

**MARCH 10, 2015**

**TESTIMONY OF ATTORNEY REUBEN S. MIDLER, ESQ. 67 HOLLY HILL LANE,  
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**REGARDING JUDICIARY COMMITTEE HEARINGS ON MARCH 11, 2015  
CONCERNING VARIOUS BILLS REGARDING FAMILY LAW AND THE SUPERIOR  
COURT OF THE STATE OF CONNECTICUT**

**AS I AM UNABLE TO ATTEND TOMORROW'S HEARING DUE TO THE FACT THAT  
I HAVE AN PREVIOUSLY SCHEDULED HEARING IN THE SUPERIOR COURT FOR  
THE JUDICIAL DISTRICT OF STAMFORD/NORWALK AT SAMFORD I AM  
SUBMITTING AN EMAIL WHICH I CIRCULATED TO SOME MEMBERS OF THE BAR  
IN LIEU OF MY APPEARANCE BEFORE THE COMMITTEE:**

At the risk of offending some and bemusing others, here is my two cents based upon Jackie Conlon's email of March 8, 2015 (at 4:57 PM) which included a synopsis of the certain aspects of the proposed legislation.

In considering the issues raised by the latest attempt to control the judicial process with respect to family law – while the judiciary committee will be holding hearings, there appears to be an infringement by the legislature's judiciary committee upon the jurisdiction of the Superior Court and the exercise of judicial discretion. In the end, it just maybe that a constitutional challenge to the legislation will have to be brought if the Judiciary Committee does not take a step back and review what is proposed to determine if the legislation infringes on the jurisdiction of the Superior Court – a constitutionally mandated court.

The bar cannot expect the Judiciary's help in fighting what to many appears to be an assault on reasoned decision making and the exercise of judicial discretion. Slowly but surely recently passed legislation and that proposed with respect to family law appears designed to achieve predetermined results and thereby limit judicial discretion and in my estimation create a fundamentally skewed system of justice in family law. For some of the legislation appears to dictate results and does not seek to create a neutral or better fact finding process for our adversary system of justice in family law administered by the constitutionally created Superior Court.

I hearken back to cases such as *State v. Clemente*, 166 Conn. 501 (1974); *Szarwak v. Commissioner*, 167 Conn. 10 (1974); and *Massameno v. Statewide Grievance Committee*, 234 Conn. 539 (1995) which clearly stood for the proposition that there were limits on the legislative power to dictate procedures or expand or contract the jurisdiction of the Superior Court and that legislation which exceeded those limits was unconstitutional, as the legislation interfered with or sought to control the prerogatives of the constitutionally created and empowered Superior Court.

Furthermore, it appears to me that portions of the proposed legislation also seek to interfere with long established rights of litigants to due process of law. See *Kelly v. Kelly*, 54 Conn. App. 50 (1999) which would appear to be relevant to the issues of the constitutionality of the provisions regarding supervised visitation and having the party ordered to undergo mental health therapy – chose the therapist. Without consideration of political correctness such proposals appear to not only be unconstitutional, but illogical, as you are in essence “putting the inmate in control of the process”.

In essence the various provisions appear to be interfering with the Court’s power to evaluate cases based upon the individual facts in each case, and then fashion appropriate remedies in accordance with due process (which entails adversarial participation) by dictating results and procedures. Judicial discretion is taken away; and, in its stead the court is required to throw reason out the window and follow a legislatively created mandate. The foregoing is similar to the imposition of procedures upon the judiciary which was addressed by *State v Clemente*, *supra* and *Szarwak v. Commissioner*, *supra*.

Finally, the creation of a cause of action against AMCs and GALs is a direct assault upon judicial immunity which immunity appears to arise as an inherent aspect of the constitutionally created Superior Court.

The foregoing are my thoughts as I did not receive sufficient the notice of the proposed hearings to allow me to do additional and more in depth review and legal research.

Thus, I submit that the only way to stop the onslaught of what appears to be periodic ill advised legislation authored by those who appear to claim to be “victims” of Family Law Practice or the Superior Court, Family Division, is to strongly remind the judiciary committee of the limits upon its exercise of legislative power and prerogatives which fundamentally seek to obviate due process of law; control the exercise of judicial discretion; and interfere with the constitutionally mandated Superior Court.

Sincerely yours,

Reuben S. Midler, Esq.