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February 11, 2009

Honorable Brian E. Frosh
Judicial Proceedings Committee
Maryland Senate
2 East, Miller Senate Bldg.
Annapolis MD 21401

Dear Senator Frosh:

I am writing on behalf of the American Bar Association to urge passage of two adult guardianship bills being considered by your Committee today – SB 122 on guardianship jurisdiction and SB 193 on guardianship monitoring. The ABA strongly supports these bills, and the ABA Section of Real Property, Trust and Estate Law and the Commission on Law and Aging have historically played a leadership role in these important facets of guardianship law.

SB 122, Guardianship Jurisdiction

SB 122 enacts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Act), promulgated by the Uniform Law Commission (National Conference of Commissioners on Uniform State Laws) in 2007 and by the American Bar Association in February 2008. The Act seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas where more than one state is involved – as occurs with increasing frequency in our mobile society. For example, many older people own property in different states. Family members may be scattered across the county. Frail, at-risk individuals may need to be moved for medical or financial reasons. Thus, judges, guardians and lawyers often are faced with questions about which state should have initial jurisdiction, how to transfer a guardianship to another state, and whether a guardianship in one state will be recognized in another state. Such jurisdictional issues can take up vast amounts of time for courts and lawyers and can cause cumbersome delays and financial burdens for family members. Jurisdictional tangles can bar timely medical treatment for incapacitated individuals and exacerbate family conflict. Moreover, lack of clear jurisdictional guideposts can facilitate “granny snatching” and other abusive actions.

The Act does not change substantive state law on guardianship, but rather seeks to clarify jurisdiction in three key ways: (1) it sets out a process to determine which state will have jurisdiction to appoint a guardian (of person or property) if there is a conflict; (2) it facilitates transfers of guardianship cases among jurisdictions; and (3) it allows for recognition and enforcement of a guardianship order in other states through registration. The Act also enhances

communications between courts of differing jurisdictions and encourages cooperation between courts regarding holding evidentiary hearings and ordering assessments or investigations.

Because it is jurisdictional in nature, the Act cannot work as intended – providing uniformity and reducing conflict – unless all states adopt it. Currently, the Act has been adopted by four states and the District of Columbia, is currently pending in some additional eight states, and is anticipated to be introduced this session in approximately 12 to 15 more states. In addition, several of the remaining states are studying the Act for future consideration. The Act has the endorsement not only of the American Bar Association, but also the Conference of Chief Justices, the Conference of State Court Administrators, the National College of Probate Judges, the National Academy of Elder Law Attorneys, the National Guardianship Association, and the Alzheimer’s Association. (See www.nccusl.org; and www.ananet.org/aging/guardianshipjurisdiction/home.html).

Maryland should adopt the Uniform Act, as provided in SB 122, for the following reasons:

- Judicial economy – It will save court resources by clarifying complex jurisdictional questions and avoiding extended litigation over jurisdictional issues.
- Family resources – It will reduce litigation expenses for families with multi-state issues and preserve the estate of the incapacitated individual.
- No budgetary impact – In a time when the state is confronting tough budgetary problems and reducing costs, this Act has no financial impact.
- It works – The Act is modeled after the highly successful Uniform Child Custody Jurisdiction and Enforcement Act, which Maryland and almost every other state has adopted and which has been working well for many years.
- It addresses elder abuse – A number of provisions in the Act are designed to help the court identify and reduce potential abuse of incapacitated adults. For example, it provides that judges take into account any “unjustifiable conduct” in making a jurisdictional decision. (See Stiegel, L., “Nine Ways to Reduce Elder Abuse Through Enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act,” www.abanet.org/agingguardianshipjurisdiction/home.html).
- It fosters comity among states.

SB 193, Guardianship Monitoring

SB 193 establishes a Commission on the Monitoring of Guardians of Disabled Adults. The American Bar Association strongly supports practices to strengthen court oversight of adult guardians. The ABA supports submission and review of guardian reports, development of guardian training and orientation, use of guardianship standards and plans, continuing legal and judicial education on guardianship and guardian accountability, and development of adequate data systems to ensure effective oversight. The ABA Commission on Law and Aging and

Commission on Mental and Physical Disability Law initiated the first national guardianship monitoring study in 1991 (*Steps to Enhance Guardianship Monitoring*), resulting in a landmark report outlining 10 “monitoring steps” drawn from practices in diverse jurisdictions.

In 2006, the AARP Public Policy Institute and the ABA Commission on Law and Aging conducted a national survey to determine how courts monitor the performance of guardians and to what extent practices had changed since the 1991 study. The survey found that, while reporting practices had advanced, verification of reports and accounts, as well as visits to vulnerable individuals, were frequently lacking. It also found a compelling need for guardian training, data collection, funding for monitoring, and enhanced use of technology.

In 2007, the AARP Public Policy Institute and the ABA Commission released an extensive report, *Guarding the Guardians: Promising Practices for Court Monitoring*, detailing promising approaches from courts with excellent practices and from an interdisciplinary symposium of experts.

The Maryland Commission on the Monitoring of Guardians of Disabled Adults created by SB 193 would thus have a solid foundation on which to build. The Commission would address a pressing need. While this legislation will entail some modest cost for Commission operation, it would yield immense benefits to an especially vulnerable population. The ABA and its Commission on Law and Aging would be pleased to work with the Maryland Commission as it works to identify promising practices and develop recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman

cc: Senator Delores G. Kelley