



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: April 25, 2011

TO: The Honorable Patricia Blevins
The Honorable Melanie George
The Honorable William B. Chandler, III
Ms. Lexie McFassel, Public Guardian

FROM: Ms. Daniese McMullin-Powell, *Dmp/ku* Chairperson
State Council for Persons with Disabilities

RE: S.B. 24 (Public Guardian)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 24 which proposes reforms for the Office of the Public Guardian in an effort to meet the increasing critical need for guardianship services in Delaware. The proposed legislation would repeal the existing enabling legislation for the Office of Public Guardian. It would also establish a "Delaware Guardianship Commission" to serve in an advisory capacity to the Public Guardian. Overall, the legislation is straightforward and provides more detail than the existing enabling legislation. However, SCPD has the following observations and recommendations.

First, the Chancellor currently appoints the Public Guardian who serves at the pleasure of the Chancellor. See Title 12 Del.C. §3991. The legislation envisions appointment by the Governor (lines 18 and 155-157). There is potential for the position becoming a "patronage job". Appointment is not subject to Senate confirmation. In contrast, personnel such as the Election Commissioner (Title 15 Del.C. §301), Director of the State Housing Authority (Title 29 Del.C. §8603), and OMB Director (Title 29 Del.C. §6302A) are appointed with the consent of the Senate. Moreover, the rationale for removing the appointment authority from the Chancellor is not compelling. The synopsis recites as follows:

It changes the appointing authority from the Chancellor to the Governor to remove the conflict of the Public Guardian appearing in the Court of Chancery while being supervised by the Chancellor.

The Family Court has multiple contracts with attorneys to provide representation in

dependency/neglect and other proceedings. Such attorneys could appear before the Chief Judge who approves the contracts. SCPD is unaware of any ethical concerns raised by this practice.

Second, it is clear that the Governor could remove the incumbent Public Guardian immediately upon the effective date of the legislation (lines 155-157). However, it is not clear if the Governor could remove the Public Guardian (for cause or otherwise) once appointed to a 6 year term (lines 17-18).

Third, line 9 appears to allow the Public Guardian to only serve Delaware citizens. Thus, appointment of the Public Guardian for noncitizens legally residing in the State as well as Stockley or DPC residents incapable of establishing Delaware citizenship would be categorically foreclosed. Moreover, historically, the Chancery Court exercised guardianship jurisdiction over nonresidents. For example, the former enabling legislation, Title 12 Del.C. §3901, authorized the Court to appoint a “guardian of the Delaware property of any nonresident disabled person owning property located in this State, and a guardian of the person of any nonresident disabled person brought into this State for care”. The current version of §3901 is less specific but does not limit the Court’s jurisdiction to Delaware citizens or residents. A “Delaware citizen” limitation on appointment of the Public Guardian is ostensibly unduly constrictive and merits reconsideration.

Fourth, SCPD truly appreciates that S.A. 1 to S.B. 24 was introduced which expands the membership of the newly created Delaware Guardianship Commission by adding a member from the disability and elderly communities designated by the Secretary of Health and Social Services. However, Council recommends that the member from the disability community be designated by the State Council for Persons with Disabilities [Title 29 Del.C. §8210] or the Community Legal Aid Society, Inc. [Title 16 Del.C. §§1102(7); 5161(a)(2); 5162(a)(4); 5181(7) and Title 31 Del.C. §3903]. The composition of the Delaware Guardianship Commission is overwhelmingly comprised of State officials, a majority of whom would be representatives of one agency, DHSS. It would be preferable to include some consumers of non-profit representation for balance.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations or recommendations on the proposed legislation.

cc: The Honorable Harris McDowell
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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