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**Testimony of Douglas J. Monaghan
Connecticut Bar Association's Children and the Law Committee**

In SUPPORT of HB 6442

**An Act Concerning the Appointment of Counsel and Guardians Ad Litem
and the Appointment of Permanent Guardians**

**Judiciary Committee
February 28, 2011**

The field of legal representation in child protection matters has been moving in the direction of improving advocacy for children in neglect and abuse proceedings. The legislature's creation of the Commission on Child Protection is an example of this State's commitment to improving advocacy not only for children, but all parties involved in the child protection cases.

Connecticut's current model of child representation mandated by Conn. Gen Stat. § 46b-129a provides that a child's representative in court is both attorney and guardian ad litem (GAL). Although our standards of practice and the current statute dictate that the primary role is the traditional client directed model of representation, the statute also allows for attorneys to subjectively substitute their judgment for that of the child and seek a separate GAL and thus severely limit a child's rights as a party to be legally represented and heard in court proceedings. This proposal seeks to eliminate that problem by simply appointing all children attorneys only and require that attorneys provide client directed representation unless the more stringent requirements of Rule of Professional Conduct 1.14 are met. 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. The dual appointment under our current statute sets up a presumption that children are incompetent due to minority status, which is not so under the Rules of Professional Conduct and which is inconsistent with their recognized rights to be a party to the proceedings and to be heard by the court. Furthermore, the dual role of attorney/GAL creates an inherent conflict for the attorney providing representation and attempting to establish an attorney-client relationship with the child client.

This proposed amendment will be an important step in continuing to improve representation for children in child protection matters. The Commission on Child Protection and the Judicial Branch have worked collaboratively to train judges and attorneys about the importance of hearing the child's position in child protection proceedings. The Judicial Branch established a pilot

program to promote more children's attendance in court. Connecticut Rules of Court and case law recognize a child as a party with distinct legal interests requiring protection through legal representation in child protection proceedings. The federal government now requires that a child's position regarding permanency plan be ascertained by the juvenile court. It is important to now fully protect the child's position by giving children true advocates unfettered by an obligation to consider best interests.

This proposal does not eliminate the ability of counsel for the child, or more appropriately, the court, to seek the appointment of a separate GAL to assist the court with ascertaining the child's best interest, if it appears necessary in a particular case. This amendment also does not seek to affect the role of counsel for children in divorce and custody cases heard in family matters. There is clearly a distinct difference between child protection proceedings commenced by the state against families and those private divorce and custody proceedings where parents with equal constitutional and legal interests are the litigants.

It is important to keep Connecticut moving in the direction of true advocacy on behalf of children who are subject to neglect, abuse and termination of parental rights proceedings in juvenile court. This amendment will solidify the child's rights in these very significant and challenging cases.