

Testimony of Kate W. Haakonsen
For the
The Task Force to Study Legal Disputes Involving the Care & Custody of Minor Children
February 9, 2014

Attorney Dornfeld, Attorney Cousineau and members of the Task Force, thank you for the opportunity to present testimony.

My name is Kate W. Haakonsen. I am a lawyer in private practice for over 35 years. My practice includes mediation, collaborative divorce and litigation and has been concentrated in the area of family law for many years. I am a past chairman of the Family Section of the Connecticut Bar Association and a member of its legislative committee, as well as the state-wide organization for mediators and collaborative professionals and several national and international professional organizations, although these comments are mine do not represent any organization. My testimony is based on my own experience and observations based on my years as a lawyer and mediator as well as serving as a volunteer in the family courts as special master for over 25 years including at the Regional Child Custody Docket.

I understand that the Task Force is considering the following issues at this hearing:

(1) The role of a guardian ad litem and the attorney for a minor child in any action involving parenting responsibilities and the custody and care of a child.

(2) The extent of noncompliance with the provisions of section 46b-56(c)(6) and the role of the court in enforcing compliance.

(3) Whether the state should adopt a presumption that shared custody is in the best interest of a minor child in any action involving the custody, care and upbringing of a child.

(1) In my opinion, Guardians ad Litem (GALs) and Attorneys for Minor Children (AMCs) provide a very valuable service to their clients (the children), the parents, attorneys and the courts. They gather information from many sources provided by the parents and others, and they often do so in the evenings and on weekends, by traveling to people's homes or children's schools when most of the rest of us have ended our workdays. They provide a voice to children's concerns and wishes but also a mature assessment of their best interests which the litigants and sometimes their lawyers are not able to formulate because of their personal involvement and point of view or their positions as advocates for their clients. They provide vital information to courts which courts often have no other way of getting. More often than not, they assist the parties in reaching agreements about their parenting disputes and avoiding an expensive and damaging trial or hearing. In this way, they often reduce conflict and keep costs of cases down compared with trials.

People who are unable to settle their own disputes often have a belief that, if a judge or some other responsible trier of fact will just hear their stories, their positions will prevail. When that is not the result, they tell us the judge got it wrong. So it is with GALs and AMCs. Parents believe each of them is acting in and advocating the best interests of their children. But when they do not agree on what is best for their children, the court needs an objective opinion from a qualified professional who will look at the situation on behalf of the children rather than the parents. GALs and AMCs are appointed only when parents are unable to agree between themselves. They serve the children, not the parents who have their own voice in the process.

If GAL's services are expensive, it is primarily caused by the level of conflict between the parents. They may want no stone left unturned in the investigation of the other parent's shortcomings, but they are offended by the cost of the effort required. If certain professionals are often chosen by courts or lawyers to serve as GALs and AMCs, it is not a conspiracy to make them rich. It is because their work is most respected by the court and by their colleagues whose only motivation is to help children and their families to end their conflict in the interests of the children. No one would choose that line of work to get rich. These professionals are needed and I, for one, am grateful they are willing to serve.

Parents tend to believe that if their child has a negative opinion of them or is reluctant to spend time with them, he or she was influenced by the other parent. GALs go through hours of training in addition to the years of experience many of them have, to help them distinguish between a child's own feelings and a recitation of a parent's. However, they are human and are not always right. Fortunately for the parents, GALs and AMCs are not the final decision makers. Whatever their recommendations, a judge must weigh all the evidence and make a decision if the parents can't. Each litigant has the opportunity to refute the GAL's point of view or question their investigation. This is how our legal system functions. It is difficult for me to see how it would function without the help of GALs and AMCs.

(2) It is not entirely clear to me what is meant by "the extent of non-compliance with §46b-56(c)(6) and enforcement thereof." Section 46b-56(c) is a portion of a statute which sets forth 16 factors which the court may consider in making an order of custody. It states specifically that "The court is not required to assign any weight to any of the factors that it considers. To the extent that compliance with this provision is required, it would be compliance by the court in considering the factors and weighing them as it deems appropriate.

Having said that, I have found in many cases that, where both parents are otherwise able to provide good care for their children and are seeking primary residence of the children, the parent who is seen as less likely or able to facilitate a relationship with the other parent may not be successful. Or, said

the other way, the parent who is most supportive of the children's relationship with the other has a leg up. That is the advice I give my clients.

It is important to understand though that this is only one factor for the court to consider. If several other factors would weigh in favor of the parent who is less supportive of the other one, a different result may occur. That is why there are 16 factors and not 1 for the court's consideration. Again, parents whose children are reluctant to spend time with them tend to blame the other parent rather than looking at how their own behavior or relationship with their child may be impacting the situation. After a certain age, children have their own minds, as any parent whose child won't mind them can attest. They can as easily turn away from a parent who disparages the other as cling to him or her. They may feel the need to look out for the parent they perceive as being injured without being asked for that help. They become their own judges and are sure they know what is right without advice from either parent. Meanwhile, parents are left to ask "who is this person in my child's body?" Parents who can't or won't communicate with each other about what is going on with their children are left to guess and often to guess wrong. Factor (6) is an important consideration for the court, but it requires a determination that a parent is unwilling or unable to facilitate and encourage the relationship with the other parent and also what relationship with that parent is appropriate. That determination by the court has to be based on the evidence before it. Here again, the parents have the opportunity to be heard and to present evidence if such evidence exists.

(3) Shared parenting is taken by most people to mean that each parent is responsible for the children for an equal amount of time. While many parents who work well together and are committed to living in convenient proximity to each other often agree to a shared parenting arrangement, it would seem to be folly to presume that would be the in the best interest of every child in every case unless proven otherwise. Shared custody works best when there is relatively good communication between parents and a level of respect and good will which reduces the stress suffered by children whose parents are in conflict. Many studies have found that the level of conflict between parents is the single greatest predictor of the impact of divorce on children. It would not be good public policy to presume a low level of conflict in all divorces or custody disputes. There is already a presumption of joint legal custody which assures most parents have input into parenting decisions as well as reasonable time with their children. Most interested parents spend significant if not equal time with their children after divorce. In my experience, when that does not happen, it is due to parental preference or very high conflict between the parents.

Legislating a presumption of shared parenting will also change the bargaining positions of parents in a way which may not benefit children. The legislature and the Child Support Guidelines Commission

have gone out of their ways in the past to avoid creating a trade off of parenting time for something else like child support or property. It is far better that there be no default parenting schedule so that everyone is encouraged to fashion a plan in good faith and based on all the relevant factors.

Thank you for the opportunity to present this testimony.