

Legal Assistance Resource Center

❖ of Connecticut, Inc. ❖

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S.B. 1211 -- Post-judgment interest

Judiciary Committee public hearing -- March 25, 2011

Testimony of Raphael L. Podolsky

Recommended Committee action: NO ACTION ON THE BILL

We urge that the Committee take no further action on this bill for the following reasons:

- * **Mandatory vs. discretionary post-judgment interest:** While the meaning of this bill is not entirely clear, it appears to remove from judges the discretion to deny post-judgment interest altogether or to set a rate of less than 10% in cases involving installment payment orders. Under existing law, the awarding of post-judgment interest (except on negligence judgments) is discretionary with the court. For example, in Bower v. D'Onfro, 45 Conn. App. 543 (1997), the Appellate Court said explicitly that "A decision to deny or grant postjudgment interest is "primarily an equitable determination and a matter lying within the discretion of the trial court," 45 Conn. App., at 545. A number of trial courts have applied that rule to cases where they found that the award of post-judgment interest would not be fair. While post-judgment interest is normally awarded routinely, the law allows it to be denied or reduced in appropriate cases (e.g., where a delay in the final decision was caused by the plaintiff or where market interest rates are lower than 10%). This is an important protection for defendants.
- **Unequal treatment of installment payment orders:** The bill also seems to discriminate against installment judgments, because it makes the 10% rate mandatory for them under C.G.S. 52-356d (Sec. 1 of the bill) while keeping both the awarding of interest itself and the imposition of a 10% rate discretionary for other judgments under C.G.S. 37-3a (Sec. 2 of the bill). This makes little public policy sense, since installment payment orders, which are available only against individuals (not businesses), are usually intended to recognize the more limited ability of individuals to make lump-sum payments. If anything, it is more important that post-judgment interest not be automatic and not be set at the highest legal rate when an individual paying a weekly order is the defendant
- **Conflict with other statutes:** The mandatory 10% interest rate set by Section 1 of the bill is in direct conflict with the 5% rate for hospital bill judgments under C.G.S. 37-3a(b).
- **Unreasonably high interest rate:** In addition, it is odd in this economy and with present market interest rates to set a mandatory rate at such a high level. If anything, the statutory maximum rate should be lowered.