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Testimony Regarding: Raised Bill No. 1203, An Act to Improve the Quality of Legal Representation for Children in Juvenile Matters.

Testimony of Taly Bialostocki, Mary Glassman, & Shelley Geballe¹
To the Select Committee on Children
February 20, 2007

Senator Meyer, Representative McMahon, and distinguished Members of the Select Committee on Children:

We testify on behalf of Advocates for Connecticut's Children and Youth (ACCY), a statewide, independent, research-based organization dedicated to speaking up for children and youth in the policy making process that has such a great impact on their lives. ACCY is the sister lobbying organization of Connecticut Voices for Children, on whose behalf we also testify.

We testify today in strong support of SB 1203, An Act to Improve to the Quality of Legal Representation for Children in Juvenile Matters, which would enable the Commission on Child Protection (CCP) and the Chief Child Protection Attorney (CCPA) to provide legally adequate and effective representation for children and families in abuse and neglect cases. The CCP oversees Connecticut's system of providing court-appointed counsel to children and parents in abuse and neglect cases, helping to ensure that the legal rights and best interests of these vulnerable children are protected and that their voices are heard in court. Our testimony is informed by the participation of CT Voices' President, Attorney Shelley Geballe, on the Commission on Child Protection as one of its 11 appointed members, although we testify on behalf of Connecticut Voices for Children and ACCY only.

We would like to commend this Committee for looking into this important issue and to highlight some of the necessary changes that the bill you raised will address.

Connecticut's current system of providing legal representation to children and parents in child protection proceedings – independent contract attorneys paid a fee of \$500 for the first thirty hours of representation – faces some significant challenges. Connecticut's current level and method of compensation for attorneys in child protection proceedings is inadequate to encourage effective representation of children and parents throughout the state. In fact, Connecticut's current flat fee system encourages attorneys to accept a large number of cases and spend a minimal amount of time on each. With this model, it is extremely difficult for the state to exercise adequate supervision and oversight over the attorneys, to provide adequate training for them, and to provide timely access to other experts like social workers.

¹ This testimony was prepared with the assistance of Joshua Hudner, Blair Warner, and William Bowen, Yale Law students participating in the Yale Legislative Services program under the supervision of Attorney Shelley Geballe (President, CT Voices for Children), Attorney Mary Glassman (Director, Advocates for Connecticut's Children and Youth) and Professor J. L. Pottenger, Jr. (Legislative Advocacy Clinic, Yale Law School).

Even when the system of legal representation in child protection proceedings functions properly, the situation facing lawyers, judges, children, parents, and relatives is not easy. In these proceedings, our states most vulnerable children are confronted with a complicated legal system and the prospects of being separated from their parents and losing touch with their siblings and other relatives. For these sensitive cases to be resolved in the best interests of the children involved, it is essential that competent, qualified, and well-trained lawyers hear their voices and represent their interests in court. When the system of legal representation in child protection proceedings does not function properly, vulnerable children suffer and Connecticut suffers, as these youth may be less likely to complete school and transition successfully to adulthood.

Subsection (i)(2) of Section 1, which sets attorneys' compensation at sixty dollars per hour is an important step forward for Connecticut.

Setting attorney compensation at sixty dollars per hour will encourage attorneys to spend sufficient time on their cases, attract qualified new attorneys, provide better records of the attorneys' daily activities for quality assurance, and avoid potential law suits against the state for inadequate compensation levels.² This, in turn, will help ensure that the voices and best interests of vulnerable children are heard in court. Under this hourly billing scheme, attorneys will be required to document their time in order to receive compensation. Switching from the current flat fee system to an hourly billing system is an easy and cost effective method of improving oversight.³

This change may also help Connecticut avoid litigation over the adequacy of the compensation it provides to attorneys representing children in child protection proceedings. In 2004, the Juvenile Matters Trial Lawyers Association filed suit in federal district court against the Connecticut Judicial Department, claiming that the compensation rates were substantially lower than those paid to public defenders. The District Court (Droney, J.) dismissed the case on procedural grounds. However, the court warned: “[T]he pay structure for appointed counsel representing indigent families and children in the Connecticut state courts may result in inadequate resources for effective representation [T]he 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.”⁴

Although this suit was dismissed on a technicality, lawsuits in other states have been more successful. In 2003, the New York County Lawyers Association obtained a permanent injunction against the City and State of New York requiring that the City of New York and the State of New York pay assigned counsel \$90 per hour for both in-court and out-of-court work until the legislature modified the laws setting compensation.⁵ Prior to the suit, New York lawyers received \$40 per hour of in-court work and \$25 per hour for out of court work.⁶ SB 1203 takes Connecticut's best interests into account, as it may help Connecticut avoid costly litigation on this issue.

² See *Juvenile Matters Trial Lawyers Association v. Judicial Branch*, 363 F. Supp. 2d 239, 251 (D. Conn. 2005) (dismissed on procedural grounds).

³ See, e.g. COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, 4TH ANNUAL REPORT 19 (2004).

⁴ *Juvenile Matters Trial Lawyers Ass'n v. Judicial Branch*, 363 F.Supp. 2d 239, 251 (D. Conn. 2005) (emphasis added).

⁵ *New York County Lawyers' Ass'n v. State*, Index No. 102987/00, at 37 (N.Y.Sup.Ct. 2003), available at <http://www.nycla.org/publications/decision.pdf>.

⁶ *Id.* at 3.

Ensuring attorneys are compensated adequately may help to reduce caseloads to acceptable levels.

The National Association of Counsel for Children (NACC) and the American Bar Association (ABA) recommend that attorneys working full-time in the area of child abuse and neglect spend no more than 2,000 billable hours representing children each year (attorneys working less than full-time should reduce these billable hours proportionately)⁷ This translates to a caseload of approximately 80 clients. Many contract attorneys in Connecticut currently have caseloads well above 100 clients, though many of them do *not* work exclusively on child protection matters. Additional attorneys are required to reduce caseloads to the point where attorneys can meet the Standards of Practice adopted by the Commission on Child Protection and provide adequate representation.

Subsection (d) of Section 2, which allows the Chief Child Protection Attorney to “employ such staff as is necessary to carry out his or her duties,” will help the CCPA to oversee and supervise contract attorneys around the state.

Hiring additional staff will allow the Chief Child Protection Attorney to institute an hourly billing system that provides better records of the attorneys’ daily activities for quality assurance and increased accountability as well as a formal complaint and investigation mechanism to monitor the quality of representation provided to children and families.

A tool to increase the quality of representation provided by the system as a whole is determining whether or not the contract attorneys are spending enough time preparing for their court appearances, appearing in court, and meeting with their clients. The easiest and most cost effective method of oversight is to switch to an hourly billing system and require the attorneys to document their time in order to receive compensation, as outlined in subsection (i)(2) of Section 1 and discussed above.⁸ Another simple method of oversight that the CCPA’s Office is already exploring is to distribute surveys to court personnel, DCF case workers, and parents and children involved in abuse and neglect case and ask them for feedback on the performance of the attorneys. A number of other states use surveys. In Connecticut, the CCPA’s Office needs additional staff members to both oversee the billing statements generated by switching to an hourly billing model and to collect and analyze the survey results.⁹ Finally, the CCPA’s Office must have the capacity to determine if the contract attorneys are delivering quality representation by conducting courtroom observations. The CCPA’s Office requires sufficient funding to hire an attorney to assist in courtroom observations of contract attorneys.

The CCPA currently informally investigates complaints as the CCPA’s Office is too small to undertake a formal system. Other states have used complaint systems to drastically cut down on missed court appearances and to greatly increase the quality of representation. They institute a formal investigatory mechanism involving a review of the court record, interviews with the parties involved, and sometimes an audit of a random selection of other cases being staffed by the same attorney.¹⁰ The CCPA’s Office requires sufficient funding to hire additional staff to institute a formal complaint and investigation mechanism.

⁷ NAT’L ASS’N OF COUNSEL FOR CHILDREN, NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES 7 (2001); *see also* AM. BAR ASS’N, ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, §§L-1, L-2 (1996).

⁸ *See, e.g.* COLORADO OFFICE OF THE CHILD’S REPRESENTATIVE, 4TH ANNUAL REPORT 19 (2004).

⁹ Interview with Carolyn Signorelli, Chief Child Protection Attorney, Office of the Chief Child Protection Attorney in New Haven, Conn. (Nov. 28, 2006).

¹⁰ COLORADO OFFICE OF THE CHILD’S REPRESENTATIVE, 5TH ANNUAL REPORT 14 (2005).

Section 9 of SB 1203 provides essential support for initial and in-service attorney training, which will help to improve the quality of legal representation in child abuse and neglect cases and ensure the well-being of some of Connecticut's most vulnerable children.

Training programs are essential to building and maintaining the skills required to successfully represent a child client, and to keep attorneys up to date on relevant case law, statutes, and procedures. Increased training leads to better, faster outcomes for children and families. Connecticut has only recently instituted training requirements for juvenile contract attorneys, including pre-service training and three seminars of in-service training each year. The Chief Child Protection Attorney is also coordinating an informal mentoring system to assist new contract attorneys in getting their footing in the demanding job of representing children and families.

These programs are a tremendous step forward, and additional changes to the training program, which would be allowed under SB 1203, would enhance attorney competence and lead to better outcomes for the children and families involved, including offering additional training areas and sessions.

These changes include:

- **Offering additional training areas:**

The American Bar Association (ABA) and the Governor's Committee on the Quality of Representation of Children and Families recommend training in two areas not currently required in pre-service training for child protection attorneys.¹¹ These include training in child development and psychology and training in how to interview children. These topics would allow attorneys to better understand child clients' situations and mental and emotional states, enabling them to more accurately and fully represent the interests of the children.

- **Offering additional training sessions:**

Mandatory pre-service training should be offered more than once a year, which is currently the practice. The contract attorneys are overbooked, with only 144 of them attempting to provide representation in over 3500 cases in the first quarter of FY 2007 alone.¹² Allowing new attorneys to enter the system just once each year exacerbates this problem and could easily be fixed with additional training programs.

- **Offering mentoring programs:**

The CCPA's office should coordinate a formal, compensated mentor program, and new attorneys should be required to assist their mentor in bringing several cases before they are permitted to bring their own. Other states use such mentor programs to great effect, and the in-courtroom training requirement helps new attorneys avoid simple mistakes that cause delays and lead to poorer outcomes for children.¹³

¹¹ AM. BAR ASS'N CTR. ON CHILDREN AND THE LAW, FINAL REPORT: MICHIGAN COURT IMPROVEMENT PROGRAM: ASSESSMENT OF PROBATE COURTS' HANDLING OF CHILD ABUSE AND NEGLECT CASES 61 (1997).

¹² Data compiled by the Chief Child Protection Attorney's Office.

¹³ Please see Connecticut Voices for Children's forthcoming white paper, *Giving Families a Chance*. Section V.A details the systems in other states.

- **Adopting a formal certification procedure:**

A formal certification procedure should be adopted for lawyers after three years of practice in the field that includes peer reviews, writing samples, and an exam. The National Association of Counsel for Children (NACC) already runs such programs in several states to ensure that attorneys who represent children and families have the skills and knowledge required.¹⁴

The proposal to provide legal services using a multidisciplinary agency model of legal representation described in Sections 4 and 7 of SB 1203 is an important step forward that will improve the outcomes of children involved in Connecticut's child protection system and result in significant cost savings for the state.

An individual contract system, such as the one in Connecticut, has great difficulty ensuring adequate representation for children and families. The program described in Sections 4 and 7, together with the other changes outlined in SB 1203, are an important step as Connecticut transitions to a more effective model of legal representation for children and families in abuse and neglect proceedings. Furthermore, the experience of other states suggests that transitioning to an interdisciplinary model of representation provided by a specialized private or public agency will yield future cost savings, as lengths of stay in foster care are reduced.

Evidence from other states indicates that providing legal representation through contracts with a public agency or nonprofit legal services provider leads to higher quality representation of children and parents.

1. **Training.** A legal services or public defender-like organization can more easily provide centralized training and oversight, as well as the day to day advantages of mentoring, specialization, and institutional memory offered by working in the same office with attorneys working in the same area of the law.

2. **Multi-disciplinary Approach.** A centralized office is able to employ social workers, medical experts, and paralegals and support staff that individual attorneys usually cannot afford on their own. These staff can both provide additional expertise on cases and also assure that the attorneys' more costly time is spent most cost-effectively.

3. **Success in Other States.** Data from New Jersey, New York, Massachusetts, Washington, and Michigan, indicate substantial benefits are found in an organizational model, including positive outcomes for children such as decreased length of time in foster care and increased reunification rates with family.

The costs of an improved system of representation in abuse and neglect cases will be matched by the savings the state will experience. Additional expenditures are necessary to give children and parents the representation they need and deserve while in the middle of such traumatic, life-changing events.

High quality legal representation leads to cost savings in the longer term. An organizational model would cost roughly 15% more up front than an adequate independent contractor model, but evaluations of programs in other states have demonstrated that money is still saved in the long term.

1. **A Washington pilot program, for example, reduced the average time (and expense) of foster care by 20%, or 55 days per child.** Reunification rates went up significantly with the Washington program, and termination of parental rights dropped, resulting in a reduction in long-term foster care costs and

¹⁴ See NAT'L ASS'N OF COUNSEL FOR CHILDREN, STANDARDS FOR CHILD WELFARE ATTORNEY CERTIFICATION, *available at* http://www.naccchildlaw.org/training/documents/StandardsABAOriginal04_001.pdf.

leading program officials to conclude that these savings alone would offset the cost of the pilot program within three years.¹⁵

2. **An innovative program in New York City with lower caseloads and in-house assistance of social workers resulted in even greater savings, reducing average time in foster care from 4.2 years to less than 4 *months* with few repeat referrals to child welfare.**¹⁶

While the changes proposed require additional funding, it is clear that savings from improved representation in abuse and neglect cases would be substantial in Connecticut.

In Connecticut, each day in foster care costs between \$24.80 and \$27.40, so Connecticut would save between \$1,364 and \$1,507 for each child who spent 55 fewer days in such care. Faster permanent placements save money for DCF and the legal system since they eliminate the need for periodic permanency plan hearings, staffing of the case by DCF, and foster care and/or residential care board and care payments. **Connecticut would save \$9,052 to \$10,001 for each year of foster care avoided in board and care costs alone.**

By comparison, the cost of 25 hours of representation at \$60 per hour is \$1,500.¹⁷ Though Connecticut is paying for many hours of representation already, the flawed model of representation means it is not reaping the benefits that other programs achieve in reduced foster care costs. Thus, the costs of a change in Connecticut's model of representation (to one that relies more on non-profit legal services organizations) and a moderate increase in pay will be more than offset by the savings in the foster care system.

¹⁵ JASON A. OETJEN, IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION 7-8 (2003).

¹⁶ See http://www.cfrny.org/2006_accomp.asp.

¹⁷ See: <<http://www.dir.ct.gov/dcf/Policy/Trmt36/36-55-25-2.htm>>.