

**TESTIMONY OF JUDGE CHRISTINE KELLER
JUDICIARY COMMITTEE PUBLIC HEARING
MARCH 10, 2008**

Senate Bill 605, An Act Concerning Judicial Branch Openness

Good afternoon. My name is Christine Keller. I am a Superior Court judge and am here to speak at the request of the Judicial Branch regarding **S.B. 605, *An Act Concerning Judicial Branch Openness***, particularly with reference to **Sections 5 through 10**, which affect the Judicial Review Council. I serve on the Judicial Review Council with three attorneys, two other judges or alternates for family support magistrates and workers' compensation commissioners and six lay persons. The Council has a website that already complies with proposed **subsections (g) and (h) of Section 5** of the proposed bill. The council meets once a month to consider complaints. Our regular meetings usually take at least half of a day. We meet at additional times when necessary to hold probable cause and formal disciplinary hearings. No one is compensated for his or her work. In many other states, members of judicial disciplinary bodies are paid a per diem rate. Everyone has other full time responsibilities, so convening the council is no easy task. We have a part time Executive Director, a part time investigator and a full time Executive Secretary. Our Executive Director reviews all complaints, directs their investigation and presents them to the council for its consideration. The Office of the Attorney General provides the council with legal advice when requested. The assistant attorney general assigned to us has numerous other responsibilities in his own office.

Section 5

The Judicial Branch opposes the proposal in **Section 5(i)** to have the council issue advisory opinions. We are concerned that such a proposal would create burdensome demands on the Judicial Review Council's existing staff, call for the commitment of significantly more time

from the volunteer and otherwise employed members of the council and detract from the council's core function.

Ethical opinions now provided to members of the bar and other public officials are written by attorneys or other experts in ethics, not by lay persons with unrelated expertise. If you examine the opinions from ethical advisory boards in Connecticut and other states, they are scholarly, extensively researched memoranda of law. If the Judicial Branch creates its own Ethics Advisory Committee, its advisory opinions would not be binding on the Judicial Review Council, which could then serve as an appropriate check if an opinion posed as a defense to a complaint appears overly protective of judges. At the very least, if the Judicial Review Council must undertake this function, you will need to supply adequate, additional appropriations for enhancing its professional staff.

Section 6(a)

The Judicial Branch opposes the amendment to **Section 6(a)** allowing the Judicial Review Council to disclose that a complaint has been filed if it is already widely public and the public interest requires such disclosure, provided the judge is given an opportunity to be heard. This invites an individual to circumvent the requirement that the contents of a complaint and knowledge of a council investigation not be disclosable to third parties until probable cause has been found by mailing a copy of their complaint to the press or other public forums. Confidentiality until probable cause is found protects the reputations of innocent judges wrongfully accused of misconduct, maintains confidence in the judiciary by avoiding premature disclosure of alleged misconduct, encourages retirement as an alternative to costly formal proceedings and protects Judicial Review Council members from outside pressures. In many instances, even after a matter goes public, the judge cannot comment due to the ethical

restrictions in the Judicial Code of Conduct against commenting on pending or impending matters. Unlike other public officials accused of wrongdoing, we cannot call a press conference and defend ourselves. We respectfully suggest that you at least consider amending the proposed language. Massachusetts, for example, provides “In any case in which the subject matter becomes public, through independent sources or through a waiver of confidentiality by the judge, the commission may issue such statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudgment, or to state that the judge denies the allegation.” Michigan, Minnesota and the federal 9th Circuit Court of Appeals, among others, further provide that if the judge is exonerated during the course of the confidential investigation or probable cause hearing, a public statement of such exoneration may be issued if the judge agrees to waive confidentiality.

Section 6(b)

The Judicial Branch does not agree with the recommendation to make public admonishments of judges by the Judicial Review Council. The current law broadly provides a number of grounds for censure, suspension or removal of a judge. The current provision on the use of an admonishment allows the council to issue one in order to recommend a change in practice for conduct that is alleged in a complaint if the conduct doesn’t sufficiently rise to the level of the specified grounds for censure, suspension or removal. but the judge has “acted in a manner which gives the appearance of impropriety or constitutes an unfavorable judicial . . . practice. . . .” The complainant is informed of the issuance of the admonishment but the substance of it is not publicly disclosed to any person or organization except to the General Assembly’s judiciary committee, which is entitled to review the substance of the admonishment,

including copies of the complaint file. The ability to issue an admonishment also may serve to effectuate the disposition of a complaint by stipulated agreement and avoid the expense of conducting full hearings. By making an admonishment public, you eliminate its usefulness and elevate it to the same status as a public censure.

We believe the legislature, like many other states, enacted the current provision for confidential admonishments to address instances of judicial misconduct that may not be so egregious as to require the issuance of a public sanction, but does call for a private warning. It is a matter of degree. For example, an alleged violation of the code of judicial conduct may not have been intentional or there is no persistent pattern of misconduct. Sometimes, whether the conduct is unethical may be the subject of debate in professional circles, but the council concludes there has been an appearance of impropriety or a bad practice. Regardless, the council is satisfied that the judge has acknowledged the error, taken steps to correct it and is unlikely to offend again. A disciplinary system that lacks any degree of sensitivity, even for isolated failures, and provides for no alternatives apart from public condemnation is less apt to witness those who require correction as the result of minor breaches step forward and accept it. An unrelenting, punitive approach will lead to more secrecy, not less.

Section 9

We agree with the revision to the Judicial Review Council statute that provides that the council simply reports, rather than recommends reappointment for nomination for appointment to a different court. The Judicial Review Council sought this change last year, as the members felt they do not know enough about the totality of a judge's work to make a recommendation on reappointment or elevation to a higher court. That really is the mandate of the Judicial Selection Commission, not the Judicial Review Council.

The existing law already has achieved a balance between the legislature's right to be informed and preserving the confidentiality of complaints that do not result in the imposition of sanctions, which supports the integrity and independence of the judiciary. (See General Statutes Section 51-51q(2)). The Judicial Review Council is currently required to provide a report of any complaint and its disposition to the Governor, the Judicial Selection Commission and to the Judiciary Committee. (See General Statute Section 51-51q(1) and (2)). The judges also provide additional information in their applications and General Assembly questionnaires, for reappointment or elevation. Furthermore, the Judicial Review Council must make all complaint files concerning any judge available to the Judiciary Committee upon its request. However, any confidential information provided to the committee will not be further disclosed to any person or organization. We believe that if you reviewed dismissed complaints in confidence you would not detect a pattern of leniency, but rather would conclude that the Judicial Review Council and the judges whose appointments you approve are performing well.

Thank you for your consideration of my remarks.