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**Testimony of Attorney Allen Gary Palmer
Chair of the Connecticut Bar Association Family Law Section**

**OPPOSE HB5505
An Act Concerning Family Court Proceedings**

Judiciary Committee
March 13, 2015

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

I am the current Chair of the Connecticut Bar Association Family Law Section and submit this testimony in my capacity as Section Chair only. Our section includes in its membership more than 550 Connecticut attorneys who identify themselves as lawyers whose practices include Family Law. We are one of the preeminent voices on important issues concerning Family Law in this State. Many of our members dutifully serve as Guardians Ad Litem and/or Attorneys for Minor Children.

The Connecticut Bar Association Family Law Section strongly opposes Bill 5505. Due to timing conflicts between the notice of this hearing and the Constitution and Bylaws of the CBA and our Section, this is our first opportunity to voice our opposition to this misguided piece of legislation. For the reasons that follow, Bill 5505 is unconstitutional, promotes the continuation of domestic violence against women and children, is fiscally irresponsible, and in some aspects unnecessary and superfluous. While our Supreme Court repeatedly and often describes consideration of the child's best interests as "paramount," Bill 5505 places no focus on the child's best interests, and all the focus on the parent's "rights."

An attorney for the minor child (AMC) is generally appointed when a child is of sufficient age and intelligence to form an opinion, and establishes a lawyer-client relationship between the AMC and the child, not the parents. A guardian ad litem (GAL) is generally appointed to make a recommendation to the Court in the child's best interests on issues of custody and parental access. Sometimes, a child requires both an AMC and GAL. The dynamic of a GAL appointment is such that in virtually every case, one or both parents will not agree with the recommendation and consider himself or herself aggrieved. There is no lawyer-client relationship created by a GAL appointment. Rather, the child becomes the ward of the GAL for certain purposes, such as determining the child's best interests, or on issues concerning privileged information. To the extent there is a "client," a GAL serves at the discretion and pleasure of the Court.

I spent a substantial part of the first 25 years of my law career representing the interests of children whose families were in crisis. I have appeared in Family Court; Juvenile Court and/or Probate Court for more than 150 children, as an AMC, or as GAL. I served with pride for years on several appointed counsel lists throughout Fairfield and Litchfield Counties, and treated my representation of each child as I would any other client. My anecdotal experience is similar to many other dedicated professionals who represent kids. On more than one occasion, probably more than ten occasions, the fees I earned from these appointments were spent buying food, medicine, diapers or school supplies, among other things, so my clients and wards might have an easier Wednesday than they had a Tuesday. I once put up \$500 of my own money to try to salvage summer vacation so two of my wards might have some vacation time with their Dad. When the father complained that it was not enough money, returned my check and cancelled his vacation, I applied the \$500 to his outstanding balance.

As my practice developed to a more privately-retained model, I often accepted appointments as AMC or GAL at a substantially discounted rate. But some of the core principles remained. Our Supreme Court has repeatedly referred to the child's best interests as the "paramount" consideration. When an AMC or GAL represents the interests of a child, the client or ward is rarely if ever in the wrong and almost always just wants his or her parents to reconcile in some manner. I have never solicited an appointment as GAL or AMC—occasionally one of the party's attorneys might call pre-appointment to gauge my interest. While I am not shy about admitting that I have been paid for my services as AMC or GAL, I rarely was paid my full hourly rate from the outset, and even more rarely was paid my discounted rates in full at the end of the case.

In view of the open season on Family Judges, GALs, AMCs, Family Lawyers, and others who work in this system, and the unwillingness of the system itself to provide adequate protections for those who agree to protect the interests of Connecticut's children, I sadly no longer represent children in any capacity.

I caution against placing great weight on the anecdotal testimony of those parents who testified before you—their stories are extreme and not the norm. Between July 1, 2008 and June 30, 2013, the Judicial Branch identified 53,474 cases filed as either custody applications or dissolution of marriage cases involving children. Yet, only fifty or so of the most vocally dissatisfied parents are controlling this debate. I understand that there are no matched sets of parents arguing for reform—it is the parent who perceives himself or herself as the "loser" in a custody case who joined the debate on the side of "reform." While this is not universal, it is predominant. So long as we resolve custody disputes in an adversarial forum, this struggle using the children as a tug-o-war rope will not allow itself to end. Issues of manipulation, abuse, control, and power dynamics simply transfer targets from the other spouse to the Court and the child's representatives. Keep in mind that each parent who appeared before you to support this bill either (a) settled his or her case by agreement and is now complaining; or (b) had a full trial on the merits with the right to appeal. I encourage the members of this Body to consider the Connecticut Judicial Branch Satisfaction Study, which can be accessed on line at:

http://www.jud.ct.gov/family/Family_Matters_Satisfaction_Study.pdf

Of those who responded to the survey, more than half were involved in a custody and/or visitation dispute (55.3% and 50.1%, respectively). For purposes of my testimony, the survey reports more than half of the respondents provided a positive rating for their GAL to remain neutral, while at the same time slightly less than half questioned the reasonableness of the GAL fees. My best educated guess is that this dynamic would produce the same result as to the parties' attorneys—i.e. general satisfaction with the job done, but general dissatisfaction with the costs. The overwhelming majority of respondents were either very satisfied (43.9%) or somewhat satisfied (29.7%) with their Court experience.

As to each section of Bill 5505:

Section 1:

The Superior Court is vested with broad discretion to enter appropriate custody and parental access orders, and this section restricts the court's discretion to protect children at risk. Bill 5505 is unconstitutional in that the Legislative Branch would impermissibly inject its own oversight, as well as oversight by DCF, an administrative agency, over the Judicial Branch in violation of the Separation of Powers clause of the Connecticut Constitution. This section is short sighted, as the only options to the Court would be unsupervised visitation or no visitation. My experience is that any parent would rather see their children supervised if the other option was no visitation. As a family lawyer, I have often discouraged clients from filing complaints and litigating in DCF. If Bill 5505 passes, parents would have no option but to litigate in juvenile court to protect their kids, increasing the budget of DCF and the Juvenile Court. Finally, this section promotes domestic violence in that it prevents the court from entering sufficient orders to protect children and adult victims, the overwhelming majority of which are women. I was present when the American Bar Association Family Law Council debated the Model Act on Representing Children. It was heartbreaking to hear family judges on the Council recount entering orders under their state's laws requiring no supervision, only to have that parent physically abuse or in at least one case murder their child. Section 1 opens the door that someday a family judge will be required to send a child to visitation which results in that child's death at the hands of a parent.

Section 2:

Practice Book §25-62 makes Family Services the default candidate for appointment as GAL. However, cases where the Court has appointed Family Services as GAL are a rarity, as I know of not one case. Since Family Services is understaffed and underfunded, the vast majority of GALs comes from the Family Bar. This is an essential function reserved to the Judicial Branch generally and Family Services specifically, and Family Services employees are immune from civil liability and provided indemnification and a defense if sued. Since the default option by practice book rule is to appoint Family Services as GAL, private attorneys and mental health professionals serving in that capacity should enjoy the same protections as quasi-judicial officers that their counterparts in Family Services enjoy; a position articulated by our Supreme Court. These same protections should also apply to privately retained custody evaluators. Given the current climate surrounding custody cases in Connecticut, many of the best qualified, most respected mental health professionals are declining to accept appointments to perform evaluations. Connecticut's children are the losers.

GALs, AMCs, and custody evaluators should be able to go about their doings without the fear of defending themselves in state or federal court. This is the underlying rationale in *Carrubba v. Moskowitz*, 274 Conn. 533, 541 (2005), which expanded qualified immunity for AMCs and GALs to absolute immunity, which “is necessary to protect those persons in the performance of their duties.” Contrary to representations made during Wednesday’s public hearing, there was NO dissent to the Supreme Court’s opinion in *Carrubba v. Moskowitz*—any reliance on Judge Hennessey’s dissent in the Appellate Court decision misinterprets established law. The Supreme Court rejected Judge Hennessey’s argument that this is a legislative matter, and expanded the Appellate Court’s qualified immunity to grant AMCs and GALs absolute immunity. I encourage members of this Body to review the entirety of Justice Borden’s opinion in *Carrubba v. Moskowitz*, which clearly sets forth why AMCs and GALs require immunity. Section 2 will have a chilling effect on child representation. Experienced child representatives, such as myself, are refusing appointments and no longer willing to serve, and this list is growing. Section 2 encourages the monied spouse, the disenfranchised spouse, or the irrational spouse to threaten litigation or engage in litigation to manipulate or extract revenge from the child’s representatives. The child’s representative is supposed to exercise professional judgment in the child’s best interests, not react out of fear of retribution by an “aggrieved” parent. It discourages competent effective child representation. Again, Connecticut’s children lose.

The Code of Conduct for Counsel for the Minor Child and Guardian Ad Litem, which was promulgated by the Judicial Branch in response to the mandate in P.A. 14-3 and P.A. 14-207, should go a long way to bring sanity back to custody practice. It is well thought out and provides real standards for AMC and GAL practice. It has also only been in effect for less than six (6) months and needs the opportunity to work. This reactionary legislation causes more problems than it solves.

Section 3:

This contradicts Practice Book §§25-60 and 25-60A, and is an infringement on the rule-making function of the Superior Court’s authority over process and procedure in its cases. The General Assembly establishes rights and remedies—the Rules Committee establishes procedures in the Superior Court. It is also superfluous since (a) a GAL’s file and evaluator’s file are open for discovery; (b) the GAL and evaluator can be deposed; and (c) there is nothing in either the practice book, the General Statutes or the Code of Evidence precluding a party from hiring an expert to refute the GAL’s or evaluator’s recommendations. This right already exists. There is a distinction to be made between treating providers and evaluators. To the extent possible, the Court should retain authority to appoint the evaluator in any case.

I also note that it appears that my pharmacist, physical therapist and podiatrist qualify as evaluators under Section 3. Owners of a licensed medical marijuana facility may also qualify as evaluators under this section.

Section 4:

This section infringes on the rule-making function of the Superior Court's authority over process and procedure in its cases. Objections on relevancy and hearsay are reserved to the trial court per the Code of Evidence. This section also fosters domestic violence, as the disclosure of privileged information places the victim at risk of further abuse, this time in the context of a child custody or visitation proceeding by requiring the domestic violence victims' treatment providers to testify. It also drives up the cost of a divorce in that trials will be of longer duration and the providers listed have a right to charge for their participation. Longer custody trials will also put undue stress on an already crowded docket. This is also superfluous, since there is no preclusion from offering the testimony described. See e.g. Practice Book 15-4. Issues of waiver are already determined with regard to privileged information, and this adds nothing to that body of law.

I am happy to appear before your Committee should you have any questions.

My curriculum vitae is attached.

Thank you.