

Legal Assistance Resource Center

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S.B. 494 -- Guardians ad litem

Judiciary Committee public hearing -- March 31, 2014
Testimony of Raphael L. Podolsky

Recommended Committee action: AMENDMENT

The legal services programs represent persons on all sides of family issues -- custodial parents, non-custodial parents, and children. We sometimes are appointed guardians ad litem. We therefore bring a fairly diverse perspective to the issues that have been raised regarding the GAL system.

Notwithstanding its imperfections, we strongly believe in that system. The system should be improved and strengthened, not blown up. We have become increasingly concerned about the broad attacks on the system, which have accused judges, lawyers, and GALs of cooperating in a corrupt system for the purpose of enriching each other. We believe that those charges are incorrect and that they are already undermining the availability of GALs by driving them out of the system. Indeed, the problems we have seen are quite the opposite of ones often cited in these hearings. Our concerns are about some GALs who have failed to do their jobs -- not by overcharging but rather by underperforming (e.g., failure to spend adequate time visiting the child or investigating the home and school situation), which is to some extent driven by the inadequacy of state-rate payments. Our experience has also been that most GALs, notwithstanding the low state payment rate, make all reasonable efforts to do a good job.

We do, however, believe that the GAL system is in need of improvement. For that reason, we support many of the proposals in S.B. 494. In particular, we support:

- * The disclosure requirements in Section 1(c): We think it should be standard practice that the court, upon appointing a GAL, specify the work that is expected, the time frame in which the work should be done and when reports back to the court are to be made; what fee schedule is authorized (including whether the GAL is to be paid at state or private rates); and how the costs will be allocated between the parties (including whether payment will be by the state). It would be helpful if the bill specified that the court should require financial affidavits at the time of appointment of the GAL to assist in the allocation of costs. We also recommend that the bill contain explicit language requiring the Judicial Branch to develop an overall set of standards of conduct for GALs.

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- * The right of a party to request the removal of a guardian in Section 4: We think, however, that right should be limited (see below).
- * The development of informational materials for the public in Section 6: We support a Judicial Branch publication that explains the role and responsibilities of GALs and attorneys for minor children.

We believe, however, that it is important to make at least two changes to this bill. In particular:

(1) A clear standard for a motion to remove a GAL should be established (Sec. 4): If the parties have standing to seek removal, there is a very real danger that the sometimes contentious nature of custody disputes could generate frequent motions based on no more than disagreement with the GALs recommendations. The standard for removal should be based on conflict of interest, incapability, dereliction of duty, substantial bias, or other similar matters. Motions to remove a GAL should be supported by sworn affidavit, and a hearing should not be required without the allegation of a prima facie case. We also think that GAL disputes should not ordinarily be referred to Family Relations mediation and that the reference to such referrals should best be removed from the bill (lines 89-94). While no form of mediation should be precluded, we think that such motions should ordinarily be heard directly by a judge.

(2) Parties should be able to ask the court to appoint a GAL (Sec. 1): S.B. 494 allows the parties to choose their own GAL or the court to appoint a GAL after it has given the parties five names and waited for two weeks to see if the parties choose one of them. This delay of more than two weeks will in most cases be entirely unnecessary. In reality, the parties will usually know if they are likely to reach an agreement. The bill should be amended to allow the parties immediately to ask the court to make the appointment.

We are also concerned about the requirement that, in the absence of the agreement of the parties, the court give the parties five names. We think it may lead to courts giving names off of a rotating list, without regard to the suitability or experience of the GAL. The judge is more likely than pro se litigants to know who would do the best job in a particular case, and we therefore think that, in the absence of the parties agreeing upon a GAL, it is preferable for the judge to simply make the appointment.

(3) It should be clear that the court can order state payment for a GAL or attorney for the minor child (AMC) whenever the parents are indigent (Sec. 5). To avoid any ambiguity, we suggested adding the phrase "or if the parents are indigent" after word "care" in line 112. It is our understanding that this is already the law.