individual may need a conservator of the person, a conservator of the estate, or both.)

Currently, Probate Courts supervise the work of conservators of the estate through the accounting process. Under C.G.S. section 45a-177 and the Probate Court Rules of Procedure, a conservator of the estate must periodically submit a written report that summarizes how the conservator has managed the conserved person's finances. The rules require a one-year account at the end of the first year of the conservatorship and a triennial account every third year thereafter. A court may require more frequent accounting if appropriate under the circumstances of a case.

The accounting process is designed to give the conserved person and his or her family an opportunity to review the account, ask questions and alert the court to any objections. When the conservator files the account with the court, the conservator must also send copies to the conserved person and the conserved person's family. The conserved person is entitled to an attorney (the services of which are paid by the Probate Court system if the conserved person is indigent) to assist in reviewing the account. The court conducts a hearing at which questions and concerns about the account are addressed. Following the hearing, the court issues a decision approving or rejecting the account based on finding whether the conservator has complied with the law.

The audit provisions of this bill will enable the Probate Courts to conduct an in-depth examination of a subset of the accounts that are filed by conservators. Specifically, the bill authorizes our central office to select accounts for audit on a random basis or on the basis of other criteria designed to detect fraud. An account that is chosen for audit will be assigned to an independent certified public accountant who will examine all records of the conservator's financial activities. The auditor will verify the accuracy of the conservator's account and identify any abnormalities. The auditor has 90 days to complete the audit and submit a written report to the court.

Upon receipt of the auditor's report, the court schedules a hearing on the conservator's account. The auditor's report is admissible in evidence at the hearing and the parties have the right to require the auditor's presence as a witness. After considering the audit report and all other evidence presented at the hearing, the court will decide whether to approve or reject the account in the same manner as other accounting proceedings. If the court finds that the conserved person has suffered financial losses as a result of a conservator's

breach of fiduciary duty, it may order the conservator to restore funds to the conserved person.

The difference between the ordinary accounting process and an audited account is verification. In most accounting proceedings, the court relies on the representations contained in the conservator's account, much like the Internal Revenue Service relies on the figures that a taxpayer reports on an income tax return. An audit adds additional scrutiny to the accounting process by reviewing the underlying records to verify that those representations are accurate.

The bill provides that the cost of audits will be paid from the Probate Court Administration Fund and further that the audit program will be implemented only to the extent that funding is available. We are not seeking additional state budget funds to implement the program.

Recognizing that it would be cost prohibitive to conduct an audit of every conservator account, the primary goal of the audit program is to deter conservator misconduct. We will publicize the audit program as part of the conservator training initiatives described below. Awareness of the possible scrutiny of an audit will, in tandem with existing oversight mechanisms, will help prevent exploitation of persons under conservatorship.

### **Conservator Training**

The audit and conservator standards of practice proposals contained in this bill are part of a broader effort to strengthen the Connecticut's conservatorship system. A third key component of this effort, which does not require legislation and is currently in development, is a comprehensive training program for new conservators. The education program, which will be available by year-end, uses web-based self-study tutorials to allow new conservators maximum flexibility in taking advantage of the course material. A two hour tutorial is planned for family conservators and a more in-depth six hour course will be geared towards professional conservators.

### **Conclusion**

By adopting this legislation, Connecticut will join a growing trend among the states, with the support of organizations such as AARP, the National Center for State Courts and the National Guardianship Association, to strengthen court oversight of conservatorships. Connecticut has an opportunity to be at the forefront of nationwide efforts to improve support and training for conservators while taking cost-effective steps to protect vulnerable residents from exploitation.

We urge the committee to act favorably on this bill.