

Concerns regarding HB2424: probate; wards; rights

Section One:

§14-1101: Counties do not have the authority to establish courts. The Arizona Constitution establishes one Superior Court for each county, and Superior court judges are elected in 13 of the 15 counties. Would the inability to demonstrate competence disqualify a judge from the ballot?

§14-1104: The newly established Legislative Advisory Probate Panel would consist of seven private citizens who will review proceedings brought before the court pursuant to Title 14 and receive complaints from the public regarding probate matters. The House Judiciary committee has nine *elected* public members who are doing the former by virtue of hearing HB2424, and Arizona voters have established a constitutional Commission on Judicial Conduct which is an independent state agency that investigates complaints against judicial officers with the authority to reprimand, censure, suspend, or even remove a judge. Setting up a bifurcated system will only serve to confuse the public and give a false sense of authority to this panel which is tasked with making recommendations for judicial changes without the ability to ensure implementation.

Section Two:

§14-5109 (A): Requires the court to sanction a petitioner for filing a guardianship petition based on hearsay evidence without specifying what those sanctions could or would be. More troublesome is the fact that the language guts the Rules of Evidence which has numerous exemptions allowing for the admission of hearsay evidence. If an average person who is not familiar with this term of art inadvertently violates this section, the court would be mandated to sanction them, and again- what does that entail? Financial sanctions? Contempt?

§14-5109: Due process concerns will be raised if a probate judge is forced to follow a directive appointment and allow visitation with a family member unless a finding is made as to criminal conduct. This would force criminal trials within the probate court, something they are not set up to accommodate. Guardianships are intended to *protect* wards from potential abuse, and current ARS §14-5311 allows the court to pass over an individual named by the ward for good cause. Under this new section the court would be unable to skip over a petitioner who has been convicted of murder, molestation, financial fraud against another person because technically they

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didn't commit a crime against the ward. This is an extremely vulnerable population and it is not uncommon for people to prey on the elderly, befriend them, and then seek powers of attorney or court appointment as a fiduciary.

§14-5109 (F): What is a "credible physician?" The court would be forced to hold hearings to make such a determination and under this law, a ward's OB/GYN could arguable be a credible physician. Does that mean the court cannot order an independent evaluation of the alleged ward pursuant to §14-5303? What "period of time" is sufficient? As is apparent by the efforts to implement the new medical marijuana law, it is difficult to mandate an arbitrary length of time after which a sufficient doctor/patient relationship is deemed to have been developed.

Section Three:

§14-5307: Requires the court to approve an automatic substitution of a guardian once a year for any or no cause. The first year of a guardianship is generally the most expensive, and the majority of the cases that come before the court are not large estates. This will force a judicial officer to appoint a successor guardian who would then be required to conduct an inventory of the ward's assets and liabilities, essentially starting the process all over again, potentially draining the average, modest estate, and forcing the ward to become dependent upon taxpayer support.

Section Four:

§14-5310: By statutory definition, a ward is an incapacitated person who is impaired to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible personal decisions. In many of these cases the individuals do not want a guardian or conservator appointed, but that does not remove the court's obligation to look out for the best interests of the ward. Family members who are upset because they believe a guardian is draining their inheritance can and will coerce incapacitated relatives into appointing someone else. The court will be forced to comply so long as the successor guardian is "suitable," which under this new law means they have not been found to have committed a crime against the ward, which goes back to the problem with proposed ARS §14-5109.