

The Honorable Lois Murphy
Court of Common Pleas of Montgomery County Pennsylvania
Administrative Judge, Orphans' Court Division

TESTIMONY BEFORE THE PENNSYLVANIA SENATE JUDICIARY AND
AGING AND YOUTH COMMITTEES
TUESDAY, MARCH 14, 2023

Good morning, Majority chairs Baker and Ward and Democratic chairs Santarsiero and Collett. Thank you for inviting me to participate in this hearing focusing on strengthening guardianship laws and preventing elder abuse.

My name is Lois Murphy, and I am a Judge of the Court of Common Pleas of Montgomery County Pennsylvania. I am the Administrative Judge of the Orphans' Court Division. I also have the privilege of serving on the Advisory Council to the Supreme Court on Elder Justice, under the leadership of Chief Justice Debra Todd, and Chair, Judge Paula Ott.

My remarks before the committee today are made in connection with matters about which I have acquired knowledge and expertise in the course of my judicial duties. Opinions and thoughts expressed in the remarks, and in response to any questions, are my own and do not reflect the views of the Supreme Court, the Court of Common Pleas of Montgomery County, the Administrative Office of Pennsylvania Courts, or the Advisory Council on Elder Justice.

I am very pleased to have this opportunity to discuss with you our significant efforts to improve guardianship practices in Pennsylvania. At this moment, the Pennsylvania Courts are actively engaged and extremely focused on implementing improvements to enhance the quality of justice for adults who are the subject of petitions for guardianship. Last fall, the courts received a major federal grant from the Administration on Community Living to support Guardianship Reform efforts. This includes a major effort to improve our ability to monitor court-appointed guardians, and to increase the information available concerning guardianship cases. Educational programs are also being delivered for judges, court administrators and others to enhance the quality of justice. Importantly, the courts are actively involved in promoting due process as well as less restrictive alternatives to guardianship.

According to the National Center for State Courts, approximately 1.3 million adult guardianship cases exist across the United States, and an estimated \$50 billion is managed by court appointed guardians. It is widely acknowledged that our information about guardianships nationally is inadequate. Pennsylvania courts are leading the way and have developed the most robust reporting and information about guardianships, and an award-winning system for monitoring guardians that we believe is the best in the nation. In Pennsylvania the number of people subject to guardianship is over 18,000. A significant percentage of guardianship cases filed each year in Pennsylvania involve adults over age 60.

Guardianship is a legal proceeding in which the court is asked to determine whether an adult has the capacity to make their own decisions, and if not, whether a guardian must be appointed to make decisions for them. Guardians may be appointed to make decisions for

incapacitated individuals of any age, including elderly individuals with dementia, young adults with developmental disabilities, and other individuals who suffer cognitive impairment as a result of conditions such as traumatic brain injury or stroke. Often, guardians are family members acting to care for a loved one. In cases in which a family member is unable or unwilling to serve, and in some cases of family disharmony or abuse by a family member, professionals may be appointed as guardians.

Guardians may be needed to protect the rights of people unable to make and communicate decisions. However, declaring someone to be incapacitated is a profound deprivation of the fundamental right of the individual to make his or her own decisions. Placing a guardian in charge of a person's medical, financial, and other important life decisions should never be done lightly. We have a duty in every case to protect the constitutional rights of the individual who may be deprived of his or her liberty and autonomy.

Senate Bill 506 includes language to make clear that legal counsel must be appointed to represent an alleged incapacitated person (AIP) in any matter for which counsel has not been retained by the AIP. Counsel would represent the AIP in the proceedings to determine capacity and in any subsequent proceeding to consider, modify or terminate a guardianship, to ensure protection of those rights. Appointment of counsel is critical to protect the right to due process of every person who faces a petition seeking to determine that he or she is incapacitated and appoint a guardian. Appointment of counsel in these cases is consistent with provisions requiring appointment of counsel to represent individuals in numerous other areas of the law in which they face potential deprivation of their fundamental rights of autonomy.

Elder abuse and financial exploitation are deeply concerning and growing problems in our communities. Abuse, harm, and exploitation may be perpetrated by family members, neighbors, strangers, and scammers. An exploiter may also be a person acting under a power of attorney or acting as a Social Security representative payee as well as in some cases, a court-appointed guardian. In many cases, a court-appointed guardian is appointed after concerns of exploitation or abuse of an incapacitated person have been raised. In these cases, a primary goal of appointing a guardian is to prevent further abuse or exploitation. The Courts need the information and tools to prevent abuse and exploitation, and to assure that we do not appoint as guardians anyone who could or would exploit the incapacitated individual.

Through the Advisory Council on Elder Justice, we are taking many steps to educate judges and to improve our practices and procedures around elder justice and guardianships, including improving due process for adults facing a potential guardianship. One significant challenge for policymakers seeking to address issues posed by guardianships is that for many years we have lacked adequate data about guardianships in Pennsylvania and across the nation. Pennsylvania is taking a leadership role in addressing this information gap.

The AOPC, under the leadership of Chief Justice Todd and the Advisory Council to the Supreme Court on Elder Justice, has developed the Guardianship Tracking System (GTS) that was rolled out statewide by December 2018. I would like to spend a few moments describing the benefits of this transformative system.

From a judge's perspective, perhaps the most important feature of GTS is that it permits judges to share statewide any concerns about the qualifications or integrity of a prospective guardian. Up until now, if we had a concern that a person seeking to serve as a guardian had a criminal record, or had mismanaged funds, the only way judges in other counties would become aware of these concerns was by word of mouth, informally, or in a published opinion. The GTS permits us to check the records of current guardians instantly and statewide. In addition, we are now at work on enhancements to GTS to improve our ability to check automatically for criminal records of individuals seeking appointment as guardians or serving as guardians.

GTS is also transforming the way that guardians file annual reports, and the information that the state court system will be able to review. It also monitors when mandatory reports are not submitted and sends electronic communications to guardians when they are overdue. Perhaps most importantly, our statewide system has created a unified statewide database that has collected a wealth of guardianship data that can be analyzed at both the state and local level.

Today we can answer questions that we could not prior to 2019, such as:

- How many Pennsylvanians have been adjudicated incapacitated and have had guardians appointed for them? **As of Dec. 31, 2022, 18,478 Pennsylvanians are under guardianship.**
- How much in funds (\$\$\$) are subject to management by guardians? **\$1.58 Billion.**
- What is the percentage of cases in which family members are appointed as guardians? **62% of cases include one or more family members as a guardian.**
- What is the percentage of guardianship cases involving older adults (over age 60)? **44.2% of cases are for persons aged 60 or above.**

The Guardianship Tracking System also identifies red flags on all annual reports filed by guardians for further review by each court. Red flags may concern the spending of funds that belong to the incapacitated person, as well any changes in the needs of the incapacitated person. The GTS system has greatly improved our ability statewide and at the trial court level to understand trends in guardianship and to monitor and supervise court-appointed guardians.

The Pennsylvania Office of Elder Justice in the Courts has also been working with federal offices, including the Social Security Administration and the Department of Justice, to improve communication and increase collaboration. We are hopeful that the Pennsylvania GTS will permit us to identify those cases in which both a guardian has been appointed by a state trial court and a representative payee has been appointed by the Social Security Administration. Collaborating will help us to assure that all finances are being reported appropriately, and we hope will lead to protocols to share information when a guardian or representative payee has been removed for cause or has been alleged to be financially exploiting the incapacitated person.

The Advisory Council on Elder Justice in the Courts also supports the concepts in the legislative proposal to require that professional guardians be certified guardians, including

requirements for education and criminal record history. This provision is important to assure that the courts, when appointing guardians, can have confidence in the individual's given authority over the lives and well-being of protected individuals.

In addition, the Advisory Council supports reform efforts to require courts to avoid guardianship whenever a less restrictive alternative to guardianship will be sufficient. I would be happy to discuss what is meant by a less restrictive alternative, which may include a power of attorney, a trust, an ABLÉ account, serving as a representative payee or making health care decisions as a health care representative.

Thank you again for the opportunity to participate in this hearing and share my views. I would be pleased to answer any questions that you may have.