

Legal Assistance Resource Center

❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106
(860) 278-5688 x203 ❖ FAX (860) 278-2957 ❖ Rpodolsky@LARCC.org

S.B. 912 -- "Administrative functions" under the FOIA

Testimony of Raphael L. Podolsky – March 23, 2009

Recommended Committee action: ADOPTION OF THE BILL

This bill differs from the status quo in two fundamental ways. First, S.B. 912 provides that "all matters not directly related to judicial decision-making in individual court cases" are subject to the Freedom of Information Act. This probably reflects the maximum constitutional extent of the reach of the FOIA, since it cannot cover purely judicial functions. Second, S.B. 912 explicitly includes rulemaking within the definition of "administrative functions" of the Judicial Branch, thereby clearly bringing Judicial Branch rulemaking under the FOIA. We think that the FOIA should apply to the Judicial Branch as it applies to other branches of government, except as to decision-making in individual court cases. S.B. 912 is in sharp contrast to Section 13 of H.B. 6340, a bill pending in the Judiciary Committee, which omits rulemaking from the definition of "administrative functions" and lacks a general statement about covering all but individual case decision-making.

We therefore support S.B. 912. All state agencies should be covered by the FOIA, except where precluded by the constitutional separation of powers doctrine. In regard to the Judicial Branch, the basic constitutional doctrine is that the Judicial Branch is subject to legislative regulation except that the General Assembly cannot pass a law that (a) exercises a power exclusively within the control of the courts or (b) constitutes a significant interference with the court's judicial functions, State v. Darden, 171 Conn. 677 (1976). The General Statutes are filled with rules of practice and procedure that have been adopted by the legislature. Rulemaking involves the establishment of policy, not the decision of individual cases. A statute making clear that rulemaking is an administrative function and that matters other than the decision of individual cases are subject to the FOIA is well within the power of the General Assembly. It is also the proper policy in regard to open government.

The definition of "administrative functions" proposed in S.B. 912 is reasonable and should be adopted.