Ohio Judicial Conference

The Voice of Ohio Judges

House Civil Justice Committee
Paul Pfeifer
Interested Party Testimony on House Bill 500

Chair Hambley, Vice Chair Patton, Ranking Member Brown, and members of the House Civil Justice Committee, I thank you for this opportunity to submit interested party testimony for House Bill 500 on behalf of the Ohio Judicial Conference. I am Paul Pfeifer, Executive Director of the Ohio Judicial Conference.

The Ohio Judicial Conference has some concerns about H.B. 500 and suggestions on how it may be improved. We are diligently working with the sponsors, Representative Kick and Representative McClain, the bill's proponents and other interested parties to reach consensus language that may alleviate the concerns discussed below. We believe there is a path forward to address elder isolation issues either through clarifications to the guardianship statutes, amendments to Sup. R. 66, or a combination of both.

Guardianship Modernization Efforts

Before discussing our concerns, the Judicial Conference would like to remind this Committee that the Supreme Court of Ohio recently adopted new Rules of Superintendence for the Courts of Ohio for adult guardianships. Sup. R. 66.01(A) defines "best interest" as "the course of action that maximizes what is best for a ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the ward." Sup. R. 66.03(B)(1)-(5) provides guidelines to address comments and complaints regarding a guardian. Sup. R. 66.09 lists responsibilities of the guardian, including consideration of "person-centered planning," the ward's support system and communication with the ward.

We recognize there may be ways to improve the family visitation process, but any change to the guardianship law should be carefully crafted to avoid creating harmful conflict and imposing financial burdens on Ohio's probate courts. Our recommendations for H.B. 500 follow.

Creation of New Rights

There are potential unintended consequences with proposed R.C. 2111.53, which declares that "every adult in this state has the right to visit with, and receive mail and telephone or electronic communications from, whomever the adult so chooses, unless a court has specifically ordered otherwise." Although well-intended, this policy-statement could create problems for government agencies, hospitals and private

businesses who wish to exclude disruptive visitors without an explicit court order. We suggest removing this section.

Problematic Inclusion of Incompetents

The inclusion of "incompetent" visitation is of great concern to probate judges for several reasons. Under current R.C. 2111.01(D), "incompetent" is broadly defined as follows:

(D) "Incompetent" means either of the following:
(1) Any person who is so mentally impaired, as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide;
(2) Any person confined to a correctional institution within this state.

If a relative alleges someone to be incompetent, the probate court would follow the same procedure as if a guardianship was requested, and hold a hearing on the issue. If the court determines someone is incompetent, the court would assign a guardian. By allowing someone to petition for visitation before a determination of incompetency, H.B. 500 could flood probate courts with visitation cases that may have ultimately been resolved by assignment of a guardianship.

Additionally, pursuant to R.C. 2111.01(D)(2), family members and even "interested persons" could petition for *prison* visitation, even if ODRC denied it for any number of legitimate reasons. We believe inmate visitation decisions are properly determined by ODRC and federal institutions. We ask that all references to "incompetents" be removed from the bill.

Increased Litigation Costs

H.B. 500 will impact the probate courts by increasing caseload and workload. Family conflict cases are highly emotional and rarely reach settlement out of court. They require lengthy hearings and significant court time. Any noncompliance with a court order could lead to additional hearings on contempt of court.

Court expenses would also increase under the bill. Most wards and incompetents are indigent, so the court would have to provide an appointed guardian ad litem or attorney. The court would need an investigator to research the basis of the claims. While the bill allows courts to assess some costs to any party beside the incompetent or ward, any expenses that are not recuperated will have to come out of the court's budget. To clarify that all these additional expenses can be assessed to the parties, we suggest amending proposed R.C. 2111.5314 to explicitly include costs for mediation, guardians ad litem, appointed attorneys, investigations and other related expenses. This would clarify that the General Assembly was cognizant of the potential costs involved and provide the probate courts with discretion to assess costs as needed.

We thank Representative Kick and Representative Merrin for their openness to our concerns. We look forward to working with them and members of this Committee to improve this bill. Although I am unable to testify in person, I would be happy to follow-up on any questions Committee members may have.