STATE OF CONNECTICUT
SUPREME COURT

CHAMBERS OF
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Testimony of Senior Associate Justice David M. Borden
Judiciary Committee Public Hearing
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Senate Bill 1481, An Act Concerning State Referees

Thank you for the opportunity to speak today on behalf of the Judicial Branch on **Senate Bill 1481, *An Act Concerning State Referees.***

As you know, my primary goal over the past year has been to promote the accountability, transparency and openness of the Judicial Branch. In order to further this goal, the Judicial Branch has conducted an examination of all of the Branch's various functions. One of the areas that that we looked at is the role that Judge Trial Referees play in our system, which led to the adoption of a policy to govern the designation and assignment of judge trial referees. This policy, which has been reviewed by all our judge trial referees, will take effect on June 1, 2007. It is designed to ensure the efficient use of judge trial referees and that each judge trial referee is competent to do the job. I have attached a copy of the policy to my testimony for your information.

I would like to take a moment to provide you with some background. Every state judge automatically becomes a state referee upon reaching the mandatory retirement age of 70 and remains a state referees for the remainder of his or her eight-year term. In addition, state referees are eligible for reappointment to subsequent terms. Currently, the statutes do not provide that state referees be reviewed by the Judicial Selection Commission prior to reappointment.

The Connecticut Constitution states that each judge "who has attained the age of seventy years and has become a state referee may exercise, as shall be prescribed by law, the powers of the superior court .... on matters referred to him as a state referee." (Article fifth, section 6 of the Constitution of the State of Connecticut, as amended by Article 8, section 2 of the Amendments to the Constitution of the State of Connecticut.) The statutes provide that the Chief Justice may designate any state referee as a judge trial referee, which means that they may hear and participate in a variety of cases pursuant to statute (C.G.S. 52-434).

Judge trial referees play a vital role in the Judicial Branch's core function of adjudicating cases. It is no exaggeration to say that our courts would be seriously handicapped without their assistance. They perform a myriad of functions which include fact finding, taking evidence, presiding over pretrials, hearing juvenile matters, determining damages in condemnation cases, deciding deficiency judgment motions in mortgage foreclosure cases and hearing any civil, non-jury case. Many of our court locations rely heavily on the resource of judge trial referees and could not function effectively without them. In addition, they serve vital roles at the appellate level, serving on panels hearing cases at the Appellate Court, reviewing cases for transfer to the Supreme Court from the Appellate Court, and helping to settle many cases through the appellate Preargument Conference program.

The proposal before you would require that state referees be reviewed and approved by the Judicial Selection Commission. We are not opposed to this new requirement. I see no reason why judge trial referees should not be required to go through the same reappointment process that all incumbent judges go through every 8 years – namely, they must be approved by the Judicial Selection Commission, recommended by the Governor, appear before this committee and then be approved by the entire General Assembly. However, I do not agree with the language that appears on line 70 and 71 of the proposal. It would eliminate the presumption that all other judges up for reappointment have -- that they are qualified for retention in that office. I believe that the criteria by which state referees are evaluated by the Judicial Selection

Commission should be the same as that for judges, and that they are entitled to the same presumption of qualification. I would like to point out to the Committee that state referees, after being reappointed by the general assembly, are subject to a second level of review before they are eligible to hear cases. This review is conduct by the Chief Justice prior to designating them as judge trial referees. The newly adopted policy that I referenced above formalizes this review.

In conclusion, I agree that it is appropriate to establish a more extensive process to ensure accountability among our judge trial referees, but would respectfully request that you delete the new language on lines 70 and 71 of the proposal.

Thank you for your consideration. I would be glad to respond to any questions.

Policy Concerning the Service of Judge Trial Referees

1) The Chief Court Administrator will assign each judge trial referee (JTR) to a judicial district or districts based upon the needs of the court system.

Rationale: This will allow a more efficient use of the resources of JTRs. While some judicial districts have many JTRs, some have very few.

2) The JTRs will inform their Administrative Judge when they are available to work, on a monthly basis. The Administrative Judge, after assessing the needs of the district and consulting with the Presiding Judges, shall provide each JTR with a schedule of the days that he or she is assigned to work. The Presiding Judges will allocate the work among the JTRs.

It should be noted that if a JTR limits the types of matters that he or she will hear, the number of days that he or she will be asked to work may be substantially limited, based on the needs of the judicial district.

Rationale: The determination of when and how often a JTR will work should be made by the Administrative Judge in collaboration with the JTR.

3) The request for payment form for JTRs will be altered to provide space for the JTR to indicate what area of work he or she performed on a given day and at what location.

Rationale: To develop a system that will more accurately record the work that JTRs do, so that the Judicial Branch can ensure that JTRs are used most efficiently.

4) Each JTR will be reviewed annually by the Administrative Judge, who will provide his/her recommendation to the Chief Court Administrator. The Chief Court Administrator will recommend to the Chief Justice whether the JTR should be re-designated.

a) When deciding whether to re-designate a JTR each year, the Chief Justice shall consider the number of days that the JTR worked during the previous year.

b) If an Administrative Judge has concerns about recommending that a judge referee be re-designated as a JTR, the Administrative Judge will refer the matter to the Chief Court Administrator. The Chief Court Administrator and the Administrative Judge will consult to determine what information should be obtained and provided to the Administrative Judges and Chief Administrative Judges, who will be charged with

recommending to the Chief Court Administrator whether he or she should forward the JTR's name to the Chief Justice for re-designation. If the competence of the JTR is of concern, the Chief Court Administrator may order an evaluation pursuant to Section 51-45c of the Connecticut General Statutes.

c) Standards for the Administrative Judges and Chief Administrative Judges to consider:

- Judicial temperament, which means that the JTR possesses those personal qualities of patience, industry, courteousness, demeanor and faithfulness to the duties of the office that are essential in a good jurist.

- The JTR's physical and mental fitness are such that the JTR can fulfill the duties of the office with reasonable accommodation.

- Whether the JTR is decisive and renders decisions promptly in the performance of duties and obligations.

Rationale: To provide accurate and objective information so as to ensure that the annual designation of each JTR continues to be appropriate.

March 29, 2007