

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

TESTIMONY BEFORE THE PENNSYLVANIA SENATE JUDICIARY COMMITTEE
MONDAY, SEPTEMBER 24, 2018

Good afternoon Senator Greenleaf and members of the Judiciary Committee. Thank you for inviting me to participate on this panel addressing the administration of Justice in Pennsylvania.

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 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 will focus my remarks on Guardianship Proceedings in Pennsylvania, and current efforts to enhance access to justice for incapacitated adults.

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 Courts are actively engaged and extremely focused on implementing improvements to enhance the quality of justice for adults under guardianship. 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.

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 is taking leadership in developing more robust reporting and information about guardianships.

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. Many 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.

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 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. 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 Justice Todd and the Advisory Council to the Supreme Court on Elder Justice, has developed a new Guardianship Tracking System that is being rolled out across the state as we speak. I would like to spend a few moments describing the benefits of this transformative new system, known as "GTS". The system is being enabled in Pennsylvania's 60 judicial districts between July and December 2018. As of today the system is operating in 16 judicial districts (19 counties) including Allegheny and Philadelphia.

From a Judge's perspective, perhaps the most important new feature of GTS is that it will permit 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 will permit us to check the records of current guardians instantly and statewide. Eventually the GTS will have a feature that will check automatically for criminal records of individuals seeking appointment as guardians or serving as guardians.

GTS is also transforming the way that guardians file their annual reports, and the information that the state court system will be able to review. GTS provides an online portal through which guardians will file their annual reports. This new system will create a unified

statewide database that will for the first time permit the Courts to collect and analyze a great deal of information at the state and local level.

Beginning in 2019 (although for some questions we will not have sufficient data until 2020) we expect to be able to answer questions we cannot answer today, such as:

- How many Pennsylvanians have been adjudicated incapacitated and have had guardians appointed for them?
- How much in funds (\$\$\$) are subject to management by guardians?
- What is the percentage of cases in which family members are appointed as guardians?
- What is the current caseload of each professional guardian?
- What is the percentage of guardianship cases involving older adults (over age 60),
- What is the percentage of guardianship cases involving developmentally or intellectually disabled adults or other adults under age 60 with cognitive impairment due to brain injury or other conditions.

The Guardianship Tracking System will also identify 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 will greatly improve our ability statewide and at the trial court level to understand trends in guardianship and to monitor and supervise court-appointed guardians.

I can tell you that the system is already working and paying dividends. Just about 10 days ago, a judicial colleague of mine in another county learned, via the GTS, that a guardian whom he had appointed was unexpectedly placed in charge of over \$1,000,000 of assets. When he learned of causes for concern about this guardian's integrity, this alert prompted him to remove the guardian and appoint a different guardian, to protect the incapacitated individual from exploitation or theft.

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 Guardianship Tracking System 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.

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.