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## Connecticut's Road to "Real" Attorneys for Kids

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## CONNECTICUT’S ROAD TO “REAL” ATTORNEYS FOR KIDS

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### I. INTRODUCTION

During the 2011 Legislative Session, Connecticut took a tremendous step forward by giving children involved in child protection proceedings “real” attorneys through Public Act 11-51.<sup>1</sup> Ironically, in the very same act, it took an immense step backward by eliminating the very agency responsible for proposing and shepherding this enactment through the legislature, and just six years earlier, created to ensure the quality of children’s attorneys.<sup>2</sup> While this article’s focus is not the effect of the current budget crisis on state agencies and not-for-profit organizations serving the poor, the recent experience of Connecticut and its stalled effort to provide quality legal representation to children and indigent parents in child protection cases highlights the fragility of the commitment to legal representation as a means to hold the child welfare system accountable. Providing client-directed attorneys for children consistent with the *Connecticut Rules of Professional Conduct* and the American Bar Association’s (ABA’s) Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (Model Act) is a critical measure for improving legal protection for children involved with the state’s child welfare agency. However, it must be accompanied by an adequate system of attorney compensation and accountability to

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1. See 2011 Conn. Acts 18–19 (Reg. Sess.).  
 2. Compare *id.* at 2, with 2005 Conn. Acts 26–27 (Spec. Sess.).

achieve its promise of a true voice for children with the court and the child welfare agency.

Public Act 11-51 section 17 eliminates Connecticut's requirement that counsel for children in neglect, abuse, and termination of parental rights proceedings serve in a dual capacity as attorney and guardian ad litem (GAL).<sup>3</sup> It clearly defines the attorney role consistent with the *Connecticut Rules of Professional Conduct* by stating: "Counsel for the child shall act solely as attorney for the child."<sup>4</sup> This amendment is the product of the author's de-

3. See 2011 Conn. Acts 18.

4. *Id.* The following is the version of section 17 of Public Act 11-51 with the additions and deletions to the former *General Statutes of Connecticut* section 46b-129a, thus demonstrating the amendments:

(2) [a] (A) A child shall be represented by counsel knowledgeable about representing such children who shall be [appointed by the court] assigned to represent the child [and to act as guardian ad litem for the child.] by the office of Chief Public Defender, or appointed by the court if there is an immediate need for the appointment of counsel during a court proceeding. The court shall give the parties prior notice of such assignment or appointment. Counsel for the child shall act solely as attorney for the child.

(B) If a child requiring assignment of counsel in a proceeding under section 46b-129, as amended by this act, is represented by an attorney for a minor child in an ongoing probate or family matter proceeding, the court may appoint the attorney to represent the child in the proceeding under section 46b-129, as amended by this act, provided (i) such counsel is knowledgeable about representing such children, and (ii) the court notifies the office of Chief Public Defender of the appointment. Any child who is subject to an ongoing probate or family matters proceeding who has been appointed a guardian ad litem in such proceeding shall be assigned a separate guardian ad litem in a proceeding under section 46b-129, as amended by this act, if it is deemed necessary pursuant to subparagraph (D) of this subdivision.

(C) The primary role of any counsel for the child [including the counsel who also serves as guardian ad litem,] shall be to advocate for the child in accordance with the Rules of Professional Conduct. [When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child.]

(D) If the court, based on evidence before it, or counsel for the child, determines that the child cannot adequately act in his or her own best interests and the child's wishes, as determined by counsel, if followed, could lead to substantial physical, financial or other harm to the child unless protective action is taken, counsel may request and the court may order that a separate guardian ad litem be assigned for the child, in which case the court shall either appoint a guardian ad litem to serve on a voluntary basis or notify the office of Chief Public Defender who shall assign a separate guardian ad litem for the child. The guardian ad litem shall [speak on behalf] perform an independent investigation of the case and may present at any hearing information pertinent to the court's determination of the best [interest] interests of the child, [and] The guardian ad litem shall be subject to cross-examination upon the request of opposing counsel. The guardian ad litem is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children and relevant court procedures. [In the event that] If a separate guardian ad litem is [appointed] assigned, the person previously serving as [both] counsel [and guardian ad litem] for the child shall continue to serve as counsel for the child and a

termination that client-directed representation for children was essential to a strategy to improve representation for children subject to neglect, abuse, and termination of parental rights petitions filed in juvenile court by the Department of Children and Families (DCF).<sup>5</sup> What follows is a story that starts somewhere in the middle of Connecticut's twisted and broken road towards quality legal representation for children and parents in child welfare proceedings.

## II. THE ESTABLISHMENT OF THE OFFICE OF THE CHIEF CHILD PROTECTION ATTORNEY

The story of this legislation began when the general assembly created the Commission on Child Protection (COCP) during the 2005 Legislative Session through Public Act 05-3 sections 44 through 47.<sup>6</sup> The decision to create this Commission was a culmination of several factors, not the least of which was a lawsuit brought by the Juvenile Matters Trial Lawyers Association (JMTLA) against the Judicial Department for violating the rights of their indigent clients by not adequately paying court-appointed counsel.<sup>7</sup> While the lawsuit was dismissed on standing grounds, the conclusion of district court Judge Christopher Dronney essentially directed the Judicial Department and the legislature to address the issues raised by the suit:

Although the pay structure for appointed counsel representing indigent families and children in the Connecticut state courts may result in inadequate resources for effective representation in par-

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different person shall be [appointed] assigned as guardian ad litem, unless the court for good cause also [appoints] determines that a different person should serve as counsel for the child, in which case the court shall notify the office of Chief Public Defender who shall assign a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem.

*Id.* at 18–19.

5. The author was appointed as Connecticut's first Chief Child Protection Attorney, head of the Commission on Child Protection, on March 31, 2006. See Thomas B. Scheffey, *Training Now a Must for All Children's Lawyers*, CONN. L. TRIB., Jan. 16, 2012, <http://www.ctlawtribune.com/getarticle.aspx?id=40982>. Early on, the author was invited by CT Voices for Children, Casey Family Services, and DCF to listen to different groups of foster youth about their experiences with courts and attorneys. Her own experience in court as an Assistant Attorney General representing DCF and the stories of the youth helped to shape her decision that clearly defining the role of counsel for children as a traditional client-directed attorney was critical to improving representation.

6. 2005 Conn. Acts 25–27.

7. *Juvenile Matters Trial Lawyers Ass'n v. Jud. Dep't*, 363 F. Supp. 2d 239, 242 (D. Conn. 2005).

ticular cases, the Association has not shown that it has standing to make that claim in this case. This Court is bound by the constitutional and prudential requirements of standing, and cannot permit cases to proceed which do not meet those requirements. Of course, the decision here on the standing of the Association does not mean that other parties could not raise these issues in this Court or the Connecticut Superior Court. Finally, it may very well be that an administrative or legislative review of the issues raised in this suit may be an appropriate course.<sup>8</sup>

That decision came out on March 28, 2005, and the legislation passed during a special session in June 2005.<sup>9</sup> The intent was to create an independent agency devoted to improving attorney services for children and indigent parents in child protection matters.<sup>10</sup> The Act provided for the appointment of a Chief Child Protection Attorney (CCPA) by an eleven member COCP.<sup>11</sup> The CCPA was responsible for providing a system of state-paid legal representation in juvenile and family matters and ensuring the quality of that representation.<sup>12</sup> While the primary impetus of this legislation was the problems with the system of legal representation in neglect, abuse, and termination of parental rights cases, the administration of billing for state-paid attorneys in family matters cases—including attorneys for minor children and GALs for children of indigent divorce and custody litigants—was also transitioned to the CCPA.<sup>13</sup> The legislation called for the CCPA to:

(3) Establish training, practice and caseload standards for the representation of children, youths, indigent respondents and indigent legal parties pursuant to subdivision (1) of this subsection. Such standards shall apply to each attorney who represents children, youths, indigent respondents or indigent legal parties pursuant to this section and shall be designed to ensure a high quality of legal representation. The training standards for attorneys required by this subdivision shall be designed to ensure proficiency in the procedural and substantive law related to such matters and to establish a minimum level of proficiency in relevant subject areas, includ-

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8. *Id.* at 251.

9. *See id.* at 239; *see generally* 2005 Conn. Acts.

10. *See* 2005 Conn. Acts 26.

11. *Id.* at 25–26.

12. *Id.* at 26–27.

13. *Id.*

ing, but not limited to, family violence, child development, behavioral health, educational disabilities and cultural competence.<sup>14</sup>

#### A. *Step One: Standards of Practice*

In order to address the issue of practice standards, the author established two working groups to conform the *Standards of Practice for Parent Representation* and the *NACC's Model Standards for Representation of Children (NACC Standards)* to Connecticut law.<sup>15</sup> The working groups consisted of volunteer judges, child advocates, lawyers, and law professors who began their work in the Summer of 2006.<sup>16</sup> At this time, most case law in Connecticut regarding the respective roles of counsel for minor children and GALs arose from dissolution and custody actions.<sup>17</sup> In 2003, the appellate court in *In re Tayquon H.*,<sup>18</sup> decided the first child protection case outlining the authority and function of a separate GAL in the context of a child protection proceeding.<sup>19</sup> While *In re Tayquon H.* focused on whether the authority of a separate GAL for a minor parent usurped the authority of the minor parent's biological parent in the neglect proceedings, it also analyzed the historical distinctions between counsel and GALs.<sup>20</sup> In its discussion, the court relied on decisions in family matter cases, even though the statutory scheme for appointment of counsel and GALs in child protection proceedings under section 46b-129a of the *General Statutes of Connecticut* as very different than those in family matter proceedings where authority was derived from section 46b-54 to appoint a separate attorney.<sup>21</sup> A probate court statute, sec-

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14. CONN. GEN. STAT. § 46b-123d(a)(3) (2011).

15. CAROLYN SIGNORELLI, COMM'N OF CHILD PROTECTION, THE FIRST ANNUAL REPORT OF THE CHIEF CHILD PROTECTION ATTORNEY 27 (2007) [hereinafter SIGNORELLI, FIRST ANNUAL REPORT], available at [http://www.ct.gov/ccpa/lib/ccpa/TheFirstAnnualReport\\_12-3-07.pdf](http://www.ct.gov/ccpa/lib/ccpa/TheFirstAnnualReport_12-3-07.pdf).

16. See *id.*; COMM'N ON CHILD PROT. STATE OF CONN., CONN. STANDARDS OF PRACTICE FOR ATT'YS & GUARDIANS AD LITEM REPRESENTING CHILDREN IN CHILD PROT. CASES 2 (2006) [hereinafter CONN. STANDARDS OF PRACTICE], available at [http://www.ct.gov/ccpa/lib/ccpa/final\\_standardskids\\_12-27-06.doc](http://www.ct.gov/ccpa/lib/ccpa/final_standardskids_12-27-06.doc).

17. See *Ireland v. Ireland*, 717 A.2d 676, 677, 688 (Conn. 1998) (explaining that an attorney for a child should be heard regarding the child's best interests, as an attorney would be "arguing on behalf of his or her client, based on the evidence in the case and the applicable law . . . in a similar manner as most other attorneys are heard, that is, through such methods as written briefs, questioning of witnesses, oral arguments, and other proceedings that take place during the course of a trial"); see also *Schult v. Schult*, 699 A.2d 134, 139 (Conn. 1997) (citing *Knock v. Knock*, 621 A.2d 267, 275 (Conn. 1993)).

18. 821 A.2d 796 (Conn. App. Ct. 2003).

19. *Id.* at 799, 803.

20. *Id.* at 802-07.

21. *Id.* at 802-04, 807.

tion 45a-620, provided discretion to appoint a separate GAL.<sup>22</sup> This cross-citing was concerning because of the very different legal rights and interests at stake for children in child protection proceedings who are considered parties to the case, as compared to the interests of children in custody battles.<sup>23</sup> It became alarming in July of 2005, when the family court case, *Carrubba v. Moskowitz*,<sup>24</sup> was decided. The court described the role of an attorney appointed as counsel for a minor child in dissolution actions as follows:

Of course, we recognize that such attorneys perform a hybrid role because of their simultaneous duty to function as an advocate for the child. That function, however, must always be subordinated to the attorney's duty to serve the best interests of the child. Even when an attorney for the minor child functions less as a guardian ad litem and more as an advocate because of factors such as the child's advanced age, maturity level and ability to articulate her preferences, the shifting of the balance from an objective evaluator of the child's best interests to personal advocate happens because those factors increase the likelihood that the child is able accurately to identify and to make choices to pursue her own best interests independently, without the aid of an objective assistant to the court. Thus, even the advocacy role of the appointed attorney for the minor child may be reconciled with the attorney's primary duty—to assist the court in serving the best interests of the child.<sup>25</sup>

The Working Group on the *Connecticut Standards of Practice for Attorneys & Guardians ad Litem Representing Children in Child Protection Cases* determined that since the appellate court in *In re Tayquon H.* had referenced the need for courts to define the roles and duties of counsel and GALs on a case by case basis “absent firm guidelines from [the] legislature or other sources,” and since the legislature had granted the CCPA the authority to promulgate practice standards, our standards would seek to reinforce and clarify the role of counsel as that of a client-directed attorney.<sup>26</sup> This had to

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22. CONN. GEN. STAT. § 45a-620 (2011).

23. See *In re Tayquon H.*, 821 A.2d at 801–02, 807 n.20. The author recognizes that several interests coincide for children in dissolution and custody actions and children in neglect proceedings, such as safety, continuity of care, stability of placement and maintenance of family relationships. However, in child protection cases where the state is a party and potential custodian, the stakes for children are even greater and the enforcement of rights while in foster care, even more critical.

24. 877 A.2d 773 (Conn. 2005).

25. *Id.* at 783.

26. *In re Tayquon H.*, 821 A.2d at 807 n.20 (alteration in original); CONN. STANDARDS OF PRACTICE, *supra* note 16, at 1, 4.

be done within the boundaries of the existing appointment statute.<sup>27</sup> The Working Group therefore focused on the statute's provision: "The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the [Connecticut] *Rules of Professional Conduct*."<sup>28</sup> It also sought to provide guidelines for assessing best interest and whether or not a conflict existed through objective criteria. The Working Group was provided the *NACC Standards* as well as the reports from the Fordham Proceedings of the Conference on Ethical Issues in the Legal Representation of Children, and the *Draft UNLV Recommendations of the Conference on Representing Children in Families* to assist in the task.<sup>29</sup>

Under the heading Role of Attorney/GAL for Minor Child, the *Connecticut Standards of Practice for Attorneys & Guardians ad Litem Representing Children in Child Protection Cases* provides:

Under Connecticut's framework of dual representation for a minor child in juvenile matters, as set forth in [General Statutes of Connecticut section] 46b-129a(2) and discussed in *In re Tayquon H. . . .*, the attorney/GAL for a child must attempt to provide traditional client-directed representation whenever possible. To that end the attorney/GAL must assess the child's competency to render decisions concerning the objectives of representation and his or her own best interest. Only when it is determined that the child client does not have such competency or has diminished capacity can an attorney/GAL substitute his or her objective determination of the child's best interest and request a separate GAL due to the existence of a conflict.<sup>30</sup>

By bringing the need to assess competency into the standards, since it was absent from the statute, the Working Group attempted to address the

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27. See CONN. GEN. STAT. § 46b-129a.

28. *Id.* § 46b-129a(2).

29. SIGNORELLI, FIRST ANNUAL REPORT, *supra* note 15, at 27; CONN. STANDARDS OF PRACTICE, *supra* note 16, at 34 nn.5, 7; see generally STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE & NEGLECT CASES 8 (Nat'l Ass'n of Counsel for Children, Revised Version 1999) [hereinafter REVISED STANDARDS OF PRACTICE]; JAMES BELL ET AL., REPORT OF THE WORKING GROUP ON DETERMINING THE CHILD'S CAPACITY TO MAKE DECISIONS, *reprinted in* 64 FORDHAM L. REV. 1339 (1996); NAT'L ASS'N OF COUNSEL FOR CHILDREN, NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE & NEGLECT CASES (2001), available at [http://www.naccchildlaw.org/resource/resmgr/docs/nacc\\_standards\\_and\\_recommend.pdf](http://www.naccchildlaw.org/resource/resmgr/docs/nacc_standards_and_recommend.pdf); *Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham*, 6 NEV. L.J. 592 (2006).

30. CONN. STANDARDS OF PRACTICE, *supra* note 16, at 4.



existing practice of substituting the attorney's assessment of best interest for all children's expressed wishes. The commentary went on to explain:

These [s]tandards explicitly recognize that the child is a separate individual with potentially discrete and independent views. To ensure that the child's independent voice is heard, the child's attorney must advocate the child's articulated position. Consequently, the child's attorney owes traditional duties to the child as client. Consistent with Rule of Professional Conduct 1.14, "Client with Diminished Capacity" the attorney/GAL must seek the appointment of a guardian only when a client's ability to make an adequately considered decision is diminished.<sup>31</sup>

The aspect of the statute that was difficult to reconcile with the *Connecticut Rules of Professional Conduct* was its provision of a subjective test for determining the existence of a conflict, requiring a separate GAL whenever the child's wishes or position varied from that which counsel believed was in his or her client's best interest.<sup>32</sup> With no express requirement that a child's capacity be assessed before an attorney could substitute his or her own view of best interest and no statutory framework, case law, or training on deciphering a particular child's best interest from an objective standpoint, many children were not having their perspectives presented to the court in a manner consistent with the traditional duties of competency, diligence, loyalty, zealotry, and confidentiality.<sup>33</sup> While the *NACC Standards* attempted to accomplish this, the statute's language was very limiting and of course took precedence over the standards.<sup>34</sup> Attorneys continued to substitute their judgment for their client's expressed wishes, to treat their role as that of best interest advocate, and to assert they could adequately represent their client's wishes simply by stating them on the record and then defer to the GAL to advocate for his or her subjective view of best interest. Many attorneys be-

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31. *Id.*; see CONN. RULES OF PROF'L CONDUCT R. 1.14 (2011).

32. Compare CONN. GEN. STAT. § 46b-129a (2005) ("When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child."), with CONN. RULES OF PROF'L CONDUCT R. 1.14, and CONN. STANDARDS OF PRACTICE, *supra* note 16, at 4-5.

33. Compare CONN. GEN. STAT. § 46b-129a, with CONN. STANDARDS OF PRACTICE, *supra* note 16, at 4, and ANNIE E. CASEY FOUND. ET AL., THEIR DAY IN COURT: ENSURING ADEQUATE REPRESENTATION FOR CHILDREN AND PARENTS IN CHILD PROTECTIVE SERVICES CASES (2006), available at <http://www.caseyfamilyservices.org/userfiles/pdf/ec-2006-day-in-court-program.pdf>.

34. Compare REVISED STANDARDS OF PRACTICE, *supra* note 29, at 8, with CONN. GEN. STAT. § 46b-129a.

lieve the appointment in a dual capacity permitted them to express their client's wishes and simultaneously advocate for what the attorney believed to be in their client's best interest. As a result, a legislative amendment was needed to clarify the role of counsel and ensure each child in neglect and abuse proceedings received an advocate and advisor bound by the *Connecticut Rules of Professional Conduct*.

*B. Step Two: Educating Stakeholders About the Importance of the Child's Voice in Child Protection Proceedings*

While the CCPA was a very new image in the Connecticut child advocacy landscape in 2006, the existence of the position helped focus some additional attention on the issue of children's rights in child protection proceedings. Existing advocacy organizations that were influential in the legislature's decision to establish the COCP collaborated with the CCPA to continue the momentum of the new agency.<sup>35</sup> On November 20, 2006, The Annie E. Casey Foundation/Casey Family Services, Connecticut Voices for Children (CT Voices) and the President Pro Tempore of Connecticut's Senate held a symposium at the Capitol called "Their Day in Court: Ensuring Adequate Representation for Children and Parents in Child Protective Services Cases."<sup>36</sup> The main theme of the day outlined in the symposium brochure was a recognition of the legislature's "important first step in tackling the critical issue of how best to ensure that children and parents involved in child protection proceedings have adequate legal representation by establishing the Commission on Child Protection" and the need to support its mission.<sup>37</sup> The brochure, as well as many speakers that day, went on to sow the seed for the importance of client-directed attorneys for children: "These complicated legal decisions are best made when all parties have the benefit of zealous and competent legal counsel as required by law and professional ethics."<sup>38</sup>

In the Fall of 2006, at the request of its President and COCP member, Shelley Geballe, CT Voices took over a research project the author had undertaken to examine the most effective means to provide legal representation; and in March of 2007, published with Yale's Legislative Services program, a white paper entitled *Giving Families a Chance: Necessary Reforms for the Adequate Representation of Connecticut's Children and Families in*

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35. ANNIE E. CASEY FOUND. ET AL., *supra* note 33.

36. *Id.* Co-sponsors included the COCP, Center for Children's Advocacy, Connecticut Bar Foundation James W. Cooper Fellows, Connecticut Jim Casey Youth Opportunities Initiative, and the Office of the Child Advocate. *Id.*

37. *Id.*

38. *Id.*

*Child Abuse and Neglect Cases.*<sup>39</sup> While this paper focused on the need for improved competency and an organizational model of representation as best practice, it served as a valuable reminder to legislators about the importance of the work.<sup>40</sup> The CCPA and the Judicial Department's Court Improvement Program Coordinator, Marilou T. Giovannucci, collaborated to bring Andrea Khoury, Assistant Director of Child Welfare for the National Child Welfare Resource Center and Director of the ABA's Youth at Risk Bar-Youth Empowerment Project, to Connecticut. Attorney Khoury spent a day presenting to lawyers and judges about the importance of children attending court and participating in the formulation of their case goals through a traditional attorney-client relationship. This training included former foster youth sharing their experiences in an effort to help judges and lawyers understand the need to give children in the system a meaningful voice. The author in the COCP's First Annual Report pointed out to the Governor, legislators and the Judicial Department how the current

statutory framework, which is tied to both federal funding requirements and philosophical perspectives on the ability of minors to enforce legal rights, has significant ethical and training implications for contract attorneys, as well as financial implications for the COCP due to the number of separate GALs that are appointed whenever an attorney/GAL perceives a conflict between their child client's expressed or implied wishes and their client's best interest.<sup>41</sup>

### C. *Step Three: Legislative Proposals*

During the 2008 Legislative Session, the CCPA submitted a proposal to amend section 46b-129a of the *General Statutes of Connecticut*, which was voted on favorably by the Judiciary Committee and included in Senate Bill 325.<sup>42</sup> This bill provided for a cut off at age seven, whereby attorneys would no longer act in a dual capacity for children ages seven and older.<sup>43</sup> This was a compromise position based upon concerns raised by the Office of the Child Advocate. The legislation actually passed in the Senate and was slated for a

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39. See generally WILLIAM BOWEN ET AL., GIVING FAMILIES A CHANCE: NECESSARY REFORMS FOR THE ADEQUATE REPRESENTATION OF CONNECTICUT'S CHILDREN AND FAMILIES IN CHILD ABUSE AND NEGLECT CASES (2007), available at <http://www.ctkidslink.org/publications/welf07reformsforrep.pdf>.

40. See *id.* at 3.

41. SIGNORELLI, FIRST ANNUAL REPORT, *supra* note 15, at 16.

42. S.B. 325, Feb. Gen. Assemb., Reg. Sess. (Conn. 2008).

43. *Id.*

vote on the consent calendar of the House on the last day of the session.<sup>44</sup> Unfortunately, a controversial amendment was attached to it.<sup>45</sup> By the time the author convinced the proponent of the amendment not to call the amendment, it was too late and the bill was never called. The author was back to the drawing board in 2009.

In 2009, the proposal was contained in Senate Bill 1057.<sup>46</sup> Only five entities submitted written testimony concerning the bill.<sup>47</sup> The Connecticut Association of Nonprofits summarily opposed it without explanation and the State of Connecticut Division of Criminal Justice opposed another technical amendment of the bill that it mistakenly believed applied in delinquency proceedings.<sup>48</sup> Given that 2009 was a difficult budget session, the bill did not make it out of committee.<sup>49</sup>

In 2009, the author published an article in the *Connecticut Law Tribune* entitled *When Children Are Clients: Ethical Dilemmas Emerge in Child Protection Proceedings*.<sup>50</sup> This effort to "educate" the bar and others on the issue may have backfired in that the family bar became aware of the CCPA's agenda. Since the COCP's enabling legislation also referenced the need for standards for state paid lawyers in family matters cases and the COCP was responsible for "qualifying" attorneys and GALs to represent children in divorce and custody matters when the parents were indigent, they were concerned that the legislation would eventually extend to eliminate the "hybrid" role of attorneys for minor children enunciated in *Carrubba*.<sup>51</sup> Apparently there was some backroom opposition mounted. In addition, the proposal was now opposed by the very legislator who had originally introduced it in 2008.

44. Judiciary Committee, *Bill Status Report on S.B. 325*, CONN. GEN. ASSEMBLY (Feb. 26, 2012, 6:00 PM), [http://www.cga.ct.gov/asp/cgabillstatus/CGABSPrint.asp?selBillType=Bill&bill\\_num=SB00325&whichyear=2008](http://www.cga.ct.gov/asp/cgabillstatus/CGABSPrint.asp?selBillType=Bill&bill_num=SB00325&whichyear=2008).

45. See S.B. 325, Feb. Gen. Assemb., Reg. Sess. (Conn. 2008) (amendment).

46. S.B. 1057, Jan. Gen. Assemb., Reg. Sess. (Conn. 2009).

47. See Judiciary Committee, *Public Hearing Testimony on S.B. 1057*, CONN. GEN. ASSEMBLY (Mar. 4, 2009), available at [http://www.cga.ct.gov/asp/menu/commdoctmybillallcomm.asp?bill=SB-01057&doc\\_year=2009](http://www.cga.ct.gov/asp/menu/commdoctmybillallcomm.asp?bill=SB-01057&doc_year=2009).

48. See Div. of Criminal Justice, *Testimony of the Division of Criminal Justice: S.B. 1057*, at 3 (Mar. 2, 2009).

49. See Judiciary Committee, *Bill Status Report on S.B. 1057*, CONN. GEN. ASSEMBLY (Feb. 26, 2012, 6:00 PM), [http://www.cga.ct.gov/asp/cgabillstatus/CGABSPrint.asp?selBillType=Bill&bill\\_num=SB01057&whichyear=2009](http://www.cga.ct.gov/asp/cgabillstatus/CGABSPrint.asp?selBillType=Bill&bill_num=SB01057&whichyear=2009).

50. Carolyn Signorelli, *When Children Are Clients: Ethical Dilemmas Emerge in Child Protection Proceedings*, CONN. L. TRIB., Aug. 17, 2009, at 16.

51. 2007 Conn. Acts 3 (Reg. Sess.); *Carrubba v. Moskowitz*, 877 A.2d 773, 783 (Conn. 2005). "Upon a finding that a party is unable to afford counsel [in a family relations matter], the judicial authority shall appoint . . . an attorney to provide representation from a list of qualified attorneys provided by the Chief Child Protection Attorney." 2007 Conn. Acts 3.

She expressed pessimism about the ability to form an attorney-client relationship with minors due to their poor judgment and inconsistent positions. Also, some of the contract attorneys disagreed with a provision in the proposal that allowed the court to raise the issue of a conflict or the need for a separate GAL. The latter provision was a result of a compromise with the Judicial Department, as well as concern over the fact that in 2008 DCF had suggested this amendment to the bill.<sup>52</sup> The Judicial Department was concerned about losing a best interest advocate.<sup>53</sup> It wanted any amendment to clarify that judges had the authority to appoint a GAL in the event counsel for the child was not requesting one but that the court needed information from an objective source.<sup>54</sup> Courts were already appointing separate GALs on occasion without a request from counsel for the child even though the existing statute did not expressly authorize *sua sponte* appointments or another party to raise the issue.<sup>55</sup> In addition, the Supreme Court of Connecticut's decision in *In re Christina M.*<sup>56</sup> held that courts did have an obligation to appoint a separate GAL absent a request from counsel when there was sufficient evidence on the record of a conflict.<sup>57</sup> Since the critical goal of the proposal was to secure a loyal and zealous advocate for each child's wishes in the courtroom, and the language of the proposed amendment required a finding of impaired judgment and risk of substantial harm, before the court could exercise that discretion, from the author's perspective, it was an easy concession to secure Judicial Department support.<sup>58</sup> Unfortunately, even with the Judicial Department's official support, reservations communicated to the Judiciary Committee leadership by a fellow legislator resulted in the proposal dying in committee.

After the 2011 defeat, in preparation for the 2011 Legislative Session, the author attended a Connecticut Bar Association Family Section meeting in order to explain the need for the amendment to section 46b-129a of the *General Statutes of Connecticut* on behalf of children involved with DCF, to assure members of the family bar that the COCP had no intention of getting

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52. Compare 2007 Conn. Acts 3, with Conn. Judiciary Committee Joint Favorable Report, concerning Senate Bill No. 325, entitled "An Act Concerning the Commission on Child Protection."

53. See generally *An Act Concerning the Appointment of Counsel and Guardians ad Litem in Child Protection Matters, and the Appointment of Permanent Legal Guardians: Hearing on, H.B. 6442 Before the Judiciary Comm.*, Feb. Reg. Sess. (Conn. 2011) (testimony of Christine E. Keller, Chief Administrative Judge for Juvenile Matters).

54. See *id.* at 1.

55. See *id.*

56. 908 A.2d 1073 (Conn. 2006).

57. *Id.* at 1086.

58. See S.B. 1057, Jan. Gen. Assemb., Reg. Sess. (Conn. 2009).

involved in the role of counsel debate in the dissolution and custody context, and to answer any questions they had.<sup>59</sup> The author also undertook to revitalize the all but defunct Children and the Law Committee of the Connecticut Bar Association (CBA).<sup>60</sup> Given the fact that the COCP's legislative agenda had garnered more attention and opposition since 2008 when it almost quietly passed into law and the lack of a constant presence on the legislative lobbying floor, the author determined that it would be critical to gain support from the CBA House of Delegates and its lobbying efforts.<sup>61</sup> The Secretary of the JMTLA, who was the instigator of the suit against the Judicial Department and a major proponent of the establishment of the Commission, Douglas Monaghan, agreed to volunteer with the CBA to serve as the new Chair of the Committee.<sup>62</sup> At the first meeting of the "new" Children and the Law Committee, the proposal to amend section 46b-129a of the *General Statutes of Connecticut*—to provide traditional client-directed representation—became part of the Committee's legislative agenda along with, the advocacy for the COCP's budget in order to ensure the improvements put in place continued and for a new permanency option to termination of parental rights—permanent guardianship.<sup>63</sup> In fact, the Committee voted to amend the proposal to eliminate the seven-year age cutoff. The Committee requested a favorable vote from the CBA House of Delegates, and without any opposition from the Family Law Section, the request passed at the January 10, 2011 meeting of the House of Delegates.<sup>64</sup>

With the lobbying efforts of the CBA and the unanimous support at the public hearing held on February 28, 2011, House Bill 6442 progressed

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59. CHILDREN & THE LAW COMM., CONN. BAR ASS'N, MINUTES OF COMMITTEE MEETING MAR. 10, 2011 (2011), available at <https://www.ctbar.org/userfiles/Committees/ChildrenAndTheLaw/Minutes/03-11-2011.pdf>.

60. See Douglas Monaghan, *Child Welfare and Juvenile Law Committee*, CONN. BAR ASS'N, <https://www.ctbar.org/Sections%20Committees/Committees/ChildWelfareAndJuvenileLaw.aspx> (last visited Feb. 26, 2012).

61. See CAROLYN SIGNORELLI, COMM'N OF CHILD PROTECTION, THE SECOND ANNUAL REPORT OF THE CHIEF CHILD PROTECTION ATTORNEY 27–28 (2009), available at [http://www.ct.gov/ccpa/lib/ccpa/CCPA\\_Second\\_Annual\\_Report\\_FY\\_2008.pdf](http://www.ct.gov/ccpa/lib/ccpa/CCPA_Second_Annual_Report_FY_2008.pdf). This strategy had proven very successful in the 2007 budget session when the CBA supported increasing the COCP budget to secure an hourly compensation rate for child protection attorneys. See SIGNORELLI, FIRST ANNUAL REPORT, *supra* note 15, at 35.

62. See Monaghan, *supra* note 60.

63. See CHILDREN & THE LAW COMM., CONN. BAR ASS'N, MINUTES OF COMMITTEE MEETING OCT. 28, 2010 (2010), available at <https://www.ctbar.org/userfiles/Committees/ChildrenAndTheLaw/Minutes/10-28-2010.pdf>.

64. See CHILDREN & THE LAW COMM., CONN. BAR ASS'N, MINUTES OF COMMITTEE MEETING FEB. 3, 2011 (2011), available at <https://www.ctbar.org/userfiles/Committees/ChildrenAndTheLaw/Minutes/02-03-2011.pdf>.

through the session.<sup>65</sup> One of its selling points during this extremely dire budget session was the fact that if the proposed standard for appointing a separate GAL—specifically requiring that the conflict concern substantial harm and a finding of impaired capacity—was implemented, fewer separate GALs would be appointed.<sup>66</sup> This would translate into a cost savings. It appears this argument did resonate with legislators because instead of permitting the potential cost savings to remain in the budget for the program of legal representation, which was deficient, an amount equal to the estimated cost savings was subtracted from the Child Protection Commission’s budget for GALs.<sup>67</sup> This approach was fortuitous of the unfortunate turn of events when House Bill 6442 was subsumed into the budget bill Public Act 11-51, which consolidated the COCP into the Public Defender’s Commission.<sup>68</sup> So while the COCP died, one of its most important initiatives finally survived the legislative session and became law.<sup>69</sup>

### III. CONCLUSION

So while it remains to be seen under the new leadership of the system of legal representation in child protection cases how this new law will be implemented, the passage of this legislation remains a positive development in child welfare law in Connecticut. Hopefully, by joining the list of states that

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65. See e.g., *An Act Concerning the Appointment of Counsel and Guardians ad Litem in Child Protection Matters, and the Appointment of Permanent Legal Guardians: Hearing on H.B. 6442 Before the Judiciary Comm.*, Feb. Reg. Sess. (Conn. 2011) (testimony of Carolyn Signorelli, Chief Child Protection Att’y for the State of Conn.). Each legislative session the author drafted extensive written testimony explaining the inherent conflict created by the dual capacity appointment and how that diminished the voice of children in child protection proceedings. The testimony also cited to the ABA Model Act, the Conferences at Fordham and UNLV and the NACC and ABA Standards of Practice. See *id.* at 4 n.6. In 2011, borrowing from the ABA’s Litigation Section, Children’s Rights Committee’s Video on giving children a true voice (with permission), the author put together a PowerPoint presentation on “Why Lawyer’s for Children in Child Protection Matters Should Always Provide Client-Directed Representation,” and provided it to legislators. Presentation by Carolyn Signorelli, Chief Child Prot. Att’y, Why Lawyers for Children in Child Protection Matters Should Always Provide Client-Directed Representation, to State Legislatures (Oct. 19, 2011) (on file with *Nova Law Review*).

66. See Conn. H.R. Comm. on Judiciary Comm., H.B. 6442 (2011) Staff Analysis (Reg. Sess. 2011), <http://cga.ct.gov/2011/FN/2011HB-06442-R000704-FN.htm> (last visited Feb. 26, 2012); OFFICE OF LEGISLATIVE RESEARCH, CONN. GEN. ASSEMBLY, SUMMARY OF 2011 PUBLIC ACTS 80 (2011), available at [http://www.cga.ct.gov/olr/Documents/year/PASUMBK/2011PASUMBK-20111212\\_Summary%20of%202011%20Public%20Acts.pdf](http://www.cga.ct.gov/olr/Documents/year/PASUMBK/2011PASUMBK-20111212_Summary%20of%202011%20Public%20Acts.pdf).

67. See Conn. H.R. Comm. on Judiciary Comm., H.B. 6442 (2011) Staff Analysis.

68. See OFFICE OF LEGISLATIVE RESEARCH, *supra* note 66, at 80, 82.

69. See *id.*

have client-directed attorneys for children, Connecticut will contribute to the momentum behind the ABA's passage of the Model Act and more states will follow suit. For those states or programs considering adopting the Model Act or similar legislation, the author hopes this article will provide some important lessons about identifying and educating potential opponents and navigating the vagaries of the legislative process.