

**PAELA Testimony  
Joint Public Hearing on Strengthening Guardianship Laws,  
Preventing Elder Abuse and Senate Bill 506  
Tuesday, March 14, 2023  
Hearing Room 1, North Office Building**

Senator Baker, Senator Ward, Senator Santarsiero and Senator Collett, good Morning and thank you for allowing the Pennsylvania Association of Elder Law Attorneys (PAELA) to testify at this hearing about what Pennsylvania can do to strengthen guardianship laws, prevent elder abuse and specifically on SB 506. I am Sally Schoffstall, of Schoffstall Elder Law in Orefield, PA.

PAELA is comprised of attorneys who represent older adults and families with a loved one with disabilities. Elder law involves proactive estate planning that anticipates the need for caregiving and public benefits. Regardless of planning, situations arise where an older adult experiences a decline in cognitive capacity or a child with an intellectual or developmental disability attains age 18 where guardianship becomes necessary for responsible financial and medical decision-making to occur.

Those in need of guardianship are among the most vulnerable in our society and should be afforded the utmost protection of the Pennsylvania legislature and legal system. Guardians must be trustworthy, capable, and subject to ongoing supervision to prevent cases of financial exploitation, neglect, and abuse. It is from this perspective PAELA offers the following insight and comments.

Guardians must not be appointed unless there is clear and convincing evidence of incapacity, and the definite need for guardianship. Alleged incapacitated persons should participate as fully as possible in all decisions which affect them. Every effort should be made to enable the alleged incapacitated person to be seen by the judge, participate in hearings, and object to proposed actions. In fact, the recent development of virtual meeting technology has greatly enhanced the participation capability of medically fragile alleged incapacitated persons.

**1. Certification for Professional Guardians, Mandatory Education for Appointed Guardians, Criminal Background Checks**

In general, PAELA supports the proposed language in SB 506 regarding these three topics. The National Guardianship Association, headquartered in Pennsylvania, provides a certification process, and sets forth high standards of practice for its membership. PAELA also supports a mandatory on-line education course for non-professional guardians that would inform them of their legal duties to maintain accurate records, ask the court for approval before expending

principal, and seek legal counsel as needed. Perhaps the existing GTS system could function as a portal for such training.

PAELA supports the use of criminal background checks but cautions against the use of background checks that are unreasonably costly or take an unreasonable amount of time to obtain. A fee of up to \$50 for a background check obtained in 2-3 weeks is reasonable. A fee of \$500 for a background check obtained in 2-3 months is unreasonable.

## **2. Less Restrictive Alternatives**

In general, PAELA supports language in SB 506 that requires specific pleading regarding the availability of less restrictive alternatives; directs the court to prefer less restrictive alternatives to guardianships, where available and sufficient; and requires specific findings of fact concerning less restrictive alternatives. However, most of the alternatives listed in the bill are not at all available to individuals who have been incapacitated from birth or as minors. These less restrictive alternatives are also not at all available to older adults who, usually through denial or procrastination, never bother to pre-plan for their eventual incapacity. From a practical standpoint, the financial cost and time delay of pursuing multiple additional court orders when problems arise is insurmountable for many families.

## **3. Mandatory Appointment of Counsel**

Due Process requires each state carefully consider how best to guarantee the rights of the alleged incapacitated person to counsel, and whether mandatory appointments of counsel should be required in every case. There are various approaches used among the states. Pennsylvania's current approach requires:

- 1) counsel for the petitioner to notify the court at least 7 days prior to the guardianship hearing of whether the alleged incapacitated person has counsel;
- 2) the court may "in appropriate cases," appoint counsel at no cost to the respondent if counsel has not otherwise been retained. Pennsylvania should review and consider all possible options including whether mandatory appointment of counsel should be required.

As opposed to mandatory appointment of counsel in every case, PAELA supports enactment of "Alternative A" of Section 305(a) of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act drafted by the National Conference of Commissioners on Uniform State Laws as set forth below:

### **SECTION 305. APPOINTMENT AND ROLE OF ATTORNEY FOR ADULT (Alternative A)**

(a) The court shall appoint an attorney to represent the respondent in a proceeding for appointment of a guardian for an adult, regardless of the respondent's ability to pay, if:

- (1) upon being provided the option, the respondent requests an appointment;
- (2) a court-appointed independent medical evaluator recommends an appointment; or
- (3) the court determines the respondent needs representation.

PAELA highlights the need for further dialogue regarding the following issues:

- a. From a realistic standpoint, how will mandatory appointment of counsel be funded that results in competent legal counsel willing to fulfill this role?
- b. Appointment of counsel should not cause undue delay.
- c. The current guardianship system in Pennsylvania gives discretion and flexibility to our county judges to adapt a complex guardianship structure to individual matters before them in their respective settings to craft practical solutions for all of the parties who appear before them. Creating mandatory requirements eliminates that flexibility. No one knows that better than our local judiciary.

#### **4. Compensation for Guardians**

Compensation of appointed guardians must be on a modest scale and court-approved, but sufficiently reasonable to compensate guardians for work properly performed. Without adequate compensation, high quality individuals, particularly certified guardians, will not be willing to take on this position of responsibility and potential liability.

#### **5. Additional Legislative Funding**

PAELA supports additional legislative funding to support a workable guardianship system to accomplish appointment of competent legal counsel who act on a timely basis; the review of guardianship reports; the certification of professional guardians; and the training of non-professional guardians. PAELA also supports obtaining additional input regarding guardianship reform from local Orphans' Court judges in urban, suburban, and rural settings.

In summary, PAELA is grateful the General Assembly is devoting attention to the needs of older adults and younger adults with disabilities. With specific regard to SB 506, PAELA greatly appreciates the ability to be involved in the guardianship reform process. We desire to continue this important dialogue with you and thank you for considering our input.