Randy Asplund

2101 S. Circle Dr., Ann Arbor, MI. 48103 (734) 663-0954 Randy@RandyAsplund.com

To: The Honorable Graham Filler, Chairman
House Judiciary Committee
Michigan House of Representatives
P.O. Box 30014
Lansing, MI., 48909

cc: Senators Jeff Irwin, Ruth Johnson, and Representative Felicia Brabec,

Re: Rebuttal of October 15, 2021 letter from Probate Judges, Freddie Burton, Jr., Patrick McGraw, Julia Owdziej, James Biernat, Jr., David Murkowski, and Kathleen Ryan.

Dear Representative Graham,

I have recently acquired the Nov. 12, 2021 CSP & Probate council Meeting Probate and Estate Planing Section report which included this letter from these probate judges as an exhibit.

I hope you have reviewed the video of the June 10, 2021 hearing of the MI Senate Judiciary Committee which is available on Sen. Johnson's Face Book page:
https://www.facebook.com/SenRuthJohnson/videos/218340263439268
I was one of the witnesses testifying that day about the abuses by the courts which are actively destroying victims lives via violations of civil rights, statutes and due process. I underscore that the probate judges are at the heart of this problem.

I offer this rebuttal of the criticisms of HB 4847-4850 in which these judges state: "We believe that this package of bills, while well-intentioned, will be more harmful than helpful as currently written." I have carefully read their letter and it seems clear that if the MI House were to adopt their recommendations, the legislature would be enabling the courts to commit great harm to the populace. As you know, our

laws are written so that plenary guardianships and conservatorships should be the last resort and that "professionals" should be the very last option, an option to be avoided if possible.

When I read the letter by these judges it is very clear that their goal is polar to these values. In fact, a look at the way probate judges decide cases shows that they have been conducting their courts to the antithesis of that outcome. Their goal is to increase "professional" guardianship, especially by appointing officers of their courts, who then abuse their authority to commit abuses aimed at financial and real-estate exploitation through fraud and fraud on the court. When these acts are done without due process, they become Federal crimes. The probate judges promote this by intentionally abusing judicial discretion in deciding cases.

ITEM #1

They ask for funding for public guardians who serve "pro bono" or for minimal reimbursement. They follow the request by implying that such persons are expected to provide a public service for free. The fact is that no hospital or nursing home is required to pay for services for someone not already n their care, and if a person came to them Medicaid would be the appropriate source of compensation. This request is actually a thinly veiled request to increase profits for ATTORNEYS appointed by the judges. We have seen these disingenuous claims before from those trying to claim professional guardians don't make enough money. Probate law is extremely lucrative.

ITEM #2

They don't like that HB 4847 requires attentiveness of the guardian towards their ward. In person visits are the only way to observe actual conditions of care. But these guardians are interested in profit and that happens by maximizing the number of wards. Some of these judges appoint HUNDREDS of cases to single guardians. The guardians then delegate the responsibilities to employees who were NOT appointed by the judge. So why would the judges want to make i easy to proliferate professional guardianships which pay less attention to the wards? They are claiming that such appropriate assurance of care would put professionals out of business. Clearly, a better solution would be to stop appointing so many professional guardianships and to leave care to lesser alternatives s the law requires.

ITEM #3

The judges object to increasing record keeping by requiring detailed inventories under HB 4848. However, if these judges had legitimate care for the wards and their families, they would want this. It

would reduce the chances of litigation which come from unscrupulous guardians and conservators who are committing the crime of conversion. The pattern is to hold estate sales and never report the income or account for it on their annual accounting. Pool tables, pianos, jewelry, artworks, etc. just disappear without any record and without the money being used for the benefit of the ward. These judges are advocating the enablement of crooked fiduciaries to steal.

The judges ask "What is the purpose of filing with the court?" Again, this is disingenuous because the answer is obvious. The ward, the family, even other Interested Parties will want to know where their family silver and china went. They will want to know where the family photos ended up, etc. The guardians and conservators often refuse to answer these questions and the courts don't make them follow the laws we have.

The judges follow this with

ITEM #4

which tries to make the case that we don't even need to keep track of sentimental items. They wish to remove this, claiming that some people are "hoarders" and so t is too difficult to determine sentimental value. I believe this excuse, while flimsy at best, further establishes how little these judges care about the families whom they destroy.

ITEM #5

The judges claim that a "neutral party" must be appointed when interpersonal disputes arise which hinder the fiduciary's ability to carry out their job. The lack of logic betrays the true objective here, which is to have a greater legal power to appoint a "professional" rather than the family member chosen by the Individual, as is their statutory right. To wit, the fiduciary hasn't been appointed yet. The court is anticipating that which has not happened. And in fact, when family members attempt to stop an abusive or exploitative "professional" fiduciary, that itself is the appointment of a supposedly neutral professional being the cause of the extra litigation. And the fiduciary then gets to bill their ward for the hours involved in the lawsuit, so the fiduciary PROFITS from the litigation.

The Individual's wishes for who should be responsible to help them is supposed to be the statutory priority. It is their life, and the court cannot possibly understand the complexities of why they value what and whom they value. And there is no logic supporting the unwillingness to appoint the choice of the ward due to the actions of third parties because that appointee would then have the power to defend the ward from the aggressor. Yet the probate judges in MI frequently abuse discretion in order to

appoint their favorites, despite it contradicting the law. By doing so, they have been "legislating from the bench" for many years, and now they seek to make the abuse legal.

ITEM #6

These judges do not want guardians to bother with the requirements for when a guardian wants to change the ward's Residence. They call it to much of a burden. But what t really means is they wan guardians to be able to hide and even isolate wards from family and friend who might seek to bring a malicious guardian to court, or to access the ward as a witness in a case against the guardian or conservator.

As legislators all across the US, at both State and Federal levels have been learning, the real danger to Individuals of advanced age, whether they have true disability or not, or other Individuals with disabilities, including physical disabilities such as blindness or amputation, it is the court system which is often the root cause of the abuses and exploitation. And they are learning that a great many people, the majority of cases, are not in need of guardianship or conservatorship because they are perfectly capable of meeting their needs with Supported Decision Making.

SDM as it has been enacted in other States has been imperfect because it has kept the courts involved when unnecessary, and it has also failed the people in the same way which State laws across the US have failed. That is the unconstitutionality of deprivation of rights without due process, or the pretense of due process which has been conducted without equal treatment under the law.

When a person loses all of their rights, and all of those rights are given to another person, as these judges do regularly in violation of State statutes, the victim can no longer have any say in where they live, who they associate with, including family, they can be forced to divorce, be prevented from voting, they can have their real property without their say, and be prevented from using it or even setting foot there while they "own" it, and they can have everything they own sold without any input or claim to keep for"sentimental reasons." And when the judge gives these rights to that third party, whose only interest is profit, and has no reason to be personally invested in the well-being of the Individual, that full control with the ability to earn income from it is exactly the definition of slavery, violating the 13th Amendment.

Sir, the HB 4847-4850 are on the right track. The people seeking to dilute them, especially the probate

judges, are not invested in the welfare of the people of Michigan. The Michigan Guardianship Association and Probate Judges are the foxes in the hen-house, and their input should be weighed with that in mind.

HB 4847-4850 will NOT fix the problems, no matter how well they are conceived because it has been the practice of Probate judges to ignore statutes and appoint persons who then conduct exploitation and other abuses. As long as judges can get away with ignoring the law, no law you make will necessarily make difference.

However, there is a way to get the victim's head out of the lion's jaws. It is commonly understood that a great portion of persons under guardianship could manage just fine under Supported Decision Making. I would recommend to you that SDM could be the perfect answer after all if the State of Michigan adopted the DEFAULT version of SDM, which I am attaching to this letter in two documents. The first is the D-SDM proposal, and the second is an FAQ page. I have been having meetings with legislators and their legislative aides on both the State and Federal levels over this proposal, and it is getting a lot of positive attention. It is the remedy which would provide the proper level of care and meet all needs, would avoid guardianship, reduce court litigation, it would work WITH State laws on guardianship because a smaller degree of guardianship would continue. So, HB 4847-4850 would still be very helpful if this law proposal were considered as a *complimentary law,* co-existing with guardianship. And when adopted, the critique of the probate judges in their Oct. 15 letter would become moot, and the incentive for courts and "professional" fiduciaries, especially attorney-fiduciaries, would be so diminished as to make corruption a costly risk for little gain.
A copy of the letter from the judges is attached here.

Sincerely,

Randy Asplund

October 15, 2021

Honorable Graham Filler, Chairman
House Judiciary Committee
Michigan House of Representatives
P.O. Box 30014
Lansing, MI 48909

Dear Chairman Filler:

We write to encourage the Committee to make additional changes to HB 4847-4850. We believe that this package of bills, while well-intentioned, will be more harmful than helpful as currently written.

In particular, we wish to emphasize the harm to our community members with mental illness. Nearly half of adult guardianships are for persons under 65 years old; most of those are for people suffering from serious mental illness. Often for this group, a professional guardian is the only person who is both willing and suitable to serve. The proposed legislation would put many professional guardians out of business. Without a guardian for these community members, we would expect to see more homelessness, more visits to the ER, and more arrests and interactions with the criminal justice system. We are quite sure that is not the goal of this committee, and we urge you to take a close look at our suggestions outlined below.

- **Funding must be provided with the additional requirements for public guardians who currently serve "pro bono" or for very minimal reimbursement for their duties.**
    - Professional guardians, hospitals and nursing homes serve an important function for those individuals who do not have family members who are able or willing to serve in this capacity and should not be expected to nor can they provide this public service for free.
- **Visitation requirement will put professional guardianship agencies out of business.** HB 4847 would require monthly in-person visits, rather than current law requiring quarterly visits, and would also require each visitor to be a certified guardian. We recommend:
    - allowing visits to be conducting virtually by phone or using audio-visual technology (and the court could require in-person visits if warranted in the court's view). This allows greater flexibility and is more cost-effective for both the guardian and the ward without a loss in oversight.
    - dispensing with the requirement that all visitors be certified. HB 4847 allows the use of support staff to perform certain functions while reserving all decision-making authority for the certified guardian. The visits are another function that can easily be delegated to a support staff person, who can then report any concerns for additional follow-up to the certified guardian.
- **Recordkeeping requirement for filing with the courts is too burdensome and contrary to structure of EPIC.** The requirement to file extensive, detailed inventories and accounts in HB 4848 will burden the court system without appreciable benefit (courts are not

equipped with qualified staff to audit accounts so what is the purpose of filing with the court?).

- In accordance with the intent and structure of EPIC, require the fiduciary to maintain certain records that are available for inspection by a guardian ad litem or interested person; objections may then be raised and heard by the court.
- Risk of identity theft and financial scams/exploitation increases by requiring detailed records to be filed with the court (note that inventories and accounts are currently required, but the proposed bills impose additional requirements).

In addition to the three major suggestions outlined above, we would like to note a few more suggestions:

- **A certification process managed by SCAO could incorporate some of the detailed requirements in the proposed bills rather than being required for every individual case.**
  - For example, rather than requiring a guardian to make an inventory of a person's "sentimental" items (which may be impossible in certain situations, such as in a hoarding situation or if the person is entirely unable to communicate), include training and practical information in the certification process about how to identify and protect a person's sentimental items when relocation is required.
- **Interpersonal disputes that interfere with a fiduciary's ability to carry out his/her duties must be a basis for appointing a neutral party.**
  - A guardian must be able to put the proposed ward's needs ahead of interpersonal disputes; in the court's experience, this is not always possible and in those cases, a neutral party (a professional guardian) may need to be appointed. Without this option, there will be cases that are endlessly litigated with repeated petitions which will take up valuable court time that could be used for other cases.
- **Permanent residence change requirements are unnecessary and too bureaucratic.**
  - In the court's experience, this would be a relatively rare occurrence and the lengthy process and detailed requirements impose too much of a burden on the guardian, rather than allowing flexibility depending on the situation.

We appreciate the efforts of this committee to improve the guardianship process and encourage the members to take a close look at our suggestions. The probate courts of this state are tasked with the responsibility for our most vulnerable members of our community, including the elderly and those with mental illness. Guardians serve an important function in supporting those vulnerable populations. Just recently, as part of a movement to increase access to mental health treatment and reduce the criminalization of mental illness, the legislature enacted Public Act 595 in 2018 which permitted guardians to consent to mental health treatment. That was an important change to allow guardians to get necessary treatment for their wards earlier and faster, to reduce and prevent more serious symptoms, reduce hospitalization and jail time, and to encourage stability in housing and medical care. These bills presently before you would take these efforts several steps backward. We encourage you to support the efforts of guardians and probate courts by providing funding for guardians and dispensing with unnecessary bureaucracy while maintaining appropriate oversight for the protection of our most vulnerable individuals.

Freddie G. Burton, Jr.
/with permission

Honorable Freddie G. Burton, Jr.
Chief Judge Wayne County Probate Court

James M. Biernat, Jr.
/with permission

Honorable James M. Biernat, Jr.
Chief Judge Macomb County Probate Court

Patrick J. McGraw
/with permission

Honorable Patrick J. McGraw
Chief Judge Saginaw County Probate Court

David M. Murkowski
/with permission

Honorable David M. Murkowski
Chief Judge Kent County Probate Court

Julia B. Owdziej
/with permission

Honorable Julia B. Owdziej
Presiding Judge Washtenaw County Probate Court

Kathleen A. Ryan
/with permission

Honorable Kathleen A. Ryan
Chief Judge Oakland County Probate Court