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Testimony of Mary Alice Moore Leonhardt, Chair,
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**Senate Bill 1431, An Act Establishing a Demonstration Project
For An Office of Administrative Hearings**
Judiciary Committee
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Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to submit written testimony on Senate Bill 1431, An Act Establishing a Demonstration Project for an Office of Administrative Hearings.

My name is Mary Alice Moore Leonhardt. I am an attorney in private practice in Hartford, where I practice in the area of administrative law and I primarily concentrate on representation of health care clients and transportation providers. A substantial part of my law practice has been devoted to representing, for almost twenty years, these types of clients before state agencies including the Department of Public Health, Office of Health Care Access, Department of Children and Families, Department of Education, Department of Social Services, Department of Transportation, Department of Motor Vehicles and Department of Consumer Protection, in contested cases and appeals of state agency decisions. I am the chairperson of the Administrative Law Section of the CBA, which consists of attorneys in private practice who represent others before executive agencies, as well as attorneys employed by the State of Connecticut.

The CBA, on behalf of the Administrative Law Section, **supports** this legislation which would bring the state of Connecticut current with the trend followed by the majority of states (30 including Massachusetts, New Hampshire, New Jersey, Oregon and

Maryland, among others) plus the District of Columbia, which have embraced the central hearing panel movement. Passage of this important bill will do so by enabling a demonstration project for establishing an independent office of administrative hearings in the Executive branch. The mission of this hearings unit would be to provide the public: consumers, regulated individuals and businesses, with an independent forum in which to secure a fair hearing to dispute and address agency action. On behalf of the CBA, I wish to thank the committee for raising Senate Bill 1431 for a public hearing and I respectfully request that the committee **approve** the bill.

The proposed hearings unit would conduct contested case hearings for the Commission on Human Rights and Opportunities, the Department of Children and Families, Department of Education, Department of Transportation and the Department of Motor Vehicles. Other agencies would have the option to utilize the services of these independent hearing officers for hearings or mediation, but they would not be mandated to do so.

An office of administrative hearings would: (1) ensure impartial administration and conduct of hearings of contested cases; (2) ensure greater uniformity and consistency in the application of the Uniform Administrative Procedure Act by state agencies; (3) facilitate and enhance public trust and confidence in the exercise of regulatory and disciplinary powers conferred upon agencies and boards; and achieve substantial costs savings amounting to hundreds of thousands of dollars annually for each agency.

If Senate Bill 1431 is approved, administrative law judges, would hold hearings for the targeted agencies and render proposed or final decisions as requested by the agency. Those decisions that are currently recommended to an agency head for review

and possible modification would continue, as under present law. Appeals of recommended and final decisions would, as under present law, be taken to Superior Court. Under the bill, the office of administrative hearings would be accountable to the Governor through the appointment of the chief administrative law judge, and to the legislature through the budget and confirmation processes. The bill allows for recognition of collective bargaining units in the new agency. Hearing officers transferred to this new agency would retain their rights, class, status and opportunities to avoid any adverse impact.

An office of administrative hearings should be established because it would provide:

- **Impartiality.** Administrative law judges in a centralized hearing unit would be subject to a higher code of professional responsibility and a code of ethics. Because hearing officers currently are employees of the agencies conducting the hearings, they are not always perceived as impartial, unbiased judges of the issues before them. An agency promulgates regulations and rules of practice, investigates violations, prosecutes cases and decides those very cases. An agency has authority over hearing officers and outside-contracted hearing officers, possibly compromising the integrity and fairness of the hearing process. A centralized panel of administrative law judges sitting in an independent agency would provide fundamental fairness and due process; apply agency policy and regulations without being subjected to advancement or penalty by the agency for their cooperation or lack of cooperation; and enhance public trust and confidence in the process and in decisions rendered. Consequently, an office of administrative hearings would foster trust and confidence in state government.
- **Efficiency.** A central office of administrative law judges would consolidate support services and systems within one agency, thereby generating efficiencies in time and cost savings. Flexibility in case assignments would predominate to ensure that appropriate administrative judges would be assigned both to specific kinds of cases or particular agencies to apply the necessary expertise, and to meet the "feast or famine" fluctuating caseloads of the various agencies. Staff would easily be assigned where the need exists and cases would be handled in less time. Fewer administrative law judges would be needed to hear more cases. Attorneys and members of the public would have a central location from which to obtain copies of the administrative law judges' decisions, the procedural regulations established by the office of administrative hearings and the substantive

regulations of the departments. It will eliminate a process that currently puts professionals, consumers, businesses and other parties through a prolonged hearing process.

- **Cost and Economies of Scale.** The experience in other states which have pioneered the central hearings units demonstrates that a central independent hearings unit is inherently more cost-effective than independent hearing units sprinkled throughout a multitude of state agencies. This is achieved by economies of scale and flexibility in case assignment. For example, in Oregon, where the office of administrative hearings was established approximately 7 years ago, the savings were measurable:
 - In 2000-01, its first fiscal year after implementation, Oregon's OAH reported the average number of OAH hours per referral was 8.55. By 2002-03, the number had been reduced by a striking 17% to 7.13 hours. Similarly, in 2001-01, the average cost of a referral was \$322. In 2002-03, it was \$285, a savings of 11%. The total cost savings to Oregon in 2002-03 was \$1.4 million.
 - The average cost of Department of Transportation referrals dropped by 6%; the average cost per referral dropped by 9%; and in 2002-03, the Department saved \$232,158.
 - The average cost of Department of Human Services referrals (about 3000-4000 annually) dropped by 23% in 2002-03; the average number of hours per referral dropped by 26%; and in 2002-03, the Department saved \$371,600.

Other states have had similar success in driving the costs down:

- In late 1994, Texas reported a savings of 70% in costs associated with agency hearings. In the second year of its operation of a centralized hearing unit, Maryland's office saved the state almost \$828,000. Our near neighbor, New Jersey spent only \$7.5 million on its administrative hearings after implementing its central hearings unit, as compared to the \$20 million it would have spent on the hearings. Minnesota reported its hearing costs for public utility commission hearings dropped in two years from \$400,000 to \$234,000.
- **Expertise.** Administrative law judges would be experienced in a uniform administrative law practice and process in accordance with rules of practice which would bring more uniformity to the agency hearing process. All present full-time agency hearing officers of the departments included in the bill would be transferred into the new hearing office and available for the suitable assignment of cases for their training and expertise. In other words, the same hearing officers, whether employed or under contract, would be available to bring their expertise to

bear in the same types of cases as were previously assigned to them at their former agency. At the same time, opportunities to hear other types of cases and receive appropriate training, would stimulate and sharpen an administrative law judge's intellect, encourage creative inquiry into novel issues, provide for peer consultation and attract the most qualified people to the administrative bench. The proposed legislation also provides for consistent training of the administrative law judges in procedural and substantive law, ensuring competence and enhanced professionalism, particularly in those agencies that currently use contractual hearing officers.

- **Uniformity and consistency.** The administrative hearing and enforcement processes used by state agencies, except where governed by the UAPA, vary unnecessarily and often for no apparent reason. Uniformity can be achieved by adopting a single process under a central hearing office that can be varied in limited circumstances to address agency needs. A central hearing office could establish uniform hearing procedures.

Members of the committee should know that the Administrative Law Section has been working hard to build consensus on the bill. We have met with, among others, representatives of A & R/AFT, which represents attorney-hearing officers that would be affected by the legislation. As with similar experiences in our neighboring state of Massachusetts and other states such as Oregon and Michigan, the bill provides that the employment rights of employees transferred to the central office would be unaffected. Members of these bargaining units would retain their memberships as they transition over to the new office. We have discussed the bill with representatives of a number of other organizations and representatives from the agencies in the bill and we understand that many of the current hearing officers and their supervisors are supportive of this legislation.

In addition, the specific state agencies for which the office of administrative hearings would conduct contested case hearings may require further discussion. We are certainly open to discussing policy and other reasons with the legislature and representatives of state agencies that may wish to be included in the bill.

On behalf of the CBA and the Administrative Law Section, thank you again for the opportunity to comment on Senate Bill 1431. The section appreciates your consideration and support of this important legislation that will establish an appropriate "wall of ethics" and ensure integrity in contested case proceedings in Connecticut.