



Testimony of Mary Alice Moore Leonhardt,
Member of the Executive Committee,
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Senate Bill 1188, An Act Establishing the Division of Administrative Hearings
Committee on Government Administration and Elections
March 21, 2011

Senator Slossberg, Representative Morin, and members of the Government Administration and Elections Committee, thank you for the opportunity to comment on Senate Bill 1188, An Act Establishing the Division of Administrative Hearings. My name is Mary Alice Moore Leonhardt. I am honored to be here as a representative of the Connecticut Bar Association (CBA) and also as an attorney in private practice in Hartford, where I practice in the areas of administrative law and litigation for health care clients and transportation providers. The CBA, on behalf of the Administrative Law Section, **supports Senate Bill 1188** because it believes this central hearing office will provide the public, consumers, regulated individuals and businesses, with an impartial forum in which to secure fair hearings to dispute and address agency regulatory action. On behalf of the CBA, I wish to thank the committee for raising Senate Bill 1188 for a public hearing and I respectfully request that the committee **act favorably** on the bill.

By way of background, I have served as the chairperson of the CBA's Administrative Law Section which consists of attorneys in private practice who represent others before executive agencies, as well as attorneys employed by the State of Connecticut. A substantial part of my law practice has been devoted to representing, for

almost twenty years, these types of clients in administrative hearings before state agencies including the Department of Public Health, Office of Health Care Access, Department of Children and Families, Department of Education, Department of Social Services, Department of Transportation, Department of Motor Vehicles, Department of Consumer Protection, Department of Public Utilities Control, Office of State Ethics, State Elections Enforcement Commission and the Freedom of Information Commission. In 2009, in accordance with Section 155 of Public Act 09-07 of the September Special Session, the president of the Connecticut Bar Association appointed me to serve on a task force to develop recommendations for the establishment of a Division of Administrative Hearings to conduct impartial hearings of contested cases brought by or before the Departments of Children and Families, Transportation and Motor Vehicles and the Commission on Human Rights and Opportunities. This task force's work encompassed consideration of the model for the implementation of a "central hearing office" or "central panel" for administrative hearing officers similar to those set up in more than 30 states, the District of Columbia, New York City and the City of Chicago. I have met with the Chief Administrative Law Judges from these states and they have offered their support to ensure Connecticut's Division of Administrative Hearings is properly modeled and to facilitate the implementation of the central office. This proposal has been refined over several years and it is the product of a consolidated effort aimed at ensuring a seamless transition of the hearings. It also incorporates several provisions suggested by the collective bargaining units which represent the hearing officers and staff involved with these contested case hearings to ensure that such matters as seniority and status, among other rights and entitlements are respected.

The Administrative Law Section suggests that the division be established within the Department of Administrative Services or in the new agency consolidating the state "watchdog" agencies. Initially, the contested cases concerning the Departments of Children and Families, Transportation, Consumer Protection and Motor Vehicles, the Commission on Human Rights and Opportunities and cases concerning retaliation for whistleblower complaints, will be transferred into the Division. Other agencies may elect to utilize the hearings unit as appropriate and the unit will also conduct mediation and pre-hearing settlement conferences for the assigned agency cases or those of other agencies who may opt in from time to time.

The Division of Administrative Hearings of administrative hearings should be established because it would foster the use of a more effective operational and financially accountable business model for these hearings. It will provide:

- **Efficiency.** A central office of administrative law adjudicators would consolidate support services and systems within one agency, thereby generating efficiencies in time and cost savings. Flexibility in case assignments would predominate to ensure that appropriate administrative adjudicators would be assigned both to specific kinds of cases or particular agencies to apply the necessary expertise, and to meet the "feast or famine" fluctuating caseloads of the various agencies. Staff would easily be assigned where the need exists and cases would be handled in less time. Fewer administrative law adjudicators would be needed to hear more cases. Attorneys and members of the public would have a central location from which to obtain copies of the administrative law adjudicators' decisions, the procedural regulations established by the office of administrative hearings and the substantive regulations of the departments. It will eliminate a process that currently puts professionals, consumers, businesses and other parties through a prolonged hearing process.
- **Cost and Economies of Scale.** The experience in other states which have pioneered the central hearings units demonstrates that a central independent hearings unit is inherently more cost-effective than independent hearing units sprinkled throughout a multitude of state agencies. This is achieved by economies of scale and flexibility in case assignment. For example, in Oregon, where the

office of administrative hearings was established approximately 7 years ago, the savings were measurable:

- In 2000-01, its first fiscal year after implementation, Oregon's OAH reported the average number of OAH hours per referral was 8.55. By 2002-03, the number had been reduced by a striking 17% to 7.13 hours. Similarly, in 2001-01, the average cost of a referral was \$322. In 2002-03, it was \$285, a savings of 11%. The total cost savings to Oregon in 2002-03 was \$1.4 million.
- The average cost of Department of Transportation referrals dropped by 6%; the average cost per referral dropped by 9%; and in 2002-03, the Department saved \$232,158.
- The average cost of Department of Human Services referrals (about 3000-4000 annually) dropped by 23% in 2002-03; the average number of hours per referral dropped by 26%; and in 2002-03, the Department saved \$371,600.

Other states have had similar success in driving the costs down:

- In late 1994, Texas reported a savings of 70% in costs associated with agency hearings. In the second year of its operation of a centralized hearing unit, Maryland's office saved the state almost \$828,000. Our near neighbor, New Jersey spent only \$7.5 million on its administrative hearings after implementing its central hearings unit, as compared to the \$20 million it would have spent on the hearings. Minnesota reported its hearing costs for public utility commission hearings dropped in two years from \$400,000 to \$234,000.
 - Massachusetts, having staggered the transition of agency hearings into its central hearings office, has experienced more than \$1million in savings each year as more and more agencies have been transitioned into the unit.
- **Impartiality.** A centralized panel of administrative law adjudicators sitting in an impartial agency would provide fundamental fairness and due process; apply agency policy and regulations without being subjected to advancement or penalty by the agency for their cooperation or lack of cooperation; and enhance public trust and confidence in the process and in decisions rendered. Consequently, an office of administrative hearings would foster trust and confidence in state government.
 - **Expertise.** The expertise applied by the current hearing officers would be retained and hearing officers would enhance their skills, training and knowledge base. Administrative law adjudicators would be experienced in a uniform

administrative law practice and procedures in accordance with rules of practice which would bring more uniformity to the agency hearing process. All present full-time agency hearing officers of the departments included in the bill would be transferred into the new hearing office and available for the suitable assignment of cases for their training and expertise. In other words, the same hearing officers would be available to bring their expertise to bear in the same types of cases as were previously assigned to them at their former agency. At the same time, opportunities to hear other types of cases and receive appropriate training, would stimulate and sharpen an administrative law adjudicator's intellect, encourage creative inquiry into novel issues, provide for peer consultation and attract the most qualified people to the administrative bench. The proposed legislation also provides for consistent training of the administrative law adjudicators in procedural and substantive law, ensuring competence and enhanced professionalism, particularly in those agencies that currently use contractual hearing officers.

- **Uniformity and consistency.** The administrative hearing and enforcement processes used by state agencies, except where governed by the UAPA, vary unnecessarily and often for no apparent reason. Uniformity can be achieved by adopting a single process under a central hearing office that can be varied in limited circumstances to address agency needs. A central hearing office could establish uniform hearing procedures.

The CBA appreciates your consideration and support of this important legislation that will bring Connecticut on par with the majority of other states, will establish an appropriate "wall of ethics" and ensure integrity and efficiencies in contested case proceedings in Connecticut. On behalf of the CBA and the Administrative Law Section, I respectfully request that the Government Elections & Administration Committee **favorably report** Raised Senate Bill 1188.

Thank you again for the opportunity to comment on Senate Bill 1188. I would be pleased to answer any questions you may have.