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March 31, 2014

TO: Judiciary Committee

FROM: Attorney Aaron P. Wenzloff

ON BEHALF OF: New Haven Legal Assistance Association, Inc. and other legal services programs in Connecticut

RE: S. B. 494

Members of the Judiciary Committee:

My name is Aaron Wenzloff, and I am a staff attorney at New Haven Legal Assistance Association where I represent low-income clients in family cases. I am offering testimony about Senate Bill 494 and the role of guardians ad litem in family court.

As a legal services attorney, I represent poor people in contested divorce and custody cases. In particular, we primarily represent clients who have been victims of domestic violence. In our cases, the assistance of a guardian ad litem (GAL) is often indispensable. Principally, GALs gather information through investigations and report their findings to the court, explaining what is in the best interests of the children. The cases I see as a legal services attorney typically involve a history of some level of domestic violence; in these cases, a GAL is helpful in assessing the impact of the parents' behaviors on the children. Importantly, a GAL can help address when one parent's conduct has escalated into further harassment or abuse of the other parent, and suggest alternative parenting plans to protect kids from exposure to abusive conduct, whether that abuse is emotional or physical. Overall, the GAL system is important and valuable for our client population.

Nevertheless, the legal services community recognizes that our GAL system in Connecticut could be improved, which S.B. 494 seeks to accomplish. In particular, we support S.B. 494 in how it seeks to provide more information to parents about the role of a GAL in their cases, and to require clear orders about the scope and nature of a GAL appointment.

However, there are a few suggestions that we would offer to improve S.B. 494.

Motions for Removal of a GAL (Section 4)

S.B. 494 gives any party in a family case involving children standing to petition for the removal of a GAL. In theory, this is an important right. Creating statutory authority for removing a GAL also clarifies Connecticut law. Currently, under Connecticut law, a party does not generally have

standing to ask for the remove a GAL. It is important for the parents themselves to have the ability to request the removal of a GAL in circumstances where a GAL has exhibited improper, unethical, or prejudicial actions, or other misconduct.

However, this procedural right should be closely cabined so that it does not permit a parent to request the removal of a GAL simply because the parent is unhappy with a GAL's recommendations or the progress or outcome of the case. In that light, S.B. 494 does not provide sufficient clarity about when a GAL can be removed. Without that specificity, the bill opens the door for too many parties to make too many motions for removal without good cause. This would be a waste of judicial resources, both on individual cases and on the family court system as a whole. Moreover, an excessive number of motions for removal of GALs will likely discourage attorneys and mental health professionals from doing this work, as they are drawn into protracted litigation over their appointments as GALs instead of doing the substantive work of representing children's best interests.

If parents are to have standing to remove a GAL, there should be a clear legal standard as to when such motions are appropriate, such as where there is substantiated bias, a conflict of interest, or possibly some form of gross dereliction of duty. A clear legal standard would allow the court to rule that the moving party does not make a prima facie case for removal and dismiss on the papers. Moreover, the moving party should be required to file a verified petition with the motion, which includes specific and good-faith allegations, so that the moving party is subjected to the penalties of perjury when pursuing such a course of action. Finally, referring disputes over a motion for removal of a GAL to a family relations mediation session will likely be unproductive and a misuse of family relations resources. Such disputes should be decided by a judge based on a good faith motion, a clear legal standard, and, only if necessary, an evidentiary hearing.

Appointment of GALs (Section 1(a) and (b))

Section 1 sets up a procedure for the choice of a GAL. In particular, it requires the court to give five names to the parties, who then have two weeks to make a choice. If the parties fail to choose, the court makes the choice for them. The parties, however, can by written agreement choose a GAL other than one of the five.

We have some concerns about this system, since self-represented parties are unlikely to have enough information about GALs to make a reasonable choice and because it may lead courts to appoint randomly from a list, without regard to the degree of experience or particular skills of the particular GALs listed. We do not recommend rotation-based appointments from a list. If the parties do not agree upon an appointment, we think it would be better to simply let the court appoint an appropriate GAL. At the very least, however, Section 1 should be amended to make explicit that the parties can immediately request the court to make the appointment. In those cases where the parties either know that they will not agree or know that they will not be able to choose from the list, they should be able to tell the judge immediately that they would prefer a court appointment. That will save more than two weeks of time. As drafted, S.B. 494 does not seem to permit that option.

Fees and Payment of GALs (Sections 1 and 5)

S.B. 494 proposes several changes about the fees of GALs and how they are allocated. It is important that, for poor parents, the fees of any GAL be paid by the state. In particular, the court should assess the indigence of the parents by reviewing their financial affidavits before allocating the fees of a GAL. All of our clients are poor—they cannot afford an attorney, let alone a GAL.

(1) Section 1: We support the S.B. 494’s approach to making the allocation of fees clear to the parties in the court’s orders before any work is commenced by the GAL. We suggest that S.B. 494 include language, possibly in Section 1(c), to clarify that the parties should submit financial affidavits prior to the court’s order about the fee schedule, hourly rate, and retainer for a GAL. This would also aid in the court’s assessment of indigence prior to the appointment of a GAL.

(2) Section 5: It is our understanding under existing law that the court can order state payment for a guardian ad litem, as it can for an attorney for a minor child, if the parent is indigent. Lines 111 to 114 of this bill codify required payment for GALs appointed for children who are receiving or have received state aid or care. We read these lines as not precluding state payment for GALs and attorneys for minor children (AMCs) in instances when the parents are indigent but the child is not receiving state aid. If there is any doubt that such a reading is correct, then any ambiguity in Lines 111 to 114 should be clarified so that there is no doubt that state payment may always be ordered if the parents are indigent.

Thank you for your time and consideration.

Very truly yours,

Aaron P. Wenzloff
Staff Attorney