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Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

RE: Raised Bill 494
Written Comments of Adam J. Teller, Esq.
Submitted to the Judiciary Committee

Dear Members of the Committee:

My name is Adam J. Teller, and I am a practicing attorney in Connecticut. I am submitting this written testimony to express my general support for RB 494, as I believe this bill will help address some problems in the current procedures for appointment and payment of guardians ad litem and attorneys for minor children (GAL/AMC) in the family courts. However, there are a number of areas where this bill could be improved.

I have been a member of the Connecticut bar for over 25 years, and am also admitted to practice in Massachusetts. Before entering private practice, I served as a law clerk to a federal judge and also as a public defender in the Connecticut courts. I am a partner in the East Hartford law firm of Leone, Throwe, Teller & Nagle, and appear frequently in civil, criminal and probate courts in Hartford, Tolland, Middlesex, and Windham counties, with occasional appearances elsewhere. About 25% of my practice consists of representation of individuals in family matters of all types. Although many of these cases involve guardians for minor children (GAL) or attorneys for minor children (AMC), and I have taken the state GAL/AMC training, I do not often serve in those roles. I currently am an appointed GAL in only one matter. In that case, I volunteered to serve at reduced rates to be set by the court based on the parties' ability to pay, and the court later established that rate at 50% of my customary fee for similar matters. Court appointments of any kind are not now, and have not ever been, a major source of income for my firm.

In my experience, the procedures for appointment and payment of GAL/AM's are not the highest priority problem facing our family courts. The most serious problems of the Connecticut family courts are lack of resources and the sheer number and complexity of the cases themselves. I believe that the system could do a better job to "triage" custody cases, and to offer promptly the intervention each family needs to resolve the crisis which has forced that family into the court

system. This especially requires that the system identify potential high-conflict cases early – immediately upon their entry into the court system would not be too soon – and apply the interventions which are known to work in those cases, before they become intractable. Were this bill about general family court reform, I would have much more to say. It suffices for now to ask that the Committee keep in mind that just and effective resolution of custody matters is only possible when the court system is able to offer these tools: clearly stated initial expectations for the parties’ own conduct, with remedies for effective enforcement of those expectations; early identification and mediation of disputes; professional investigation by neutral experts when the adversary system is not sufficient to provide reliable information to the court; and prompt availability of judges to resolve those which cannot be mediated successfully. All of these things require resources, and the state should attempt to provide those resources to the families whose crises bring them to the court system.

Recently, a number of current and former (mostly unsuccessful) litigants have advocated for “reform” of the family courts and have made GAL/AMC’s the primary focus of their discontent with the system. As stated here, I reject that focus. The Connecticut family courts are indeed overwhelmed by families in conflict, many of which have serious needs and dysfunctions - economic, social, medical, and mental health. However, it is important to recognize that the challenges these families face in the family courts are not the result of GAL/AMC’s who are overbilling, under-supervised, or acting improperly. As with any profession, there may be a few appointed attorneys or mental health professionals who fit that description, but they are very rare. The vast majority of the GAL/AMC’s I have encountered in my practice have been genuinely committed to helping the children and families they serve, and do not expect to make much money by doing so. Indeed, I am quite certain that the appointed attorneys in my own cases can, and regularly do, make more money with less difficulty and stress by handling their own private clients than by taking such appointments. Why do they take these cases? Because they have a professional obligation to be of service to the courts and the public, and because they believe they can make a difference. They do not deserve the slanders which have been laid against them in public hearings by litigants with a specific agenda, and I hope that your hearings on this bill do not become a forum for more of the same. While it may well be true that both the profession and the litigating public would benefit from a clear written code of conduct and billing guidelines for GAL/AMC’s, I believe that the judicial branch is the proper source for such measures. I also believe that the judicial branch is both capable and motivated to implement those measures.

Nor are the system’s problems caused by judges ignoring the law or behaving as autocrats, another charge that has been thrown out by so-called reformers. The law of family matters does grant wide discretion to the judge hearing such cases, and it is inevitable that the exercise of that discretion occasionally will be made in error or even, very rarely, abused. But I can honestly state that I have never appeared before a family court judge in a Connecticut courtroom who did not take seriously the awesome responsibility of making decisions about a family in crisis, and try his or her best to do what was right for that family within the limits of the law.

However, as the proposed RB 494 reflects, recent criticism of the court system’s use of GAL/AMC’s does have a germ of truth to it. The problem is rooted in the perceptions of the parents and other participants who are usually encountering the concept of a GAL/AMC for the first time – often imposed by the court or in some cases, suggested by their own counsel. GAL/AMC’s provide services for the benefit of minor children and their responsibility is to

those children and/or to the court; they are paid by, but yet do not answer or owe their primary allegiance to the parents/guardians of those children. This is a difficult concept for many parents to accept, even if they understand it intellectually. There is no shortage of case decisions, ethical rules, and materials promulgated by the bar and other groups to guide GAL/AMC's, and among lawyers and mental health professionals there is general agreement about what constitutes appropriate conduct in these roles. But this is not equally true for laypersons who may not find that body of literature accessible or illuminating. Even for those parties who are educated or sophisticated in other areas of life, and are able to research the issue, they will find that the courts do not have an authoritative set of written standards for GAL's. While AMC's are acting as attorneys and are governed by the Rules of Professional Conduct for attorneys, those rules are mainly written from the standpoint of the protection of clients. But parents in custody cases are not clients of the AMC, and may find those rules unhelpful or even worse, misleading when applied to their own situation. Moreover, different judges may well have different expectations for the GAL/AMC's appointed in a specific case. It would be helpful for the parties in each case to have those case-specific expectations written down and endorsed by the court at the outset. A general code or standard of conduct adopted by the judges themselves for GAL's (and perhaps AMC's as well) would also be welcome, as would some process of evaluation and quality control to assure that individuals who are appointed as GAL/AMC's meet the applicable code or standard.

Similarly, there is no standardization of either billing practices, or the division of the cost imposed on the litigants, for services rendered by GAL/AMC's. Some litigants who encounter GAL/AMC's find it difficult to understand why or how they have been billed for activities which they do not perceive as serving their interest or that of their children, and are not given a clear explanation. It would be helpful to have some guidance for both the professionals and the parties in that area, and to have those issues determined at the beginning of the relationship.

Finally, when litigants do have a problem with what their child's GAL/AMC does, there should be a clear method and forum to address their legitimate complaints. However, because litigants will always seize whatever tactical advantages are offered to them, their complaints should not be allowed to obstruct the GAL/AMC's ability to perform their functions; neither should they be allowed to burden other parties with unjustified expense.

In light of these concerns, my support for RB 494 is qualified. While the bill targets some legitimate problems, it does not address the most serious issues facing the family courts today. However, the bill is an attempt to make the system better, and it is a worthwhile attempt. I would like to see the flaws in the bill corrected, and to that end I ask that the Committee consider the following:

1. There are many cases, such as emergency motions, ex parte motions, and restraining orders, where the court simply will not have time to follow the procedure mandated by section 1 of the bill because a GAL/AMC is needed to investigate and report immediately. In one case where I represented a father, a GAL was appointed in the morning, made a home visit to the children and reported that afternoon, resulting in the father being reunited with his children that night. Unless some allowance for interim or expedited appointment is created, judges will be forced to defer action that should be immediate and decisive, while waiting for parties to agree on a GAL/AMC. Without such a mechanism, the bill creates an incentive for parties to request appointment as a tactic to delay the proceedings, and even if such delay is not tactical, it will sometimes be harmful.

2. Section 4 of the bill should address who pays for a GAL/AMC's time to respond to an unsuccessful removal motion. Placing that burden on the movant would both deter frivolous motions, and be fair to the party who has not sought removal and who does not benefit from the motion in any way, and also to the GAL/AMC who should not have to bear that cost. The bill should also restrain repeated motions for removal without leave of court, as they may become both a means of hindering the GAL/AMC's work, and a hardship to the innocent party.

3. The language in Section 5(a) of the bill requiring that GAL/AMC's be paid at state rates in all cases where the child "is receiving or has received state aid or care," is both unfair and unworkable. Whether a child is receiving or has previously received state aid is not determinative of the parent/guardians' present ability to pay. The focus of inquiry should be what amounts (if any) the parents/guardians (or intervenors) can and should pay for the services the family is receiving; any other rule would require the taxpayers to bear the costs for some families, but not for others in similar financial circumstances. Furthermore, there should be some inquiry regarding the number of qualified, competent GAL/AMC's who are willing and available to accept such appointments at the rates established by the Public Defender Services Commission. If Section 5(a) will increase the demand for such professionals beyond the existing supply, as appears likely, then it will create a class of children for whom no GAL/AMC can be appointed unless the parents/guardians/intervenors voluntarily agree to pay more than state-established rates.

4. The term "college savings account" in Section 5(b) should be carefully defined to limit the exemption of those funds to apply only to Section 529(b) programs, and similar tuition savings plans which are held in trust or custodial accounts legally restricted to that use, established before the custody dispute arose. Otherwise, the parties will be able to strategically manipulate the resources available to pay for the GAL/AMC services, without necessarily preserving those resources for the minor children's education.

5. Sections 5(c) and (d) of the bill should be clarified to eliminate the possibility of after-the-fact reductions of fees due to AMC/GAL's for services already performed, without regard to the parents/guardians' ability to pay, agreements to pay their own counsel, earning capacity, and prior disposition of assets or other resources which could and should have been used to pay for the services the families requires.

Thank you for the opportunity to comment on R.B. 494.

Sincerely yours,

Adam J. Teller