

**House Aging and Older Adult Services Committee
Informational Meeting
Supreme Court Elder Law Task Force
Office of Elder Justice in the Courts
Advisory Council on Elder Justice in the Courts
April 13, 2016**

INTRODUCTION

Good morning Chairmen Hennessey and Samuelson and members of the Aging and Older Adult Services Committee. Thank you for the opportunity to talk with you about the work of the Supreme Court’s Elder Law Task Force, its comprehensive report and recommendations, and the subsequent work of the Office of Elder Justice in the Courts and the Advisory Council on Elder Justice in the Courts.

I am Paula Francisco Ott, and I am a judge on the Superior Court of Pennsylvania. I serve as the co-chair of the Advisory Council on Elder Justice in the Courts. With me are Zygmunt Pines, the previous state court administrator, my co-chair of the council and one of the driving forces behind the courts’ work on elder justice; and George Zanic, president judge of Huntington County, a former member of the task force, and a member of the advisory council.

A 2014 resolution adopted by the national Conference of Chief Justices and the Conference of State Court Administrators recognized that state courts would “experience a substantial increase in adult guardianships and conservatorship cases” resulting from a growing population of older adults and increased longevity.

Well before the adoption of this resolution, Pennsylvania courts recognized the need to study the growing issues impacting the elder

community and their interaction with the legal system. These issues included guardianship, abuse and neglect, and access to justice.

The Supreme Court concluded that it was necessary to review the way in which state courts – from magisterial district courts to the appellate courts – address the needs of elders. There was also recognition that the changes could not be effectuated by the judiciary alone. As was noted by the National Center of State Court’s Center for Elders in the Courts, because of the multiplicity of issues involved in elder law cases, a court’s response is most effective when it works with community stakeholders and taps into their expertise and resources.

FORMATION OF THE ELDER LAW TASK FORCE

In 2013, the Supreme Court convened the Elder Law Task Force, a multi-disciplinary task force to study, identify and make recommendations to address particular concerns regarding elders.

The task force was a “blue ribbon” panel consisting of 38 elder issue experts. Members included jurists, elder advocates and attorneys, orphans’ court clerks, prosecutors, educators and representatives of the financial industry – all professionals with expertise and interest in elders and their interaction with the courts. Then-Chief Justice Castille asked Justice Debra Todd to undertake the formation and leadership of the task force, and the Justice, together with Zig Pines, led the task force in its work.

The charge of the task force was clear – to lay a foundation for substantive improvements in the way elders in Pennsylvania interact with the court system and to develop a blueprint to address those challenges. Specifically, the task force was to “review current practices and problems,

examine promising practices in other states and deliver a blueprint of recommendations to address the needs and challenges of the Commonwealth's aging population.”

Because the scope of the task force was far reaching, three committees were formed to better focus on specific areas of interest. Included were committees on guardians and counsel, guardianship monitoring and elder abuse and neglect. Each committee was charged with studying specific areas and reporting back to the full task force.

The task force and its committees worked diligently throughout 2013 and 2014. The entire task force met four times. The committees also held numerous meetings during the same time frame, either in person or by phone or videoconference. For the task force's second meeting, legislative staff from the aging and judiciary committees was invited to attend. Justice Todd and the members of the task force recognized the judiciary was not the sole branch of government with a potential role in implementing task force recommendations, and Justice Todd believed it was important for legislative staff to understand the work of the task force and have the opportunity to pose questions.

All members of the task force, each with their own full-time jobs, gave freely of their time to serve and be active and integral participants in the discussions, formation of recommendations and the compilation of the report.

ELDER LAW TASK FORCE REPORT

In November 2014, after 18 months of work, the comprehensive report of the Elder Law Task Force was released. We have provided members of the committee with a copy of this report.

The report contains 130 recommendations. I want to stress that they are just that – suggestions and proposals as to the best course of action based on the work and study of the 38 experts who served on the task force. As I suggested earlier, the task force realized early in the process that the changes necessary to achieve its goals would go beyond areas over which the Supreme Court has jurisdiction, and would require partners during the endeavor.

Of the 130 recommendations, a substantial majority – 91 – are recommendations made to the Supreme Court. The other 39 recommendations extend to the judiciary’s sister branches, prosecutors, bar associations, the federal government, the public and victim services providers.

Before discussing the legislative recommendations, allow me to provide the committee with an idea of some of the recommendations that have already been enacted and those that are well on their way to enactment.

ENACTMENT OF THE FIRST TWO TASK FORCE RECOMMENDATIONS

The Supreme Court has adopted the first two recommendations of the task force.

The first recommendation, adopted in January 2015, was the creation of the Office of Elder Justice in the Courts (office) within the Administrative Office of Pennsylvania Courts. The office, staffed by one person, its director, is charged with assisting the Supreme Court with implementation of the task force recommendations and providing support to the advisory council. The office develops and participates in presentations and training sessions for the advisory council, judges and attorneys; fosters collaboration with other elder justice entities; participates in elder justice interdisciplinary teams; serves as

a resource on elder issues to the entire Unified Judicial System; and responds to requests from the public.

The second recommendation adopted by the Supreme Court was the establishment of the Advisory Council on Elder Justice in the Courts (advisory council). The advisory council serves as a link between the stakeholders and the Supreme Court and the AOPC. It also serves as a liaison to our sister branches of government and other parties regarding the implementation of the task force recommendations and other matters involving elder justice. The advisory council provides direction to the Office of Elder Justice in the Courts and focuses on the prioritization of the recommendations, continuing to refine them when necessary, so that the best possible methods are used to implement them.

The advisory council is comprised of 24 members, who are identified in the membership list that was provided to you, and Justice Todd who is the Supreme Court liaison. The council's membership, like that of the task force, is diverse. It includes elder advocacy organizations and attorneys, jurists, health care and family service professionals, educators, representatives from the legislative and executive branches and county elected officials. Its two committees, Guardianship Counsel and Monitoring and Elder Abuse and Neglect, are chaired by Judge Lois Murphy from Montgomery County and President Judge Sheila Woods-Skipper from Philadelphia County, respectively. The advisory council meets quarterly; the committees meet on a monthly or bimonthly basis.

THE IMPORTANCE OF REFINEMENT AND COLLABORATION

It is important to emphasize that when the task force members made their 130 recommendations, they understood that the changes would not come overnight. The group of stakeholders who now serve on the advisory council bring a myriad of experience, expertise and viewpoints to the table. Many of the task force recommendations have already been discussed and debated by the advisory council. The complexity of many of the issues and the passionate viewpoints of experts in the elder law field, two factors I know this committee is aware of, will result in a long-term, but necessary, process to further develop and refine the recommendations.

An example of this evolution is found in one of the legislative recommendations requesting that the General Assembly provide for creation of elder abuse task forces in all counties/judicial districts. The task force believed that local elder abuse task forces are necessary vehicles to provide education to, and share information with, judges, court staff, guardians and practitioners.

At the time the task force was working on its recommendations, the House of Representatives unanimously passed House Resolution 929. This resolution directed the Legislative Budget and Finance Committee (LBFC) to identify those local area agencies on aging service areas without multidisciplinary elder abuse task forces, and investigate the need to establish such task forces. The LBFC submitted a report of its findings and recommendations to the House.

As a result of the LBFC report, the advisory council dedicated a part of its October 2015 agenda to a presentation by the LBFC. Based on the results of the LBFC study, the advisory council modified task force recommendation

109 to recommend the creation and continuation of elder abuse task forces where feasible, rather than mandate them in every county or judicial district.

The interaction with the LBFC also demonstrates one of the more important goals of the office and the advisory council – collaboration. The advisory council understands the realities facing all levels of government today. Budgets continue to be tight and all entities must do their best to identify efficiencies and work with others on common goals.

Members of the advisory council and the state court administrator have met with the Pennsylvania Commission on Crime and Delinquency to share its work and discuss where, moving forward, there can be a collaborative relationship to pursue goals of common interest. I also met recently with the Pennsylvania Commission on Sentencing to discuss the feasibility of enhanced sentences for crimes committed against elders, another of the task force’s recommendations. Obviously, the legislature will play the central role in the enactment of enhanced sentences, and it is one of the reasons we are appreciative of the opportunity to appear before you today.

It is a goal of the advisory council to take advantage of any opportunity to work collaboratively with any and all interested parties, and to build upon the efforts that already exist, particularly if they are effective.

TASK FORCE RECOMMENDATIONS IN PROGRESS

The advisory council has identified a number of the recommendations that can be achieved in the short-term and are in the process of enactment.

The recommendation that the education of judges and court participants be a primary focus is already underway and will continue. The office and the advisory council have already participated in 13 presentations

and training sessions before a diverse collection of groups including the Pennsylvania Council on Aging, the Pennsylvania Legal Aid Network, the Department of Aging, Temple University's Institute on Protective Services, the Elder Abuse Awareness Conference and the Pennsylvania Bar Institute, county bar associations and county elected officials. Educational presentations have also been made to magisterial district judges as a part of their continuing education and to common pleas judges during the Conference of State Trial Judges.

One of the handouts committee members received today is the Elder Abuse and Neglect Bench Card. This bench card was one of the judicial education recommendations made by the task force. The advisory council worked with the AOPC Judicial Education Department to develop, finalize and approve the Bench Card, which is aimed at providing judges with the tools and resources for identifying and reporting elder abuse. The Bench Card has been distributed to all common pleas judges. In addition, magisterial district judges are receiving training on the Bench Card during their statutorily-required continuing education sessions. Going forward, all common pleas judges and magisterial district judges, elected and appointed, will receive education on the Bench Card during their respective new judge trainings.

There are a number of additional judicial education recommendations that are in progress. Along with the training sessions mentioned earlier, work is continuing by the office and the AOPC Judicial Education Department on the development of training sessions for jurists, attorneys and family guardians. A specific example is the office's ongoing collaborative effort with the York County courts that resulted in the creation of a model education program for attorneys who handle guardianship matters. The program, which was

originally presented in 2015 through the York County Bar Association, is continuing to be refined and presented. A model training session for family guardians has also been developed and presented, and additional refinement of future sessions is underway.

Expanding on the concept of the Elder Abuse Bench Card, the development of two bench books is underway. One book focuses on guardianship, and will be utilized by orphans' court judges. The second book focuses on issues regarding elder abuse, and is for judges of all divisions. Steering committees have been formed to facilitate the development of the bench books.

The task force recommended that the Supreme Court, through the Criminal Procedural Rules Committee, consider if the official comment to Pa.R.Crim.P. 500 should be amended to ensure testimony of elder victims and witnesses in criminal cases is preserved by videotape deposition, for the use at trial if the elder victim's memory has deteriorated since the crime was committed. The proposed revision was published for comment last year, and the Criminal Rules Committee is currently working to send a final proposal to the Supreme Court for its consideration in the near future.

The task force also proposed new orphans' court forms and changes to existing forms. One new form is a standardized physician/licensed psychologist deposition form to ensure consistent quality and quantity of pertinent information for judges to consider when determining an individual's capacity. The proposed deposition form, as well as proposed revisions to other guardianship forms, were published for comment last year by the Orphans' Court Procedural Rules Committee.

The Orphans' Court Procedural Rules Committee continues its work on rescinding and revising forms recommended by the task force, including the annual report of the guardian of the estate and person, and the guardian's inventory. Based on the comments received, a guardianship forms subcommittee of the Orphans' Court Procedural Rules Committee was convened with the purpose of making further refinements to the forms. It is anticipated that later this year, the proposed guardianship rules and revised forms will be published together for public comment as the next step in the rulemaking process.

Another recommendation that is in progress that I believe this committee will find of interest pertains to access to justice for elders. It involves the development of a pilot elder court in Philadelphia. An elder court would be similar in concept to the very popular veterans courts we have across Pennsylvania.

President Judge Sheila Woods-Skipper has created an elder justice working group to look at the concept of an elder court and has been identifying the needs of elders in the court system. The working group is also identifying the types of cases the court would hear and the judicial and staff training that would be necessary. The goal is to have a written proposal for a pilot program presented to be presented to the advisory council and then to Justice Todd later this year.

LEGISLATIVE RECOMMENDATIONS

The task force identified several recommendations that will require legislative approval. A number of those focused on specific legislation that

was pending at the time the task force was undertaking its work, while others focused on policy changes that were not in legislative form then.

As I emphasized earlier, these are simply recommendations from the 38 experts who participated on the task force and developed the report. The recommendations represent policy changes that the group identified and believed are necessary to improve the manner in which elders in Pennsylvania interact with the court system. The advisory council understands that many factors must be considered with the legislative policymaking process. The council is very interested in working with this committee, as well as other legislative committees, toward reaching positive policy outcomes.

One of the advisory council's legislative priorities for 2016 is the enactment of provisions providing for training of employees of financial institutions on the identification, prevention and reporting of elder financial abuse.

Chairman Hennessey's legislation, House Bill 786, requires financial institutions that currently have internal training programs to include in the curriculum information to assist employees with the recognition of the signs of potential financial abuse of an older adult and informing employees about the applicable provisions of the Older Adult Protective Services Act (OAPSA), and the process for making an abuse report.

Another OAPSA change advanced by the task force's report was the reporting involving financial institutions of suspected financial abuse or exploitation and the delay of suspicious financial transactions by elder customers. The advisory council will continue to monitor all OAPSA

legislation on these issues and stands ready to provide feedback where appropriate.

In addition to having an interest in OAPSA legislation governing financial institutions, the Department of Banking has invited some members of the advisory council to participate on an advisory board designed to enhance Pennsylvania's efforts to protect elders from financial exploitation. The advisory board will support the work of the department's elder fraud prevention initiative with the ultimate goal of providing continuing legal education on topics such as diminished financial capacity, signs of fraud and exploitation, ethics, and reporting of fraud and exploitation. The program will be developed this year in collaboration with the American Bar Association.

I mentioned earlier preliminary discussion with the Pennsylvania Commission on Sentencing. The task force originally recommended the enactment of mandatory minimum sentences in addition to those provided for in current law for the conviction of crimes against elders. This recommendation was modified by the advisory council as it recognized that mandatory minimum sentences might not be a preferred option of the legislature or judges. The recommendation now suggests that as an alternative to mandatory minimum sentences, the legislature could look instead at enhanced sentences for certain crimes against elders. The advisory council looks forward to working with the legislature and the sentencing commission on this endeavor.

The advisory council will continue to monitor several bills of interest that are currently pending and comment on those where it is appropriate to do so. The advisory council also continues to look at other legislative recommendations proffered by the task force – such as amendments to the

current slayer statute – and decide on the most prudent way to present them to you and your colleagues.

Thank you for the opportunity to provide remarks on the task force recommendations and the ongoing work of the Office of Elder Justice in the Courts and the Advisory Council on Elder Justice in the Courts. On behalf of the task force and the advisory council, I thank this committee for its recognition of elder issues and their importance to all Pennsylvanians, and for the financial support the House has given to departments and agencies who work tirelessly on behalf of our elder citizens.

I am happy to answer any questions you might have.