

# CONNECTICUT LAW JOURNAL



Published in Accordance with  
General Statutes Section 51-216a

VOL. LXXIX No. 5

August 1, 2017

288 Pages

## Table of Contents

### CONNECTICUT REPORTS

State v. Acosta, 326 C 405. . . . .	3
<i>Sexual assault first degree; risk of injury to child; certification from Appellate Court; whether Appellate Court correctly concluded that trial court had not abused its discretion in admitting twelve year old uncharged sexual misconduct evidence; whether uncharged sexual misconduct evidence was too remote and insufficiently similar to be admissible pursuant to State v. DeJesus (288 Conn. 418); public policy concerns justifying admission of prior uncharged sexual misconduct, discussed.</i>	
Volume 326 Cumulative Table of Cases . . . . .	19

### CONNECTICUT APPELLATE REPORTS

Bigelow v. Commissioner of Correction, 175 CA 206. . . . .	104A
<i>Habeas corpus; whether habeas court abused discretion in denying petitioner certification to appeal; whether court improperly denied petition for writ of habeas corpus; claim that habeas counsel failed to raise claims that trial counsel did not properly advise and adequately represent petitioner during plea negotiations and plea canvass; claim that habeas counsel failed to raise claim that trial counsel improperly failed to file motion seeking petitioner's entry into diversionary substance abuse program; claim that trial counsel provided ineffective assistance by failing to seek certain presentence confinement credit.</i>	
Colonial Investors, LLC v. Furbush, 175 CA 154 . . . . .	52A
<i>Summary process; nonpayment of rent; claim that notice to quit was legally insufficient; claim that disclaimer in notice to quit that any partial payments would be accepted for use and occupancy only and not for rent was misleading; claim that trial court improperly determined that it did not need to decide second special defense; whether customer service charges for utilities were properly included as component of rent; claim that notice to quit included improper water charges and was legally insufficient; claim that plaintiff violated state regulation (§ 16-11-55) pertaining to submetering of water; whether Metropolitan District Commission was subject to regulation promulgated by state Public Utilities Commission; claim that plaintiff misapplied payment to defendant's arrearage rather than to current monthly rental obligation.</i>	
Commissioner of Public Health v. Colandrea, 175 CA 254. . . . .	152A
<i>Petition to enforce subpoena duces tecum seeking production of patient records from defendant dentist; subpoena issued pursuant to statute (§ 19a-14 [a] [10]) that explicitly gives Department of Public Health authority to issue subpoenas in connection with investigations; whether trial court properly granted petition to enforce subpoena duces tecum; claim that plaintiff, Commissioner of Public Health, failed to make sufficient factual showing that subpoenaed records were related to complaint under investigation; whether plaintiff established that subpoenaed records met requirements of provision in statute (§ 52-146o [b] [3]) allowing disclosure of patient communications or information without patient consent if disclosure is in connection with investigation or complaint, provided that such communications or information relates to complaint.</i>	
Dull v. Commissioner of Correction, 175 CA 250 . . . . .	148A
<i>Habeas corpus; whether habeas court improperly dismissed habeas petition as untimely pursuant to statute (§ 52-470 [d] and [e]); claim that petitioner established good cause for untimely filing of habeas petition.</i>	

(continued on next page)

In re Luis N., 175 CA 271. . . . . 169A  
*Termination of parental rights; claim that trial court violated respondent mother's right to due process by improperly considering evidence gleaned from ex parte meeting with children in terminating mother's parental rights; whether unpreserved claim was reviewable pursuant to State v. Golding (213 Conn. 233); harmless error; claim that it was plain error for court to consider evidence gleaned from ex parte meeting with children; whether trial court violated mother's right to due process by failing to inform her that she was entitled to receive canvass pursuant to In re Yasiel R. (317 Conn. 773) prior to start of trial when that case was not decided until after commencement of mother's trial; whether trial court's finding that mother failed to achieve sufficient degree of personal rehabilitation as would encourage belief that, within reasonable time, considering age and needs of children, she could assume responsible position in their lives was supported by clear and convincing evidence; whether trial court improperly concluded that termination of mother's parental rights was in best interests of children.*

In re Luis N., 175 CA 307. . . . . 205A  
*Termination of parental rights; claim that trial court deprived respondent father of fair trial by meeting with children ex parte, allowing visitation supervisor with Department of Children and Families to attend meeting and failing to make record of court's observations of children; whether unpreserved claim was reviewable pursuant to State v. Golding (213 Conn. 233); whether, even if trial court's ex parte meeting violated father's right to fair trial, any error was harmless; whether father could prevail under plain error doctrine when he failed to challenge factual basis of judgments terminating parental rights; claim that trial court erred in failing to declare mistrial, sua sponte, after ex parte meeting with children; failure to raise claim before trial court.*

Medeiros v. Medeiros, 175 CA 174 . . . . . 72A  
*Dissolution of marriage; motion for contempt; sanctions; claim that trial court failed to allow defendant fair opportunity to present defense to motion for contempt; whether trial court improperly precluded, on hearsay grounds, defendant from testifying regarding statements made to him by parties' child; whether any error was harmless; claim that trial court failed to determine that evidence establishing finding of contempt met required clear and convincing standard of proof; claim that trial court erred in imposing sanctions for defendant's indirect civil contempt; whether challenge to trial court's stayed order of incarceration was moot; whether claim qualified for capable of repetition yet evading review exception to mootness doctrine; whether trial court's stayed incarceration order was punitive; whether trial court abused discretion by failing to consider defendant's ability to pay plaintiff attorney's fees and marshal fees; whether defendant waived right to raise claim as to fees on appeal; whether trial court erred in imposing compensatory fines on defendant without any evidence as to actual damages suffered by plaintiff.*

Northrup v. Witkowski, 175 CA 223. . . . . 121A  
*Negligence; recklessness; whether trial court properly granted motion for summary judgment on ground of governmental immunity; whether allegations that defen-*

(continued on next page)

**CONNECTICUT LAW JOURNAL**  
 (ISSN 87500973)

Published by the State of Connecticut in accordance with the provisions of General Statutes § 51-216a.

Commission on Official Legal Publications  
 Office of Production and Distribution  
 111 Phoenix Avenue, Enfield, Connecticut 06082-4453  
 Tel. (860) 741-3027, FAX (860) 745-2178  
 www.jud.ct.gov

RICHARD J. HEMENWAY, *Publications Director*  
 Published Weekly – Available at <http://www.jud.ct.gov/lawjournal>

Syllabuses and Indices of court opinions by  
 MICHAEL A. GENTILE, *Acting Reporter of Judicial Decisions*  
 Tel. (860) 757-2250

---

The deadline for material to be published in the Connecticut Law Journal is Wednesday at noon for publication on the Tuesday six days later. When a holiday falls within the six day period, the deadline will be noon on Tuesday.

*dant town officials failed to maintain and repair storm drains involved discretionary acts for which defendants were entitled to governmental immunity pursuant to statute (§ 52-557n [a] [2] [B]); claim that genuine issue of material fact existed as to whether town ordinance created ministerial duty; claim that identifiable person-imminent harm exception to discretionary act immunity applied; whether plaintiffs demonstrated that harm alleged was imminent; whether counts alleging recklessness by individual town officials could be maintained as matter of law when record did not support finding that any of individual defendants acted or failed to act with type of wanton disregard that is hallmark of reckless behavior.*

Questell v. Farogh, 175 CA 262 . . . . . 160A

*Negligence; whether trial court abused discretion in denying motion to open and set aside default judgment; whether court reasonably could have concluded that plaintiff was not prevented from attending trial management conference as result of mistake, accident or other reasonable cause.*

Sanchez v. Edson Mfg., 175 CA 105 . . . . . 3A

*Workers' compensation; whether Workers' Compensation Review Board properly affirmed decision of Workers' Compensation Commissioner denying plaintiff certain disability benefits; whether board properly determined that commissioner's findings concerning cause and extent of plaintiff's disability were supported by sufficient underlying facts; whether board properly found that opinion of medical expert was competent medical evidence on which commissioner properly relied in reaching decision; claim that this court should give less deference to commissioner's credibility determinations where medical examiners did not testify before commissioner; whether board abused discretion in not remanding matter for articulation as to why commissioner disregarded medical opinion of expert chosen by commissioner.*

State v. Torres, 175 CA 138 . . . . . 36A

*Murder; carrying pistol without permit; whether first time in-court identification of defendant as shooter made by eyewitness violated defendant's right to due process and should have been excluded pursuant to State v. Dickson (322 Conn. 410), where eyewitness was unable to make reliable identification of defendant in nonsuggestive out-of-court procedure prior to trial; whether defendant waived claim that first time in-court identification of him as shooter by eyewitness violated right to due process and should have been excluded; whether record was adequate for this court to determine that in-court identification of defendant was unreliable; whether admission of identification was harmless beyond reasonable doubt.*

Volume 175 Cumulative Table of Cases . . . . . 235A

**SUPREME COURT PENDING CASES**

Summary . . . . . 1B

**NOTICES OF CONNECTICUT STATE AGENCIES**

Airport Authority, Connecticut. . . . . 1C

**MISCELLANEOUS**

Judge Trial Referee Designees—Arbitration Proceedings - Trial de Novo . . . . . 3D

Notice of Certification as Authorized House Counsel . . . . . 3D

Office of State Ethics Advisory Opinion . . . . . 5D

Office of State Ethics—Order Regarding Advisory Opinion . . . . . 19D

Opening of Litchfield Judicial District Courthouse at Torrington. . . . . 1D

Revised Notice of Attorney Discipline . . . . . 4D

Small Claims Decentralization . . . . . 1D