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**Written Testimony of Megan McLeod, Connecticut Legal Services,
in Support of S.B. 201
For Public Hearing of the Committee on Government
Administration and Elections
2/20/08, 10:30 AM
Demonstration Project for an Office of Administrative Hearings**

My name is Megan McLeod. I am a staff attorney with Connecticut Legal Services, a non-profit agency representing poor people. Among other things, I represent individuals in administrative hearings before the Department of Social Services ("DSS"). I am here to testify in support of Senate Bill 201, which would establish a new independent hearings office to handle appeals from some agencies, and would require the chief administrative law judge of this new office to also develop a plan for taking over appeals from DSS. This bill would address serious structural problems in the current system, problems which limit access to fair administrative appeals.

I am glad to see that the requirement for a feasibility analysis and implementation plan regarding the transfer of DSS hearings to this new office, as agreed upon last year, remains in this year's proposal in Section 29. I am concerned, however, that the implementation date was changed from six months to well over a year. We would urge that this language be changed back to six months in order to expedite an implementation plan to include DSS.

DSS' fair hearing office is housed within the DSS Commissioner's legal unit. This creates a serious structural problem which I believe affects the fairness of hearings and the ability of a hearing officer to be impartial. Legal staff represents the Commissioner and advise DSS field staff. But they also supervise the hearings office and advise hearings officers. Legal staff could advise DSS field staff in a case, and then advise or directly supervise a hearing officer, or redraft sections of a hearing officer's decision. For example, a case worker from DSS may believe they can terminate a recipient from HUSKY based on their interpretation of a DSS policy. Before terminating, the caseworker may check with someone from the DSS legal staff to see if



they agree with this interpretation. The legal staff will give the caseworker the legal support for their position, perhaps referring them to the appropriate part of the policy manual. This is all appropriate.

The problem arises if a client loses their health insurance and wants to challenge their termination. They request a fair hearing. At the fair hearing, they argue their position that they should not be terminated based on DSS policy. DSS is arguing on the other side at the hearing, and may be represented by a DSS attorney. The hearing proceeds. But after the hearing, when making a decision in the case, or even during the hearing, the hearing officer has a question on the law. The hearing officer then can and does consult directly with a DSS attorney about this legal question. Sometimes the DSS attorney even redrafts the hearing officer's decision in the case. This attorney would be someone from the same office that previously provided advice to the caseworker about why this person should be terminated under DSS policy and the same office that is now representing DSS in the hearing. While it is not the same attorney, they are from the same office, and it makes sense that they would all share and promote the same legal view.

In other contexts, if an attorney represents one party in a case and wants to present arguments or provide information to the judge, they can only do so if they also provide this information to the other side. However, in the context of DSS, when legal staff advise or intervene with a fair hearings officer, this information is not disclosed to the complainant. The complainant, therefore, does not have an opportunity to rebut or otherwise counter the advice or other intervention. As you can see, this makes it very difficult for a recipient to disagree with a DSS legal position and win at a fair hearing.

This lack of transparency affects fairness, a problem compounded by the fact that most complainants in fair hearings at DSS are unrepresented, and unsophisticated about the law governing their cases and the process being followed. Most people at fair hearings have to depend on the hearing officer facilitating a complete record, and impartially making findings of fact and legal rulings. These aren't idle platitudes; they are required by the Constitution. (*see* *Goldberg v. Kelly*, 397 US 254 (1970) and its progeny).

An independent administrative hearing agency will be in a position to avoid the conflicts inherent in the DSS hearing structure. It can also efficiently train its hearing officers to improve skill levels and assure both high levels of professionalism and avoidance of ethical conflicts affecting access to a fair hearing process. For these reasons, we support creation of such an agency. Ultimately, we strongly support DSS hearings being moved under the control of such an agency.