Connecticut Bar Association

30 Bank Street
PO Box 350
New Britain
CT 06050-0350
06051 for 30 Bank Street

(860)223-4400
fax (860)223-4488

Testimony of Kate W. Haakonsen, Member, Executive Committee,
Family Law Section of the Connecticut Bar Association

House Bill 6068

An Act Concerning the Assignment of Property and the Award of Alimony Upon Annulment, Dissolution of Marriage or Legal Separation

Judiciary Committee
February 28, 2007

Senator McDonald, Representative Lawler and members of the Judiciary Committee, I thank you for the opportunity to appear before the Committee to comment on House Bill 6068, An Act Concerning the Assignment of Property and the Award of Alimony Upon Annulment, Dissolution of Marriage or Legal Separation. My name is Kate W. Haakonsen. I am an attorney who has practiced in the area of divorce and family law for over 28 years. I am here today to speak on behalf of the Family Law Section of the Connecticut Bar Association whose members have a great interest in bills affecting family law procedures and issues concerning dissolution of marriage. On behalf of the section, I respectfully request that the Judiciary Committee **not act** on House Bill 6068.

House Bill 6068 would prohibit the court from considering the causes for an annulment, dissolution of the marriage or legal separation when assigning property under §46b-81 or awarding alimony under §46b-82 of the General Statutes. Presently, a court is unable to consider the grounds on which the case is filed only when awarding temporary alimony under §46b-83. House Bill 6068 would make evidence of the cause of the breakdown, usually referred to as "fault," irrelevant and presumably inadmissible with regard to alimony or property division in all cases seeking a divorce, annulment or legal separation regardless of the grounds plead.

Under present law, regardless of the grounds alleged in a complaint for dissolution of the marriage or legal separation, either party may present evidence as to the cause of the breakdown and the court may consider such evidence as one of numerous factors in awarding alimony and assigning property. If the complaint alleges irretrievable breakdown, the "no fault" ground, such evidence has no affect on whether or not the marriage is dissolved. The purpose of no fault divorce was to allow parties to dissolve their marriage without having to prove by a preponderance of evidence that the other's fault caused the breakdown of the marriage. Under the prior fault system, parties often trumped up fault allegations, and if the court found the parties equally at fault, they

remained married. House Bill 6068 would prohibit the consideration of the cause of the breakdown in alimony and property awards in all cases, even if fault grounds were plead in the complaint.

Our society expects and assumes that there are consequences for bad behavior in a marriage. Our clients expect that there are negative consequences for bad behavior by either spouse. House Bill 6068 would negate that expectation and defy that assumption. Lawyers regularly advise clients that the family court is a court of equity which can consider causation in these cases and that it is in their best interests to behave well toward each other both before and during a divorce. It is in everyone's best interests, especially where children are involved, for parties to be given and to follow this kind of advice. If House Bill 6068 becomes law, lawyers will be correct in advising clients that their behavior before and during a divorce will have no negative economic consequences to them. Lawyers would have to tell clients that the court has no interest in the mistreatment or suffering they have endured in their marriages. Injured and unhappy clients going through a difficult passage in their lives might never have the cathartic experience of telling their story, which now more often takes place in a pre-trial settlement conference than an actual trial, at any stage of the case because it would be irrelevant. Short of a criminal violation or an actionable personal injury, there would be no legal remedies for one spouse's mistreatment of the other.

In addition, contrary to what may be its intent, House Bill 6068 would be likely to lead to increased litigation and more contentious litigation. If the court could not compensate a spouse financially for cruelty or abuse in the context of a divorce action, the emotional need that parties sometimes have to seek compensation for their injuries would not be able to be addressed within the traditional forum. Lawyers would have to resort to filing multi-count complaints alleging civil causes of action such as assault, intentional infliction of emotional distress, and slander and to seek monetary damages. Such cases would be more likely to lead to trial and parties would be entitled to have these claims heard by a jury.

The idea that no fault divorce means that fault should not be considered may sound attractive at first blush. But upon sober reflection, it flies in the face of societal values and norms for the way we treat each other, especially the way we treat our husbands or wives, and the obligations owed between spouses. It would mark a major and unhealthy departure from the established public policy of the State of Connecticut.

Thank you for allowing me the opportunity to comment on House Bill 6068. The Family Law Section of the Connecticut Bar respectfully requests that the Judiciary Committee **take no action** on House Bill 6068 for the foregoing reasons.

I would be happy to answer any questions that you may have.