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S.B. 325 -- Standards for appointed counsel and guardian ad litem for children

Judiciary Committee Public Hearing -- February 25, 2008
Testimony of Raphael L. Podolsky

Recommended Committee action: ADOPTION OF SECTION 3
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I am testifying on this bill in particular in regard to Section 3, which clarifies the duties of an attorney who is appointed to represent a child in juvenile court. Children in juvenile court have the right to appointed counsel. In general, it is an attorney's duty to represent the child's views and desires. It is a guardian ad litem's (GAL's) duty to represent the child's best interests. Attorneys, however, are commonly appointed as both attorney and GAL. Often this presents no conflict, but sometimes it does. In those circumstances, the attorney must notify the court that he believes that the child's best interests are in conflict with what the child wants and that a GAL must be appointed. This type of disclosure in effect turns the attorney into a witness against the client and, either directly or indirectly, reveals that the attorney does not believe that the child's views should be adopted. This directly undercuts the attorney's role as attorney and virtually assures that the child's views cannot be well represented.

Section 3 of this bill uses the age of seven to permit a division of the responsibilities of appointed counsel. If the child is at least seven years old, the attorney must act solely as attorney for the child. This assures that the views of such a child will always be presented and represented in any hearing. Only if the court determines that a different person is required to assess the child's best interests is a separate separate GAL appointed. The existing rule is retained for children under the age of seven.

We believe that Section 3 is an improvement over the present system, and we therefore urge its adoption.