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JUDICIARY COMMITTEE: March 4, 2009 PUBLIC HEARING

Testimony of Carolyn Signorelli
Chief Child Protection Attorney

SB No. 1057
HB No. 6404
HB No. 6451

Commission on Child Protection
State of Connecticut

Office of the Chief Child Protection Attorney

Senator McDonald, Representative Lawlor and esteemed Committee Members, for the record I am Carolyn Signorelli, Chief Child Protection Attorney, with the Commission on Child Protection and would like to begin by thanking the Chairs and the Committee for raising three bills based upon proposals I submitted on behalf of the Commission:

Senate Bill 1057 clarifies the respective authority of the court and the Chief Child Protection Attorney in the assignment of children's attorneys and the roles of attorneys and GAL's in child protection proceedings; House Bill 6404 grants indemnification and statutory immunity for state paid contract attorneys providing representation to children and indigent parents in our family and juvenile courts; and House Bill 6451, contains technical amendments regarding the Commission on Child Protection, as well as measures to ensure the right of children to independent counsel and to permit a multi-disciplinary model of legal representation in child protection matters.

S.B. No. 1057 (RAISED) AN ACT CONCERNING APPOINTMENTS OF COUNSEL AND GUARDIAN AD LITEMS IN CERTAIN JUVENILE MATTERS.

The amendments to C.G.S. § 46b-129a found at **p. 1, lines 10 - 12** clarifies that the Chief Child Protection Attorney is responsible for assigning attorneys to children in child protection cases, except when there is an immediate need during a court proceeding for the court to appoint an attorney. This clarification will render § 46b-129a consistent with the Commission's enabling legislation and with Court Rule 32a-1(b) (attached).

The following amendments are aimed towards clarifying the duties attorneys and GAL's owe to the children they represent in child protection proceedings and towards increasing attorney accountability to their clients, the Commission and the Court:

1. Children 7 years of age or older receive traditional client directed representation from an attorney **(p. 1, l. 14 - p. 2, l. 15)**;

2. Children are appointed a separate GAL if it is established that they are incapable of acting in their own Interests consistent with Rule of Professional Conduct 1.14 **(p. 2, lines 22 – 27).**

3. The role of a GAL is also more clearly defined by requiring the GAL to conduct an independent investigation and to provide the court with all information relevant to a determination of the child's best interest **(p. 2, lines 28 – 30)**.

4. Exceptions are established from the general rule that the Commission on Child Protection pays for the legal and GAL representation of children in juvenile matters. **(p. 2, l. 42 – p. 3, l. 52)**.

Discussion: Amendments to C.G.S. § 46b-129a:

The field of legal representation in child protection matters has been moving in the direction of improving the advocacy for children in neglect and abuse proceedings by providing trained attorneys committed to zealously advocating for children's interests in court. See, ABA/NACC Revised Standards of Practice for Lawyers Who Represent: http://www.naccchildlaw.org/resource/resmgr/Docs/juvenilejustice.doc and Connecticut Standards of Practice for Attorneys and Guardians Ad Litem Representing Children in Child Protection Matters (excerpts attached).

Connecticut's current model of child representation mandated by C.G.S. § 46b-129a requires that representatives for children in neglect and abuse proceedings act as both an attorney and a guardian ad litem (GAL). This creates an inherent conflict in the representation since an attorney owes a duty of loyalty and confidentiality to the wishes of his or her client, but a GAL has no such duty and is obligated to advocate for what he or she determines to be in the child client's best interest. The current language in C.G.S. § 46b-129a states: "When a conflict arises between the child's wishes or position and *that which counsel for the child believes is in the best interest of the child,* the court shall appoint another person as guardian ad litem for the child." The combination of this dual role and subjective standard of "best interest" to determine that a conflict exists has permitted attorney/GAL's for children to act more as GAL than attorney. Some attorneys do not work to establish an attorney-client relationship with child clients, do not diligently discern the expressed or implied wishes of children and substitute their subjective judgment of what is n the best interest of children when they advocate before the court or seek a separate GAL. This practice severely limits a child's rights as a party to be legally represented and to be heard in court proceedings.

This proposal seeks to eliminate that problem for children 7 years of age or older by simply assigning them an attorney and making it clear the attorney's sole responsibility is to provide client directed representation unless the more stringent requirements for protective action of Rule 1.14 are met.[1] Rule 1.14 requires that the client be under an impairment that renders them incapable of reaching an informed decision in relation to the subject matter of the representation. It further requires that that impairment and lack of judgment in relation to the client's own interests is likely to have serious adverse consequences if the attorney does not take protective action. This approach is consistent with a child's party status in juvenile proceedings and with the Commentary to Rule 1.14 which states, "Nevertheless, a client with impaired capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody." Conn. Prac. Bk. 1.14, Commentary (attached).

Discussion amendments to C.G.S. § 46b-136:

This amendment renders section 46b-136 consistent with recent changes to Conn. Prac. Bk. § 32a-1(e) and (f). This statute provides for the judicial authority's discretion to appoint counsel in the interest of justice, even where a party might otherwise not be entitled to state paid legal representation. For example, in some delinquency matters parents who are found able to afford to hire counsel for their child fail to do so, yet the court believes the child must be represented. The Chief Child Protection Attorney will assign counsel, the court will assess costs to the responsible party and the Chief Child Protection Attorney can seek reimbursement for the costs of that representation. Another instance where this statute is utilized by the judicial authority is for parents in child protection cases who do not qualify as indigent, but cannot or do not obtain their own attorney. The court can rule that the interest of justice requires that a state paid attorney be appointed by the judicial authority and assigned by the Chief Child Protection Attorney. **(p. 3, l. 64 – p. 4, l. 82).**

H.B. 6404 (RAISED) AN ACT CONCERNING INDEMNIFICATION AND IMMUNITY FOR CERTAIN CHILD PROTECTION AND GUARDIAN AD LITEMS.

On behalf of the Commission, I have also submitted amendments to C.G.S. §§ 4-141 (p. 2, lines 26 – 28) and 4-165 (p. 4, lines 79 – 81)to include the attorneys providing representation pursuant to C.G.S. § 46b-123d(a)(1) in the

[1] The Commission has obtained an opinion from the Children's Bureau of the Federal Dept. of Human Services that this proposal will not violate CAPTA and therefore not jeopardize federal reimbursement. (attached).

definition of state employee for purposes of indemnification and immunity from liability for negligence.

Juvenile Contract attorneys providing representation in child protection matters should be considered equivalent to special public defenders for purposes of immunity because they are independent attorneys contracting with the state to provide representation to indigent individuals who are constitutionally and statutorily entitled to representation.[2] Although these contractors are not direct employees of the state, both special pubic defenders and attorneys that contract with the Chief Child Protection Attorney provide legal representation that the state is required to provide due to the liberty interests at stake and its interference in those liberty interests.

This representation is essential to the state's ability to perform certain functions. Specifically, juvenile contract attorneys assist the judicial system in fulfilling the court's role as arbiter of matters between the State Department of Children and Families, the parents as the respondents brought before the court by the state, and the children who are the subject of the state's petitions. These attorneys, just as special public defenders serve to protect the constitutional rights of indigent criminal defendants, serve to protect the constitutional right of parents and children to family integrity. Therefore, statutory immunity pursuant to § 4-165, should be extended to these attorneys. The amendment also includes the contract attorneys who defend putative fathers and parties facing incarceration in family matters because similar to public defenders they protect the liberty and property rights of putative fathers entitled to a fair adjudication of paternity and the liberty interests of contemnors in family matters cases who are threatened with incarceration.

This bill constitutes an important measure in my efforts as Chief Child Protection Attorney to raise awareness of the importance of this work and gain recognition of the valuable role these attorneys play in the state's ability to preserve the rights of children and families in our child welfare system. In order to attract more competent attorneys to this field, the current lack of prestige associated with the practice needs to improve. To that end I have facilitated Child Welfare Law's recognition in this state as a legal specialty; enactment of this bill will compliment my efforts to raise the bar in the practice of child protection.

In addition, by providing this immunity from negligent behavior, the legislature will ***not*** be removing accountability for these attorneys or reducing the protections for these clients. It must be acknowledged that one of the reasons for the creation of the Commission on Child Protection was the recognition that many attorneys in this field were not adequately representing the interests of

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[2] Pursuant to P.A. 76-371 Sec. 2, the legislature added public defenders, including special public defenders, to the definition of state employees for purposes of entitlement to qualified immunity under C.G.S. § 4-165.

their clients and that the existing system of representation was not working well. Historically parents had the right to sue for negligent representation, yet the accountability and protection that opponents of this bill attribute to that right was not realized.

A much more effective way to ensure that these clients receive exemplary legal representation is to attract better attorneys to the field; train them in child protection law and practice; provide them with the tools necessary to advocate for their clients; limit their caseloads and hold them to high standards of practice. We can increase the prestige in which the field of child welfare law is held by acknowledging the important role it plays in our system of child welfare and justice, thus attracting better attorneys. Providing immunity and indemnification for these attorneys is one important step to achieve that goal and improve the child protection bar.

For attorneys who wish to focus their practice in this area and become child welfare experts and specialists, the immunity will provide a much needed financial incentive through savings in malpractice insurance costs. Moreover, granting statutory immunity does not remove other means of holding incompetent attorneys accountable, including actions for intentional conduct, the grievance process and loss of their annual contract with the Commission.

For these reasons, I respectfully request that the Committee vote favorably on H.B. 6404.

H.B. 6451 (RAISED) AN ACT CONCERNING THE COMMISSION ON CHILD PROTECTION AND THE CHIEF CHILD PROTECTION ATTORNEY.

H.B. 6451 makes four changes to the Commission's enabling legislation:

1. Section 1 adds a subsection (j) to C.G.S. § 46-123c. This subsection will establish that the Commission on Child Protection is only required to pay for one original transcript when multiple parties that it provides representation for are part of an appeal taken by one of its clients. **(p. 1, lines 3 – 8)**. If the appeal is taken by the Attorney General's Office, the Commission on Child Protection is only responsible to pay for the costs of copies of the additional transcripts required by its contract attorneys. **(p. 1, lines 9 – 13)**.

2. A technical amendment to clarify that the Chief Child Protection Attorney can contract with law firms is contained in section 46b-123c(1)(B)(ii). **(p. 2, l. 29)**.

3. A new subdivision (B) has been included in division (2) of section 46b-123c in order to clarify that the legislature intended the office of the Chief Child Protection Attorney to provide an attorney pursuant to its established system of representation to each and every child who is the subject of an abuse, neglect or termination petition in juvenile court. **(p. 2, lines 35 – 37).**

4. This new provision added to section 46b-123d(b) creates an exception to the mandated reporting requirements of sections 17a-101 et. seq. for social workers or other mandated reporters employed by an attorney providing legal services pursuant to this section. In furtherance of the multi-disciplinary agency model of legal representation encouraged by subsection, the amendment would apply the attorney-client privilege to the social workers or other mandated reporters working for an attorney under this section. **(p. 3, lines 54 – 65).** The bill proposes that the exception be contained within the mandated reporting statute as well. **(p. 3, lines 75-77).**

Discussion new section 46b-123c(2)(B) referenced above in # 3:

I have proposed this section because there is some disagreement over whether or not the system of legal representation established by the Chief Child Protection Attorney pursuant to P.A. 05-3, Sections 44-46, was intended to apply to all children subject to neglect, abuse or termination of parental rights petitions in juvenile court or only to the children of indigent parents. This debate stemmed from a circumstance where non-indigent respondent parents hired and paid for counsel to file an appearance on behalf of the children they were accused of neglecting and abusing.

It is my position, as well as that of the Commission, that:

i. The plain language of our enabling statute makes no distinction based upon indigent status with respect to our responsibility to assign counsel for children[3]; in fact, section 46b-129a, the statute prior to the Commission's establishment that provided for the appointment of counsel for children by the court, also makes no reference to indigent status of a child's parent being found prior to the court's obligation to appoint counsel for a child;

ii. There exists a conflict that is not consentable under the Rules of Professional Conduct where the respondent-parents in a neglect and abuse petition hire, pay for and have the ability to fire counsel for their child who is the subject of the petition, requiring the child to provide informed consent. See Rules of Professional Conduct: 1.7(a)(2), 1.8(f), 5.4(d)(3) (attached). Matters concerning the consequences of and alternatives to one's parent providing legal representation in a child protection proceeding is not a matter typically considered within the ability of a child to "understand, deliberate upon, and reach conclusions about..." for purposes of providing the informed consent required by Rule 1.8(f)(1). (See, Rule 1.14, Commentary);

[3] C.G.S. § 46b-123d(a)(1) provides: "The Chief Child Protection Attorney appointed under section 46b-123c shall: Establish a system to provide ... (B) legal services and guardians ad litem to children, youths and indigent legal parties in proceedings before the superior court for juvenile matters." Note that the word indigent does not refer to or qualify children or youths, just legal parties in addition to children or youth.

iii. Permitting wealthier parents to choose and hire counsel for their allegedly abused or neglected children would mean that wealthier respondent-parents would have a greater right and ability to control the course of the proceedings, flow of information to the court and ultimate outcome of the case, than that of indigent parents. Conversely, children of wealthier parents would have less guarantees of independent legal counsel owing a duty of loyalty only to them, than children of indigent parents; and

iv. Unlike the situation where attorneys representing sibling groups in these cases assess whether or not their representation of any of the siblings will be materially limited, the risks of inadequate protection of the child client's rights, interests and well-being where counsel is hired and paid by the child's parents in a neglect and abuse proceeding are too significant to conduct case specific inquiries about the ability of counsel to provide conflict free representation. The risk that an attorney's independent professional judgment and his or her ability to maintain an unfettered attorney-client relationship will be compromised when the person who may have abused or neglected their client is paying them, warrants the current statutory framework whereby originally the court and now the Chief Child Protection Attorney automatically assign counsel to children regardless of their parents' financial status. This amendment seeks to make that clear.

I respectfully request that the Committee vote to approve H.B. 6451.

Thank you for this opportunity to be heard. If there are any questions, I welcome them at this time.

Respectfully Submitted

Carolyn Signorelli