

# Legal Assistance Resource Center

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### H.B. 7001 -- "Administrative functions" under FOIA

Testimony of Raphael L. Podolsky – February 5, 2007

**Recommended Committee action: ADOPTION OF THE BILL**

Under C.G.S. 1-200, the "administrative functions" of the Superior Court are subject to the Freedom of Information Act; but the statute contains no definition of "administrative functions." This bill fills that gap by adopting the first recommendation of the Governor's Commission on Judicial Reform, though with some changes in phrasing, by defining the term as "all matters not directly related to the judicial decision-making in individual court cases," including specifically the rule-making function. I urge the Committee to approve the bill but suggest that it use the exact wording recommended by the Commission.

Thirty years ago, I filed a complaint with the FOIC when the Rules Committee of the Superior Court, which drafts and recommends the rules contained in the Practice Book, refused to allow the public to observe its meetings. The FOIC ruled that rule-making is an "administrative" function of the courts and ordered the Rules Committee to open its meetings. The judges appealed, claiming that, under the separation of powers doctrine, the legislature could not constitutionally submit rule-making to the FOIA. The case ultimately reached the Connecticut Supreme Court, which avoided the constitutional issue by holding that rule-making, although not adjudicative, is also not "administrative" and is therefore not covered by the FOIA. See Rules Committee of the Superior Court v. Freedom of Information Commission, 192 Conn. 234 (1984). This bill makes clear that rule-making is administrative.

There is no good reason to exclude judicial rule-making from the FOIA. Rule-making is similar to making laws, and is thus "quasi-legislative" in nature. As a matter of public policy, no public agency should be making rules or laws behind closed doors. Secrecy inherently undercuts democracy. As a matter of constitutional law, there is no constitutional ban on legislative regulation of the rule-making process of a coordinate branch of state government. This becomes obvious when we realize that the Legislative Branch routinely passes laws on Executive Branch rule-making. See, for example, the Uniform Administrative Procedure Act. No one seriously suggests that separate of powers precludes state agency rule-making from being subjected to the FOIA. The established constitutional test for separation of powers violations in the judicial context is whether the law (a) exercises a power which is exclusively under the control of the court (e.g., the deciding of individual court cases) or (b) significantly interferes with the orderly conduct of the court's judicial functions. Inclusion of judicial rule-making within the FOIA affects neither. Rule-making does not involve case adjudication; and the statutes are filled with legislatively-enacted rules for the courts. In addition, the FOIA itself, through its exceptions in appropriate circumstances, assures that open meetings do not interfere with the orderly conduct of state agencies.

The definition of "administrative functions" proposed in this bill is reasonable and should be adopted.

