

Judiciary Committee
PUBLIC HEARING
Wednesday, March 11, 2015

Testimony of Attorney Carolyn Signorelli

H.B. No. 5505 (COMM) AN ACT CONCERNING FAMILY COURT PROCEEDINGS.

Senator Coleman, Representative Tong and Members of the Judiciary Committee:

I write today as an attorney who has practiced in the child protection field for over 20 years and as the former Chief Child Protection Attorney who was responsible for establishing training and standards for guardians ad litem (GALs) and attorneys for minor children (AMCs) in neglect and abuse cases in juvenile court and, in part, in family relations matters. I oppose Committee Bill No. 5505 because it is inconsistent with our laws designed to protect and promote the best interest of children.

Section 1 usurps the authority of the Judicial Branch to hear and decide controversies that come before it based upon the facts and evidence presented by the parties and will increase the number of referrals to DCF emanating from custody conflicts.

Section 2, by stripping the immunity afforded GALs and AMCs in child custody cases by the Supreme Court case *Carrubba v. Moskowitz*, 274 Conn. 533 (2005), will dissuade qualified individuals from serving as GALs and AMCs in family relations cases at all, but especially in litigious custody battles where their services are most needed.

As our Supreme Court noted in *Carrubba*:

Courts in other jurisdictions have almost unanimously accorded guardians ad litem absolute immunity for their actions that are integral to the judicial process. See, e.g., *Fleming v. Asbill*, 42 F.3d 886, 889 (4th Cir.1994); *Cok v. Cosentino*, supra, 876 F.2d at 3; *Gardner v. Parson*, supra, 874 F.2d 131; *Myers v. Morris*, 810 F.2d 1437, 1466-67 (8th Cir.), cert. denied, 484 U.S. 828, 108 S.Ct. 97, 98 L.Ed.2d 58 (1987); *Kurzawa v. Mueller*, 732 F.2d 1456, 1457-58 (6th Cir.1984); *Babbe v. Peterson*, 514 N.W.2d 726 (Iowa 1994); *Tindell v. Rogosheske*, 428

N.W.2d 386, 387 (Minn.1988); *Billups v. Scott*, 253 Neb. 287, 571 N.W.2d 603 (1997); *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991). Courts have reasoned that the duty of a guardian ad litem to secure the best interests of the minor children places the guardian "squarely within the judicial process to accomplish that goal"; *Kurzawa v. Mueller*, supra, at 1458; and, therefore, that a grant of absolute immunity is both appropriate and necessary in order to ensure that the guardian will be able to "function without the worry of possible later harassment and intimidation from dissatisfied parents." *Id.* One court noted its concern that "[w]ithout immunity, guardians ad litem would act like litigation lightning rods. Lawsuits would, in the words of Learned Hand, 'dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.' *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir.1949), cert. denied, 339 U.S. 949, 70 S.Ct. 803, 94 L.Ed. 1363 (1950)." *Short v. Short*, 730 F.Supp. 1037, 1039 (D.Colo.1990).

Id. at 547-48.

Moreover, this legislature recently enacted an amendment to C.G.S. § 4-165 through P.A. 11-152 granting immunity to GALs, AMCs and attorneys for indigent parents appointed by the Public Defender Services in neglect, abuse, termination, delinquency and FWSN cases. P.A. 11-152 acknowledges and codifies the importance of independence for GALs and AMCs in juvenile matters and protects them from litigation when they perform their duties in good faith. There is no logical basis to provide GALs and AMCs in family matters with not only less protection than attorneys and GALs in juvenile matters, but absolutely no protection at all. This Section encourages litigation by disgruntled parents and enables them to stall paying GALs and AMCs for their services simply by filing a lawsuit.

Section 3 empowers litigants to delay or remove the court's ability to obtain independent, neutral and expert assessments of the family dynamic and children's needs and potentially conflates the distinct roles of treatment providers and independent evaluators. Section 3 by including family relations matters as defined in 46b-1 potentially applies this legislation to juvenile matters cases. While this may not be

intended, the potential to interpret the legislation as applying in juvenile matters would overly complicate the process of obtaining court ordered evaluations and ordering Specific Steps as required by 46b-129 in neglect and abuse cases.

Section 4's requirement that matters pertaining to the medical diagnosis of a child cannot be relayed to the court by a GAL or AMC will increase the costs of litigation by requiring health care professionals to be subpoenaed to court in all instances where the court needs the information.

This legislation will have the unintended consequences of further burdening the civil court docket; further delaying the resolution of custody matters, where time is of the essence for the well-being and proper development of the children at issue; and preventing the court from obtaining independent, neutral and expert information about the best interest of the children whose fate it must decide because the parents are unable to do so. Our justice system has various avenues of recourse if an AMC or GAL does not fulfill his or her duties responsibly and ethically. AMCs and GALs in family cases are required to undergo training on representing the best interest of children competently and ethically. The children of the state of Connecticut subjected to harmful custody battles would be better served by enhancing the justice system's ability to mediate or promptly litigate custody disputes and to properly qualify, train and oversee AMCs and GALs, rather than attempt to control, and in so doing distort, their approach to representing children through the threat of litigation.

Respectfully Submitted,

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