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To: JudTestimony
Subject: HB 5505

Testimony of Robert D. Zaslow, Immediate Past Chair,
Family Law Section of the Connecticut Bar Association

House Bill 5505 – Referred to Committee on Judiciary

An Act Concerning Family Court Proceedings

Judiciary Committee

March 10, 2015

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. For the majority of my tenure as an attorney in Connecticut, I have had roughly 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 House Bill 5505 that is being considered by the Judiciary Committee.

While I am the Immediate Past Chair for the Family Law Section of the Connecticut Bar Association, I present my comments not to speak for the Family Law Section nor the Connecticut Bar Association; my commentary is meant to speak for myself and from my experience as a family lawyer. Last year, there was an unfortunate rush to push legislation based on factually unchecked stories and commentary. The push last year sought to vilify those persons who had worked tirelessly as Guardians Ad Litem, Attorneys for Children, and mental health professionals who conducted evaluations and family counseling services. The efforts to vilify even targeted judges. The gist was to target those persons in the Family Courts who were charged to exercise any sort of discretion; those who had to make recommendations or decisions that they believed – based on their investigations and evidence before them – were in the best interests of children.

The continuation of last legislative session's push results in House Bill 5505 that is before you today. **I write today to respectfully request that the Judiciary Committee reject House Bill 5505 and not allow it out of Committee.**

Going through House Bill 5505, please allow me to address the following concerns:

Section 1. The theme of attacking discretion in the Family Courts continues here. Section One ties a judge's hands by prohibiting him/her from issuing an order for supervised visitation with a child absent four narrow exceptions. The four exceptions noted are certainly scenarios in which supervised visitation is warranted. However, as each case and each family dynamic that comes before a court is unique, it follows that one cannot have a one-size-fits-all straightjacket. How does someone define "conduct that presents a potential risk to the health, safety, or well being of a child"? It seems axiomatic to many, but for others any court-ordered disruption to an unsupervised visitation schedule is anathema. Without making this into a novel, leave it to say that attempting to compartmentalize and define when supervised visitation may be implemented to ensure the safety of a child is best left to a Judge of the Superior Court who has been charged with the duty to be impartial and carefully weigh the evidence before him/her.

Parent uses marijuana? Many would say (and have said in our family courts) that marijuana use is not a problem that should warrant supervised visitation. Child wets the bed at one parent's house after consistent and continual emotional abuse? Many would say (and have said in our family courts) that without an arrest, there is no proof. I could go on, but the point is made.

Section 2. This provision flies directly in the face of long-standing caselaw from our Supreme Court (*Carrubba v. Moskowitz*, 274 Conn. 533 (2005)) that provides Guardians Ad Litem and Attorneys for Minor Children immunity for actions taken within the scope of their appointed roles. Again, the theme recurs – attack anyone who has discretion in the Family Courts. As a GAL or AMC over the past two decades, it is clear that cases in which a GAL or AMC is sought are already highly charged cases. If the case cannot be successfully mediated – most often done with the assistance/behest of the GAL or AMC – then one or both of the parties will feel aggrieved as a recommendation will be made that favors one over the other. Litigation often brings with it emotional pain and animus. Often, this pain and animosity is targeted at the GAL or AMC – the one person before the court who is a neutral, who does not have an axe to grind. With Section Two, we now give sanction to have a myriad of lawsuits filed against GALs or AMCs. Anyone who is disappointed in the recommendation will feel aggrieved, and without anything more, can file suit against a GAL or AMC who has acted in good faith. And, to add insult to injury, if the GAL or AMC prevails – most likely after a year or two of needless

harassing litigation – the GAL or AMC **cannot** seek or realize any costs, fees, or damages from the parent-litigant. This, while the family court litigant-turned-plaintiff can do so.

Section 3. In this section, subsections (a) and (b) allows parents to choose the court-ordered therapist or evaluator. These are provisions fraught with problems. The reason a court would choose an evaluator or, if needed to do so, choose a therapist would be to ensure that there is an unbiased professional. To have an evaluator or therapist already aligned with one side of a case is not an aid to the court.

Moreover, as currently drafted, this section would permit any licensed health care provider – including pharmacists, for example – to conduct a custody evaluation or treat an individual for any manner. The language is not limited to mental health professionals. The language is not limited to ensure proper work for extraordinarily sensitive situations.

Finally, section (c) mandates than any evaluation must be submitted to a court within thirty days. While no one wishes to see cases prolonged, this bill would seek to put expedience over thoroughness.

It also mandates the evaluation to be submitted to the court. This potentially places sensitive health care information/diagnoses/HIPAA-covered information, security information, and sensitive personal factual information in a public record for the world to see. This will, undoubtedly, haunt the parents and their children indefinitely.

Section 4. Once again, this is an attack on those with discretion. In this case, it seeks to limit and handcuff GALs in the course of their investigation and efforts to provide information to a court. Connecticut caselaw provides that, where a GAL has been appointed for a child in a contested custody matter, the GAL is the appropriate person to exercise or waive the child's privileged information. The GAL is the safeguard regarding a child's healthcare information. This bill would strip the GAL of this duty, and would place the child's healthcare information into both litigants' hands – oftentimes to try to "win" their custody fight, one or both parents cast aside a concern for the fallout of exposing such information, the compromising of a child's confidentiality, and the breach of the child's privileged therapeutic relationship with physicians, counselors, and mental health professionals.

This section also would increase costs and delays in the court. If medical/health care information is sought by a litigant, the bill requires the medical professionals involved in a child's life to be summoned to court to testify. Not only will there be resulting delays in the courts in having to hear multiple witnesses whose information could be provided through the medium of the GAL, but the expense to the litigants is potentially astronomical. The physicians/medical health providers will be billing for their time to travel to court, sit and wait in court, and

testify. In the vast majority of cases this expense is eliminated by a phone call and exchange of documents with the GAL.

The emotions of family court litigation should not translate into continued attacks on the discretion of those professionals – GALs, AMCs, mental health professionals, and judges – charged with the task of safeguarding the best interests of children in an unbiased manner. There are already means by which any of these professionals can be disciplined if they engage in actions that violate their respective professional codes of conduct. There continues to be a need to have professionals involved who are neutrals. There needs to be those who can assist the courts in helping to provide information to help determine what, exactly, may be in the best interests of the children involved. House Bill 5505 serves the purpose of continuing the attack against those with discretion in the Family Courts, and will result in harm to litigants and ultimately the children of those litigants.

Thank you for allowing me the opportunity to comment on House Bill No. 5505. For the aforementioned reasons, I strongly urge that House Bill 5505 be voted down.

Respectfully submitted,

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