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Statement for Legislative Task Force on Child Custody Reform

Public Hearing on January 9, 2014

On behalf of members of the Forensic Division of the Connecticut Psychological Association, we are pleased to be able to provide input to this Task Force. My name is Dr. Mary Cheyne. I am a clinical and forensic psychologist who has practiced for nearly 14 years conducting divorce custody and child protection evaluations. I also see child, adolescent and adult patients in therapy. My colleague, Dr. Stephanie Leite has practiced for 10 years, primarily doing evaluations in the child protection and custody arenas.

Psychologists have traditionally worked with men and women going through divorces as their individual psychotherapists, their children's therapists and as marriage and family therapists. This role has grown to include custody evaluators, Guardian Ad Litem, parent educators, mediators and parenting coordinators. Members of the Forensic Division not only serve in the above roles but also volunteer their time as Special Masters in the Regional Family Trial Docket and in the Early Intervention program, a pilot program in the Hartford courts.

First, I would like to say that we know divorce is painful and confusing for parents and children. There are many difficult decisions that have to be made. The most difficult is the division of parental roles and responsibilities, parenting time and residence of the children. The reason it is important to have individuals from the Forensic Division talk to you today is because on-going developments in the science and practice of psychology are highly applicable to the problems of how best to help children and parents in divorcing and divorced families.

Psychological theory and research continues to address state-of-the-art application of developmental theory and research to these most crucial of issues. As psychologists we know that placing the children's best interest first is paramount, and this too, has become the standard in law. As a psychologist I am trained to look at behavioral patterns and how they give a glimpse into underlying motives for behavior. As a forensic psychologist I apply this skill set to the intricate dynamics of a conflicted divorce.

Between the two of us we have worked with many GALs and judges. They are by and large motivated by a genuine desire to help families in crisis, especially children. The families Stephanie and I see are the most high conflict families in the state. The families come to us with problems they have labeled as irreconcilable. They are unable to co-parent and to place their children's needs first without involving the court system to a ridiculous degree. The Forensic Division embraces change and progress. We are encouraged that the members of this Task Force are motivated to

make the system better and more efficient with the goal of keeping all our kids healthy.

I would like to start with a small story. I have a friend who is a judge in another state. Prior to that position she had been a GAL, providing free services to children and their families. The cases she saw were violent and abusive. When she became a judge, she said her faith in humanity was rebirthed because the great majority of cases that come before the bench are not high conflict and do not require the services of a GAL. The majority of custody issues that come before our court, nearly 90%, do not need a GAL, and are settled relatively easily.

The cases that our current system describes as "high-conflict," do not fit easily into one category, but contain a web of personalities, complex history and intolerance that are not seen in the rest of the population. And, while perpetuating a high conflict divorce can be an effective means for parents to hurt each other, what gets lost is the tremendous damage this conflict inflicts on the children. I speak for the forensic division when I say that all our psychologists and all the GALs I know would be thrilled if there was no such thing as high conflict custody cases, if the parents would place their children's needs first. Unfortunately, that is not the case and here we stand, in front of you today.

It is our understanding that there three major areas of possible reforms that have been identified in the charge that the legislature has given your task force. These are the reform of the GAL system, the idea of joint custody and the ever popular, yet often misunderstood, idea of alienation.

The first issue is the reform of the GAL system. Traditionally, in Connecticut, GALs have been attorneys, but this is not the case in other states. In Massachusetts for example, most GALs are mental health professionals. We hope the Task Force will recognize the role non attorney GALs can provide. For example, some divorces have a heavy emphasis on financial issues, others on the psychological issues of the parents or children, and others have more focus on navigating the legal process. Having a deeper pool of talent will lead to choosing GALs that are best suited for each case.

The mental health provider GAL brings his or her understanding of child development , family dynamics and conflict resolution into the forum of the courts to assist the children. We also understand how to work with various personality types, family dynamics and children's needs. These skills can benefit the public significantly. In other cases, lawyers trained in mediation, financial matters or conciliation and knowledgeable of the options available through the courts, will be the most effective.

In Connecticut over the past several years, a 30-hour training curriculum for GALs has been introduced that incorporates instruction from a variety of disciplines regarding areas of importance for children of divorcing families. Successful completion of this program will soon be a requirement for one to be appointed as a GAL. Recently, this curriculum was presented and well received at a multidisciplinary conference of divorce custody professionals. Stephanie and I have been involved with most of the GAL trainings, both as lecturers and as small group leaders. We have found the legal, judicial and mental health professionals involved in these trainings,

both as presenters and trainees, to be compassionate and deeply dedicated to the best interests of children in Connecticut.

The second matter is the issue of presumptive shared custody. The phrase "shared custody" is confusing, because Connecticut already has a presumption of joint custody. Does shared custody mean a 50-50 split of time? This confuses issues of decision-making with issues of parenting time, two related but different concepts. We ask you to separate the issues of joint decision-making and equal parenting time. The two issues are very different.

The idea that every family should be served up a 50-50 parenting schedule is just as wrong as the old fashioned presumptions that dads only needed to see their kids two Saturdays a month. A legal presumption with respect to parenting time that is not tailored to the special circumstances of each divorcing family is intrinsically problematic. So, we ask for recommendations that are flexible and allow each family to have a plan set that meets their individual needs.

Also, families grow and change. It is not only the kids who change over the years, but the parents too. When a family separates the whole contract changes. Both parents have to do lots of things they did not do before. What was is no more. Keeping the same schedule, sometimes known as the approximation standard, is not right for most families. Likewise, parenting plans should be open to change as the children's needs change.

The third matter is the idea of court enforced parenting time. This is clearly an effort to avoid what is referred to as alienation, where a child resists or refuses contact with

one parent as the result of restriction, discouragement, anxiety or prohibition of contact on the part of the other parent, either intentionally or subconsciously. These are some of the most tragic and problematic divorce and post-divorce situations for children. The psychological research is abundantly clear: not only do children of high conflict divorce do poorly, children in alienation-type situations do the most poorly of all.

This is not the forum for a lecture on the concept of alienation, since we could probably talk about it for a long time. In the professional literature there has been a lot written recently about alienation and psychologists' understanding of alienation has become more nuanced than ever before. As we learn more, it becomes clear that claims of parental alienation must be evaluated carefully and without the tendency to stereotype one parent. The court must attend to the motivations of each individual child refusing to visit a parent.

Just because a child does not want to see a parent, it does not mean that alienation exists. The situations where children make these objections are highly variable and require specialized assessment. Even in those rare cases where a parent is clearly responsible for deliberately encouraging the child or children to refuse visitation with the other parent, the circumstances and solutions are likely to change from one family to the next and from one child to the next. This means that each situation must be assessed individually. There is no one size fits all rule. If it is clear that one parent is acting deliberately and with malice or even out of anxiety, the courts may wish to

consider some sort of sanction only after it has been established that the child's desire to stay away is unreasonable.

So, the take home points are:

1. GALs should come from many different areas of practice according to the fact patterns of each case, but all need to be knowledgeable in issues of high conflict divorce, its process and its effects on children.
2. The issue of joint custody while often a salve for the parents, often fails to focus on meeting the kids' best interest. It is important to look at each family's needs and capabilities and also to separate the issues of physical custody, parenting time and decision making.
3. Alienation is a real and awful thing. However, using alienation as a tool to batter the other parent or to explain away the effect of pre-divorce poor attachment and/or bad co-parenting is not only unacceptable but damaging to children. If the specter of alienation is raised, the court must look at each family separately and utilize the skills of a trained professional who understands current alienation theory to help clarify the situation. Sanctions should only be taken when it is clear one parent is deliberately hindering the relationship of the other parent with the children.

*Thank you for listening. We wish the Legislative Task Force on reform of child custody laws a speedy and successful conclusion of your important responsibilities. If you need further input from either of us, we are available to you.*