

ESTATES, TRUSTS AND PROBATE LAW SECTION

Steering Committee:

Carol A. Rhees, Co-Chair
Martin J. McNamara, Vice-Chair
Thomas J. Cholis
Thomas J. Egan
Lloyd Leva Plaine
Henry L. Rucker



The District of Columbia Bar

December 8, 1987

Councilmember Wilhelmina Rolark
Council of the District of Columbia
Room 125
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: District of Columbia Guardianship,
Protective Proceedings and Durable
Power of Attorney Act of 1986

Dear Ms. Rolark:

As members of the Steering Committee of the Estate, Trusts and Probate Law Section of the District of Columbia Bar, we are writing to urge that the effective date of the new guardianship and protective proceedings law be postponed and to express our support for the proposed amendments to the law recently forwarded to your office by Teresa Spada.^{1/} In our view, the proposed amendments would result in substantial cost savings and facilitate the administration of the Act, while still providing adequate protection for the rights of the protected person.

In addition to the proposed amendments, we would suggest the following additional amendments intended to make it clear that the appointment of an examiner or visitor is optional. Our suggested changes are underlined.

1. D.C. Code, Section 21-2041(b), is amended as follows:

(b) The petition shall state the name, address, and interest of the petitioner, state the name, age, residence and address of the individual for whom a guardian is

^{1/} The views expressed herein represent only those of the Estates, Trusts and Probate Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

sought and set forth the reasons for which the guardianship is sought with specific particularity so as to enable the court to determine whether an examiner or visitor should be appointed and, if so, what class of examiner and visitor should examine the person alleged to be incapacitated.

2. D.C. Code, Section 21-2041(f), is amended as follows:

(f) In the case of an individual whose incapacity is alleged to arise out of mental retardation, if an examiner or visitor is appointed, preference is for the appointment of an examiner or visitor who is a qualified mental retardation professional and who can give a complete social, psychological, and medical evaluation of the individual. When the alleged mentally retarded individual has a current comprehensive evaluation or habilitation plan, the plan shall be presented as evidence to the court. When a plan exists but has not been updated within 6 months prior to the hearing, preference is for an update of the plan as part of the examination conducted by the examiner and visitor.

3. D.C. Code, Section 21-2052(b)(6), is amended as follows:

(6) The reason why appointment of a conservator or other protective order is necessary, stated with sufficient particularity as to enable the court to determine whether an examiner or visitor should be appointed and, if so, what class of examiner and visitor should examine the individual alleged to be incapacitated. If the appointment of a conservator is requested, the petition shall also set forth the name and address of the person whose appointment is sought and the basis of any claim to priority for appointment.

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4. D.C. Code, Section 21-2054(c) is
rs:

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visitor is appointed, preference is for
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update of the plan as part of the exa-
tion conducted by the examiner and
visitor.

In addition, we note that the referen-
48(d) to Section 21-2060(b) should instead
60(a).

If the effective date of the Act is p-
that an opportunity will be provided for a
w of the legislation with a view towards f-
and facilitating its administration.

Please let us know if we can be of as-
le Council.

Thank you for your consideration.

Sincerely,

Carol A. Rhees

Martin

Thomas J. Cholis

Thomas

Lloyd Leva Plaine

Henry L