



**State of Connecticut**  
**DIVISION OF CRIMINAL JUSTICE**

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**Testimony of the Division of Criminal Justice**

*In Opposition to:*

**S.J. No. 32 (COMM) RESOLUTION PROPOSING AN AMENDMENT TO THE  
STATE CONSTITUTION CONCERNING THE PRACTICES AND PROCEDURES  
OF THE COURTS**

*Chief State's Attorney Kevin T. Kane*  
*Joint Committee on Judiciary – April 9, 2007*

The Division of Criminal Justice strongly opposes S.J. No. 32, which proposes an amendment to the Connecticut Constitution that would strip the Judicial Branch of its primary authority to enact rules governing practice and procedure of the courts and transfer that authority to the General Assembly. At present the rule-making authority of the Judicial Branch is shared between the General Assembly and the Judicial Branch. This sharing has effectively operated as a check and balance on both branches of government. Where the rule-making authority of the Judicial Branch and the legislative branch overlaps each has been mindful and respectful of the authority and interests of the other. See, for example, *State v. James*, 211 Conn. 555, 559-536 (1989); letter dated March 3, 1998, to Chief Justice Robert Callahan from Senator Donald E. Williams, Jr., and Representative Michael P. Lawlor.

Amending the Constitution is an action that should be taken only when there is no other solution. The language of S.J. No. 32 makes clear that its primary concern is to address concerns about the openness and accountability of the courts. These concerns have been addressed dramatically by the Judicial Branch, and new rules and practices correcting the problems that concern the proponents of this resolution will be in effect long before the Constitution can be amended.

The General Assembly should, as it has in the past, proceed with extreme caution and prudence when it ventures into the internal operations of another branch of government. The rules of practice and procedure deal with the internal operations of the courts and deal directly with the courts ability to effectively determine the lawful rights and interests of the parties and to interpret and apply the laws. The judges who deal with

cases on a daily basis and who see and hear first hand the lawyers and litigants appearing before them are by far in the best position to establish rules of procedures which, more often than not, deal with such issues as limitations on pages or the margin sizes of briefs or the nature or issues that must be addressed before or during trial. These rules ensure the orderly and effective process of litigation so that cases may proceed in a timely and effective manner and issues that should be decided will be decided. The rules are detailed and technical. The legislative process is not a practical process for their enactment.

The Judicial Branch has a process for enacting and amending the rules of practice that is responsive to the needs of the courts, the litigants and lawyers and the public in general. Committees of judges study the rules and the need for changes. Proposals to change the rules may be made by anyone and public comment is invited before the rules committee proposes changes. Actions of the Judicial Branch demonstrate that it has been deliberately responsive to concerns of the public, and there is no need to amend the Constitution.

While this sharing of power between the branches has resulted at times in tension, that tension has led to careful and deliberate resolution of problems. Transferring the rule-making authority exclusively to the Legislative Branch would be a mistake.

The Division of Criminal Justice would respectfully recommend that the Committee reject S.J. No. 32, Resolution Proposing an Amendment to the State Constitution Concerning the Practices and Procedures of the Courts. Thank you.