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**Testimony Regarding:
Proposed Bill No. 854, An Act Concerning Compensation and Training for Attorneys Representing Children in Foster Care.**

Testimony of William Bowen, Joshua Hudner, Blair Warner,¹ Mary Glassman, & Shelley Geballe
To the Select Committee on Children
February 2, 2007

Senator Meyer, Representative McMahon, and the 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 support of Proposed Bill No. 854, An Act Concerning Compensation and Training for Attorneys Representing Children in Foster Care, which would allocate funding to the Chief Child Protection Attorney (CCPA) to provide legally adequate and effective representation for children and families in abuse and neglect cases. 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 urge the Committee to adopt Proposed Bill 854 and recommend additional language to enable the Child Protection Attorney to use the funds to provide representation through more effective interdisciplinary representation models that have proven successful in other jurisdictions. These changes would also reduce the likelihood of litigation over the adequacy of Connecticut's current compensation scheme. We also endorse the amendments to this act proposed by the CCPA, which will implement innovative and effective changes to Connecticut's system of representation, and encourage the Committee to adopt them.

Connecticut Can Significantly Improve Representation and Save Money By Allocating Funds to Allow for More Effective Models of Interdisciplinary Representation

Evidence from other states indicates that providing attorneys through 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.

¹ Mr. Bowen, Mr. Hudner, and Ms. Warner are Yale Law students participating in the Yale Legislative Services program and have prepared this testimony 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).

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 leading program officials to conclude that these savings alone would offset the cost of the pilot program within three years.**²
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.³

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. By comparison, the cost of 25 hours of representation at \$60 per hour is \$1,500.⁴ Much of this representation cost is already being spent in these cases without such savings in foster care. **Thus, a moderate increase in pay is more than offset by the savings in the foster care system.**

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.**

Appropriating sufficient funds will attract qualified attorneys to this area of law, and give them incentives to provide competent and adequate representation to their clients that will save Connecticut taxpayers money.

Effective legal representation of children and parents also is essential if our courts are to make fully-informed decisions about the well-being of our state's most vulnerable children, based on full knowledge of the child's best interests as well as of the parents' needs and how they can best be met. Without this information, the underlying reasons for the referral to DCF may not be addressed, resulting in potentially longer term stays in care, a mismatch between services ordered and those needed, and other unnecessary costs.

Additional Funds are Legally Necessary Because the Current System Fails to Ensure Children and Families Receive Adequate Representation

1. **Attorneys who represent children in child protection proceedings are paid as little as \$17 an hour.** Attorneys who represent Connecticut's children in child protection proceedings are paid \$500 for their first 30 hours of work. Any additional payments must be approved by the CCPA. Low pay leads to poor representation by decreasing attorney morale, increasing

² JASON A. OETJEN, IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION 7-8 (2003).

³ See http://www.cfrny.org/2006_accomp.asp.

⁴ See: <<http://www.dir.ct.gov/dcf/Policy/Trmt36/36-55-25-2.htm>>.

turnover, and encouraging attorneys to take on high caseloads in order to receive an adequate annual salary. Because caseloads are high and compensation is low, most attorneys never meet the children they represent. As a result, these children never receive the quality of legal representation they deserve in order for the court to make a good decision on the difficult issue of whether to remove a child from family or return a child home and provide reunification services.

2. Attorneys representing children in child protection proceedings should be compensated at an hourly rate comparable to the rate paid in states with comparable costs of living. Connecticut pays its children's attorneys well below the hourly rate of states with comparable costs of living, and representation suffers as a result. Under the assumption that children's attorneys spend adequate time per case – 20 hours – they earn only \$25 an hour, less than one-seventh the hourly rate of the lowest paid attorneys in private practice, and less than half the pay of children's attorneys in states with comparable costs of living. **An improved compensation scheme is necessary to attract and retain more experienced lawyers to work on behalf of the Connecticut children who are in need of protection.**⁵

3. The CCPA's Office requires additional funding to increase the number of juvenile contract attorneys in order to reduce caseloads to acceptable levels. The NACC and the 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.⁶ This translates to a caseload of 80 clients. Contract attorneys in Connecticut currently range in caseloads well above 100 clients. Additional attorneys are required to reduce caseloads to the point where attorneys cannot meet the Standards of Practice adopted by the Commission on Child Protection and provide adequate representation.

4. Adoption of a modified compensation scheme may 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.”⁷

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.⁸ Previous to the suit, New York lawyers received \$40 per hour of in-court work and \$25 per hour for out of court work.⁹ It would be in Connecticut's best interests to take the federal district court's advice in the recently-dismissed Connecticut litigation, and provide adequate compensation to attorneys representing children and indigent families and thereby avoid the costs that would accompany additional litigation.

⁵ Connecticut can ensure that attorneys are completing several crucial tasks involved in the representation of children and that they are meeting standards for cost-effectiveness by requiring those attorneys to report their hours and activities to the Chief Child Protection Attorney. Attorneys who are paid by the hour will be better able to fulfill their obligations, including visiting their clients, or consulting with their client's caseworker. The Chief Child Protection Attorney may be able to further assure that these attorneys are fulfilling their duties by requiring that they certify under penalty of false statement that they have completed a list of core activities. The Chief Child Protection Attorney may also use this reporting requirement to monitor attorneys for over-billing. Should abusive billing practices prove to be a problem, the proposed statutory language would be flexible enough for the Commission to adopt an alternative compensation scheme.

⁶ 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).

⁷ Juvenile Matters Trial Lawyers Ass'n v. Judicial Branch, 363 F.Supp. 2d 239, 251 (D. Conn. 2005) (emphasis added).

⁸ 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>.

⁹ *Id.* at 3.

Additional Funds Will Significantly Improve the Quality of Representation and the Lives of Connecticut's Children

1. **The Chief Child Protection Attorney's Office requires sufficient funds to fulfill its training mandate.** 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. **Thus increased training leads to better, faster outcomes for children and families.** Connecticut has only recently instituted training requirements for juvenile contract employees, and now requires pre-service training and three seminars of in-service training each year. The Chief Child Protection Advocate 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, but additional changes to the training program would enhance attorney competence and lead to better outcomes for the children and families involved.

These changes include:

- **Offering additional training areas:**

The American Bar Association (ABA) recommends training in two areas not currently required in pre-service training for child protection attorneys.¹⁰ 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. **Courses on interviewing children** would help attorneys explain complex legal topics in a way that avoids causing emotional harm to children who are already in a delicate and stressful position. ..

- **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.¹¹ Only allowing new attorneys to enter the system and alleviate this burden 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.¹²

- **Adopting a formal certification procedure:**

A formal certification procedure should be adopted for lawyers after three years of practice in the field and including peer reviews, writing samples, and an exam. The National Association of Counsel for Children (NACC) already runs such

¹⁰ 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).

¹¹ Data compiled by the Chief Child Protection Attorney's Office.

¹² Please see Connecticut Voices for Children's forthcoming white paper, *Giving Families a Chance*. Section V.A details the systems in other states.

programs in several states to ensure that attorneys who represent children and families have the skills and knowledge required.¹³

2. The CCPA's Office requires sufficient funds to oversee and supervise contract attorneys around the state. Part of increasing 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.**¹⁴ 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 funding for 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.**¹⁵ Finally, the CCPA's Office must have the capacity to determine if the contract attorneys are delivering quality representation by conducting courtroom observations. The only attorneys qualified to make courtroom observations, are attorneys in the CCPA's Office. **The CCPA's Office requires sufficient funding to hire an attorney staff person to assist in courtroom observations of contract attorneys.**

A formal complaint and investigation mechanism would also greatly assist the CCPA's Office in monitoring the quality of representation provided to children and families. 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 provided by instituting 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.¹⁶ **The CCPA's Office requires sufficient funding to hire additional staff in order to institute a formal complaint and investigation mechanism.**

3. The CCPA's Office needs sufficient funding to adequately compensate attorneys while switching to an hourly billing model. Connecticut currently uses an individual contract model where attorneys are contracted on a case by case basis to provide representation for a child or parent. Connecticut currently offers juvenile contract attorneys \$500 for the first 30 hours of work, or \$16.67 per hour. This is inadequate to encourage effective representation of children and parents throughout the state, and the 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. **An individual contract system has great difficulty ensuring adequate representation for children and families.**

The CCPA's Office would improve representation by switching to an hourly billing model and provide a minimum of \$60 per hour in order to 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.¹⁷

In order to make the transition from the flat fee to an adequate hourly billing model, the CCPA's Office requires sufficient funding to both compensate attorneys at \$60 per hour and hire additional accounting staff to review the detailed billing statements required of the contract attorneys.¹⁸

¹³ 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.

¹⁴ See, e.g. COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, 4TH ANNUAL REPORT 19 (2004).

¹⁵ Interview with Carolyn Signorelli, Chief Child Protection Attorney, Office of the Chief Child Protection Attorney in New Haven, Conn. (Nov. 28, 2006).

¹⁶ COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, 5TH ANNUAL REPORT 14 (2005).

¹⁷ See *Juvenile Matters Trial Lawyers Association v. Judicial Branch*, 363 F. Supp. 2d 239, 251 (D. Conn. 2005) (dismissed on procedural grounds).

¹⁸ Interview with Carolyn Signorelli, Chief Child Protection Attorney, Office of the Chief Child Protection Attorney in New Haven, Conn. (Nov. 28, 2006).