



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
Judiciary Committee
April 9, 2007**

House Bill 7429, An Act the Judicial Review Council

Thank you for the opportunity to speak today on behalf of the Judicial Branch regarding *House Bill 7429, An Act Concerning the Judicial Review Council*.

I would like to address three specific aspects of this bill. The first is found on lines 102-118 that would require the Judicial Review Council to issue advisory opinions as to whether conduct being contemplated by a judge, family support magistrate or workers compensation commissioner could be subject to admonishment, censure, suspension or removal from office.

Judge Chase Rogers and I are fully supportive of the concept of providing judges with the opportunity to request an advisory opinion. Additionally, we need to look at our current Judicial Code of Conduct, which has not been revised in many years. The American Bar Association has just completed reviewing and providing recommendations for some changes to its code of ethics, which will be a helpful starting point for us. As you know, Judge Rogers has asked Appellate Court Judge Barry Schaller and Superior Court Judge Christine Keller to look at establishing a more formal mechanism for judges to obtain advisory opinions on judicial ethics questions. They have agreed to do so.

Requiring the Judicial Review Council to issue advisory opinions is one way to accomplish this objective. However, there may be a better way of

providing judges with the opportunity to request advisory opinions. For this reason, I respectfully request that you delete this section of the bill and give us time to develop a well-researched proposal.

I would like to now turn to lines 200 - 202 of the bill, which would make the Judicial Review Council's investigatory records public if a preliminary investigation indicates that probable cause exists that a judge, family support magistrate or workers compensation commissioner is guilty of specific conduct. I believe that the language is too broad as it could make public information that was not entered into evidence during the probable cause hearing and that the subject may not have had the opportunity to rebut. I would suggest that the broad language of "statements and other documentary evidence obtained or compiled during the investigation" be narrowed to "statements or documents introduced in evidence during the proceeding."

Finally, the Judicial Branch is strongly opposed to the provision of the bill that would require that the Council's deliberations, when it is making its findings, be open to the public. The Council is required to consider the facts and to apply the law to determine whether a judge should be publicly censured, suspended, exonerated or referred to the Supreme Court with a recommendation that the judge be suspected for a period longer than one year. These are weighty issues that may have a serious effect on a person's reputation and career.

When the Judicial Review Council goes into session, in my view, it is acting like a jury. When a jury deliberates, absolutely no one other than the jurors is present - even judicial marshals and judges are excluded from the jury deliberation room. This confidentiality is necessary to ensure that jurors feel free to express their viewpoints without recrimination and, thus, to render a fair decision.

I believe that having closed deliberation sessions is necessary to ensure that the members of the Judicial Review Council can have an open and frank discussion without having to be concerned about outside influences. The

members of the council discuss questions about a judge's character, integrity, competence, ethics and temperament. These are difficult questions that require an honest, candid and direct discussion. I believe that making these deliberations public will have a chilling effect that may adversely affect the decisions in these important matters.

Thank you for the opportunity to put forth the Branch's position.