

## STATE OF CONNECTICUT GENERAL ASSEMBLY

**Raised Bill No.** \_\_\_\_\_ (Modeled from Congress' H.R. 5219)

January Session, 2007

\_\_\_\_\_ JUD\*

### Referred to Committee on Judiciary

Introduced by The House Judiciary Committee, authored by Francis C. P. Knize using recommendations from Rep. Christopher Shays, and Raised H.R. 5219 at the U.S. Congress' House Judiciary Committee.

### An Act Concerning Judicial Transparency and Ethics Enhancement and Judicial Reform

Creation a State Statute, to provide for the detection and prevention of inappropriate conduct, illegal activity, undermining of the judicial machinery, and violations of the Judicial Oath to support the U.S. and State Constitutions in the State Judiciary, while acknowledging the review standard of a public officer's "*Spirit of Restraint*" to infringe upon a party's fundamental rights.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Jan , 2007

Francis C. P. Knize, producer, using recommendations from Mr. Christopher Shays during an interview with him, introduces the following bill; which is now referred to the House Committee on the Judiciary.

### A BILL

Creation of a new Statute to provide for the detection and prevention of inappropriate conduct and detection of *fraud which does, or attempts to ... defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner*, concerning the application in the Connecticut State judiciary.

*Be it enacted by the Senate and House of Representatives of the State of Connecticut in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the 'Connecticut Judicial Transparency and Ethics Enhancement Act of 2007'.

#### SEC. 2. INSPECTOR GENERAL FOR THE JUDICIAL BRANCH.

(a) Creation and Duties-

CHAPTER \_\_\_\_--INSPECTOR GENERAL FOR THE JUDICIAL BRANCH

0001. Establishment.

0002. Appointment of Inspector General.

0003. Duties.

0004. Powers of the Inspector General and Assistant Inspector Generals

0005. Powers of the 12 member panel of the Grand Jury

0006. Reports.

0007. Whistleblower protection.

**Sec. 0001. Establishment**

There is established for the judicial branch of the State Government the Office of Inspector General for the Judicial Branch with powers to appoint a Grand Jury Panel (hereinafter in this chapter referred to as the 'Office').

**Sec. 0002. Appointment of Inspector General**

The head of the Office shall be the Inspector General, who shall be appointed by a panel made up of at least 2/3rds **non-lawyer/judge/ABA** members after consultation with the majority and minority leaders of the Senate and the Speaker and minority leader of the House of Representatives. The Inspector General must have a history of having "clean hands".

**Sec. 0003. Duties**

With respect to the Judicial Branch, the Office shall--

(1) conduct investigations of matters pertaining to the Judicial Branch, including possible misconduct in office of judges and proceedings under Standards of both Ethics and Law, including powers to determine whether laws were broken, whether judicial discretion was abused, whether abuses were against Public Policy, including issues that may require oversight or other inappropriate actions (including fraud and malicious prosecution) within the State Judicial Branch.

(2) conduct and supervise audits and investigations, including Abuse of Power, Fraud upon the court; illegal or inappropriate use of discretion.

(3) prevent and detect waste, fraud, and abuse; and

(4) recommend changes in laws or regulations governing the Judicial Branch.

(5) Appoint a 12 member Grand Jury Panel made up of two-thirds **non-**

lawyer/judge/ABA members.

(6) Ensure that a complaint be set for trial within 60 days from entree of the complaint, new grand juries will be appointed as case flow becomes constrained. Assistant Inspector Generals can be appointed if the Inspector General finds he is overloaded to adjudicate all cases himself, where the Assistant Inspector General must then pass the findings and Judgment to the Inspector General for the Inspector General to exercise his duty of reporting and other administrative duties.

(7) Ensure all Office Members and jury members take an oath to support the State and Federal Constitutions before assuming their respective duties.

#### **Sec. 0004. Powers of the Inspector General and Assistant Inspector Generals**

In carrying out the duties of the Office, the Inspector General shall have the power--

(1) to make investigations and reports;

(2) to obtain information or assistance from any Federal, State, or local governmental agency, or other entity, or unit thereof, including all information kept in the course of business by the Judicial Conference of the United States, the judicial councils of circuits, the Administrative Office of the United States Courts, and the United States Sentencing Commission;

(3) to require, by subpoena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence memoranda, papers, and documents, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by civil action;

(4) to administer to or take from any person an oath, affirmation, or affidavit;

(5) to employ such officers and employees, governing appointments in the competitive service, and the provisions State General Schedule pay rates;

(6) to obtain services as authorized by Statute sec \_\_\_\_\_, at daily rates not to exceed the equivalent rate prescribed for like State employees ; and

(7) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the duties of the Office.

(8) to appoint a 12 member Grand Jury Panel to hear all cases.

(9) to demand that finding(s), order(s) or judgment(s) in question from a judge so charged under this office be clarified as to state an authority of law for which the judgment should be based, in particular order(s) for denial or dismissal if no written finding was available.

(10) to instruct the jury to find upon the clarification as to its legality.

(11) to ensure that the parties under the judge had their claims and allegations addressed, and that the judge had ruled upon the facts of their pleadings.

(12) to ensure that probable causes are not defeated by a call for a judge's right for judicial discretion, but rather discretion is always questioned for its legality and constitutionality.

**Sec. 0005. Powers of the 12 member panel of the Grand Jury**

- 1) The Grand Jury shall be granted powers of jury nullification and have the right to take it upon themselves to judge the law as applied ethically and constitutionally by a judge as well as the facts in controversy surrounding a judge's decision; under Amendment VI of the U.S. Constitution.
- 2) The Grand Jury shall be granted the power for impeachment of a Public Official, being a body authorized under the legislature.
- 3) The Grand Jury shall be granted power to suspend judicial immunity for acts where clear and convincing abuses of power, law, and harmful discretion occurred.
- 4) The Grand Jury shall be granted powers to determine Fraud, as a species of deceit well settled in law as a court's fraud upon the court as defined by KENNER; it "*is fraud which does, or attempts to ... defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner*" Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, sec 60.23. Charges against a Judge for fraud must meet the level of "*an intentional plan of deception designed to improperly influence the Court in its decision {and} has had such an effect on the court* " to have changeable effect upon the outcome of the original judgment. 7 Moore's Federal Practice, 2d ed., p. 512, sec. 60.23. Fraud is to be determined as judicial misrepresentation which follows the well-settled 5 point test adapted to the rulings of a judge: 1. a false misrepresentation of a past or present material fact or law; 2. knowledge by the public official making the false assertion that it is false or ignorance of the truth of the assertion; 3. an intention to induce the claimant to act or to justify the claimant to act; 4. the claimant must have been induced to act or justified in acting in reliance on the representation or ruling; and 5. the claimant must suffer damage proximately caused by the misrepresentation set within the the context of the ruling.
- 5) The Grand Jury shall be granted powers to determine fiduciary damages to the claimant, upon a finding of wrongdoing by a public official.

**Sec. 0006. Reports**

- (a) When to Be Made- The Inspector General shall--
  - (1) make a report to The General Assembly relating to the activities of the Office within 60 days of any judgment authorized under its office; and
  - (2) make prompt reports to the The Judiciary Committee on matters that may require prompt or emergency action by them.
- (b) Sensitive Matter of National Security or of individual or corporate privacy - If a

report contains sensitive matter, the Inspector General may so indicate by making a finding on the facts alleged for a sensitive matter and receive that report in closed session. The burden is upon the Inspector General to prove lives are at stake concerning National Security Issues, or that disclosure to the public will severely harm a non-accused individual or Corporation. Findings of the Inspector General will be made public in all cases upon a verdict of guilty.

`(c) Duty to Inform Attorney General- In carrying out the duties of the Office, the Inspector General shall report expeditiously to the State's Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal or State criminal law

**Sec. 0007. Whistleblower protection**

`(a) In General- No officer, employee, agent, contractor or subcontractor in the Judicial Branch may discharge, demote, threaten, suspend, harass or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee to provide information, cause information to be provided, or otherwise assist in an investigation regarding any possible violation of Federal or State law or regulation, or misconduct, by a judge or any other employee in the Judicial Branch, which may assist the Inspector General in the performance of duties under this chapter.

`(b) Civil Action- An employee injured by a violation of subsection (a) may, in a civil action, obtain appropriate relief.'

(b) Clerical Amendment- The table of chapters for part \_\_\_\_ of the C.G.S , is amended by adding at the end the following new item:

Title \_\_\_\_; Inspector General for the Judicial Branch.

***Statement of Purpose:***

To adopt certain recommendations put forth by the model of H.R. 5219 at Congress on Judicial Reform with respect to the transparency, accessibility and accountability of the Judicial Branch.