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Testimony of Robert D. Zaslow
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**SB494, "An Act Concerning Guardians Ad Litem and
Attorneys for Minor Children in Family Relations Matters"**

Judiciary Committee
March 31, 2014

My name is Robert Zaslow, and I have been an attorney in Connecticut for twenty years. I have focused my practice as a family lawyer. I traditionally have half of my cases representing parents and half representing children as a Guardian Ad Litem (GAL) or as an Attorney for the Minor Child (AMC). I am appreciative for the opportunity to comment on SB 494.

I am here today to speak on behalf of the Family Law Section of the Connecticut Bar Association to comment on SB 494. As you may know, the Family Law Section of the CBA consists of over 700 members who have a great interest in bills affecting family law procedures and issues; in particular, the manner with which the best interests of children are recognized and protected. Our members certainly recognize the need to improve our court systems, and SB 494 is a step in that direction.

On behalf of the section, I respectfully request that the Judiciary Committee revise SB494 before favorably reporting on it for the following reasons.

The Family Law Section of the CBA supports much of SB 494. However, the Section has voiced some concerns about the bill, as drafted. I am attaching a revised (JFS) version of the bill with the Section's suggested changes.

Going through SB 494 – though not touching upon each and every item from our revised version – I wish to raise the following concerns to be addressed prior to a favorable reporting:

Section 1. Among many of the concerns raised by parents, attorneys, and judges in the family courts, is the issue of unnecessary delays prior to addressing child-related concerns in a meaningful way. Parents who come to court and cannot agree on child-related issues may need the services of a GAL or AMC. Per Section 1(a), a set of parents who comes to court and, presumably, has a child in need of the court's intervention to ensure the child's best interests, now must wait up to two weeks after the initial court date to have a GAL or AMC selected.

The delays continue, however. After this two week delay, there is a potential, additional three week delay per Section 1(c). At this juncture – now more than a month from the time when the parents first came to court seeking to have help provided for their son/daughter – there is a hearing that is to define the scope of the GAL's/AMC's appointment. Even if the GAL or AMC selected at the two week juncture is notified of the appointment, I doubt that many GALs or AMCs would commence work without the scope of their charge being outlined as called for by Section 1(c).

The intention of Section 1 is certainly well-founded, but there is concern about the very real potential of a child's needs not being addressed for more than a month after parents come to court looking for assistance. And, it should not be forgotten, that the initial court appearance was preceded by the filing of court papers two to four weeks prior. Therefore, the real time a child's needs go unaddressed may be two months or more after the court process has started. In addition, there should be an exception to these deadlines in cases of an emergency situation. For example, during cases in which an ex parte restraining order is sought due to immediate harm to a child, it would be unconscionable for a court to have to be hamstrung in appointing a GAL or AMC for a child in immediate dire circumstances.

Finally, the Family Law Section thought it important to further clarify and delineate the expectations that are set forth in subsection (c). These include: (1) making clear the duties that are assigned to the GAL or AMC; (2) instead of certain dates being mile-markers, we suggest certain events as most often in family cases it is an event that is crucial (i.e., trial, hearing, commencement of counseling, etc.); and (3) we believe that the GAL or AMC should be able to seek a review from the court prior to the expiration of the contemplated six month timeframe as, oftentimes, events in a family file occur unexpectedly and to wait for an artificial date may be problematic for the child, the parents, or the GAL or AMC.

Section 4. Much has been made of the need for parents to have standing to seek the removal of a GAL or AMC. To be clear, however, the Section firmly asserts that, overwhelmingly, those attorneys and mental health professionals who make themselves available to serve as a GAL or AMC do so with skill, a keen sense of duty and service, and with the highest levels of professionalism. The Family Law Section certainly acknowledges that there are/have been isolated times when a GAL or AMC has acted in an unprofessional manner, and it is our Section's clear concern to ensure that these isolated incidents are identified, addressed, and are not repeated.

The Family Law Section firmly believes that if there is malfeasance or unprofessional conduct, it must be addressed and corrected. The concern, however, is that the means to do that should not be a vehicle to threaten GALs or AMCs, nor to seek revenge on a GAL or AMC for a position taken in opposition to that parent's position, etc. As such, the Section agrees that a parent should have standing to seek the removal of a GAL or AMC. However, the Section believes that such motion should only be granted *for cause*.

A GAL, for example, by definition, will upset or vex at least one of the parents in a case. If the parents cannot come to terms to resolve their case on their own, or with the assistance of mediation, they will be scheduled for a contested hearing in court. The GAL, after conducting his/her investigation, will provide the parents a recommendation as to what he/she believes is in the child's best interest. The parent who is disappointed with the recommendation should always have the right to cross-examine the GAL in court and to present evidence to demonstrate the validity of their position. However, it clearly can be foreseen that if Section 4 is passed as is, any and all parents who are disappointed by a GAL's recommendation will file motions to have that GAL removed.

The standard by which removal should be considered should be high. Having the standard be "for cause" will ensure that frivolous and/or motives of retribution will not be considered. If a GAL does not act in accord with professional standards, then that GAL should be removed. The task of a GAL is ultimately laden with the need for discretion. The Family Law Section believes that a GAL's discretion is integral to the job and, as such, if a removal is warranted it should be considered only if a motion for cause is brought and successfully demonstrated.

The Family Law Section also suggests – as noted in our revised bill – some additional safeguards from frivolous motions. We recommend that if a motion to remove a GAL or AMC is denied, the party who filed the motion shall not be able to file another such motion without first seeking leave of the court for good cause shown to file the subsequent motion. Moreover, the denied motion shall be sealed. These additions will not affect motions brought in good faith and for cause, and the additions will protect the GALs and AMCs.

Section 5(a). While well-intentioned, subsection (a) provides that all GALs or AMCs who act on behalf of a child who is, *or has been*, the recipient of state aid or care *shall* have their fees paid at what is traditionally called "state rates"; in other words, a nominal hourly rate. If a child is, at the time of the appointment, the recipient of state aid or care, it is a natural presumption that there is minimal household income earned by the parents. There is no dispute with this scenario. However, subsection (a) clearly states that this applies in any and all cases in which a child *has been* a recipient of state aid or care. What if the child had been the recipient of state aid or care five years prior and now both parents earn \$100,000.00 per year? What if one parent has signed up for HUSKY and the other has medical insurance which could be used to cover the child and sufficient means to pay the GAL? Again, the intention is well founded, but the application may be inequitable. The language of subsection (a) needs to be amended to determine what the *present* financial circumstances are for the family.

Also with regard to subsection (a), we are unaware of the financial means by which the State, through the Public Defender Services Commission can pay for GALs or AMCs. Though we are without firm statistics, if every case in which a child was receiving or had received state assistance had their GAL or AMC paid by the State, we believe this would be untenable for the State budget. Moreover, pursuant to present statutory criteria as well as the provision of Section 1, above, the Court can enter orders regarding the fees to be paid to a GAL or AMC. It would be more prudent to leave discretion with the Court to allocate payment orders in line with the present financial state of the parties.

Section 5(b). Again, the intention of the provision is agreeable, but the application may be unintended. Unfortunately, in many cases, there are parties who would do many less-than-ethical things to punish their spouse, protect themselves, etc. Some such litigants, in anticipation of a divorce, try to hide their assets. If the provision in subsection (b) remains untouched, a litigant can divert \$65,000 per child into 529 accounts (present rules allow for investing \$13,000 per year, and 529 plans allow for lump sum investments of five-year equivalents). Therefore, the Family Law Section wants to ensure that existing 529 accounts are protected and that any deposits made in anticipation of litigation would not be subject to a blanket protection.

Section 5(c). This provision appears to be in conflict with Section 1 (in which the fees of a GAL or AMC are established at the hearing three weeks after a GAL or AMC is appointed). The language of Section 5(c) seems to indicate that the fees of a GAL or AMC can be retroactively amended. Just as it is inappropriate to tell a person who is contracted to paint your house or to fix your car that, after the fact, his/her compensation will be, say, half of what was originally contracted for, it is equally inappropriate here, as well.

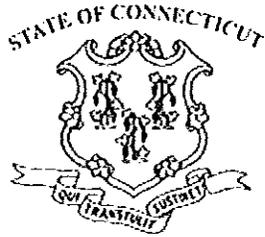
Section 1 clearly delineates that the fees and schedule of payments to be made to the GAL or AMC need to be established at the beginning of the GAL's or AMC's involvement. Subsection (c) appears to undermine the laying of expectations at the commencement of the matter. The court should consider the application of a sliding scale at the time of appointment and the GAL or AMC should have notice and the opportunity to decline the appointment at that time rather than having his or her fee adjusted after it has been earned in good faith.

Thank you for allowing me the opportunity to comment on SB No. 494.

The Family Law Section of the Connecticut Bar respectfully requests that the Judiciary Committee consider redrafting the bill to address the concerns we have raised before favorable reporting on it. I have attached below the proposed JFS language. Thank you.

I am happy to answer any questions that you may have.

PROPOSED JFS LANGUAGE -- 3/31/14 (In *bold-italicized text below*).



General Assembly
February Session, 2014

SB No. 494

LCO No. 3068

03068 _____ JUD

Referred to Committee on JUDICIARY

Introduced by:

(JUD)

AN ACT CONCERNING GUARDIANS AD LITEM AND ATTORNEYS FOR MINOR CHILDREN IN FAMILY RELATIONS MATTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2014*) (a) Except as provided in subsection (b) of this section, prior to appointing counsel or a guardian ad litem for any minor child in a family relations matter, as defined in section 46b-1 of the general statutes, the court shall provide the parties to the matter with written notification of five persons who the court has determined eligible to serve as counsel or a guardian ad litem for any child in such matter. Not later than two weeks after the date on which the court provides such written notification to the parties, the parties shall provide written notification to the court of the name of the person who the parties have selected to serve as counsel or a guardian ad litem for their matter. In the event that the parties (1) fail to timely provide the court with the name of the person to serve as counsel or a guardian ad litem for their matter, or (2) cannot agree on the name of the person who shall serve as counsel or a guardian ad litem for their matter, the court shall appoint counsel or a guardian ad litem for the minor child by selecting one person from the five names provided to the parties.

(b) The provisions of subsection (a) of this section shall not apply: (1) when the parties have requested that ~~[counsel]~~ counsel or a guardian ad litem be appointed and present to the court a written agreement that contains the name of the person who the parties have selected to serve as counsel or a guardian ad litem for the minor child for their

matter, provided such agreement shall specify (A) the duties assigned to such counsel or guardian ad litem; (B) the event on which the appointment of such counsel or guardian ad litem is to end, provided such appointment may be extended for good cause shown pursuant to an order of the court; (C) the deadline for such counsel or guardian ad litem to report back to the court concerning the progress and scope of the work undertaken; (D) the fee schedule of such counsel or guardian ad litem which shall minimally set forth (i) the amount of the retainer, (ii) the hourly rate to be charged, and (iii) the apportionment of the retainer and hourly fees between the parties; or (2) where the court deems that the immediate appointment of a guardian ad litem or counsel is necessary to protect the best interests of the child.

(c) Not later than twenty-one days following the date on which the court enters an initial order appointing counsel or a guardian ad litem for any minor child pursuant to this section, the court shall enter a subsequent order that includes the following information: (1) The specific ~~[nature of the work that is to be undertaken by]~~ duties assigned to such counsel or guardian ad litem; (2) the ~~[date]~~ event on which the appointment of such counsel or guardian ad litem is to end, provided such ~~[end date]~~ appointment may be extended for good cause shown pursuant to an order of the court; (3) the deadline for such counsel or guardian ad litem to report back to the court concerning the progress and scope of the work undertaken; (4) the fee schedule of such counsel or guardian ad litem which shall minimally set forth (A) the amount of the retainer, (B) the hourly rate to be charged, and (C) the apportionment of the retainer and hourly fees between the parties; and (5) a proposed schedule of periodic court review of the work undertaken by such counsel or guardian ad litem and the fees charged by such counsel or guardian ad litem. Periodic court review shall be undertaken not less than every six months following the date of the appointment or upon the earlier request of such counsel or guardian ad litem, unless such periodic court review is waived by the parties and any such counsel or guardian ad litem pursuant to a written agreement filed with the court.

Sec. 2. Section 46b-54 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) The court may appoint counsel for any minor child or children of either or both parties at any time after the return day of a complaint under section 46b-45, if the court deems it to be in the best interests of the child or children. The court may appoint counsel on its own motion, or at the request of either of the parties or of the legal guardian of any child or at the request of any child who is of sufficient age and capable of making an intelligent request.

(b) Counsel for the minor child or children may also be appointed on the motion of the court or on the request of any person enumerated in subsection (a) of this section in any case before the court when the court finds that the custody, care, education, visitation or

support of a minor child is in actual controversy, provided the court may make any order regarding a matter in controversy prior to the appointment of counsel where it finds immediate action necessary in the best interests of any child.

(c) If the court deems the appointment of counsel for any minor child or children to be in the best interests of the child or children, such appointment shall be made in accordance with the provisions of section 1 of this act.

[(c)] (d) Counsel for the minor child or children shall be heard on all matters pertaining to the interests of any child, including the custody, care, support, education and visitation of the child, so long as the court deems such representation to be in the best interests of the child.

Sec. 3. Section 46b-57 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

In any controversy before the Superior Court as to the custody of minor children, and on any complaint under this chapter or section 46b-1 or 51-348a, if there is any minor child of either or both parties, the court, if it has jurisdiction under the provisions of chapter 815p, may allow any interested third party or parties to intervene upon motion. The court may award full or partial custody, care, education and visitation rights of such child to any such third party upon such conditions and limitations as it deems equitable. Before allowing any such intervention, the court may appoint counsel for the child or children pursuant to the provisions of section 46b-54, as amended by this act, and section 1 of this act. In making any order under this section, the court shall be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference.

Sec. 4. (NEW) (*Effective October 1, 2014*) Any party to an action involving the custody, care, support, education and visitation of a child shall have standing to file a motion that seeks removal of counsel for the minor child or a guardian ad litem for the minor child. The Judicial Branch shall establish a procedure to effectuate the hearing of a motion seeking removal of such counsel or guardian ad litem. Prior to hearing such motion, the court may refer the parties to mediation with a family services officer employed by the Judicial Branch. If the allegations set forth in the motion cannot be resolved through mediation, a hearing shall be held on the motion and a decision on the motion shall be made by the court. The presiding judge shall determine the judge who is assigned to hear such motion. *In the event that a motion to remove is denied, the party who filed the motion shall not file another motion to remove without first seeking leave of the court for good cause shown and the denied motion shall be sealed from public access.*

Sec. 5. Section 46b-62 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) In any proceeding seeking relief under the provisions of this chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g, 51-348a and 52-362, the court may order either spouse or, if such proceeding concerns the custody, care, education, visitation or support of a minor child, either parent to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in section 46b-82. If, in any proceeding under this chapter and said sections, the court appoints [an attorney] counsel or a guardian ad litem for a minor child, the court may order the father, mother or an intervening party, individually or in any combination, to pay the reasonable fees of [the attorney] counsel or the guardian ad litem or may order the payment of [the attorney's] counsel's or the guardian ad litem's fees in whole or in part from the estate of the child. If the child is receiving [~~or has received~~] state aid or care, ***other than medical care under the HUSKY plan***, the compensation of [the attorney] counsel or the guardian ad litem for the minor child shall be established and paid by the Public Defender Services Commission.

(b) If, in any proceeding under this chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g, 51-348a and 52-362, the court appoints counsel or a guardian ad litem for a minor child, the court may not order [~~the father, mother~~] a parent or an intervening party, individually or in any combination, to pay the reasonable fees of counsel or the guardian ad litem for a minor child from a *previously existing and funded* college savings account[, including any account] established pursuant to any qualified tuition program, as defined in Section 529(b) of the Internal Revenue Code, that has been established for the benefit of the minor child, *provided that this provision shall not apply to deposits made to such accounts in contemplation of the litigation, and neither parent shall make such deposits during the pendency of the litigation without prior agreement or order of the court.*

(c) In any proceeding under this chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g, 51-348a and 52-362, in which the court appoints counsel or a guardian ad litem for a minor child, the court may order *at the time of such appointment* that the fees [~~owing~~] *to be paid* to such counsel or guardian ad litem be calculated on a sliding-scale basis after giving due consideration to the income and assets of the parties to the proceeding, *the compensation being paid to counsel for the parties and other resources available to the parties. A proposed guardian ad litem or counsel for a child shall have the opportunity to decline such appointment if the fee determined by the court is not acceptable to him or her.*

(d) The Judicial Branch shall develop and implement a methodology for calculating, on a sliding-scale basis, the fees [~~owing~~] *to be paid* to counsel or a guardian ad litem for a

minor child appointed in any proceeding under this chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g, 51-348a and 52-362.

Sec. 6. (NEW) (Effective July 1, 2014) The Judicial Branch shall develop a publication that informs parties to a family relations matter, as defined in section 46b-1 of the general statutes, about the roles and responsibilities of counsel for the minor child and the guardian ad litem when such persons are appointed by the court to serve in a family relations matter. Such publication shall be available to the public in hard copy and be accessible electronically on the Internet web site of the Judicial Branch.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2014	New section
Sec. 2	October 1, 2014	46b-54
Sec. 3	October 1, 2014	46b-57
Sec. 4	October 1, 2014	New section
Sec. 5	October 1, 2014	46b-62
Sec. 6	July 1, 2014	New section

Statement of Purpose:

To: (1) Provide greater clarity to court orders involving the appointment of counsel or a guardian ad litem for a minor child; (2) provide parties to a family relations matter with standing to remove counsel or the guardian ad litem for a minor child appointed in such matter; (3) enact new provisions concerning the payment of fees to counsel and the guardian ad litem for a minor child; and (4) require the Judicial Branch to develop a publication that informs parties to a family relations matter about the roles and responsibilities of counsel for the minor child and the guardian ad litem.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

