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Oral Testimony of Jonathan Martinis, Legal Director,  
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Before the Council of the District of Columbia  
Committee on the Judiciary and Public Safety

Public Hearing Regarding Bill 20-107:  
Charles and Hilda Mason's Elder Abuse Clarification Act of 2013

July 8, 2013

Members of the Council, my name is Jonathan Martinis. I am the Legal Director for the Quality Trust for Individuals with Disabilities. Quality Trust is an independent advocacy organization created to advance the individual and collective interests of people with disabilities. We are proud to support Bill 20-107, as we are proud to support any bill that protects people with disabilities from physical, fiscal and legal abuse. On their behalf: thank you.

As others have said, though, the harms faced and too often suffered by people with disabilities go far beyond that which can be addressed in any one bill. Along with so many other advocates, we call for a full review of the District's guardianship laws and procedures, to make sure that abuses are not only discovered and punished, but prevented. While a lack of time prevents me from making full recommendations, I would like to address one specific area where people are at great risk of abuse and one specific way that this Council can protect the rights and safety of adults in need of support. And you can do it by changing one word in one law.

If you change that word, you will ensure that people have someone to speak for and protect them when they face a guardianship petition seeking to remove their right to make basic decisions about their lives: someone to tell the Court their personal views and advocate for those views to be heard, considered and accepted. In that way, inappropriate guardianships and unsafe guardians can be avoided before they are appointed, protecting people's due process rights and their safety - the very goals the bill before you seeks to accomplish.

We know, from our work with and on behalf of people with disabilities, the severe and substantial impact guardianship can have on people's lives: they can lose the right to decide whether to work, vote or marry, where and how to live, how to spend their money and whether to accept or reject health care. A Congressional committee found that guardianship is “the most severe form of civil deprivation which can be imposed on a citizen of the United States,” and that the typical ward has fewer rights than a convicted felon.

Because guardianship can take away so many rights, people facing guardianship petitions must have strong due process protections, the most basic of which is the right to zealous representation by an attorney. Here, unfortunately, the District fails because of one word in one law.

While D.C. Code 21-2033 does give a person facing a guardianship petition the right to an attorney, it commands that attorney to represent the person's "legitimate" interests. That one word - "legitimate" - means that people facing guardianship do not have what every other party in every other litigation has, what people accused of murder and rape and drug dealing have: the right for their expressed wishes to be heard, to have their attorney say "Not him" or "Not her" and present evidence and argument supporting that position.

This is because Courts in the District generally appoint guardians *ad litem* to people facing guardianship petitions - someone to review the case, talk to the person and tell the Court what he or she feels is in that person's "best interests." That process is consistent with most every other state; but what happens if the guardian *ad litem* and person disagree? What if the guardian *ad litem* feels it is in the person's best interests to have a guardian but the person does not?

In the District, the word "legitimate" in section 21-2033 means that the person's attorney can be required to zealously advocate for a guardian to be appointed, the very thing his or her client does not want and asked for protection from.

In a case called *In Re Martel*, the D.C. Court of Appeals held that a person's attorney can represent that person's "legitimate" interests by advocating for what the guardian *ad litem* recommends, even if that is not what the person wants. And because attorneys are commanded to represent "legitimate" interests they are, therefore, required to

support the guardian *ad litem*'s position whether or not their clients agree. Put simply, the Court held that attorneys can be required to argue that their clients should lose – it's as if a defense attorney were required to say "find my client guilty" because a witness said he did it.

As a result, if the guardian *ad litem* feels guardianship is appropriate, guardianship will almost certainly occur because there will be no one and no evidence to oppose it. People with disabilities will have no right to be heard and no one to speak for them. Because of that one word - "legitimate" - guardianships that may be inappropriate, overly-restrictive, or put people at risk of abuse will happen because people and their attorneys will not be allowed to oppose them. You can fix this - you can give people who are now literally voiceless a voice - by making section 21-2033 consistent with the laws of other states. Simply change the word "legitimate" to "expressed" and you will protect people with disabilities by empowering their attorneys to advocate for what they want, not what someone else says they should have.

By doing that, you will give people the right to disagree, and attorneys the ability to advocate for them. You can, by changing that one word, ensure that people with disabilities are treated like everyone else; and by doing that, you can end discrimination and prevent abuse.

In closing, I ask you to consider this: if the bill before you is passed, and I hope it is, people charged with violating it will have an absolute right to have an attorney tell their

side of the story. Shouldn't potential victims have the same right as victimizers?

Change one word in one law and they will.

Thank you for your time, your consideration and, especially, for your commitment to those who are too often hurt and too rarely heard.