

**Statement of
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**To The House of Representatives
Committee on Government Reform**

**Regarding the Responsibilities and Accountability of the Register of Wills, the
Relationship of the Register of Wills Office with the Bar and the Public and the
Adequacy of the Reporting Requirements and Enforcement of those
Requirements in Conservatorship and Guardianship Matters**

April 23, 2004

Mr. Chairman, Congresswoman Norton and other Committee members. I very much appreciate the Committee's offer to testify before you today. Mr. Chairman, in your letter of April 20th, the Committee solicited my views on the appointment, responsibilities and accountability of the Register of Wills and her staff as well as the relationship of the Register of Wills Office with practitioners (and presumably the public), as well as the adequacy of current reporting requirements for conservators and the enforcement of these requirements. You have also asked that I comment on the use of new technologies to streamline guardianship and conservatorship administration.

Having practiced almost exclusively in the Probate Division since its inception in 1972 (and for three years before that in the U.S. District Court, the court that formerly had jurisdiction over trust and estate matters here in the District of Columbia) as well as having been employed as a Deputy Register of Wills in that Office from 1966 to 1969, I appear before you with certain ingrained prejudices and/or biases concerning just about every facet of the Probate Division's work. I was fortunate to serve as the Reporter for the Initial Advisory Rules Committee, first formed in mid-1971 to draft rules and procedures governing the administration of decedent's estates, trusts, guardianships of minors, and guardianships and conservatorships of incapacitated adults. It was my honor to have served on that committee with members of the bench and bar for more than 23 years. The role of that committee and all of its successors was to draft those rules of procedure in the administration of estates guardianships and conservatorships in accordance with the statutory framework first promulgated by the U.S. Congress, and since 1972, the District of Columbia City Council.

So that the Committee can get a full flavor of how this rule-making process works in practice, let me hear mention that the members of the committee are selected by the Chief Judge of the Superior court and consistently has included members of the bar with particular expertise and experience in matters that were handled or brought before the Probate Division. In addition, it has been a consistent practice that a number of Superior Court Judges, including those Judges assigned to the Probate Division, sit on the Advisory Rules Committee. The work of that Committee since its inception has been to periodically meet to discuss and propose modifications to existing rules as well as new rules that may be deemed appropriate to more efficiently implement the statutory scheme governing the work of the Probate Division. These proposed rules are thereafter reviewed by the Rules Committee of the Board of Judges of the Superior Court and then, if deemed appropriate by that Committee, submitted to the full Board of Judges of the Superior Court. They are thereafter put out for public comment and after a period of time promulgated as Rules of the court. I think we can all agree that the process is very open and transparent.

Having provided you with that thumbnail sketch of the Rule making process, now let me tie that process directly into your Committee's focus for this morning. The Register of Wills, as well as key Deputies and/or other senior staff of the Register of Wills Office have either been members of the Advisory Committee or acted as staff available to the Advisory Committee in drafting the proposed rules.

Can the Rule-Making Process be Improved?

Although, as indicated above, there is significant openness and transparency to the process, one suggestion in that regard would be to have the Court consider having Advisory Committee membership expanded to include one or more health care professionals or social

workers who could lend a non-legal perspective to the discussion and debate, at least in deliberating over and drafting rules affecting guardianships and conservatorships of incapacitated adults.

As I am sure the testimony of others will have laid out the workings of the Probate Division, I reiterate that there are two Judges assigned to the Probate Division, one as Presiding Judge and the other as Deputy Presiding Judge. These assignments or appointments usually run two to three years. In addition to conducting hearings as well as trials that grow out of adversarial proceedings that are filed in the Probate Division, Probate Division Judges review and sign submitted *ex-parte* orders in connection with the administration of decedent's estates, guardianships for minors as well as guardianships or conservatorships of incapacitated adults.

Appointment, Responsibilities and Accountability of the Register of Wills and her Staff.

As I am sure you have heard from Court personnel testifying here today, the Register of Wills is in fact appointed by the Board of Judges of the Superior Court, in accordance with Chapter 21 of Title XI of the D.C. Code. In addition to the duties, powers and responsibilities set forth in the Chapter 21 of Title XI, a specific Probate Division Court rule authorizes and in fact instructs the Register of Wills to review all *ex-parte* matters and to make recommendations to a Probate Division Judge as to whether or not proposed orders should be signed as submitted. This review process entails the Register or one of her deputies reviewing the requests for *ex-parte* relief and providing a written recommendation to the Court for that purpose. The written recommendations become part of the court file.

While not a statutorily defined duty, the Register of Wills, by virtue of existing Court rules is obligated to advise the Court of any irregularity perceived in connection with the administration of decedent's estates, guardianships of minors or conservatorships and

guardianships of incapacitated adults. These irregularities can run the gamut of failing to file statutorily mandated or rule-mandated Inventories or Accounts and/or failure to comply with audit requests made of the staff of the Register of Wills.

The current Register of Wills, the Honorable Constance Starks, has held that position, I believe, since 1988. Since that time there have been no less than 4 significant, far reaching, and sweeping changes to the guardianship/conservatorship statute or the administration of decedent's estates statutes and, as recently as 2003, a version of the Uniform Trust Act has been adopted by the District of Columbia. All of these statutory changes have required substantial revision to the rules and administrative undertakings that govern and guide the practitioners and general public in this area of the law. The amount of work done by the Register of Wills and her staff, as well as the organized Bar and the Bench, in adopting rules and procedures consistent with the statutory changes has been remarkable. I think it's important to note that all of these changes were implemented without an ostensible hitch or disruption in the administration of decedent's estates or conservatorships or guardianships. Specifically, the four statutory changes to which I refer, included the *Guardianship, Protective Proceedings, and Durable Power of Attorney Revision Amendment Act of 1989*, the *Probate Reform Act of 1994*, the *Omnibus Trusts and Estates Amendment Act of 2000* and, most recently, the *Uniform Trust Code Act of 2003*. It is not the purpose of this hearing or my testimony to articulate the nuances or the good or bad points of these statutes. I mention them only so that the Committee gets an understanding of how administratively the Office of the Register of Wills positively coped or dealt with the changes in procedure and administration due to the changes in the statutes. I hasten to add that in approximately the same period of time, the staff of the Register of Wills Office was reduced from 86 in the late 1980s to a current number of less than 50.

The Washington Post 2003 Expose

I think everyone here at this hearing this morning will agree that the articles that appeared in the Washington Post in June of 2003 were not the best days for the Superior Court of the District of Columbia. The Washington Post reporters did an extensive study of estate, guardianship and conservatorship proceedings that had been instituted within the Probate Division in the last 8-10 years. I am morally certain that the survey of available cases during that time exceeded 20,000 (decedent's estate filings average, on an annual basis, 2,350 to 2,500 cases; guardianship and conservatorship proceedings are probably half that number). In the two days of the Post article, they highlighted no less than ten cases where egregious conduct went unchecked, where misfeasance and nonfeasance were not challenged and, in one case, outright theft by a Personal Representative of a decedent's estate was in the hundreds of thousands of dollars. I hasten to add, as to that just mentioned example of theft by a Personal Representative (not a lawyer) there was absolutely nothing the Register of Wills Office or the Court could have done to prevent that theft. The estate was operating under statutorily mandated "unsupervised administration" and, until a complaint was filed by an Interested Person, there was no way the theft could have been detected or prevented. Nonetheless, I believe the stories were a wakeup call. It was a wakeup call for the Register of Wills Office; it was a wakeup call for the Court; and it was a wakeup call to the Bar. The Chief Judge, I presume in consultation with the presiding Judges of the Probate Division, immediately took steps to deal with the perceived pattern of conduct that allowed these irregularities and abuses to be visited upon the citizens of the District of Columbia. The Chief Judge's Administrative Order forthrightly spoke to the

practicing bar in unequivocal terms that we must do better, we have rules to be observed, we have deadlines to be met, and failure to do that in the future will in fact have consequences.

Relationship Between Register of Wills Office on the One Hand and the Bar and the Public on the Other

In the weeks and months since the Washington Post articles and the famous administrative order issued by the Chief Judge immediately following those articles, there have been rumors and grumblings by the organized Bar about the draconian nature of Chief Judge King's order and the Register of Wills role in implementation of that order. Chief Judge King properly perceived a problem within the Probate Division and, I presume in consultation with the presiding Judges of that Division, entered the Order had to be implemented. I would respectfully suggest to this Committee to the extent that it has an interest in this dynamic, the grumblings had more to do with "shooting the messenger", the implementer than anything substantive. In the passage of time, the administrative order has been amended on two different occasions. While I am not fully certain, I believe these amendments have addressed the articulated and, maybe in some instances, legitimate concerns of members of the Bar without diluting the message that comes through loud and clear from Chief Judge King's Order. Filings will be made timely, irregularities will be dealt with directly and those fiduciaries abusing their responsibilities will be dealt with appropriately.

Courthouse lore allows anecdotal stories to take on lives of their own. The stories sometimes become bigger than life. Rather than rely on such stories to determine the level of discourse and handling of issues or problems brought to the Register of Wills Office by the Bar and the public, I for one believe that empirical data is a better gage to see how that dynamic is going. This past February, Court personnel (not from the Register of Wills Office) conducted a

survey of the users of the Register of Wills Office over a specific three-day period. There was no attempt to single out a particular group or groups of users. Seventy-five percent of the people who came through the Office of the Register of Wills as “users” during the three-day period completed the survey. It has been publicly announced that ninety percent of those users “agreed or strongly agreed that service (from the Register of Wills Office personnel) was courteous and responsive.” Ninety-five percent responded that they have received the assistance they were seeking within ten minutes of entering the office. Ninety-six percent of those responding reported that the visit to the Register of Wills Office was a “positive experience”. That is a pretty strong indication that the Office and its employees are doing the job they have been asked to do.

I also recognize, and I am sure this Committee does as well, that that kind of result is only achieved through continuing positive supervision and training. It is my understanding that both are an ongoing process of the Court in general and in the Probate Division in particular.

In conclusion Mr. Chairman, I commend your Committee and its members for its desire to make sure the Superior Court and its various divisions continue to provide outstanding service in the administration of Justice to the citizens of the District of Columbia. In that role, I urge you to continue to encourage and yes, even prod, the Executive Branch of the District of Columbia Government to provide resources necessary to continue this work and to enhance the services to be afforded to the Citizens of the District of Columbia. I thank you for your time and will take any questions that you may want to present.