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**Connecticut Bar Association Family Law Section's  
Informational Summary on the Status of Connecticut  
Law on Third Party Visitation  
Select Committees on Children and Aging  
Joint Informational Forum re: Grandparents Rights to Visit Grandchildren  
January 26, 2010**

In making orders of custody and care of a minor child, the court is charged with considering, first and foremost, the best interests of the child. Conn. Gen. Stat. § 46b-56. However, the interest of a child in having contact with extended family, or adult sibling, must be balanced against the fundamental right of the child's parents to raise a child as they see fit, without the intervention of the state.

As the Select Committees on Aging and Children work to find the right balance between the interest of the child and rights of the child's parents, the United States Supreme Court case of Troxel vs. Granville, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49, 68 USLW 4458 (2000) must be kept in mind. In this Washington state case, the petitioners were the paternal grandparents of an illegitimate child. When the trial court gave alternate weekend visitation to the grandparents, the child's mother appealed. The Washington State Supreme Court reversed on grounds that the Due Process clause of the Fourteenth Amendment requires all nonparental visitation statutes to require a showing of harm or potential harm to the child as a condition precedent to granting visitation. The grandparents then appealed to the United States Supreme Court.

In a plurality opinion, the *Troxel* United States Supreme Court held that:

- (1) "The Fourteenth Amendment's Due Process Clause has a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests,' [citation omitted] including parents' fundamental right to make decisions concerning the care, custody, and control of their children [citation omitted]" and
- (2) "there is an assumption that fit parents act in their children's best interest."

The problem in *Troxel*, as the Supreme Court saw it, was that the Washington trial court gave no special weight to the mother's determination of her child's best interests – it merely substituted its judgment for the mother's judgment.

The Connecticut Supreme Court took up Connecticut's third party visitation statute, Conn. Gen. Stat. § 46b-59 in the case of Roth v. Weston, 259 Conn. 202, 789 A.2d 431 (2002). The Court held that Connecticut's statute is unconstitutional as applied; in light of the parents' compelling interest at stake, the best interests of the child are secondary to the parents' rights. The Court

provided its "judicial gloss to... salvage Section 46b-59". 259 Conn. at pp. 233-34. The Court determined that any person, including a grandparent, who is petitioning for visitation rights must prove a parent-like relationship with the child as a jurisdictional threshold. The petitioner must further prove that the parent's visitation decision will cause the child to suffer "real and substantial emotional harm" and that harm must be analogous to the harm of neglect, not the relatively more mild showing that visitation would be in the child's best interests. Petitioner must prove his or her allegations by clear and convincing evidence, a very high burden of proof. These factors must be proven in order for the petitioner to establish an interest sufficient to warrant interference with a parent's child-rearing rights.

Thank you for the opportunity to present this information to you. We would be pleased to answer any questions you may have today and we also offer our continuing assistance to you and your staff on this issue in the future.

**Sec. 46b-59. Court may grant right of visitation to any person.** The Superior Court may grant the right of visitation with respect to any minor child or children to any person, upon an application of such person. Such order shall be according to the court's best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable, provided the grant of such visitation rights shall not be contingent upon any order of financial support by the court. In making, modifying or terminating such an order, the court shall be guided by the best interest of the child, giving consideration to the wishes of such child if he is of sufficient age and capable of forming an intelligent opinion. Visitation rights granted in accordance with this section shall not be deemed to have created parental rights in the person or persons to whom such visitation rights are granted. The grant of such visitation rights shall not prevent any court of competent jurisdiction from thereafter acting upon the custody of such child, the parental rights with respect to such child or the adoption of such child and any such court may include in its decree an order terminating such visitation rights.

(P.A. 78-69; P.A. 79-8; P.A. 83-95.)

History: P.A. 79-8 added proviso specifying that grant of visitation rights is not contingent upon order for financial support; P.A. 83-95 deleted provisions re visitation rights of grandparents and permitted court to grant right of visitation to any person.

