

TESTIMONY OF MICHELE MOUNT

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Regarding Section 2 of Raised Bill No. 468, *AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES*.

Senator Coleman, Representative Tong, and members of the Judiciary Committee, thank you for the opportunity to testify on Raised Bill No. 468, *An Act Concerning the Commission on Human Rights and Opportunities*.

In my testimony today, I would like to focus on certain aspects of proposed new language in Section 2 of the bill, specifically at subparagraphs (i) and (j), amending General Statutes § 46a-84, firstly, to establish a strict deadline for the issuance of final decisions at the Office of Public Hearing (OPH) and, secondly, concerning the appointment process and the assigning of cases to Judge Trial Referees to assist the Office of Public Hearings in the adjudication and settlement of discrimination and whistleblower retaliation cases when the Office of Public Hearings caseload exceeds one hundred.

Regarding the establishment of a strict eighteen-month deadline for our office to issue a final order in contested cases that come before us, a brief history of the staffing of the Office of Public Hearings is necessary. In July of 2004, there were seven human rights referees. In June of 2011, the number was reduced to five referees. At that time, the caseload at the Office of Public Hearings was approximately seventy-five, allocated among the five referees. At the end of June of 2011, none of the five referees were reappointed and the OPH remained without any referees for six months. Three new referees were appointed between December of 2011 and February of 2012. By the time the three new referees were appointed a serious backlog had been created. Over the past two years, there have been only two referees at any given time due to resignations and illness.

Currently at the OPH there are 130 open files on the docket, two referees, and one secretary. The referees adjudicate contested cases certified to our office from the CHRO and have original

jurisdiction over whistle-blower retaliation cases. Our duties include managing the cases from a scheduling point of view; deciding dispositive, production, and evidentiary motions; and deciding cases within ninety days from the close of the public hearing. Simultaneously, we also act as settlement referees, write final decisions, and issue rulings on motions. I mention this only to illustrate the current staffing and time constraints that exist in the Office of Public Hearings

Proposed new language in Section 2 (i) would assign an arbitrary and artificial deadline requiring every case to be concluded with a final ruling within eighteen months after filing.

Our present docket includes cases that are scheduled into the fall of 2017. We look forward to the time, when a third statutorily-required referee is appointed, and the ability to designate Judge Trial Referees to hear complaints filed under our anti-discrimination laws and whistleblower retaliation laws is approved, hopefully this session. At that point, some of these hearings could be rescheduled to earlier dates. But, as any attorney will tell you, often it is the parties themselves who drive the calendar. During my four years as a human rights referee, I have not presided over a single case that did involve one or more of the following: requests for extensions of time for any of seven scheduling deadlines; dispositive motions; production motions; continuance for settlement purposes; and interlocutory appeals. Right now attorneys usually are given sixty days after the close of the public hearing to file their post-hearings brief. Thereafter, the presiding referee must render a decision the case within ninety days of the filing of post-hearing briefs. If the proposed eighteen-month deadline is imposed, the result will be that attorneys will no longer be granted extensions of time or continuances they request, production deadlines will be considerably shorter, and the deadlines for the submission of post-hearing briefs will be radically reduced. Further, under the current language, if the proposed new deadline is not met for any reason, the commission or the parties may bring an action against the presiding hearing officer in Superior Court. This action could require the Attorney General to defend OPH. Further it would require the Superior Court Judge to impose a deadline without any knowledge of the OPH caseload, our current schedules that implicate due process, the number of referees, or the health of any of the referees, the parties, and their counsel.

Lastly, with regard to Section 2 (j) of the bill, I whole-heartedly endorse the proposal which would allow Judge Trial Referees to act as presiding hearing officers or conduct settlements when the OPH caseload exceeds one hundred. However, in the interest of ensuring the constitutionally-required

separation of powers between the agency (CHRO) and its adjudicative law tribunal, I respectfully suggest that the current proposed language concerning the appointment by CHRO's executive director of a judge trial referee to hear and decide cases which are being prosecuted by CHRO is problematic, if not unconstitutional, and should be revised. Such a process would be akin to a prosecutor picking her or his own judge. Language should be substituted to clarify that the Chief Human Rights Referee assigns cases to the judge trial referees.

I might mention one other technical change in Section 1 (b) of the bill, at line 10, to conform the bill to our current process and practice. It is the presiding referee who appoints the settlement referee or the settlement attorney, not the chief referee.

Thank you very much for your consideration.