

Testimony of Salvatore C. Agati  
Superior Court Judge and  
President of the Connecticut Judges Association  
Regarding Proposed Legislation  
April 9, 2007

Good Afternoon Senator McDonald, Representative Lawlor and honorable members of the Judiciary Committee.

My name is Salvatore Agati. I am a judge of the Superior Court in Connecticut and presently the president of the Connecticut Judges Association. On behalf of the Connecticut Judges Association, I would like to address several of the proposed legislative bills on your agenda today. My colleague, Judge Maureen Dennis, will address other legislative proposals later this afternoon.

I would like to thank you for the opportunity to comment before your committee. Please bear in mind that these comments are consensus opinions of the judges who are members of the Association. Due to time constraints, my comments will be brief.

The first bill I wish to reference is No. 1481, concerning state referees. Our Association held a meeting two weeks ago with the state referees to discuss this proposed legislation, as well as, new procedures which were being promulgated by the Judicial Branch to more effectively make use of and manage the referees. After our meeting, Justice Borden, on March 29, 2007 issued new policies establishing referee guidelines. The consensus of the referees regarding the proposed legislation was that there was no reasonable objection with having to be evaluated by the Judicial Selection Commission. The one provision with which there is an issue in the proposed legislation is under subsection (e) that there no longer is a presumption that applies to referees who seek reappointment that they are qualified for retention. We understand the reason for the

referral of the referees to Judicial Selection, however, we are dealing with individuals who have been judges for many years. Because an individual reaches their 70<sup>th</sup> birthday, does not mean they immediately are no longer qualified to sit as judges. They should continue to enjoy the presumption of qualification. That presumption may be rebutted by the Commission after it has done its due diligence as to each individual candidate. Otherwise, applying a different standard to referees would not be treating them with the respect that they deserve after their many years of service to the bench and the citizens of Connecticut.

The next bill I wish to comment on is No. 7430 concerning the Judicial Selection Commission. The specific issue is under subsection (h) regarding the availability to the public of the agenda of Commission meetings. Our concern is not with the identification of sitting judges but rather with candidates applying to be approved for consideration to appointment to the bench. We wish to see further study on a process that would protect these candidates identity from public disclosure. It would be our Branch's goal as would be your goal as well, to attract and ultimately have appointed to the bench the most highly qualified candidates. For attorneys, especially those in private practice, disclosure of their candidacy at this stage could be detrimental to their positions within their firms, as well as affect their relationships with clients. We would urge further review for better safeguards in this area.

Next, regarding bill No. 7429 concerning the Judicial Review Council. It is my understanding that there will be other commentary on this legislation today.

The first area of concern is under Section 51-51K (i) regarding advisory opinions. We applaud and embrace the concept. However, we feel strongly that as proposed, the legislation as drafted is inadequate and requires further study and consideration. We fortunately have judges who have been reviewing several different models throughout the

nation to come up with one which could be implemented in Connecticut. Specifically, Judge Barry Schaller has proffered a memorandum on the subject after extensive review and analysis. I am aware that Judge Rogers, who we hope will be confirmed as chief justice by this Legislature shortly, has reviewed Judge Schaller's memorandum and endorses many of his proposals. Because time limits extensive review and discussion on these proposals for advisory opinions, we ask that no action be taken at this time on this provision. We hope that with further study and collaboration between both our branches that a model for providing advisory opinions to judges will be adopted that we can all be truly proud of and find beneficial for the future.

The other concern is the provision in Section 51-51L (d) which requires deliberations of the Judicial Review Council to be open to the public. We have contacted the American Judicature Society which advises that no state requires its disciplinary body to deliberate in public.

I have also discussed this proposal with several members of the Judicial Review Council. Their overall concern is that open deliberations would stifle the free exchange of opinions by the council members during deliberations. The members see their role as that of a jury deciding on judge's career and not as an administrative board subject to review under the Uniform Administrative Procedures Act. The concern is that attorney members who practice before the courts would not be as candid as necessary during deliberations. Also, judges members may repress their comments and criticisms of fellow colleagues.

Also, of note, is that in our review of the State Code of Ethics under General Statutes Section 1-82, proceedings involving Executive or Legislative members do not require open deliberations. This is also the case for attorney disciplinary proceedings

before the Statewide Grievance Panel, pursuant to Connecticut Practice Book Section 2-35.

We would urge you to remove this provision due to its possible chilling effect on the deliberative process.

Finally, I wish to comment on bill No. 1434 concerning compensation of Judges. The Connecticut Judges Association strongly requests your support of and passage of this legislation.

There is a growing national trend, both in the federal court system and state courts, to deal with this issue. Chief Justice Roberts has recently appeared before Congress to seek pay raises for the federal judiciary. The issue centers on the failure to keep up with cost of living increases. I have attached to my comments a survey by the National Center for State Courts which shows that although Connecticut ranks ninth (9<sup>th</sup>) in actual dollar salary nationally, when adjusted for cost of living our rank is thirty-ninth (39<sup>th</sup>) nationally.

We would urge you to review the Commission on Compensation's February 2007 Report to the General Assembly which further expounds upon the arguments in support of this legislation.

By having annual raises tied into a set index this would provide predictability and certainty to judicial salaries. Also, it would mean that we would not need to come before the Legislature every few years seeking pay raises which at times have been disproportionately high to make up for years when raises were not given. We feel that by eliminating the need to lobby the Legislature for pay raises, we can be more involved collaboratively with the Legislature in achieving a more open and efficient judiciary.

Once again, thank you for allowing me the opportunity to testify before your committee on behalf of the Connecticut Judges Association. Thank you also for your time, your attention, and your service to the citizens of Connecticut.

<u>ACTUAL \$\$ RANKING</u>	<u>COLA ADJUSTED RANKING</u>	<u>DATE OF NCSC SURVEY</u>
9th	39th	JULY 2006
8th	32nd	JAN 2006
11th	38th	APRIL 2005
11th	41st	APRIL 2004
10th	41st	OCT 2003
10th	39th	APRIL 2003
9th	38th	OCT 2002