



STATE OF CONNECTICUT
SUPREME COURT

CHAMBERS OF
DAVID M. BORDEN
SENIOR ASSOCIATE JUSTICE

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**Testimony of Senior Associate Justice David M. Borden
Government Administration and Elections Committee
February 5, 2007**

**House Bill 7001, An Act Concerning the Definition of “Administrative
Functions” Under the Freedom of Information Act**

Thank you for the opportunity to submit written testimony on behalf of the Judicial Branch regarding **House Bill 7001, *An Act Concerning the Definition of “Administrative Functions” Under the Freedom of Information Act.*** Unfortunately, I am out of state and regret that I cannot appear before you personally.

The Judicial Branch supports the clarification of the statutory definition of “administrative function” that appears in the Freedom of Information Act. We are at the threshold of a new spirit of cooperation among the branches of government. The citizens of this state demand this of us. The judiciary is committed to doing our part to ensure the openness of all aspects of Connecticut courts; therefore, we respectfully suggest an amendment to the current language of this bill which, if adopted, would lead to our unequivocal support.

Turning to the language of the bill, the Judicial Branch supports defining “administrative function” to include the management of the internal institutional machinery of the court system, accounting, personnel, facilities, physical operations, scheduling, record keeping and docketing. We also believe that “budgeting” should be specifically listed in this definition. Second, in line 4, we suggest that you use language similar to that of the Governor’s Commission on Judicial Reform, inserting “judicial activities” and striking “the judicial decision-making in individual.” Finally, we ask that you strike the phrase “rulemaking” in line 8. Removal of the “rulemaking” phrase would acknowledge this committee’s longstanding belief, as evidenced by resolutions that

this committee has considered for the past several years, that a constitutional amendment would be necessary.

I do not believe that the rule-making process should be defined as an administrative function under the Freedom of Information Act, because its function is inherently adjudicatory. By way of background, the Rules Committee is a body composed of judges of the Superior Court. Its function is to consider proposed changes in the rules of practice of the Superior Court, and to recommend amendments to the Practice Book, which contains those rules. As former Chief Justice Ellen Peters stated in Rules Committee of the Superior Court v FOI Commission (192 Conn. 234, 246), “The Rules Committee of the Superior Court plays no role in the management of the internal institutional machinery of the court system. It is charged, instead, with the responsibility of formulating rules of practice and procedure that directly control the conduct of litigation. It sets the parameters of the adjudicative process that regulates the interactions between individual litigants and the courts.”

This does not mean that Rules Committee proceedings should not be open – it simply means that they should not be governed by the Freedom of Information Act. Designating a matter as adjudicatory does not mean that it cannot be accessed by the public. Indeed, the longstanding procedure of the Rules Committee dictates that any proposed amendments to the Practice Book are published in the Connecticut Law Journal and are subject to a public hearing before their adoption, with ample opportunity for public comment. The list of members, minutes, meeting notices and agendas are now posted on the Judicial Branch website for both the Rules Committee of the Superior Court and the Appellate Rules Committee. In addition, the meetings themselves are open to the public and the press by vote of the judges.

I have been working since last spring on initiatives to ensure the transparency of Connecticut’s court system, and I feel we have accomplished a great deal in a relatively short time. On May 25th of this past year, I created the Judicial Branch’s Public Access Task Force – a diverse group of judges, media members, attorneys, and a former chancellor of the State University system – and charged them with making concrete recommendations for the maximum degree of public access to the courts, consistent with the needs of the courts in discharging their core functions of adjudicating and managing cases. My goal then, as it is now, was to ensure that our court system is open, transparent and accountable. On September 15th I was presented with the Task Force’s final report, which included a large number of recommendations designed to maximize public access to the courts.

Since that date, the Judicial Branch has been working to implement these recommendations as quickly as possible, including opening up the rule-making process. On December 19th, the judges voted overwhelmingly to open a number of judicial committees to the public, consistent with the Task Force recommendations, including the Rules Committee of the Superior Court, the Annual Meeting of the Judges of the Superior Court, the Executive Committee of the Superior Court, the Board of Examiners for Court Reporters, the Legal Specialization Screening Committee and the Code of Evidence Oversight Committee. I believe that this action demonstrates that the members of the judiciary are committed to conducting business in an open and transparent fashion.

I have been a proud member of the state judiciary for nearly thirty years. As I told the Task Force members at the inception of their work, I believe that the more transparency and openness with which we do our jobs, the greater the degree of trust, confidence and respect the public will have in us, because they will see what I have seen -- that the judiciary, including judges and staff, performs its job admirably.

Thank you for your consideration.

Proposed Amendment to House Bill 7001

1. In line 4, strike “the judicial decision-making in individual ” and insert “judicial activities in, and discussions concerning,”
2. In line 8, strike “rule-making” and inserting “budgeting” in lieu thereof
3. In line 9, after “docketing” insert “and excluding rule-making.”