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March 11, 2015

The Honorable Eric Coleman
Senator and Chair, Judiciary Committee
Legislative Office Building Room 2500
Hartford, Connecticut 06106-151

Re: Committee Bill 5505

I have been a matrimonial lawyer in Stamford for 27 years. Over my many years, I have learned that the common goal of well-intentioned parents, happily married or otherwise, is to put their children first. I have observed that the common goal of less than well intentioned parents is to put themselves first.

Committee Bill 5505 seeks to limit the court's constitutional authority to fashion equitable relief as part of its obligation to resolve disputes between parties (in this case parents) and seems to place the wants of parents over the needs of their children. The following summarizes my perceptions of the bill. This bill provides that a parent's right to be free from the perceived threat and stigma of supervised visitation is more important than the safety of children. This bill provides that GAL's and AMC's must do their job of advocating for children under the threat of being sued by a disgruntled parent. This bill provides that court ordered evaluations can only be performed by someone selected by the subject of the evaluation, resulting in not one consistent evaluation, but two potentially inconsistent evaluations, each less objective and therefore less useful in determination of how the subject of the evaluation functions as a parent. This bill provides that if a child needs mental health treatment, the court cannot order a parent to pay (or the parent can avoid paying) if the parent does not agree to the particular therapist. This bill requires the results of psychological evaluations to automatically become part of the public record, even if the dispute is eventually resolved.

The lack of any logical child-focused basis for any of the provisions of this bill should be obvious to all. However, I offer the following for the committee's consideration so that the obvious will not be ignored.

Supervised visitation is a rarely used but important option for the court when ordering visitation to protect and promote the interests of a minor child. It presents itself as an option when a parent or child is of the opinion that a parent represents a danger to a child. It is used not

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only to ensure the safety of a child, but also as a reporting method of what happens during visitation and as a teaching tool to instruct parent's how to better interact with their children in a manner that does not cause children harm. When ordered by the court, each party is given an opportunity to present evidence and argument in support or against such a request. The circumstances which would warrant supervised visitation are as varied and unpredictable as the human experience and the judge who hears the case is the ultimate decision maker of whether a particular set of facts warrants supervised visitation.

This bill presupposes that only the following four (4) circumstances could justify supervised visitation: 1) a DCF finding of abuse and neglect, 2) criminal conduct which represents a potential risk to the health of a child, 3) where there is no relationship between a parent and a child, and 4) where a parent has severe mental disability which represents a potential risk to the health and safety of a child.

While any of the four circumstances may present circumstances that would warrant supervised visitation, listing them may imply that each circumstance requires supervised visitation where perhaps unsupervised or no visitation would be appropriate. All four circumstances require a finding that would take months to determine, leaving one to wonder what happens in the interim? What happens while we await the result of the DCF investigation (and appeal), the criminal proceeding (and appeal) or the psychological evaluation? Does the legislature mandate that there be unsupervised visitation, or no visitation, in the months between the accusation of abuse, the commission of a crime or allegation of severe mental illness?

Conversely, under this bill, the lack of substantiation of a DCF investigation, the lack of conviction or the lack of "severe" mental illness (as opposed to mild or moderate mental illness) precludes the imposition of supervised visitation. Does that mean if a party applies for a diversionary program to avoid a criminal conviction, the court cannot order supervised visitation? Faced with a case where the court perceives a threat, but the statutory criteria are not present, is the parent or child better off with an order precluding all visitation? These are just some of the questions that arise from the limitations set forth in this bill.

Why eliminate the ability of the court to impose supervised visitation in cases that do not fit into the four enumerated categories? It is relatively easy to imagine a circumstance where a person, not charged with any crime, not suffering from any diagnosed severe mental illness and not found by DCF to be guilty of abuse or neglect, should only be entitled to see his or her children on a supervised basis. What about the alcoholic or drug user (prescription or otherwise)? What about the parent who is the subject of unfounded allegations of abuse made by the child (at the encouragement of an alienating spouse or otherwise)? What about the parent who has a relationship with the children, but that relationship never included spending time alone with the child, who may be particularly young or has special needs? What about the young mother who needs a little help feeling comfortable releasing an infant or toddler to the care of the young father if there is someone there who can report back to her that the father is able to adequately care

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for the child? What about the parent, who every time they parent the child, they share all the sordid details of the divorce with the child in an effort to alienate the other parent? Supervised visitation may actually help families in all of these situations.

There are many circumstances where supervised visitation has not been successful in repairing families. There are also circumstances where supervised visitation has been abused and used as a tool to alienate a parent. However, there are also many circumstances where supervised visitation has been instrumental in maintaining a parent's contact with their child during difficult and divisive divorce proceedings. Supervised visitation is not a life sentence. It is part of a process that, if successful, can restore the trust that is needed for a family to function. I have professionally been involved in a number of cases where supervised visitation was critical to repair a fractured family. I refer to them as "success stories" and they represent a significant percentage of cases.

The goal of limiting supervised visitation would be proper if the paramount interest is the vindication of parents and their rights to visit with their children. To be sure, such a right is important and fundamental. However, the law is full of circumstances where the welfare of children is paramount to the fundamental rights of parents. This is particularly true where one parent, or a child, is of the opinion that a parent represents a physical or psychological danger to the child. Supervised visitation is an important tool for the court to ensure a child's safety while at the same time guaranteeing a parent's access to their children.

As for the proposed changes related to the ability to sue the GAL and AMC and make them responsible for the legal fees of the Plaintiff, and preclude them from recovering legal fees if the civil action is decided in the GAL/AMC's favor, it is clear that this bill is an attempt to deprive the court of the authority to appoint attorneys for children or appoint guardians ad litem. A more honest approach to take for the proponent of this bill is to simply call for the elimination of GALs and AMCs all together, which is probably beyond the authority of the legislature. To side step that limitation, this bill creates a legal environment whereby no practitioner would put themselves at risk by serving as a GAL or AMC, in the same way that no judge would decide a family case if their decision would expose them to personal liability.

The role of the GAL is to provide the court with information without the filter or gloss imposed by a parent. It keeps children out of the courtroom. Because the nature of the job is to present evidence that is not controlled by either party, the GAL or AMC is likely to present evidence needed for the benefit of the court that is unfavorable to one or both parties. This is likely to make the GAL or AMC the object of a parent's upset or anger. The fact that one parent, or both parents, disagree with the testimony of the GAL or the actions of the AMC should not be a surprise. It is a frequent response to doing your job as the GAL or AMC. This bill would effectively eliminate an important tool for the court to determine the facts and circumstances of a custody case.

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As for that portion of the bill which permits a party to select the court's evaluator or therapist, it robs the court of discretion to appoint those experts that the court desires and thereby eliminates the notion of the court appointed expert. It also eliminates the neutrality in the selection process that is essential to maximize an objective evaluation.

As for that portion of the bill that absolves a parent of any financial responsibility for the therapeutic needs of a child, if that parent does not agree with the selection of a therapist or evaluator, the bill ignores a parent's responsibility for the medical needs of their child. If a child is in need of mental health services or an evaluation, they should receive them and the parents should be obligated to contribute to the cost, without regard to whether a parent's preference for a mental health care provider was accepted or declined. The issue is about the needs of the child.

Finally, for that portion of the bill that mandates the filing of reports with the court, it should be noted that many evaluations are never filed with the court and therefore do not become part of the public record. It is important to understand that psychological reports contain a wide range of the most personal and private information imaginable. Once a report is issued, the parties review it in private with counsel and the parties have an opportunity to settle their differences. In many cases, the report is not given to the parties to ensure that it does not come to the attention of the children or is otherwise misused. In my experience, if parties have not settled before the report is issued, a large percentage of parties settle their case after the report is issued. If they do settle their differences, the report is not released to the court and not available to the public. It is only a small portion of cases that actually get tried before the court where the report is made public. This bill would make all psychological evaluations public. No purpose is served by such the mandated filing of psychological reports with the court.

When I first read this bill, I thought that it would be dismissed out of hand, as I think it should be. Then I considered that the majority of people have not shared my experience. I wrote this letter and shared my experience in hopes of aiding the committee to separate what is best for families from the upset of a few who are more concerned about what is best for them than what is best for their children.

The family unit, intact or divorced, is the cornerstone of our society and the practice of family law is fundamentally important to the preservation of the family unit, in whatever form. I am not ignorant of the problems in the Family Division of the Connecticut Superior Court as well as the Connecticut Family Bar. I have watched the practice of family law change dramatically over the past 27 years. Some changes have been for the better, and some have not. The practice of family law is a noble profession that can be greatly improved, but it will take concerned members of the public, the Judicial, Executive and Legislative Branches of Government, as well as experienced members of the bar to address these issues together, so we can better address the legal and mental health issues presented by family law cases.

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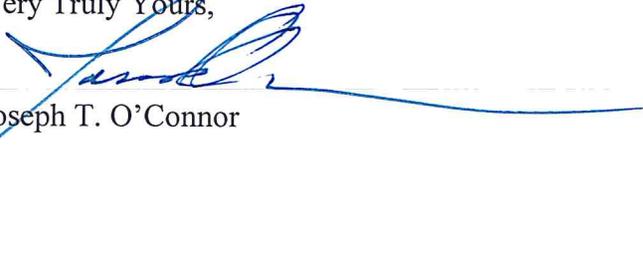
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Committee Bill 5505 is a bill that will hurt families and do nothing to advance the family unit and I encourage the Committee to recommend that it be rejected by the Committee.

Very Truly Yours,



Joseph T. O'Connor