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Testimony of Adam Olsham
Connecticut Bar Association Creditor's Rights Committee
Senate Bill 1000
An Act Concerning Fees for the Levy of an Execution
Finance Revenue & Bonding Committee
March 2, 2009

Senator Daily, Representative Staples and members of the Finance Revenue & Bonding Committee, thank you for the opportunity to appear before the committee to comment on Senate Bill 1000, An Act Concerning Fees for the Levy of an Execution. My name is Adam Olsham and I am a Partner with the law firm of Law Offices Howard Lee Schiff PC in East Hartford and legislative liaison of the Creditor's Rights Committee of the Connecticut Bar Association. The CBA Creditor's Rights Committee has a great interest in bills concerning legal process and their effect on both creditors and debtors. The CBA Creditor's Rights Committee urges the committee to **oppose** Senate Bill 1000, which would lead to confusion, mistakes and unnecessary delays and respectfully requests that the Finance Revenue & Bonding Committee **reject** the bill as it applies to legal services for the following reasons.

The bill proposes that the State Treasurer would be responsible for levies of execution against assets of judgment debtors in civil cases, for which the State Treasurer would collect a fee of 12 1/2% of the amount of the execution. It is unclear if the Treasurer's fee would be in addition to the 12 ½% fees that a state marshal collects for levying executions. If that is the case, judgment debtors would be burdened with a 25% fee, an amount that is simply unfair and unreasonable. It is also unreasonable to expect the marshal not to be paid for his or her work if a marshal serves the execution.

Judgment creditors could never get a marshal to serve an execution, and would be then entirely dependent upon the Treasurer to serve executions.

Current law provides that marshals levy executions, and the assets are held by the marshal or the bank until proper to release to the judgment creditor, or returned to the judgment debtor. Including the Treasurer to this system would add confusion, mistakes and problems, and would likely result in new and unnecessary delays. Among other things, the bill would probably result in delaying the proper credit of payments to the judgment debtors, or the return of funds; neither result is in the best interest of judgment debtors. We believe that the current system properly handles the executions, and should not be changed.

The Treasurer would need to *daily* account for all funds that it has collected as creditors need to know what has been collected to provide a proper credit against the judgment. In my experience, judgment debtors frequently contact our office to find out how much they need to pay off the balance. If we are unable to obtain this information from the State Treasurer, the judgment debtor will be unable to satisfy the balance due or be required to pay more than is due and receive a return of funds after the Treasurer has provided the information and credit. This is disadvantageous to debtors.

By way of example, a judgment creditor who has a judgment for $10,000 against a judgment debtor may seek a bank execution to enforce the judgment if it is unpaid. The judgment creditor applies to the court for a bank execution. In doing, the judgment creditor must be able to state accurately the balance due and owing. If funds have been collected by the State Treasurer that are unknown to the judgment creditor, the judgment creditor will not be able to state that amount accurately on the application for the bank

execution. This could result in a violation of the Fair Debt Collection Practices Act, among other things.

If the court issues the bank execution, the judgment creditor gives the execution to a marshal to serve on the judgment debtor's bank account. If there are funds in the judgment debtor's name in the bank, those funds are subject to the execution and sequestered by the bank. The bank then must send notice of the execution and the claim for exemption form to the judgment debtor and any secured party who may wish to challenge the execution. The bank is then required to hold the funds for 15 days from the date that the exemption claim form is mailed to the judgment debtor. The funds are not turned over to the marshal. If the judgment debtor returns the claim for exemption form to the bank within the 15-day period claiming an exemption with respect to the funds, the bank must send the claim to the clerk of the court that issued the execution, and the court then schedules a hearing on the exemption claim. The bank is required to hold the funds for another 45 days or until a court order the bank receives directing the disposition of the funds. If nothing is received within the 45-day period, the funds are returned to the judgment debtor's account.

Does the current system described above no longer apply if this bill passes? Are the funds to be then turned over the State Treasurer upon execution to hold pending a decision on the claim for exemption? Are they to be sent when there is a disposition? If so, how long are they to be held, and why? Senate Bill 1000 is silent on these questions.

The bill as drafted is vague, ambiguous and lacking in clear instructions as to how it is to be implemented. It would require that the State Treasurer "enter into a cooperative agreement" with the Judicial Branch to "assist in a program to aid creditors in the levy of

executions against the assets of person to satisfy a judgment awarded pursuant to a judgment of a court." This language suggests that the State Treasurer is now responsible for assisting our clients in collecting judgments. As a result, State information would be used to pursue collection of assets.

Thank you for allowing me the opportunity to comment on Senate Bill 1000, An Act Concerning Fees for the Levy of an Execution. The CBA Creditor's Rights Committee respectfully requests that the Finance Revenue & Bonding Committee **oppose** and **reject** the bill

I'd be happy to answer any questions you may have.