Senate Bill 2029
House Human Services Committee
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Introduction: Chairman Ruby and members of the House Human Services Committee, for the record, my name is Garrick Voigt, staff attorney for the Office of the State Court Administrator and staff for the Task Force on Guardianship Monitoring. My testimony today will primarily address concerns about SB 2029, clarify responses to questions from the March 10 hearing and propose an amendment.

Conflicts of Interest: Opposition testimony has largely focused on the claim that housing the Office of Guardianship and Conservatorship (OGC), the Guardianship and Conservatorship Counsel (Investigation Counsel), the Guardianship and Conservatorship Review Board (Review Board), and the Guardianship and Conservatorship Operations Committee (Operations Committee) within the Judicial Branch creates a conflict of interest. These arguments rely on a misunderstanding of the term "the Court."

The North Dakota Supreme Court, the Court System, and the district courts are not the same entity. Yes, they are all part of the Judicial Branch, and the Chief Justice is the administrative head of the Supreme Court, Court System, and Judicial Branch. However, ignoring independent divisions within the Judicial Branch generates misconceptions about conflicts of interest. For example, if you applied that standard when looking at the Executive Branch, it would have many conflicts of interest because it oversees so many programs and agencies. Yet, conflicts of interest are limited because the Executive Branch is made up of various departments, which are divided into divisions, which are often further subdivided into sections, bureaus, and units, all handling specific functions ranging in scope and functioning independently from one another. Now, let's apply that same concept to the Judicial Branch when assessing conflicts of interest.

The North Dakota Supreme Court, the Court System, and the district courts operate as distinct entities within the Judicial Branch. There was a comment that the structure proposed under SB 2029 creates a conflict of interest because the "Supreme Court" will become the appointer, appropriator, monitor, complaint processor, and adjudicator. That's not the proposal. Under the proposed structure, the appointer is the district court; the appropriator is a Legislature (though the budget proposal will be made by the Operations Committee); the monitor will be the OGC; the complaint processor will be the Investigation Counsel; the adjudicator will be the Review Board; and appellate review will be handled by the Supreme Court.

It was also argued that there is a conflict of interest because "the Court" is intimately connected to the ward because "the Court" appoints and removes guardians, appoints court visitors, conducts hearings on various petitions, etc. Yes, the district courts have the authority to perform these functions. These powers remain exclusive to district courts under SB 2029. As mentioned, the district courts will not generally be involved in the proposed complaint process except for receiving notices. The Review Board may make recommendations to the district court overseeing a guardianship or conservatorship case, but that judge will not be bound to those recommendations. It is best to think of the district courts, OGC, Review Board, Investigation Counsel, Operations Committee, and the Supreme Court as separate departments under the Judicial Branch because each serves a separate function.

Legislative Oversight: It was again argued that Legislative oversight will be lessened if the bill passes because transferring these programs to the Judicial Branch will remove the Legislature's ability to oversee changes to the Administrative Code, which is a valid concern. I wanted to measure the legislative oversight being lost if SB 2029 is enacted, so I looked at the ND Admin Code. I found that no Admin Code provision touches on the details of the Department of Health and Human Services (HHS) programs impacted by SB 2029. Those programs are governed by agency policies and contracts, which are not subject to legislative review. If anything, SB 2029 enhances legislative oversight by consolidating adult guardianship program appropriations and making expenditures more transparent and reviewable by the Legislature.

Judicial Overreach: Some have claimed that SB 2029 represents judicial overreach. However, the Supreme Court's involvement in this matter is the direct result of two legislative studies from the 68th Legislative Assembly, one mandated by enacting Chapter 27-27, and the other conducted by the Interim Government Finance Committee.

Chapter 27-27: Chapter 27-27 is short. It mandated the Supreme Court to create the Task Force on Guardianship Monitoring (Task Force). The Task Force was asked to address matters of guardianship accountability and further protections of individuals under guardianship. It was also tasked with recommending to the Supreme Court the regulations necessary to enhance the guardianship monitoring program to investigate suspected guardian mismanagement or illegal behavior. Therefore, one of the asks was to create a guardian investigator position and put it under the Supreme Court, while the other ask was creating court rules to improve the current guardianship structure in North Dakota.

Furthermore, Article VI, Section 3 of the North Dakota Constitution gives the Supreme Court rulemaking authority. The Court System does not believe it is

judicial overreach to use constitutionally granted powers after going through the legislative process to obtain a grant of statutory authority, especially when the Court System was asked to do so by the Legislature. Additionally, it was alleged that passing SB 2029 would unfairly subjugate guardians and conservators to court rules; however, guardians and conservators are already subject to court rules regarding minimum qualifications and procedures for appointment.

Interim Government Finance Committee Study: The study conducted by the 68th Interim Government Finance Committee considered the existing structure for adult guardianship programs under the Office of Management and Budget, Judicial Branch, and HHS; the feasibility of consolidating the programs under one agency; and an appropriate level of funding for the programs. Again, that committee sponsored the bill that became SB 2029, meaning a legislative body suggested putting the programs under the Judicial Branch. The Court System does not see how it is judicial overreach to transfer these programs to the Judicial Branch when a legislative body used the legislative process to do so.

Judicial Function: Critics have pointed to the age of the Winsor Schmidt Report, arguing that its recommendations must be reconsidered in light of changes in the guardianship landscape. While some aspects of the report are outdated (such as moot recommendations), its core findings on conflicts of interest and the distinction between direct and indirect services remain relevant. Dr. Schmidt specifically advised against placing a public guardianship office within a social service agency due to its role in providing direct services to wards, which could create conflicts of interest. In contrast, the Court System does not provide direct services—it contracts with providers, ensuring indirect oversight. Some jurisdictions have gone far beyond what is proposed in SB 2029. For example, the Nebraska Legislature established its Office of Public Guardian (OPG) within the Judicial Branch in 2014 to serve as a guardian of last resort. Nebraska's OPG employees provide direct services, whereas SB 2029 proposes a model with far less direct involvement.

Program Placement: Some have argued that HHS should continue administering the developmentally disabled (DD) corporate contract and take responsibility for the Public Administrator Support Services (PASS) program. This argument assumes that long-standing practices with the DD corporate contract are inherently correct. However, even HHS acknowledged it has a conflict of interest in administering the PASS program. Additionally, both the Governor's Office and HHS have declined responsibility for these entities. Ultimately, the decision on where to house these programs is a policy choice. The Task Force recommended placing the entities and programs proposed in SB 2029 within the Court System because: (1) the Court System has experience with similar structures; (2) the Court System's conflict of interest is lower than that of HHS; and (3) it requires fewer fulltime equivalent (FTEs) positions to administer the programs, minimizing government expansion.

Biased Against Guardians: Some claim SB 2029 is biased against guardians, though no specific examples have been provided. The bill's investigative and administrative procedures mirror those of the Judicial Conduct Commission and the Attorney Disciplinary Board, ensuring fairness. Arguing that these procedures are biased against guardians is akin to arguing that judicial and attorney disciplinary procedures are inherently unfair against attorneys and judges.

Additionally, concerns about SB 2029 not including advanced monitoring technology like Minnesota's system are misplaced. The Court System intends to explore enhanced monitoring software regardless of the bill's passage. Furthermore, it was claimed that Minnesota does not have an office of public guardian, which is true; however, about three years ago, its state court system created a pilot project to receive and investigate allegations of guardian and conservator misconduct.

Policy Effective Date: This was addressed in my March 10 testimony, but as a reminder, because there is an appropriation attached to this policy, the policy's effective date is July 1, 2025, not August 1.

Judicial Branch Licensing: A question was raised about whether the Court System currently licenses any professions. While it does not issue formal licenses other than attorney licenses, it establishes and enforces professional standards in multiple areas, including:

1. Guardians (N.D. Sup. Ct. Admin. R. 59)
2. Family mediators (N.D.R.Ct. 8.1)
3. Parenting investigators (N.D.R.Ct. 8.6)
4. Guardians ad litem (N.D.R.Ct. 8.7)
5. Alternative dispute resolution professionals (N.D.R.Ct. 8.9)
6. Parenting coordinators (N.D.R.Ct. 8.11)

The licensing framework in SB 2029 is modeled after attorney licensing and disciplinary procedures, making it well within the Court System's existing capabilities.

Admin. R. 59 Qualifications: There was a question on the current standards to become a guardian under N.D. Sup. Ct. Admin. R. 59. Standards under Rule 59 are separated into three categories: nonprofessional, professional entity, and professional individual.

Nonprofessional: A nonprofessional guardian need only: (1) complete the mandatory, online training provided by the Supreme Court; (2) provide a criminal history record check report; (3) provide an affidavit stating whether proposed guardian has been investigated for offenses related to theft, fraud, or the abuse, neglect, or exploitation; and (4) provide a release authorizing access to any record information maintained by an agency in this or another state or a federal agency.

Professional Individual: A professional individual must satisfy all the requirements stated for a nonprofessional plus possess certification through the Center for Guardianship Certification. Additionally, professional individuals must disclose whether they have been the subject of any disciplinary proceeding by a licensing entity or by an agency accredited through the Council on Accreditation.

Professional Entity: A professional entity must be accredited through the Council on Accreditation or have its employed guardians be certified through the Center for Guardianship Certification. Otherwise, the employed guardians must meet the same qualifications as professional individuals.

Opposition Amendment: The Court System acknowledges that an opposition amendment will be proposed. We request sufficient time to review and consider it. For context, the Court System is not opposed to placing these programs outside the Judicial Branch if an alternative structure effectively:

- Protects wards through robust guardian oversight.
- Ensures accountability for taxpayer funds.
- Consolidates public adult guardianship programs under a single funding source.

If the Committee reviews Appendix B of my March 10 testimony (p. 19, no. 3), it will note that getting HHS and law enforcement to investigate allegations of guardian misconduct has been very difficult, so it is critical that the proposed amendments have enforceable investigative mechanisms and be broad in scope. If an alternative proposal meets these objectives, the Court System is open to supporting it. That said, HHS and the Court System understand that the Governor's Office will oppose any amendment shifting the programs and entities proposed in SB 2029 from the Court System to HHS.

Proposed Amendment: Lastly, I have submitted a proposed amendment along with my testimony, which can be found on page five. This amendment adds Human Service Zones to the list of exceptions and relocates the previous subdivision 27-27.1-05(4)(c) to subsection 27-27.1-05(1). This change is necessary because the original placement of subdivision (c) would create an unintended interaction with subsection 3. Without this amendment, an individual appointed as a guardian or conservator for a family member could also offer guardianship or conservatorship services to the public, which is not the intent of subsection 3. The family member exception was included to ensure individuals are not required to obtain a license to care for their relatives. Moving this language to subsection 1 ensures it applies only in that specific context.

Conclusion: That concludes my testimony, and I will take any questions.