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by holding a hearing on August 3, 2016 . . . at which Dr. Gorman must appear and be subject to examination and cross-examination on this issue . . . .'' As discussed more comprehensively in part II B of this opinion, Judge Lager proceeded to rule that Dr. Gorman was precluded from offering expert testimony as to causation.

On August 2, 2016, Barnes filed a letter addressed to Judge Lager and the defendants' counsel indicating that, in light of Judge Lager's preclusion of Dr. Gorman's causation opinion, Barnes would not produce Dr. Gorman at the scheduled hearing on August 3, 2016. On August 3, 2016, the parties appeared before Judge Lager to, inter alia, present argument on Barnes' August 1, 2016 request to disclose Dr. Shah as a causation expert and the defendants' objection thereto. After Judge Lager had denied the request to disclose and sustained the defendants' objection, there was a discussion on the record about the defendants' pending motion for summary judgment. During that discussion, Judge Lager stated the following: ''I think the ruling [on July 26, 2016] is clear that the [c]ourt felt there was an inadequate factual basis for the [c]ourt to make that determination [regarding Dr. Gorman's knowledge of the applicable standard of care] and was going to provide today, not any other day, but today, [Barnes] that opportunity to establish that basis. That has not been done. So as of today, the [c]ourt can only conclude that there is no factual basis, based on the record before it.''

On August 10, 2016, Judge Lager heard argument on the defendants' motion for summary judgment, to which Barnes had filed an objection accompanied by an affidavit of Dr. Gorman dated August 8, 2016 (August 8, 2016 affidavit). On August 11, 2016, in her memorandum of decision granting the defendants' motion for summary judgment, Judge Lager stated in relevant part: ''In the ruling dated July 26, 2016 . . . this court focused on

the lack of foundational evidence upon which the court could make a finding that '[Dr.] Gorman knows the prevailing professional standard of care applicable to [Dr.] Daddio in Connecticut in 2011 or that his Pennsylvania podiatric practice was governed by the same standard of care.' . . . Although the court was aware that [Dr.] Gorman averred in [the July 18, 2016 affidavit] that the 'standard of care for treating patients is the same,' this conclusory statement lacked foundation. In [the August 8, 2016 affidavit], [Dr.] Gorman aver[red] that: 'The standard of care is the same for all podiatrists. The national standard of care as to what is expected of a reasonable, prudent podiatrist [with respect to] the diagnosis and treatment of a patient under the same circumstance is the same in Connecticut as it is in all other states.' The foundation for this averral is that podiatry students 'in the United States are trained in the same manner; [t]he same textbooks and reference materials are used.' " Judge Lager then concluded that, in light of Dr. Gorman's testimony during his deposition that he did not know the standard of care in Connecticut, the "conclusory statements in [the August 8, 2016 affidavit]" failed to provide the "requisite foundation for establishing [Dr.] Gorman's knowledge of the prevailing professional standard of care in this case" and "[t]here is an inadequate factual basis before the court to find [Dr.] Gorman qualified to testify as to the standard of care." For these reasons, Judge Lager, in effect, precluded Dr. Gorman's standard of care opinion.

The administratrix asserts that Judge Lager erred in precluding Dr. Gorman's standard of care opinion because physicians, including podiatrists such as Dr. Gorman, are governed by a national standard of care in medical malpractice cases. The administratrix also contends that Dr. Gorman was qualified to offer a standard of care opinion on the ground that evidence was produced illustrating, inter alia, that Dr. Gorman had treated thousands of podiatric patients since 1967 and

trained residents in the field of podiatry.[21] These contentions are unavailing.

The relevant inquiry here is whether Dr. Gorman knew what the prevailing professional standard of care applicable to Dr. Daddio was. Dr. Gorman's January 29, 2016 deposition testimony strongly suggested that he was *not* familiar with the standard of care. Judge Lager found that the July 18, 2016 affidavit in which Dr. Gorman asserted knowledge of a national standard of care was conclusory and lacked foundation. Judge Lager then considered the August 8, 2016 affidavit, in which Dr. Gorman averred that, because (1) all students enrolled in podiatry schools in the United States are trained in the same manner, (2) all podiatrists attend the same seminars and conferences to earn continuing education credits, and (3) there are many organizations in the United States offering continuing education courses relating to podiatric medicine, "[t]he standard of care is the same for all podiatrists" and "[t]he national standard of care as to what is expected of a reasonable, prudent podiatrist [with respect to] the diagnosis and treatment of a patient under the same circumstance is the same in Connecticut as it is in all other states." Judge Lager found that such affidavit did nothing to cure the conclusory nature of, and lack of foundation for, Dr. Gorman's opinions as to standard of care. As Judge Lager reasonably determined, Dr. Gorman's averments failed to establish that Dr. Gorman had the requisite knowledge of the applicable standard of care in order to testify thereto.[22] Accordingly, we conclude that

[21] The administratrix also claims that Judge Lager erroneously concluded that Dr. Gorman failed to meet the requirements of § 52-184c. The administratrix apparently overlooks that, as set forth previously in this opinion, Judge Lager concluded that Dr. Gorman satisfied the requirements of subdivision (2) of § 52-184c (d).

[22] In *Logan* v. *Greenwich Hospital Assn.*, 191 Conn. 282, 301–302, 465 A.2d 294 (1983), our Supreme Court recognized that the standard of care in a medical malpractice case is a national, rather than local, standard. See also *Grondin* v. *Curi*, supra, 262 Conn. 652 n.16 ("[a]t the time § 52-184c was enacted, [our Supreme Court] had, because of the increasing national uniformity in physicians' 'educational background and training,' moved from

Judge Lager did not abuse her discretion in precluding Dr. Gorman's standard of care opinion.

B

We next consider the administratrix' claim that Judge Lager erred in precluding Dr. Gorman's causation opinion. We are not persuaded.

"All medical malpractice claims, whether involving acts or inactions of a defendant physician, require that a defendant physician's conduct proximately cause the plaintiff's injuries. The question is whether the conduct of the defendant was a substantial factor in causing the plaintiff's injury. . . . This causal connection must rest upon more than surmise or conjecture. . . . A trier is not concerned with possibilities but with reasonable probabilities. . . . The causal relation between an injury and its later physical effects may be established by the direct opinion of a physician, by his deduction by the process of eliminating causes other than the traumatic agency, or by his opinion based upon a hypothetical question. . . .

"To be reasonably probable, a conclusion must be more likely than not. . . . Whether an expert's testimony is expressed in terms of a reasonable probability that an event has occurred does not depend upon the semantics of the expert or his use of any particular term or phrase, but rather, is determined by looking at the entire substance of the expert's testimony. . . . An expert . . . need not use talismanic words to show reasonable probability. . . . There are no precise facts that must be proved before an expert's opinion may be received in evidence. . . .

"To prevail on a negligence claim, a plaintiff must establish that the defendant's conduct legally caused

the statewide standard of care, which was reaffirmed in *Fitzmaurice* v. *Flynn*, 167 Conn. 609, 617, 356 A.2d 887 (1975), to a national standard, free of geographic limitations"). We do not construe the trial court's decision to mean that the court applied a local standard of care; rather, the court determined that Dr. Gorman's averments regarding the applicable standard of care were conclusory and without a sufficient foundation.

serious physical injury in an effort to facilitate his escape; the punch caused a life-threatening injury, as it fractured H's skull in multiple places, rendered him unconscious and was heard by D fifteen to twenty feet away, and, although the defendant claimed that his intent was not to cause serious injury but to escape, he testified that he could have shoved H in the chest, punched him in the stomach, tripped him or tried running away rather than engaging in physical contact with H.

2. The defendant could not prevail on his claim that he was denied his right to a fair trial as a result of prosecutorial impropriety, as none of the challenged remarks was improper:

a. The prosecutor did not place evidence of the defendant's postarrest silence before the jury in violation of the trial court's orders, as the prosecutor asked C, a police detective, only about the defendant's conduct in response to C's request to photograph the defendant's hands during his detention by the police, the record was insufficient to determine if the prosecutor intended to elicit improper evidence as to postarrest silence, the question was open-ended, the type of evidence the prosecutor attempted to elicit was ambiguous, the court issued no formal ruling on a motion the defendant had filed to preclude evidence of his postarrest silence and instructed the jury that questions by the attorneys were not evidence; moreover, the prosecutor had a proper motive for asking the defendant on cross-examination if he felt remorse about the incident with H, as defense counsel's questions to the defendant on direct examination opened the door for the prosecutor's follow-up questions, and the prosecutor had a good faith basis to ask the defendant additional questions on recross-examination about his remorse, as the court previously had permitted the prosecutor on cross-examination to impeach the defendant's credibility as to his purported remorse.

b. The prosecutor invited the jury to draw reasonable inferences from the evidence and did not argue facts not in evidence during closing argument about the defendant's intent to cause H serious injury, as defense counsel did not object to the prosecutor's arguments, the defendant's testimony that he could have taken other action to get away and avoid arrest instead of punching H in the head supported the prosecutor's arguments, the prosecutor's arguments as to the defendant's motivation for shopping at H's store were not presented to the jury as facts but, instead, as a submission of a reasonable inferences the jury could draw from the facts and evidence, and the prosecutor's argument about the differing accounts of the incident by H and the defendant merely asked the jury to make a credibility determination.

c. The prosecutor did not frame his statements to the jury by suggesting that it would need to find that R and D lied about the location of the defendant's punch in order to find the defendant not guilty: the prosecutor's statements, to which defense counsel did not object, asked the jury to weigh the credibility of each witness and did not force the jury to find the defendant not guilty only if first concluded that R and

D had lied; moreover, even if R and D had lied, the jury could have found the defendant guilty on the basis of his testimony alone that he punched H in the head.

(*One judge concurring separately*)

Argued May 22—officially released October 20, 2020

Procedural History

Substitute information charging the defendant with one count each of the crimes of robbery in the first degree and assault in the second degree, brought to the Superior Court in the judicial district of Litchfield at Torrington and tried to the jury before *Danaher*, *J.*; verdict and judgment of guilty of assault in the second degree and the lesser included offense of larceny in the sixth degree, from which the defendant appealed to this court. *Affirmed*.

MarcAnthony Bonanno, with whom, on the brief, was *James B. Streeto*, senior assistant public defender, for the appellant (defendant).

Brett R. Aiello, special deputy assistant state's attorney, with whom, on the brief, were *Dawn Gallo*, state's attorney, and *David R. Shannon*, senior assistant state's attorney, for the appellee (state).

Opinion

PRESCOTT, J. The defendant, John Pjura, appeals from the judgment of conviction, rendered after a jury trial, of one count of assault in the second degree in violation of General Statutes § 53a-60 (a) (1) and one count of larceny in the sixth degree in violation of General Statutes § 53a-125b. The defendant claims on appeal (1) that there was insufficient evidence to prove beyond a reasonable doubt that he intended to cause serious physical injury to the victim, and (2) that he was denied his right to a fair trial because the prosecutor committed improprieties during the trial by (a) attempting to place evidence of the defendant's postarrest silence

CONNECTICUT REPORTS

Vol. 335

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

KARLA WOLFORK, ADMINISTRATRIX (ESTATE OF DAEONTE WOLFORK-PISANI) *v.* YALE MEDICAL GROUP ET AL.
(SC 20344)

Robinson, C. J., and Palmer, McDonald, D'Auria, Kahn and Ecker, Js.

Syllabus

The plaintiff, W, who had been appointed by the Probate Court as administratrix of the estate of her deceased son, D, sought to recover damages on behalf of D's estate from the defendants, various health care providers, for medical negligence. Approximately three years after W commenced the action, the trial court issued a notice indicating that the case had been reported settled and ordered the parties to file any withdrawals or motions for stipulated judgment by a certain date or the case would be dismissed. At around the same time, the Probate Court appointed D's father, P, as coadministrator of D's estate. W failed to file the withdrawal by the deadline, and the court issued a second notice, again ordering the parties to file the necessary paperwork. W successfully sought an extension of time to file the withdrawal for the purpose of scheduling a hearing with the Probate Court and P to confirm that she had the authority to unilaterally withdraw the action. W failed to file the withdrawal by the extended deadline, however, and the trial court dismissed the action. Thereafter, P moved to open and vacate the judgment of dismissal, claiming that he had been prevented from requesting a further extension of time to withdraw or pursue the action due to mistake, accident or fraud. Specifically, P claimed that, at the time W commenced the action, she had misrepresented to the Probate Court that she was unaware of any pending litigation and that, after the Probate Court ordered W to turn over the case file to P for the hearing that W had requested, P expected that the action would remain pending and open until after the hearing. P also claimed that, in light of the ongoing issues in the Probate Court, W's failure to request additional extensions of time within which to file the withdrawal was a result of mistake or accident, and that W's counsel was aware of these circumstances but nonetheless failed to request an extension of time. Finally, P indicated that the Probate Court had removed W as administratrix of D's estate and appointed P as the sole administrator, with the authority to handle all litigation. The defendants objected to P's motion, claiming that P

lacked standing because he was not a party to the action and had not filed a motion to be substituted as the plaintiff, and that P's motion to open did not comply with the statutory (§ 52-212) requirements that the motion be verified by oath and demonstrate both that a good cause of action existed and that W had been prevented from prosecuting the action due to mistake, accident or other reasonable cause. Thereafter, P filed a supplemental motion to open and vacate, claiming that a fraud had been committed, in that he believed a settlement had been reached, without the Probate Court's knowledge or authorization, and D's estate should have received the settlement proceeds. The defendants responded that no settlement payments had been made and that P had not alleged that the defendants had participated in the alleged fraud. The trial court, without explanation, granted P's motion to open and vacate the judgment of dismissal, and the defendants appealed. The trial court thereafter issued an articulation, stating that it was substituting P, as administrator of D's estate, as the plaintiff, and finding that the filing of the withdrawal had been prevented by reasonable cause, namely, the proceedings in the Probate Court removing W as administratrix of D's estate. On appeal, the defendants claim that the trial court improperly granted P's motion to open and vacate the judgment of dismissal because he lacked standing, the motion failed to comply with § 52-212, and any fraud had been perpetrated by W rather than the defendants. *Held*:

1. This court lacked jurisdiction over the defendants' claims that the trial court improperly granted P's motion to open and vacate the judgment on the grounds that the motion failed to comply with § 52-212 and the alleged fraud had been perpetrated by W rather than the defendants, as those claims did not raise a colorable challenge to the trial court's jurisdiction to adjudicate the motion but, rather, challenged the trial court's common-law and statutory authority to grant the motion, and, therefore, this court dismissed that portion of the defendants' appeal relating to those claims for lack of a final judgment: although this court has recognized a limited exception to the rule that the granting of a motion to open renders a trial court's judgment nonfinal and, therefore, not an appealable final judgment, that exception applies only when the issue that the appellant raises involves a colorable challenge to the jurisdiction of the trial court to open the judgment, and the exception does not apply when the issue involves a claim that the trial court improperly exercised its jurisdiction to open the judgment under the applicable statutes, rules of practice, or common-law principles; in the present case, the defendants' claims concerning whether P's motion complied with § 52-212 and who perpetrated the alleged fraud challenged only the trial court's exercise of its jurisdiction, requiring this court to dismiss the appeal as to those claims for lack of a final judgment, whereas the defendants' claim that P lacked standing to move to open and vacate the judgment of dismissal raised a colorable challenge to the trial court's jurisdiction and, therefore, was reviewable on appeal.

2. The defendants could not prevail on their claim that P lacked standing to move to open and vacate the judgment of dismissal on the ground that P was not a party to the action: although P was not the named plaintiff when the trial court rendered judgment dismissing the action, the original plaintiff, W, was removed as administratrix of D's estate, and P was appointed as the sole administrator with full legal authority to prosecute all actions that had been initiated by W on behalf of D's estate, and, as the replacement administrator, P stepped into the shoes of W and acquired all of her rights and responsibilities, including her aggrievement stemming from the dismissal of the present action; moreover, once the judgment was opened, the trial court properly substituted P as the plaintiff in accordance with the statute (§ 45a-242 (e)) providing that all actions brought by a fiduciary, including the administrator of an estate, shall survive to be prosecuted by the person appointed to succeed such fiduciary.

Argued November 15, 2019—officially released April 22, 2020*

Procedural History

Action to recover damages for, inter alia, medical malpractice, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Abrams*, *J.*, rendered judgment dismissing the action; thereafter, the court granted the motion filed by Damian Pisani, administrator of the estate of Daeonte Wolfork-Pisani, to open and vacate the judgment, and the defendants appealed to the Appellate Court; subsequently, the court, *Abrams*, *J.*, substituted Damian Pisani, administrator of the estate of Daeonte Wolfork-Pisani, as the plaintiff; thereafter, the appeal was transferred to this court. *Appeal dismissed in part*; *further proceedings*.

Brock T. Dubin, with whom, on the brief, was *Colleen Noonan Davis*, for the appellants (defendants).

Karen E. Haley, for the appellee (substitute plaintiff Damian Pisani).

* April 22, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Opinion

ECKER, J. The defendants, Yale Medical Group, Yale School of Medicine, Yale-New Haven Hospital, Inc., and Yale New Haven Health System, appeal from the order of the trial court granting the motion of the substitute plaintiff, Damian Pisani (Pisani), to open and vacate the trial court's final judgment of dismissal for failure to prosecute the present action with reasonable diligence under Practice Book § 14-3.[1] The defendants contend that the trial court improperly opened the judgment pursuant to General Statutes § 52-212[2] and Practice Book § 17-43[3] because (1) Pisani was not a party to the

[1] Practice Book § 14-3 (a) provides: "If a party shall fail to prosecute an action with reasonable diligence, the judicial authority may, after hearing, on motion by any party to the action pursuant to Section 11-1, or on its own motion, render a judgment dismissing the action with costs. At least two weeks' notice shall be required except in cases appearing on an assignment list for final adjudication. Judgment files shall not be drawn except where an appeal is taken or where any party so requests."

[2] General Statutes § 52-212 provides in relevant part: "(a) Any judgment rendered or decree passed upon a default or nonsuit in the Superior Court may be set aside, within four months following the date on which it was rendered or passed, and the case reinstated on the docket, on such terms in respect to costs as the court deems reasonable, upon the complaint or written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of the judgment or the passage of the decree, and that the plaintiff or defendant was prevented by mistake, accident or other reasonable cause from prosecuting the action or making the defense.

* * *

(c) The complaint or written motion shall be verified by the oath of the complainant or his attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or defendant failed to appear. . . ."

[3] Practice Book § 17-43 (a) provides: "Any judgment rendered or decree passed upon a default or nonsuit may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant was

action and, therefore, lacked standing, (2) the motion was not verified by oath, did not demonstrate that a good cause of action existed, and did not establish reasonable cause to excuse the failure to prosecute the action with reasonable diligence, and (3) "there [was] absolutely no claim of fraud on the part of the present defendants." We dismiss the defendants' appeal in part because we conclude that appellate jurisdiction exists only with respect to the defendants' challenge to the subject matter jurisdiction of the trial court to open the judgment on the ground of Pisani's alleged lack of standing. We reject the defendants' standing claim and, therefore, uphold the trial court's determination with respect to the issue of standing.

In October, 2010, the decedent, Daeonte Wolfork-Pisani, the eleven year old son of Pisani and the plaintiff, Karla Wolfork, died while hospitalized at Yale-New Haven Hospital. The Probate Court appointed the plaintiff as the administratrix of the decedent's estate, and, in February, 2013, the plaintiff, in her representative capacity, filed a medical negligence action against the defendants on behalf of the decedent's estate. The trial court issued a scheduling order requiring the plaintiff to disclose her expert witnesses on or before December 1, 2014. The trial court informed the parties that they "may modify any of the deadlines contained in [the scheduling] order by mutual agreement, except the trial management conference date and trial date set by the court, which shall not be modifiable under any circum-

prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant or the complainant's attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or the defendant failed to appear. The judicial authority shall order reasonable notice of the pendency of such written motion to be given to the adverse party, and may enjoin that party against enforcing such judgment or decree until the decision upon such written motion."

stances." The trial court subsequently modified the scheduling order and extended the filing deadline for the plaintiff's expert witness disclosures to August 15, 2015.

The plaintiff failed to disclose any expert witnesses. Approximately two months prior to trial, the defendants moved for an order precluding the plaintiff from offering expert testimony, claiming that such testimony would prejudice their defense. The trial court deferred ruling on the defendants' motion.

The trial did not go forward as scheduled, and, in May, 2016, the trial court issued a notice indicating that "the . . . case has been reported settled. Counsel and/or pro se parties are ordered to file all necessary withdrawals and/or motions for stipulated judgment with the clerk's office on or before [June 28, 2016] . . . . Failure to do so will result in dismissal of the case." No withdrawal was filed. The trial court issued a second notice, this time ordering the parties "to file all necessary withdrawals and/or motions for stipulated judgment" on or before July 28, 2016, with the same admonition that the failure to file a timely withdrawal "will result in dismissal of the case."

On July 28, 2016, the plaintiff filed a motion for an extension of time to file a withdrawal. In her motion, the plaintiff explained that, "[o]n May 26, 2016, the Probate Court . . . appointed . . . Pisani, [the decedent's] biological father, as coadministrator of the estate. While there is no dispute over [the plaintiff's] consent to file the withdrawal by the current due date of July 28, 2016, out of an abundance of caution, [the plaintiff] would like to schedule a hearing with the . . . Probate Court so there is no issue over [the plaintiff's] authority to unilaterally withdraw the case without consent from . . . Pisani and/or a decree from the Probate Court." The

trial court granted the plaintiff's motion and extended the deadline to file a withdrawal to August 29, 2016.

The plaintiff again failed to file a withdrawal within the allotted time. On September 29, 2016, the trial court sua sponte dismissed the action pursuant to Practice Book § 14-3 "for failure to file a withdrawal of [the] action within the time period allotted by the court." The trial court issued a final judgment of dismissal and notified the parties that, "[u]nless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a motion to open [the] judgment of dismissal must be filed within four months succeeding the date on which notice was sent. ([Practice Book §] 17-4)."[4]

On January 24, 2017, Pisani[5] moved to open and vacate the judgment of dismissal under General Statutes § 52-212a[6] and Practice Book § 17-4. In a memorandum of law in support of his motion, Pisani explained that the plaintiff had "misrepresented to the Probate Court in February of 2013 that she was unaware of any litigation pending, whereupon the Probate Court closed the estate. The estate was reopened on March 22, 2016, and the [Probate] Court appointed . . . Pisani as [coadministrator] on May 26, 2016." Pisani's memorandum also represented that, on July 27, 2016, the plaintiff's attor-

[4] Practice Book § 17-4 (a) provides: "Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court."

[5] The plaintiff did not participate in the proceedings on the motion to open; nor is she a party to the present appeal.

[6] General Statutes § 52-212a provides in relevant part: "Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . ."

ney had sent a letter to the Probate Court "requesting that the matter be set down for a hearing so that the litigation matter can be discussed between the coadministrators and the Probate Court. To that end, on August 30, 2016, the [Probate] Court . . . ordered [the plaintiff] to provide a copy of the [medical negligence] litigation file to . . . Pisani for his review. The expectation was that the [medical negligence] case should remain open pending review of the file, the purpose of which was to report the status of the case to [the Probate Court], [which] had jurisdiction over the estate." (Internal quotation marks omitted.) Pisani claimed that "[c]ounsel for the [plaintiff] was aware of these facts and yet failed to request the warranted second request for [an] extension of time to file a withdrawal." Pisani alleged that the "lack of the request for [an] extension of time was due to mistake or accident or other reason unknown in that [the plaintiff] should have communicated to the [trial] court that there was a pending probate issue [and] requested an extension of time to file a withdrawal." Pisani's memorandum advised the trial court that the plaintiff had been removed as administratrix of the estate and that he had been appointed sole administrator "with the authority to handle . . . all litigation."

The defendants opposed Pisani's motion to open and vacate the judgment of dismissal on the grounds that (1) Pisani lacked standing because he was not a party to the medical negligence action, and he had not filed a motion to be substituted as the plaintiff, and (2) the motion failed to comply with the requirements of § 52-212 because it was not verified by oath, did not demonstrate that a good cause of action existed, and failed to establish that the plaintiff had been prevented from prosecuting the action by mistake, accident, or other reasonable cause. Pisani responded that (1) he had standing to move to open and vacate the judgment because, as the

sole administrator of the estate, he "stepped into the shoes" of the plaintiff, (2) the final judgment of dismissal was not a judgment of default or nonsuit, and, therefore, the motion to open was governed by § 52-212a, not § 52-212, and (3) neither a good cause of action nor a reasonable cause needs to exist if the case was settled, and, to determine whether the case was settled, the judgment must be opened so Pisani can conduct an investigation into the status of the parties' settlement negotiations.

Pisani filed a supplemental motion to open and vacate the judgment of dismissal, claiming that "he has reason to believe that fraud has been committed." (Emphasis omitted.) Specifically, Pisani alleged that he "has reason to believe that a settlement was reached in the [medical negligence] matter, that [the Probate Court] was not told of the settlement, and did not authorize a settlement, [and] that the estate of his son should have received the proceeds of the settlement and did not." In support of this contention, Pisani referenced "a video [the plaintiff] posted online with the hashtag #4andahalfyearsin on April 25, 2016," in which she "was clearly happy, celebrating and satisfied," despite reportedly being informed by her attorney on that date that no settlement had been reached. The video, "[c]ombined with the fact that [Pisani] was kept in the dark about the estate for years" and "the fact that a representation was made by [the plaintiff's] attorney that [the plaintiff] was aware of no pending litigation and the estate should be closed" in 2013, led Pisani to believe "that a fraud was committed and allowing the case to be dismissed was part of that fraud."

The defendants opposed Pisani's supplemental motion, contending that (1) Pisani still lacked standing because he was not a party to the action, (2) "no settlement payment was made by the defendants in connection with the [medical negligence] action," (3) even if a set-

tlement had been reached, it would not provide a basis on which to open and vacate the judgment because the plaintiff would be forced to withdraw the action in light of the settlement, and (4) Pisani did not allege that the defendants had participated in the alleged fraud.

The trial court granted Pisani's motion to open and vacate the judgment, without explanation. The defendants moved for reconsideration and/or clarification of the trial court's order, contending that, because "the court did not issue a memorandum of decision, it is unclear whether the court considered all of [the arguments raised by the defendants] or on what basis the court granted the motion to open." The defendants asked the court to reconsider and/or clarify the basis of its decision in light of the arguments raised in their oppositions to Pisani's motion to open and vacate the judgment and supplemental motion to open and vacate the judgment. Pisani objected to the defendants' motion to the extent that it sought reconsideration of the trial court's order opening and vacating the judgment, but he did not object to any clarification by the court. The trial court denied the defendants' motion for reconsideration and/or clarification, again without elaboration.

The defendants appealed to the Appellate Court from the trial court's order granting Pisani's motion to open and vacate the judgment of dismissal. The defendants also filed a motion for articulation, claiming that the trial court's failure to issue "a written opinion detailing the basis for [its] decision to grant . . . Pisani's motion to open [rendered] the record . . . insufficient for review by the Appellate Court." The trial court denied the motion for articulation, and the defendants filed a motion for review with the Appellate Court. The Appellate Court treated the defendants' motion for review "as a motion for compliance with [Practice Book] § 64-1" and ordered the trial court "to comply with . . . § 64-1 by filing a memorandum of decision

with respect to its May 8, 2017 order granting . . . Pisani's motion to open and vacate the judgment of dismissal, including the specific authority under which it issued that order." The Appellate Court also sua sponte ordered the trial court to "indicate in its memorandum of decision whether, in granting . . . Pisani's motion to open and vacate the judgment of dismissal, it has substituted . . . Pisani, as [the] administrator of the estate of [the decedent], as the plaintiff in this case, or if it has otherwise taken any action to substitute him as the plaintiff in his capacity as administrator."

The trial court issued a memorandum of decision in compliance with the Appellate Court's order. The memorandum provided: "As a threshold matter, the court hereby substitutes the movant, [Pisani], administrator of the estate of [the decedent], as the plaintiff in this matter. The court hereby grants the substituted plaintiff's January 27, 2017 motion to open and vacate the judgment of dismissal [rendered] in this matter on September 29, 2016, pursuant to Practice Book § 14-3 for failure to file a withdrawal within a specified period of time. In doing so, the court finds that the plaintiff was prevented from filing the withdrawal by reasonable cause, specifically, the proceeding in the Probate Court regarding removal of the predecessor fiduciary, which the court failed to consider when it [rendered] the judgment of dismissal."

We transferred the defendants' appeal from the Appellate Court to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. On appeal, the defendants renew the claims they made in the trial court in opposition to Pisani's motions to open and vacate the judgment, namely, that (1) Pisani lacked standing, (2) the motions failed to comply with § 52-212, and (3) any fraud resulting in the dismissal of the case was perpetrated by the plaintiff, not the defendants.

I

As a threshold matter, we address whether the trial court's order granting Pisani's motion to open and vacate the judgment is an appealable final judgment. "The jurisdiction of the appellate courts is restricted to appeals from judgments that are final. General Statutes §§ 51-197a and 52-263; Practice Book § [61-1] . . . . The policy concerns underlying the final judgment rule are to discourage piecemeal appeals and to facilitate the speedy and orderly disposition of cases at the trial court level. . . . The appellate courts have a duty to dismiss, even on [their] own initiative, any appeal that [they lack] jurisdiction to hear." (Citations omitted; internal quotation marks omitted.) *Solomon* v. *Keiser*, 212 Conn. 741, 745–46, 562 A.2d 524 (1989). We therefore "must always determine the threshold question of whether the appeal is taken from a final judgment before considering the merits of the claim." *State* v. *Curcio*, 191 Conn. 27, 30, 463 A.2d 566 (1983); see also *Peters* v. *Dept. of Social Services*, 273 Conn. 434, 441, 870 A.2d 448 (2005) ("[t]he subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal").

"It is well settled that, as a general rule, the granting of a motion to open renders a trial court's judgment nonfinal and, therefore, ineffective pending its resolution. . . . Therefore, with limited exceptions . . . this court lacks jurisdiction over an appeal filed subsequent to the granting of a motion to open because there is no final judgment, an essential prerequisite to our jurisdiction." (Citations omitted.) *RAL Management, Inc.* v. *Valley View Associates*, 278 Conn. 672, 686, 899 A.2d 586 (2006); see also *Solomon* v. *Keiser*, supra, 212 Conn. 746 ("[a]s with setting aside a verdict, it is well established that an order opening a judgment ordinarily is not a final judgment within § 52-263"); *Connecticut Light &*

Power Co. v. *Costle*, 179 Conn. 415, 418, 426 A.2d 1324 (1980) ("the granting of a motion to set aside a judgment and for a new trial is not ordinarily a 'final judgment' within the purview of either . . . § 52-263" or our rules of practice).

We have recognized a limited exception to this general rule, hereinafter referred to as the *Solomon* exception, "whe[n] the appeal 'challenges the power of the court to act to set aside the judgment' "; *Solomon* v. *Keiser*, supra, 212 Conn. 747, quoting *Connecticut Light & Power Co.* v. *Costle*, supra, 179 Conn. 418; reasoning that "[i]t is generally recognized that any rule of nonappealability or nonreviewability of a decision of a court setting aside its former decision does not apply and that an appeal lies where the court, in setting aside its former decision, acted beyond its jurisdiction." (Internal quotation marks omitted.) *Connecticut Light & Power Co.* v. *Costle*, supra, 418–19. In adopting the *Solomon* exception, we relied on *Phillips* v. *Negley*, 117 U.S. 665, 6 S. Ct. 901, 29 L. Ed. 1013 (1886), in which the United States Supreme Court held that "[t]he vacating of a judgment and granting a new trial, in the exercise of an acknowledged jurisdiction, leaves no judgment in force to be reviewed. If, on the other hand, the order made was made without jurisdiction on the part of the court making it, then it is a proceeding [that] must be the subject of review by an appellate court." Id., 671–72; see *Solomon* v. *Keiser*, supra, 746. Although *Phillips* was decided more than one hundred years ago, it retains vitality today, and the United States Courts of Appeals repeatedly have recognized that reviewing courts have appellate jurisdiction to review a trial court order opening a final judgment when "the jurisdiction of the court to grant the order is in question . . . ."[7] *Arenson* v.

[7] We recognize that "[t]he theory that an order granting a new trial can be appealed if the court lacked jurisdiction or power to make the order has been criticized." 15B C. Wright et al., Federal Practice and Procedure (2d Ed. 1992) § 3915.5, p. 308 n.26. As one treatise explains, "[t]he appeal disrupts continuing trial court proceedings and interferes with trial court control as

Southern University Law Center, 963 F.2d 88, 90 (5th Cir. 1992); see id. (dismissing appeal for lack of "a final, appealable judgment" because appellant's claims did not challenge jurisdiction of trial court); see also *Fuller* v. *Quire*, 916 F.2d 358, 360 (6th Cir. 1990) (noting that "[t]here is . . . a reasonably well grounded common-law exception to the [final judgment] rule whe[n] the [D]istrict [C]ourt acts without the power to do so"); *Stradley* v. *Cortez*, 518 F.2d 488, 491 (3d Cir. 1975) (noting that "courts of appeals have repeatedly recognized" that they have appellate jurisdiction to review "new trial orders challenged as beyond the trial court's jurisdiction"); *Rinieri* v. *News Syndicate Co.*, 385 F.2d 818, 821 (2d Cir. 1967) ("the law is settled that if the District Court assumes jurisdiction and power to act under [Federal Rule of Civil Procedure 60 (b)] where neither exists, an appeal will lie from its order vacating the original order").

The touchstone of the *Solomon* exception is the trial court's alleged lack of jurisdiction to disturb the finality of the judgment. See, e.g., *Novak* v. *Levin*, 287 Conn.

much as any other appeal, except to the extent that it may be possible to dispose of the appeal more expeditiously. Once an appeal is allowed, moreover, there is a strong temptation, supported by obvious efficiency advantages, to expand it to include other matters. Perhaps most important, cases involving clear violation of procedural requirements, or important questions that deserve immediate response, can be met by relying on other means of review." Id., pp. 308–309; see also *Asset Acceptance, LLC* v. *Moberly*, 241 S.W.3d 329, 334 (Ky. 2007) ("[C]ommentators have generally given the federal practice lukewarm reviews at best. Their concerns are that the grant of an immediate appeal disrupts trial court proceedings, that it risks piecemeal appeals, that it increases already heavy appellate caseloads, that it encourages imaginative attempts to characterize alleged trial court errors as jurisdictional breaches, and that it is not necessary given the availability of extraordinary writs in those cases [in which] the trial court is clearly abusing its authority."). "Notwithstanding these criticisms, the federal practice remains viable after more than 120 years." *Asset Acceptance, LLC* v. *Moberly*, supra, 334. The *Solomon* exception likewise remains viable in Connecticut, and neither party asks us to reconsider its continued vitality.

71, 77, 951 A.2d 514 (2008) (*Solomon* exception is reserved "for those cases in which the appellant makes a colorable challenge to the jurisdiction of the trial court to open the judgment" (internal quotation marks omitted)); *Cantoni* v. *Xerox Corp.*, 251 Conn. 153, 158, 740 A.2d 796 (1999) (same); *Conetta* v. *Stamford*, 246 Conn. 281, 294, 715 A.2d 756 (1998) ("[w]e have recognized an exception [to the final judgment rule] . . . for those cases in which the appellant makes a colorable challenge to the jurisdiction of the trial court to open the judgment"). "Where a final judgment has been ordered [opened] . . . permitting an immediate appeal helps to maintain the important balance between, on the one hand, the equitable insistence on justice at all costs and, on the other, the equally vital insistence that litigation must at some point conclude and reasonable expectations founded upon [long established] final judgments must not lightly be overturned." *Asset Acceptance, LLC* v. *Moberly*, 241 S.W.3d 329, 334 (Ky. 2007); see also *Rosenfield* v. *Rosenfield*, 61 Conn. App. 112, 117–18, 762 A.2d 511 (2000) (recognizing that final judgment existed in *Connecticut Light & Power Co.*, *Solomon*, and *Cantoni* because "the trier of fact had not only rendered a decision on the merits, but also had issued an order that, if carried out, might have been harmful and irreversible to the appellant"). Under the exception, "the only question on appeal is the jurisdictional one"; in the absence of a colorable challenge to the trial court's jurisdiction, "the appellate court's own jurisdiction fails, and the appeal must be dismissed." *Asset Acceptance, LLC* v. *Moberly*, supra, 333.

Claims on appeal that do not challenge the trial court's jurisdiction—but instead allege that the trial court did not appropriately exercise that jurisdiction to open a final judgment under our General Statutes, rules of practice, or common-law principles—do not fall within the scope of the *Solomon* exception and, therefore, are

unreviewable in an interlocutory appeal. We have previously explained this distinction in terms of the difference between a trial court's "jurisdiction," on the one hand, and its "authority to act," on the other. In *Amodio* v. *Amodio*, 247 Conn. 724, 724 A.2d 1084 (1999), we recognized the "distinction between a trial court's jurisdiction and its authority to act under a particular statute. Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. . . . A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it. . . . Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action. . . . Although related, the court's authority to act pursuant to a statute is different from its subject matter jurisdiction. The power of the court to hear and determine, which is implicit in jurisdiction, is not to be confused with the way in which that power must be exercised in order to comply with the terms of the statute."[8] (Citations omitted; internal quotation marks omitted.) Id., 727–28. This distinction is important because, among other reasons, a judgment rendered by a trial court that lacked jurisdiction is not merely *voidable* but *void ab initio* and, therefore,

[8] In *Amodio*, we considered "whether the Appellate Court properly concluded that the trial court lacked subject matter jurisdiction to modify a child support award." *Amodio* v. *Amodio*, supra, 247 Conn. 725–26. We held that the trial court had general subject matter jurisdiction to modify a child support award and that the plaintiff's claim challenging the propriety of the modification order under General Statutes § 46b-86 (a) implicated the trial court's statutory authority, not its jurisdiction. See id., 731 ("[i]n concluding that the trial court had no *jurisdiction* to modify [the child support award] . . . the Appellate Court confused the issues of subject matter jurisdiction and the proper exercise of the trial court's authority to act pursuant to § 46b-86 (a)" (emphasis in original)).

subject to attack at any time.[9] See, e.g., *Sousa* v. *Sousa*, 322 Conn. 757, 771, 143 A.3d 578 (2016) ("challenges to subject matter jurisdiction may be raised at any time," even in collateral attacks on judgment); *Ajadi* v. *Commissioner of Correction*, 280 Conn. 514, 533–34, 911 A.2d 712 (2006) ("[w]here the court rendering the judgment lacks jurisdiction of the subject matter the judgment itself is void," but "[a] voidable judgment is a judgment entered erroneously by a court having jurisdiction" (internal quotation marks omitted)).

Cantoni v. *Xerox Corp.*, supra, 251 Conn. 153, is illustrative of the distinction made in *Solomon* between appellate claims challenging a tribunal's *jurisdiction* and those challenging the correctness of a decision made by a tribunal in the course of its *exercise of its jurisdiction*. In *Cantoni*, we considered "whether a dispute about the authority of the . . . [C]ompensation [R]eview [B]oard to remand a workers' compensation claim to a trial commissioner other than the commissioner who originally heard the claim is an appealable final judgment." Id., 154. Although the defendants recognized that a remand order ordinarily is not a final judgment for purposes of appeal, they argued that "their appeal is different because it raises a question that falls within the exception to the final judgment rule relating to colorable claims of lack of jurisdiction in a trial court" under *Solomon*. Id., 158. We disagreed. In a decision

[9] Of course, many other important consequences flow from characterizing an issue as jurisdictional versus nonjurisdictional. For example, as previously explained, jurisdictional issues "may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal." *Peters* v. *Dept. of Social Services*, supra, 273 Conn. 441. Furthermore, "once the issue of subject matter jurisdiction is raised, it must be immediately acted upon by the court." (Internal quotation marks omitted.) *Ajadi* v. *Commissioner of Correction*, 280 Conn. 514, 533, 911 A.2d 712 (2006); see also *Gurliacci* v. *Mayer*, 218 Conn. 531, 545, 590 A.2d 914 (1991) ("as soon as the jurisdiction of the court to decide an issue is called into question, all other action in the case must come to a halt until such a determination is made").

authored by former Chief Justice Peters, the court explained that there was a distinction, on the one hand, between claims challenging a tribunal's subject matter jurisdiction and those, on the other hand, challenging a tribunal's exercise of its jurisdiction. The defendants' claim on appeal did not "raise a colorable claim" implicating the board's jurisdiction to order a remand, and, therefore, we concluded that there was "not an appealable final judgment." Id., 168. Accordingly, the defendants' appeal properly was dismissed for lack of appellate jurisdiction. Id.; see also *Reinke* v. *Sing*, 328 Conn. 376, 390–91, 179 A.3d 769 (2018) (distinguishing between trial court's subject matter jurisdiction and its statutory authority to open and modify dissolution judgment); *Hill* v. *Hill*, 25 Conn. App. 452, 455–56, 594 A.2d 1041 (dismissing appeal for lack of jurisdiction because, even if evidence was insufficient to open judgment on basis of fraud as plaintiff claimed, trial court "was not acting without jurisdiction but in the erroneous exercise of its jurisdiction"), cert. denied, 220 Conn. 917, 597 A.2d 333 (1991); cf. *Rocque* v. *Sound Mfg., Inc.*, 76 Conn. App. 130, 136, 818 A.2d 884 (dismissing appeal from trial court's order granting motion to intervene because "[t]he issue raised in this case is whether the court properly exercised its power to permit the intervention; that claim does not implicate the subject matter jurisdiction of the court, but rather involves whether the court properly exercised its authority"), cert. denied, 263 Conn. 927, 823 A.2d 1217 (2003).

We recognize that our case law articulating and applying the *Solomon* exception has not always consistently adhered to the subtle, but critical, distinction between appellate claims that challenge a trial court's *jurisdiction* to open a judgment and those that challenge a trial court's *appropriate exercise of that jurisdiction*. The source of the difficulty may be that our early case law characterized the limitation imposed on a trial court's

authority to open a judgment under § 52-212a as jurisdictional,[10] and it was not until *Kim* v. *Magnotta*, 249 Conn. 94, 733 A.2d 809 (1999), that we clarified that this limitation "operates as a constraint, not on the trial court's jurisdictional authority, but on its substantive authority to adjudicate the merits of the case before it." Id., 104; see id., 101–103 (holding that four month time limitation to file motion to open judgment under § 52-212a does not implicate trial court's subject matter or personal jurisdiction). Perhaps more fundamentally, the problem stems from the fact that "the distinction between challenges to the trial court's subject matter jurisdiction and challenges to the exercise of its statutory authority is not always clear" and sometimes "has proven illusory in practice."[11] (Internal quotation marks

[10] See *In re Baby Girl B.*, 224 Conn. 263, 288, 618 A.2d 1 (1992) (holding that four month time limitation on filing of motions to open in § 52-212a pertained to personal jurisdiction, which can be waived); *Van Mecklenburg* v. *Pan American World Airways, Inc.*, 196 Conn. 517, 518–19, 494 A.2d 549 (1985) (holding that "the trial court was simply without jurisdiction to order that the proceedings be reopened" because motion was not timely filed within four months).

[11] The distinction between a trial court's jurisdiction and its appropriate exercise of that jurisdiction "has caused ongoing confusion . . . ." *Tremont Public Advisors, LLC* v. *Connecticut Resources Recovery Authority*, 333 Conn. 672, 693 n.11, 217 A.3d 953 (2019); see id., 692–93 n.11 (recognizing "that the distinction between subject matter jurisdiction, which implicates the court's authority to entertain and adjudicate a matter, and the authority to act pursuant to a statute, which implicates the court's authority to grant relief on the merits, has caused ongoing confusion"). This confusion, linguistic and conceptual, has at times been compounded by our use of the term "authority" to describe both a trial court's jurisdictional competence, as well as its ability to grant the requested relief in conformance with our General Statutes, rules of practice, and common-law principles. See, e.g., id., 692–93 n.11; see also *Kim* v. *Magnotta*, supra, 249 Conn. 104 (distinguishing between "jurisdictional *authority*" and "substantive *authority*" (emphasis added)). To further complicate matters, in certain circumstances "the question of jurisdiction [may be so] intertwined with the merits of the case" that the issue "of whether the court has jurisdiction over the plaintiffs' claims and whether the plaintiffs ultimately can prevail on those claims appear to turn on the same question . . . ." (Internal quotation marks omitted.) *Angersola* v. *Radiologic Associates of Middletown, P.C.*, 330 Conn. 251, 277–78, 193 A.3d 520 (2018). See generally *Lampasona* v. *Jacobs*, 209

omitted.) *In re Jose B.*, 303 Conn. 569, 574, 580, 34 A.3d 975 (2012). Whatever the reason, it appears that, over time, the *Solomon* exception occasionally has become unmoored from its animating principle, causing us to characterize as immediately appealable any order opening a judgment in which the trial court's "power" or "authority" under our General Statutes, rules of practice, or common law is challenged, regardless of whether that challenge implicates the trial court's jurisdiction. See, e.g., *Citibank, N.A.* v. *Lindland*, 310 Conn. 147, 156–57 n.4, 75 A.3d 651 (2013) ("[a]n order of the trial court opening a judgment is . . . an appealable final judgment [when] the issue raised is the power of the trial court to open [the judgment] in light of the four month limitation period of . . . § 52-212a" (internal quotation marks omitted)); *Nelson* v. *Dettmer*, 305 Conn. 654, 672, 46 A.3d 916 (2012) (same); *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 195, 884 A.2d 981 (2005) (same); see also *Ramos* v. *J.J. Mottes Co.*, 150 Conn. App. 842, 843 n.2, 93 A.3d 624 (2014) (concluding that claim challenging trial

Conn. 724, 728, 553 A.2d 175 ("In determining whether a court lacks subject matter jurisdiction, the inquiry usually does not extend to the merits of the case. . . . In order to establish subject matter jurisdiction, the court must determine that it has the power to hear the general class [of cases] to which the proceedings in question belong. . . . In some cases, however, it is necessary to examine the facts of the case to determine whether it is within a general class that the court has power to hear." (Citations omitted; internal quotation marks omitted.)), cert. denied, 492 U.S. 919, 109 S. Ct. 3244, 106 L. Ed. 2d 590 (1989). The difficulty is not unique to Connecticut's jurisprudence; the federal courts also have struggled to distinguish between jurisdictional and nonjurisdictional limitations on judicial authority. See, e.g., *Arbaugh* v. *Y & H Corp.*, 546 U.S. 500, 511, 126 S. Ct. 1235, 163 L. Ed. 2d 1097 (2006) ("[s]ubject matter jurisdiction in [federal question] cases is sometimes erroneously conflated with a plaintiff's need and ability to prove the defendant bound by the federal law asserted as the predicate for relief—a [merits related] determination" (internal quotation marks omitted)); E. Hawley, "The Supreme Court's Quiet Revolution: Redefining the Meaning of Jurisdiction," 56 Wm. & Mary L. Rev. 2027, 2030 (2015) (explaining that, in recent case law, United States Supreme Court has "narrowed the definition of jurisdiction to mean only the courts' power to decide cases").

court's authority to open judgment under rules of practice fell within scope of *Solomon* exception and, therefore, was reviewable on appeal); *Byars* v. *FedEx Ground Package System, Inc.*, 101 Conn. App. 44, 46 n.2, 920 A.2d 352 (2007) (same); *Richards* v. *Richards*, 78 Conn. App. 734, 740, 829 A.2d 60 (concluding that trial court's order opening dissolution judgment was final for purposes of appeal because plaintiff claimed that there was no mutual mistake), cert. denied, 266 Conn. 922, 835 A.2d 473 (2003).

We now clarify that the *Solomon* exception is a narrow and limited exception to the general rule that an order granting a motion to open is not an appealable final judgment and that, to fall within the scope of the *Solomon* exception, an appellant's claim or claims must challenge the trial court's jurisdiction to adjudicate the motion, as opposed to an alleged erroneous ruling in its exercise of jurisdiction under our General Statutes, rules of practice, or common-law principles. In the absence of a colorable challenge to the trial court's jurisdiction, there is no final judgment from which to appeal, and, therefore, the appeal must be dismissed for lack of appellate jurisdiction.

Having clarified the scope of the *Solomon* exception, we now address whether the present appeal falls within the parameters of that exception—that is, whether the defendants' claims on appeal raise a colorable challenge to the trial court's jurisdiction to adjudicate Pisani's motion to open and vacate the final judgment of dismissal. As previously explained, "[s]ubject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. . . . A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it." (Citation omitted; internal quotation marks omitted.) *Amodio* v. *Amodio*, supra, 247 Conn. 727–28; accord *Sousa* v. *Sousa*, supra, 322 Conn. 772. Trial

"[c]ourts have an inherent power to open, correct and modify . . . [a] civil judgment of the Superior Court" and, therefore, have general subject matter jurisdiction to adjudicate motions to open.[12] (Internal quotation marks omitted.) *Chapman Lumber, Inc.* v. *Tager*, 288 Conn. 69, 106, 952 A.2d 1 (2008). The limitations that §§ 52-212 and 52-212a and our rules of practice impose on the trial court's authority to open a judgment do not implicate the trial court's jurisdiction but, rather, its exercise of jurisdiction. See *Kim* v. *Magnotta*, supra, 249 Conn. 104; see also *Reinke* v. *Sing*, supra, 328 Conn. 390 (holding that trial court had jurisdiction "to entertain and determine the plaintiff's claim seeking a modification of the dissolution judgment" because, among other things, trial court has "plenary and general subject matter jurisdiction over dissolution actions"); *Ruiz* v. *Victory Properties, LLC*, 180 Conn. App. 818, 829, 184 A.3d 1254 (2018) ("courts of general jurisdiction have the inherent power to open, correct, or modify their own judgments, [but] the duration of this power is restricted by statute and rule of practice" (internal quotation marks omitted)). Indeed, we have recognized that a trial court has "inherent" power, "independent of [any] statutory provisions," to open a judgment "obtained by fraud, in the actual absence of consent, or by mutual mistake" at any time.[13] *Kenworthy* v. *Kenworthy*, 180 Conn. 129, 131, 429 A.2d 837 (1980).

[12] In criminal cases, by contrast, "a trial court loses jurisdiction upon the execution of the defendant's sentence, unless it is expressly authorized to act." *State* v. *McCoy*, 331 Conn. 561, 585, 206 A.3d 725 (2019).

[13] That is not to say that a trial court *always* has subject matter jurisdiction to adjudicate a motion to open a final judgment. For example, "[a] case that is nonjusticiable must be dismissed for lack of subject matter jurisdiction." (Internal quotation marks omitted.) *Chapman Lumber, Inc.* v. *Tager*, supra, 288 Conn. 86; see id. (noting that "[j]usticiability comprises several related doctrines, namely, standing, ripeness, mootness and the political question doctrine, that implicate a court's subject matter jurisdiction and its competency to adjudicate a particular matter" (emphasis omitted; internal quotation marks omitted)).

We return to the question of whether the defendants' appeal raises a colorable challenge to the jurisdiction of the trial court. The defendants claim that the trial court improperly granted Pisani's motion to open the judgment because (1) Pisani lacked standing, (2) the trial court failed in various ways to comply with the statutory requirements of § 52-212a, and (3) the alleged fraud was perpetrated by the plaintiff rather than the defendants. As the foregoing discussion should make clear, the defendants second and third claims challenge the trial court's statutory and common-law authority to grant the motion to open the judgment rather than its jurisdiction to adjudicate the motion, and, therefore, these claims will be dismissed for lack of a final judgment.[14] The defendants' first claim, however, raises a colorable challenge to the trial court's jurisdiction to adjudicate the motion in light of Pisani's alleged lack of standing, and, therefore, this claim is reviewable on appeal under the *Solomon* exception.

II

The defendants argue that Pisani lacked standing to move to open and vacate the final judgment of dismissal because he was not a party to the action. Pisani responds that, as the sole administrator of the decedent's estate, he had standing to move to open the judgment on behalf of the estate. We agree with Pisani.

Standing "implicate[s] a court's subject matter jurisdiction and its competency to adjudicate a particular matter." (Internal quotation marks omitted.) *Chapman Lumber, Inc.* v. *Tager*, supra, 288 Conn. 86. "A determination regarding a trial court's subject matter jurisdiction is a question of law" over which "our review is plenary . . . ." (Internal quotation marks omitted.)

[14] We express no opinion on the merits of the defendants' second and third claims on appeal because "[a]ppellate review of [these claims] must await a final judgment." *Cantoni* v. *Xerox Corp.*, supra, 251 Conn. 168.

Andross v. *West Hartford*, 285 Conn. 309, 321, 939 A.2d 1146 (2008).

"Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented. . . . These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity. Such a personal stake in the outcome of the controversy . . . provides the requisite assurance of concrete adverseness and diligent advocacy. . . . The requirement of directness between the injuries claimed by the plaintiff and the conduct of the defendant also is expressed, in our standing jurisprudence, by the focus on whether the plaintiff is the proper party to assert the claim at issue." (Internal quotation marks omitted.) Id., 322.

A movant has standing to open a final judgment if he or she is aggrieved by that judgment, that is, if the movant has a "specific, personal and legal interest in" the judgment that would be "specially and injuriously affected . . . ." (Internal quotation marks omitted.) Id.; see id. ("Classical aggrievement requires a two part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the [controversy], as opposed to a general interest that all members of the community share. . . . Second, the party must also show that the [alleged conduct] has specially and injuriously affected that specific personal or legal interest." (Internal quotation marks omitted.)); *Bruno* v. *Bruno*, 146 Conn. App. 214, 222–24, 228, 76 A.3d 725 (2013) (concluding that husband had standing

to file postdissolution motions to open contempt orders because he was aggrieved by those orders but that husband's current wife did not have standing because she was not aggrieved); *Ragin* v. *Lee*, 78 Conn. App. 848, 864, 829 A.2d 93 (2003) (holding that nonparty child to paternity action had standing to move to open judgment of paternity because child had "independent and fundamental interest in an accurate determination of his paternity"); see also General Statutes § 52-212 (a) (judgment may be opened "upon the complaint or written motion of any party or person prejudiced thereby"). It is undisputed that a plaintiff whose action has been dismissed for failure to prosecute with reasonable diligence is aggrieved by the entry of a final judgment of dismissal and, therefore, has standing to move to open the judgment of dismissal. The defendants claim that Pisani lacked standing, however, because he was not the named plaintiff at the time the trial court dismissed the action.

The record reflects that the original plaintiff was removed as administratrix of the decedent's estate and that Pisani was appointed as the sole administrator with full legal authority to prosecute all actions that had been initiated by the original plaintiff on behalf of the estate in her representative capacity. See General Statutes § 45a-242 (e) ("[a]ll suits in favor of or against the original fiduciary shall survive to and may be prosecuted by or against the person appointed to succeed such fiduciary"); see also General Statutes § 45a-315 (defining fiduciary to include "the executor or administrator of a decedent's estate"). As the replacement administrator, Pisani stepped into the shoes of the original plaintiff and acquired all of the rights and responsibilities that she had held in her representative capacity, including her aggrievement as a consequence of the dismissal of the present action instituted on behalf of the decedent's estate. We therefore conclude that Pisani

was the proper party to move to open and vacate the trial court's judgment of dismissal.[15] Once the judgment was opened, the trial court properly substituted Pisani as the plaintiff in the present action in accordance with § 45a-242 (e); cf. *Joblin* v. *LaBow*, 33 Conn. App. 365, 367, 635 A.2d 874 (1993) (recognizing that, when "judgment has been rendered . . . substitution is unavailable unless the judgment is opened"), cert. denied, 229 Conn. 912, 642 A.2d 1207 (1994); see also *Systematics, Inc.* v. *Forge Square Associates Ltd. Partnership*, 45 Conn. App. 614, 619, 697 A.2d 701 (same), cert. denied, 243 Conn. 907, 701 A.2d 337 (1997). Because our appellate jurisdiction here is limited to our review of the trial court's subject matter jurisdiction, we express no opinion on the merits of the defendants' other claims challenging the propriety of the trial court's order opening and vacating the final judgment of dismissal. See footnote 14 of this opinion. Appellate review of those claims must await a final judgment. In the present appeal, we reject only the defendants' claim that the trial court lacked subject matter jurisdiction to open and vacate the judgment.

[15] The defendants' reliance on *Hodkin* v. *Millan*, Superior Court, judicial district of Hartford, Docket No. CV-15-5039805-S (February 19, 2016) (61 Conn. L. Rptr. 817), to support their claim to the contrary is misplaced. In *Hodkin*, the plaintiff had filed an action against the defendant, Raymond Millan, in his representative capacity as the administrator of his daughter's estate. Id., 817. Millan moved to dismiss the action as moot because he was "no longer the administrator of the estate" and was "sued only in his capacity as administrator of the estate, and not in his individual capacity, and . . . he has resigned from that position and [another individual] has been appointed successor administrator." Id. The trial court agreed and dismissed the action as moot, reasoning that, under § 45a-242, "once [Millan] resigned as administrator, and a new administrator was appointed in August of 2015, the person appointed as the new administrator should have been substituted as a defendant in this matter if the plaintiff intended to continue to prosecute this action. This has not been done." Id. Consistent with *Hodkin*, we conclude that, upon the removal or resignation of an administrator under § 45a-242, the proper party to litigate an action filed by or against the original administrator in his or her representative capacity is the replacement administrator.

The appeal is dismissed except insofar as the defendants challenge the subject matter jurisdiction of the trial court to open the judgment and the case is remanded for further proceedings according to law.

In this opinion the other justices concurred.

OFFICE OF CHIEF DISCIPLINARY COUNSEL *v.* JOSEPHINE SMALLS MILLER (SC 20390)

Robinson, C. J., and Palmer, McDonald, Kahn and Vertefeuille, Js.

Syllabus

The plaintiff, the Office of Chief Disciplinary Counsel, filed a presentment alleging numerous incidents of misconduct by the defendant attorney, including violations of certain provisions of the Rules of Professional Conduct. The defendant raised two affirmative defenses, claiming that the recommendations of the chief disciplinary counsel and the decisions of the Statewide Grievance Committee concerning her alleged misconduct violated her constitutional rights because they were based on racially discriminatory and retaliatory reasons. The trial court rendered judgment suspending the defendant from the practice of law for one year, from which the defendant appealed. On appeal, the defendant claimed that the trial court's denial of her motion for articulation and the Appellate Court's refusal to order an articulation violated her due process rights, and that the trial court incorrectly concluded that she engaged in misconduct sufficient to warrant discipline and that her claims of racial discrimination and retaliation were not properly raised in the presentment hearing. *Held*:

1. The defendant's due process rights were not violated as a result of the trial court's denial of her motion for articulation or the Appellate Court's refusal to order an articulation; the trial court's memorandum of decision comprehensively set forth the factual and legal bases for the court's conclusions, and there was no ambiguity or deficiency in the memorandum of decision that would require articulation or prevent this court from reviewing the defendant's claims on appeal.
2. This court concluded, on the basis of its examination of the record and briefs, and its consideration of the parties' arguments, that the defendant's remaining claims, namely, that the trial court incorrectly concluded that she engaged in misconduct and that her claims of racial discrimination and retaliation were not properly raised in the presentment hearing, were resolved properly in the trial court's thorough and

well reasoned memorandum of decision, which this court adopted as a proper statement of the applicable law concerning those issues.

Argued January 23—officially released April 27, 2020*

Procedural History

Presentment by the plaintiff for alleged professional misconduct of the defendant, brought to the Superior Court in the judicial district of Danbury and tried to the court, *Shaban*, *J.*; judgment suspending the defendant from the practice of law for one year, from which the defendant appealed. *Affirmed.*

Josephine Smalls Miller, self-represented, the appellant (defendant).

Brian B. Staines, chief disciplinary counsel, for the appellee (plaintiff).

Opinion

PER CURIAM. In connection with the presentment filed by the plaintiff, the Office of Chief Disciplinary Counsel, alleging misconduct by the defendant attorney, Josephine Smalls Miller, the defendant appeals from the judgment of the trial court suspending her from the practice of law for one year for violating numerous provisions in the Rules of Professional Conduct. Following the trial court's judgment, the defendant filed a motion for articulation, which the trial court denied. The defendant filed a motion for review with the Appellate Court, which was granted, but that court denied any relief. On appeal, the defendant claims that (1) the trial court's refusal to articulate and the Appellate Court's refusal to order an articulation violate her due process rights, (2) the trial court incorrectly concluded that she engaged in misconduct sufficient to warrant any discipline, including suspension from the practice of law, and (3) the trial court incorrectly concluded

* April 27, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

that her claims of racial discrimination and retaliation were not properly raised in the presentment hearing.

The trial court's memorandum of decision sets forth a comprehensive recitation of the facts, which we summarize in relevant part. In March, 2018, the plaintiff filed a four count amended presentment against the defendant, alleging numerous incidents of misconduct. Count one alleged that the defendant violated rules 1.15 (a) (5) and (c) and 8.1 (2) of the Rules of Professional Conduct by depositing personal funds into her IOLTA[1] account and, thereafter, failing to timely or completely respond to the disciplinary counsel's lawful demand for information regarding the account. Count two alleged that the defendant violated rules 1.3, 3.2, and 8.4 (4) of the Rules of Professional Conduct by failing to appear for scheduled court matters on multiple occasions, which resulted in the dismissal of her clients' actions and claims. Count three alleged that the defendant violated rule 1.4 (a) (1), (2), (3), (4) and (5) and (b) of the Rules of Professional Conduct by failing to adequately communicate to her client certain limitations on her ability to represent the client before the Appellate Court given that the defendant was suspended from the practice of law before the Appellate Court at that time. Finally, count four alleged that the defendant violated rule 5.5 of the Rules of Professional Conduct when she engaged in the unauthorized practice of law by providing legal advice and drafting legal documents for a client relative to an Appellate Court matter while the defendant was suspended from practicing before that court. In her answer, the defendant raised two affirmative defenses, claiming that the recommendations of the chief disciplinary counsel and the decisions of the Statewide Grievance Committee were based on racially

[1] "IOLTA stands for 'interest on lawyers' trust accounts.' " *Disciplinary Counsel* v. *Hickey*, 328 Conn. 688, 692 n.2, 182 A.3d 1180 (2018).

discriminatory and retaliatory reasons, both in violation of her constitutional rights.

Following a three day hearing, the trial court issued a comprehensive memorandum of decision. The court granted the defendant's motion to dismiss count three insofar as it alleged violations of rule 1.4 (a) (1), (2), (3) and (4) of the Rules of Professional Conduct because the plaintiff conceded that it had not proven by clear and convincing evidence that the defendant violated those subdivisions. The court denied the defendant's motion as to the remaining allegations in count three and rendered judgment in favor of the plaintiff, finding by clear and convincing evidence that the defendant had violated the Rules of Professional Conduct as set forth in counts one through four and suspending the defendant from the practice of law for a total effective period of one year.[2] The court concluded that the defendant had failed to meet her burden of proof as to her special defenses, which, as alleged, were legally insufficient because they merely recited legal conclusions. The court also noted that the special defenses constituted an independent cause of action. The defendant appealed from the judgment of the trial court to the Appellate Court, and the appeal was transferred to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

The defendant's first claim on appeal arises out of the trial court's denial of her motion for articulation. Specifically, the defendant sought an articulation on twenty-seven "points," or issues, that she claimed were not fully addressed in the trial court's memorandum of decision. After the trial court denied the motion, the defendant filed a motion for review of the trial court's

[2] Specifically, the court ordered the following suspensions to run concurrently: thirty days as to count one, six months as to count two, one year as to count three, and one year as to count four.

denial with the Appellate Court. As already noted, the Appellate Court granted review but denied the requested relief. On appeal, the defendant argues that the trial court's denial of her motion violated her due process rights because she is left without the means to provide a full and complete record for this court to review. Neither party addresses the appropriate standard of review for this claim. Even reviewing the claim de novo, however, we are not persuaded that the defendant's due process rights were violated.

It is well settled that it "is the responsibility of the appellant to provide an adequate record for review." Practice Book § 61-10 (a). "The general purpose of [the relevant] rules of practice . . . [requiring the appellant to provide a sufficient record] is to ensure that there is a trial court record that is adequate for an informed appellate review of the various claims presented by the parties." (Internal quotation marks omitted.) *State* v. *Donald*, 325 Conn. 346, 353–54, 157 A.3d 1134 (2017). To ensure an adequate record, the appellant may move for articulation pursuant to Practice Book § 66-5.

On the basis of our review of the record and the briefs, and our consideration of the arguments of the parties, we conclude that the trial court's memorandum of decision comprehensively sets forth the factual and legal bases for its conclusions. There was no ambiguity or deficiency in the memorandum of decision that would require the trial court's articulation or prevent our review of the defendant's claims on appeal. See *In re Nevaeh W.*, 317 Conn. 723, 734, 120 A.3d 1177 (2015) ("[a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification" (internal quotation marks omitted)).

Moreover, the defendant's due process argument is unpersuasive given that, to the extent that there is ambi-

guity in a trial court's memorandum of decision, an appellate court may order articulation to ensure an adequate record for review. Practice Book § 61-10 (b) provides in relevant part: "If the court determines that articulation of the trial court decision is appropriate, it may, pursuant to Section 60-5, order articulation by the trial court within a specified time period. . . ." See also *In re Nevaeh W.*, supra, 317 Conn. 738. In the interest of judicial economy and the proper presentation of the issues on appeal, this court has repeatedly ordered the trial court to articulate either the factual or legal basis for its decision, and this court has relied on those articulations to resolve the issues on appeal. See id. (citing cases). Thus, even when the trial court refuses to articulate, this court is still empowered to order an articulation if we determine it is necessary to perfect the record for our review. As such, the denial of the defendant's motions for articulation and review does not constitute a violation of her due process rights.

With respect to the defendant's remaining claims—that the trial court incorrectly concluded both that she engaged in misconduct and that her claims of racial discrimination and retaliation were not properly raised in the presentment hearing—on the basis of our examination of the record and the briefs, and our consideration of the arguments of the parties, we are persuaded that the judgment of the trial court should be affirmed. The issues were resolved properly in the trial court's thorough and well reasoned memorandum of decision. See *Office of Chief Disciplinary Counsel* v. *Miller*, Superior Court, judicial district of Danbury, Docket No. CV-17-6022075-S (November 26, 2018) (reprinted at 335 Conn. 480, A.3d (2020)). Because that memorandum of decision fully addresses the second and third issues raised by the defendant in this appeal, we adopt it as a proper statement of the applicable law concerning those issues. It would serve no useful purpose for us

to repeat the discussion contained therein. See, e.g., *In re Application of Eberhart*, 267 Conn. 667, 668, 841 A.2d 217 (2004).

The judgment is affirmed.

APPENDIX

OFFICE OF CHIEF DISCIPLINARY COUNSEL *v.* JOSEPHINE SMALLS MILLER*

Superior Court, Judicial District of Danbury
File No. CV-17-6022075-S

Memorandum filed November 26, 2018

Proceedings

Memorandum of decision on presentment by petitioner for alleged professional misconduct of respondent. *Judgment for the petitioner.*

Josephine Smalls Miller, self-represented, the respondent.

Brian B. Staines, chief disciplinary counsel, for the petitioner.

Opinion

SHABAN, J.

I

PROCEDURAL HISTORY

In this action, the Office of Chief Disciplinary Counsel (petitioner) has filed an amended four count presentment against Attorney Josephine Smalls Miller (respondent) alleging misconduct (#108). Count one alleges

* Affirmed. *Office of Chief Disciplinary Counsel* v. *Miller*, 335 Conn. 474, A.3d (2020).

violations of rules 1.15 (a) (5) and (c)[1] (safekeeping property) and 8.1 (2) (bar admission and disciplinary matters) of the Rules of Professional Conduct. Count two alleges violations of rules 1.3 (diligence), 3.2 (expediting litigation), and 8.4 (4) (misconduct). Count three alleges violations of rule 1.4 (a) (1), (2), (3), (4) and (5) and (b) (communications). Count four alleges that with respect to General Statutes § 51-88 and Practice Book § 2-44A, the respondent violated rule 5.5 when she engaged in the unauthorized practice of law by providing legal advice and drafting legal documents for a client relative to an Appellate Court matter while under an order of suspension by that court.

The respondent filed an answer and raised two "affirmative defenses" (#109) which claim that the recommendations of the petitioner and the decisions of the Statewide Grievance Committee (SGC) were based on racially discriminatory and retaliatory reasons, both in violation of the respondent's constitutional rights.

The court held a hearing on the matter on June 25, 26 and 27, 2018, at which time the parties were heard and provided testimony and evidence. The parties stipulated to all of the petitioner's exhibits as being full exhibits. Following the hearing, the parties submitted posttrial briefs, the last of which was filed on August 27, 2018. On July 30, 2018, subsequent to the completion of the hearing, the respondent filed a "motion to conform pleadings to the proofs" (#123) which was in reality, by virtue of its text, a request to amend her affirmative defenses. The court has read the pleading liberally

[1] In paragraph 7 (b) of its complaint, the petitioner refers to a violation of "Rule 1.15c" although there is no such section in the Rules of Professional Conduct. However, during the presentment hearing and in its posttrial brief, the reference was made to rule 1.15 (c), which is substantively the section that was referred to and addressed by the parties. As such, it is clear the reference in the complaint is a scrivener's error and will be treated as such by the court.

pursuant to Practice Book § 1-8. Given that the petitioner filed no objection to it, the court considers the amendment to have become effective pursuant to Practice Book § 10-60 (a) (3).

II

STATEMENT OF LAW

The court has jurisdiction to hear such matters based on its inherent authority to discipline counsel, as well as pursuant to the provisions of Practice Book § 2-45. "It is fundamental that [t]he Superior Court possesses inherent authority to regulate attorney conduct and to discipline the members of the bar." (Internal quotation marks omitted.) *O'Brien* v. *Superior Court*, 105 Conn. App. 774, 783, 939 A.2d 1223, cert. denied, 287 Conn. 901, 947 A.2d 342 (2008). As to the standard of proof "in a matter involving attorney discipline, no sanction may be imposed unless a violation of the Rules of Professional Conduct has been established by clear and convincing evidence." *State* v. *Perez*, 276 Conn. 285, 307, 885 A.2d 178 (2005).

There are statutory provisions and rules of practice applicable to reviewing claims of attorney misconduct. General Statutes § 51-80 provides in relevant part: "The Superior Court may admit and cause to be sworn as attorneys such persons as are qualified therefor, in accordance with the rules established by the judges of the Superior Court. . . ." General Statutes § 51-84 (a) provides in relevant part: "Attorneys admitted by the Superior Court . . . shall be subject to the rules and orders of the courts before which they act." Practice Book § 2-47 (a) provides in relevant part: "Presentment of attorneys for misconduct . . . shall be made by written complaint of the disciplinary counsel. . . ."

Attorney "[d]isciplinary proceedings are for the purpose of preserving the courts from the official ministra-

tion of persons unfit to practice in them." (Internal quotation marks omitted.) *Statewide Grievance Committee* v. *Rozbicki*, 211 Conn. 232, 238, 558 A.2d 986 (1989); *Ex parte Wall*, 107 U.S. 265, 288, 2 S. Ct. 569, 27 L. Ed. 552 (1883); *Chief Disciplinary Counsel* v. *Rozbicki*, 150 Conn. App. 472, 478, 91 A.3d 932, cert. denied, 314 Conn. 931, 102 A.3d 83 (2014). An attorney, "as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him. His admission is upon the implied condition that his continued enjoyment of the right conferred is dependent upon his remaining a fit and safe person to exercise it, so that when he, by misconduct in any capacity, discloses that he has become or is an unfit of unsafe person to be entrusted with the responsibilities and obligations of an attorney, his right to continue in the enjoyment of his professional privilege may and ought to be declared forfeited." *In re Peck*, 88 Conn. 447, 450, 91 A. 274 (1914). Therefore, "[i]f a court disciplines an attorney, it does so not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." (Internal quotation marks omitted.) *Statewide Grievance Committee* v. *Botwick*, 226 Conn. 299, 307, 627 A.2d 901 (1993). An attorney "is an officer of the court . . . . Disciplinary proceedings not only concern the rights of the lawyer and the client, but also the rights of the public and the rights of the judiciary to ensure that lawyers uphold their unique position as officers . . . of the court. . . . An attorney must conduct himself or herself in a manner that comports with the proper functioning of the judicial system." (Internal quotation marks omitted.) *Notopoulos* v. *Statewide*

Grievance Committee, 277 Conn. 218, 232, 890 A.2d 509, cert. denied, 549 U.S. 823, 127 S. Ct. 157, 166 L. Ed. 2d 39 (2006); accord Rules of Professional Conduct, preamble.

"[A] hearing such as this is not the trial of a criminal or civil action or suit, but an investigation by the court into the conduct of one of its own officers, and that, therefore, while the complaint should be sufficiently informing to advise the . . . attorney of the charges made against [her], it is not required that it be marked by the same precision of statement, or conformity to the recognized formalities or technicalities of pleadings, as are expected in complaints in civil or criminal actions." (Internal quotation marks omitted.) *Burton* v. *Mottolese*, 267 Conn. 1, 20–21, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004).

III

In that the counts against the respondent involve allegations of violations of different provisions of the Rules of Professional Conduct, and some have facts seprate and apart from other counts, the court will address each count individually and set forth the facts it finds relevant to each specific count.

A

Count One—Grievance Complaint #15-0652

As to count one, the petitioner alleges violations of rules 1.15 (a) (5) and (c) (safekeeping property) and 8.1 (2) (bar admission and disciplinary matters) of the Rules of Professional Conduct. The respondent, juris number 422896, has been an attorney since 1980 and was admitted to practice law in Connecticut on June

14, 2004. [Tr. 2 57:3–12, Miller].[2] She has practiced as a solo practitioner during her career in Connecticut. [Tr. 2 57:22, Miller; Respondent's Ex. K].[3] During the relevant time of the grievance complaint, she maintained an IOLTA account at Webster Bank. [Tr. 2 58:3, Miller]. She did not maintain a separate business account. [Tr. 2 58:7, Miller]. She did maintain a personal checking account. [Tr. 2 58:8–10, Miller].

During her time as an attorney in Connecticut and while attending her church of choice, the respondent met and became friends with a woman by the name of Sharon Israel I Am, whom she described as her "church sister." [Tr. 2 58:14–25, Miller]. They remained friends until approximately 2006 or 2007, when Ms. I Am moved out of state. In May, 2013, after having little or no contact between them in the intervening years, the respondent was contacted by Ms. I Am. [Tr. 2 59:7–10, Miller]. Pleased to have heard from her friend, the respondent agreed that the two should meet and they did so. During this meeting at the respondent's office, Ms. I Am told the respondent that she had come into a large sum of money and wanted some advice on how best to handle it. [Tr. 2 59:14–19, Miller]. The respondent gave her advice in this respect and Ms. I Am offered her $5000 for the consultation, which the respondent at first declined but later accepted at Ms. I Am's insistence. [Tr. 2 60:7–17, Miller].

After the passage of a couple of weeks, Ms. I Am again contacted the respondent, saying she wanted to renew their friendship and asked that they meet at a

[2] "Tr. 1" refers to the June 25, 2018 morning transcript; "Miller" refers to the witness.

"Tr. 2" refers to the June 25, 2018 afternoon transcript.

"Tr. 3" refers to the June 26, 2018 transcript.

"Tr. 4" refers to the June 27, 2018 transcript.

[3] Conflicting with her testimony, her résumé states she was admitted in Connecticut in 2002.

local hotel, which they did. This was followed by several social visits. At a visit on or about May 27, 2013, Ms. I Am told the respondent that she wanted to "bless" her by giving her a gift of $200,000 and gave her a check dated May 27, 2013, payable to her in that amount. [Tr. 2 62:10–23, Miller; Petitioner's Ex. 5]. Ms. I Am placed no conditions or restrictions on the respondent's usage of the gift. [Tr. 2 63:13–15, Miller]. Although the funds were not related to any specific professional work done by the respondent for Ms. I Am, the respondent wrote her own name onto the check and deposited the funds into her IOLTA account on May 28, 2013. [Tr. 2 65:12–18, Miller; Petitioner's Ex. 5]. The respondent indicated her reason for placing the funds into the IOLTA account was that Ms. I Am was an "odd person." In doing so, the respondent comingled the gift funds with $14,587.59 of her clients' funds held in the IOLTA account.

Having received this unsolicited gift, the respondent decided to use ten percent (10%) of the funds to make a donation to her church, Community Temple. She testified "that any money that comes into my hands, I, as a matter of religious belief, pay a tithe on it." [Tr. 2 67:3–7, Miller]. On June 7, 2013, the respondent wrote check #1145 from her IOLTA account made payable to Josephine S. Miller in the amount of $10,000. [Tr. 2 66:23–25, Miller; Petitioner's Ex. 5]. The back of the check was endorsed to the order of Community Temple. On July 21, 2013, the respondent wrote a second check from her IOLTA account, #1118, made payable to Josephine S. Miller in the amount of $10,000, which was also endorsed to the order of Community Temple. [Tr. 2 67:16–20, Miller; Petitioner's Ex. 5]. Ms. I Am did not instruct or require the respondent to make any donation to her church at the time she made the gift to the respondent. [Tr. 2 67:24–68:1, Miller].

In August, 2013, approximately three months after the respondent's receipt of the gift, Ms. I Am contacted

the respondent. In her conversation with the respondent, Ms. I Am asked her to quit the practice of law, as she felt it was inconsistent with their religious beliefs. When the respondent declined, Ms. I Am requested the return of the $200,000 gift. [Tr. 2 68:9–69:2, Miller]. The respondent explained that she had made the donations to the church but that she would return the remaining $180,000 which she still held. On August 12, 2013, the respondent wrote a third check from her IOLTA account, #1134, made payable to Sharon Israel I Am in the amount of $180,000. [Petitioner's Ex. 5].

Following a complaint, a grievance was initiated against the respondent by the Danbury Judicial District Grievance Panel. Thereafter, the Grievance Panel for the Judicial District of Stamford/Norwalk notified the respondent by letter dated March 22, 2016, that on January 27, 2016, it had determined there was probable cause to believe that she was guilty of misconduct. [Petitioner's Exs. 7, 10]. At the presentment hearing, the respondent acknowledged the finding of probable cause. The letter issued by the panel advised the respondent that she had violated rule 1.15 (a) (4) and (5) of the Rules of Professional Conduct in that the gift funds provided by Ms. I Am were improperly deposited into the respondent's IOLTA account.[4] [Id.] On March 30, 2016, the petitioner sent a letter to the respondent which requested that she provide eight listed items so that the petitioner could conduct an audit of the IOLTA account. [Petitioner's Ex. 6]. The requested information, pursuant to rule 8.1 of the Rules of Professional Conduct, was to be provided within fourteen days and noted that "[y]our failure to comply with this demand will be considered professional misconduct and expose you to further disciplinary action." [Id.]

[4] The presentment to this court did not encompass rule 1.15 (a) (4) and therefore the court need not address it.

On June 9, 2016, a reviewing committee of the SGC conducted a hearing on complaint #15-0652 and issued a decision on November 18, 2016, finding clear and convincing evidence that the respondent knowingly failed to respond to the lawful demand for information from the disciplinary authority, noting that as of the date of that hearing, no documents had been submitted by the respondent. [Petitioner's Ex. 13].

At the presentment hearing before this court, the respondent submitted Respondent's Exhibit O, which included an e-mail dated June 22, 2016, from the petitioner acknowledging receipt of some of the documents originally requested on March 30, 2016. It also again asked for the IOLTA statements from the bank supporting the documents the respondent had belatedly forwarded. In her testimony, the respondent admitted that she did not timely or fully comply with the initial request. [Tr. 4 53:14–24, Miller]. She acknowledged that her reply was delivered not only eighty-four (84) days after the original request, but also after the reviewing committee had completed its hearing. [Tr. 4 53:4–10, Miller].

As to rule 1.15 (a) (5) of the Rules of Professional Conduct, the rule reads in relevant part: "An IOLTA account shall include only client or third person funds . . . ." Third person funds held by an attorney may only be placed in an IOLTA account in connection with the representation of a client.[5] The court finds by clear and convincing evidence that the respondent has violated rule 1.15 (a) (5). The $200,000 given to the respondent by Ms. I Am was an unconditional gift that was accepted by the respondent and became her personal property. She deposited those funds into her IOLTA account and

[5] Rule 1.15 (b) provides in relevant part: "A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. . . ."

exercised possession and control over them, evidenced by her issuing two separate $10,000 checks out of the account as donations to her church on June 7 and July 21, 2013. [Petitioner's Ex. 5]. The respondent characterized the transaction as an honest one that had no nefarious motive. In fact, the court finds that the respondent had no intent through this deposit to deceive anyone or deprive anyone of funds that otherwise rightfully belonged to them. However, the fact that the respondent returned the balance of the funds to the donor some several months later does not excuse her violation. At the time of the deposit, the funds did not belong to a client of the respondent and had no connection to the representation of a client. Rules of Professional Conduct 1.15 (b).

As to rule 1.15 (c), it provides: "A lawyer may deposit the lawyer's own funds in a client trust account for the sole purposes of paying bank service charges on that account or obtaining a waiver of fees and service charges on the account, but only in an amount necessary for those purposes." Given the facts found by the court as recited above, there is clear and convincing evidence the respondent has violated rule 1.15 (c) of the Rules of Professional Conduct. There was no evidence that the funds deposited were to pay bank service charges. Further, the amount deposited could not reasonably be thought to be for the purpose of covering such charges, as they were tremendously in excess of any amount necessary to do so.

As to rule 8.1 (2), it provides in relevant part that a lawyer in connection with a disciplinary matter shall not "knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority . . . ." The commentary to rule 8.1 provides that "it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the law-

yer's own conduct." From the facts recited above, the court finds by clear and convincing evidence that the respondent has violated rule 8.1 (2) of the Rules of Professional Conduct, in that after being advised of a probable cause finding against her, she failed to timely or completely respond to the disciplinary authority's lawful demand for information.

B

Count Two—Grievance Complaint #15-0688

As to count two, the petitioner alleges violations of rules 1.3 (diligence), 3.2 (expediting litigation) and 8.4 (4) (misconduct) of the Rules of Professional Conduct. The basis of the alleged violation stems from the respondent's conduct in several matters that were filed in the Superior Court. The facts as to each case will be set out separately and then the alleged violations shall be addressed on the basis of the respondent's actions in each case individually as well as collectively.

Ronald Stone v. *Bridgeport Board of Education*

In the matter of *Stone* v. *Board of Education*, Superior Court, judicial district of Fairfield, Docket No. CV-13-6032345-S, the respondent represented the plaintiff in a complaint alleging "adverse employment action because of the plaintiff's race and in retaliation for his having raised a complaint of discrimination." [Petitioner's Ex. 4]. On September 3, 2014, the court, *Bellis*, *J.*, dismissed the action based on the respondent's failure to appear at a status conference scheduled for that date. The dismissal was ordered after the respondent repeatedly failed to appear for status conferences, file pleadings, and respond to discovery. [Petitioner's Ex. 4, order dated February 26, 2015].

The respondent's repeated violations are outlined in the Bridgeport Board of Education's July 7, 2014 motion for nonsuit, sanctions and judgment of dismissal. [Peti-

tioner's Ex. 4]. On January 7, 2014, the court had ordered that the parties appear for a status conference on January 23, 2014. The defendant's counsel appeared but the respondent failed to attend. On February 21, 2014, the court again ordered the parties to attend a status conference, this time on March 13, 2014. On the day of the scheduled status conference, the respondent filed a caseflow request indicating she had a conflicting status conference involving a family case in the Superior Court at Hartford. [Petitioner's Ex. 4, Caseflow Request]. No action was taken on the request, thereby leaving the respondent compelled to appear in Bridgeport for the status conference, but she did not do so.

On March 19, 2014, the defendant filed a second amended motion for modification of scheduling order and sanctions because of the plaintiff's failure to appear for his deposition, despite numerous notices, and to attend court ordered status conferences. [Petitioner's Ex. 4]. On March 28, 2014, the court yet again ordered the parties to appear for a status conference on April 10, 2014, and indicated the defendant's motion would be heard on that date. The defendant's counsel appeared, but again the respondent did not appear. [Id.] Following her receipt of a call from the clerk's office that morning inquiring as to her whereabouts, the respondent arrived almost two hours late. [Id.] The court then held a hearing on the defendant's motion and made clear to the respondent that if she failed again to appear or meet a deadline, the court would dismiss the case. [Petitioner's Ex. 4, Transcript dated April 10, 2014 22:18–26].

On June 15, 2014, the respondent sent opposing counsel an e–mail indicating her availability for the deposition of the plaintiff on July 2, 2014. Based on that request, the defendant's counsel issued a deposition notice to the respondent confirming the scheduling of the deposition. [Petitioner's Ex. 4, exhibits E and F to

motion dated July 7, 2014]. This notice was followed up on July 1, 2014, by an e-mail to the respondent asking her to confirm the Stone deposition for the following day at 10 a.m. The respondent replied at 2 p.m. on July 1, 2014, that "we will need to reschedule as I became preoccupied with a trial and did not have tomorrow down. Can we do this next week perhaps July 11. I think I'm free. But will need to check with Mr. Stone." [Petitioner's Ex. 4, exhibit G to the motion dated July 7, 2014]. At the presentment hearing, the respondent testified that she believed she failed to insert the July 2, 2014 deposition date into her electronic calendar. [Tr. 2 81:22–27, Miller].

On June 6, 2014, the defendant filed an answer, special defenses and counterclaim. [Petitioner's Ex. 4]. The respondent failed to file an answer to the counterclaim, and the defendant thereafter filed a motion for default for failure to plead. [Petitioner's Ex. 4, motion dated June 11, 2014]. On July 7, 2014, the defendant filed a motion for nonsuit, sanctions and judgment of dismissal, which was set down for a hearing for September 3, 2014. On that date, the court, *Bellis*, *J.*, dismissed the action based on the respondent's repeated failures to appear in court. The respondent testified at the presentment hearing that she "had not noted the date of September 3 as the date for the status conference." [Tr. 2 84:1–2, Miller].

Following the dismissal of the case, the respondent filed a motion to open judgment of dismissal on November 28, 2014. [Petitioner's Ex. 4, motion]. The court scheduled a hearing on the motion for January 7, 2015. On December 31, 2014, the respondent filed a motion for continuance of the hearing, which was granted by the court, and the hearing was rescheduled to January 29, 2015. [Petitioner's Ex. 4, motion and order]. On January 28, 2015, the day before the hearing, the respondent filed a caseflow request indicating that she had a

deposition to attend on January 29, 2015, which had to be completed by January 31, 2015. [Petitioner's Ex. 4, caseflow request]. That request was denied by the court that same day. [Petitioner's Ex. 4, order]. The court had previously advised the respondent not to use a caseflow request to ask for a continuance as such a request needed to be made by proper motion.[6] Nevertheless, the respondent persisted in utilizing a caseflow request to seek continuances. At the hearing on the motion to open, the court set out on the record the respondent's history of nonappearance in the case. The respondent did not appear at the hearing and, as a result, was contacted and ordered to appear in court that afternoon, at which time she did appear. [Petitioner's Ex. 4, Transcript dated January 29, 2015].

On February 26, 2015, the court entered an order indicating that the respondent did not provide a good and compelling reason to open the judgment. The court held "given the pattern in this case the plaintiff's counsel filing caseflow requests rather than proper continuance requests, appearing hours late for scheduled events, and importantly, by repeatedly failing to appear for scheduled events, along with the [inexcusable] neglect of counsel leading to the dismissal of the case, the court cannot in good conscience find reasonable cause. As

[6] The respondent had done the same thing in the matter of *Miller* v. *Board of Education*, Superior Court, judicial district of Fairfield, Docket No. CV-10-6011406-S, in which she had sued to collect attorney's fees for representation of an employee of the defendant. The court had admonished her not to use a caseflow request form in seeking a continuance of the matter but, rather, to file a motion for continuance. On July 10, 2012, Judge Bellis dismissed that case because the respondent failed to appear for trial. The court, in ruling on a motion for reconsideration indicated "the plaintiff improperly filed a caseflow request rather than a proper motion for continuance. The present case was set down for a trial well over six months beforehand, a date the plaintiff selected." [Respondent's Ex. D]. At the presentment hearing, the respondent acknowledged in her testimony that she understood that to mean that she should not file a caseflow request when requesting a continuance. [Tr. 4 92:17–20, Miller].

such the motion to open is denied." [Petitioner's Ex. 4, order]. When questioned at the presentment hearing as to the reasons why she did not appear at the various scheduled events, the respondent repeatedly replied with words to the effect of "I don't know at this time." [Tr. 2 73:14, 74:7, 74:10, 75:5, 75:8, 76:20, Miller].

The dismissal of the case was not appealed.

Gabor Meszaros v. *Leonard Banks*

In the matter of *Meszaros* v. *Banks*, Superior Court, judicial district of Fairfield, Docket No. CV-12-6027816-S, a Bridgeport police officer brought a claim against the defendant for injuries suffered in a motor vehicle accident. [Petitioner's Ex. 3, docket sheet]. The respondent filed a counterclaim on behalf of the defendant alleging that the plaintiff was responsible for the defendant's personal injuries. [Tr. 3 35:9–15, Miller]. The case was scheduled to begin jury selection on September 9, 2014. [Tr. 3 36:20–24, Miller]. On September 8, 2014, the plaintiff's attorney filed a motion for continuance for the reason that he had a funeral to attend. The motion was granted that same date. In addition, the respondent had a pretrial conference in Waterbury scheduled for September 11, 2014. As a result, the parties agreed that jury selection would begin at noon on September 11, 2014. [Tr. 3 37:22–24, Miller]. That morning, the respondent attended the pretrial conference at the Waterbury Superior Court. [Tr. 3 38:3–9, Miller]. She remained there until approximately 11 a.m., but then drove to Danbury, claiming she was not feeling well. [Tr. 3 38:23–27, Miller]. Upon returning to her office in Danbury, the respondent filed a caseflow request with the court, stating: "Counsel for defendant Leonard Banks required to seek medical treatment from primary care physician. Continuance is sought until after medical appointment on September 11, 2014." [Petitioner's Ex. 3; caseflow request dated September 11, 2014; Tr. 3 39:13–16,

Miller]. Upon failing to appear for the commencement of jury selection, the court, *Bellis, J.*, entered an order dismissing the counterclaim. [Petitioner's Ex. 3, Obj. to Motion to Open, exhibit E]. Despite her claim of illness, the respondent filed various pleadings in *different* cases that same day, including a caseflow request, certificate of closed pleadings, and an objection to a motion for summary judgment. [Petitioner's Ex. 3, Obj. to Motion to Open, exhibit H].

On January 8, 2015, 119 days after the entry of the dismissal, the respondent filed a motion to open judgment of dismissal. [Petitioner's Ex. 3]. A hearing on the motion was scheduled for February 25, 2015. The respondent failed to appear to pursue her motion. As a result, the court entered the following order: "Counsel for the counterclaim plaintiff (Attorney Miller) failed to appear for the hearing on her motion to open dismissal, despite the fact that written notice was sent by the court. Counsel for the counterclaim defendant (Attorney Edwards) appeared on time, and the court instructed Attorney Edwards to call Attorney Miller. Attorney Edwards represented, on the record, that pursuant to the court's instructions, she did call Attorney Miller, who told her that she thought the hearing was next week, and that furthermore, her pipes had burst. No continuance request was filed by Attorney Miller, nor did Attorney Miller contact the court until after she was called by Attorney Edwards. The court finds that Attorney Miller, who repeatedly fails to appear for scheduled court events, waived her right to argument on the motion to open, and the court, having reviewed all the filings, denies the motion to open on the papers. . . . There is simply no good cause to grant Attorney Miller's motion. . . . For these reasons, the motion to open is denied. Due to Attorney Miller's consistent failure to appear in court on her various cases, as well as her continued insistence on filing last-minute 'caseflow

requests' rather than proper motions for continuance, the court will not entertain a motion to reconsider or reargue this motion." [Petitioner's Ex. 3, order February 25, 2018]. The respondent testified that she had believed that the hearing was scheduled for the following week. No appeal was taken from the court's order dismissing the case.

At the presentment hearing, the respondent testified as to the circumstances of her illness and her condition that prevented her from appearing at the September 11, 2014 commencement of jury selection in the *Meszaros* v. *Banks* matter and the subsequent February 25, 2015 hearing on the motion to open judgment. Specifically, she recounted that her condition was such that she required bed rest. However, under questioning by the Hon. Vanessa L. Bryant in the federal court matter of *Smith* v. *Dept. of Correction*, United States District Court, Docket No. 13-CV-8L8 (VLB) (D. Conn.), the respondent conceded that she was not diagnosed with any medical condition until September 15, 2014, and that she had not been prescribed bed rest by any physician. [Petitioner's Ex. 3, objection to motion to open]. In that same case, the respondent had filed an affidavit dated November 5, 2014, that addressed her health. Paragraph 14 of the affidavit reads as follows: "As a consequence of this health issue, many work matters have been delayed. My seventeen day trip outside of the country on an evangelistic and preaching mission (July 31 through August 17) also meant that many matters accumulated during my absence that required work upon my return. When added to new matters that accumulated while I was on medical rest the work has not yet been caught up." [Respondent's Ex. M].

As to rule 1.3 of the Rules of Professional Conduct, it provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." The commentary to this rule provides that "[a] lawyer must

also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. . . . A lawyer's work load must be controlled so that each matter can be handled competently."

Her multiple failures to appear for scheduled court matters in both the *Stone* and *Meszaros* matters reveal a pattern of both negligence and intentional avoidance of such matters, often to the detriment of her clients. In *Stone*, status conferences had to be rescheduled numerous times. The defendant was prevented from taking the deposition of the plaintiff because the respondent cancelled scheduled dates on very short notice, causing inconvenience to opposing counsel and parties. In *Meszaros*, the respondent waited until literally the next to last day before filing the motion to open dismissal. Even accounting for the respondent's credible testimony that the delay was partly due to the respondent seeking to obtain other counsel for her client, the court can make a reasonable inference from the facts above that the respondent's workload, regardless of its size, exceeded her capacity to timely attend court appearances. This led to multiple dismissals of her clients' cases. The commentary to rule 1.3 states that "[a] client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances . . . the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness." Needless to say, it also undermines the public's respect for the judicial system. The court finds from the facts above that there is clear and convincing evidence that the respondent has committed a violation of rule 1.3 of the Rules of Professional Conduct.

As to rule 3.2, relative to expediting litigation, it states that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." The commentary to that rule provides that "[d]ilatory practices bring the administration of justice into disrepute. . . . It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay." The facts set forth above relative to the allegations of count two are replete with evidence of the respondent's repeated failure to attend scheduled court conferences, hearings, depositions, etc., that caused undue delay in the progress of multiple cases. The court finds from the facts above that the respondent not only delayed and frustrated the attempts of the court and opposing parties to obtain a timely resolution of the matters pending before the court, but also failed to make reasonable efforts to expedite litigation consistent with the interests of her own clients. Accordingly, there is clear and convincing evidence that the respondent committed a violation of rule 3.2 of the Rules of Professional Conduct.

Rule 8.4 of the Rules of Professional Conduct provides in part that "[i]t is professional misconduct for a lawyer to," among other things, "(4) [e]ngage in conduct that is prejudicial to the administration of justice . . . ." "It is well established that members of the bar [must] conduct themselves in a manner compatible with the role of courts in the administration of justice." (Internal quotation marks omitted.) *Notopoulos* v. *Statewide Grievance Committee*, supra, 277 Conn. 235. The respondent's lack of diligence, which as noted above was in some cases either negligent or an intentional avoidance of her various obligations, led to the dismissal of her clients' matters. This conduct was certainly prejudicial to the administration of justice in that

it not only impeded the ability of the court and opposing counsel to timely dispose of pending matters, it specifically resulted in the dismissal of her own clients' matters without a hearing on the merits. This is particularly noteworthy with respect to this rule as the respondent was specifically forewarned by the court that continued failure to appear in court as scheduled or to meet a court deadline would result in dismissal of her client's case. [Petitioner's Ex. 4, transcript]. The court finds from the facts above that there is clear and convincing evidence that the respondent has committed a violation of rule 8.4 (4) of the Rules of Professional Conduct.

C

Count Three—Grievance Complaint #17-0405

As to count three, the petitioner has alleged that the respondent violated rule 1.4 (a) (1), (2), (3), (4) and (5), as well as rule 1.4 (b) of the Rules of Professional Conduct, all of which relate to communications with one's client. Upon completion of the presentation of the petitioner's evidence, the respondent moved the court to dismiss count three on the basis that the petitioner had failed to put forth any evidence to establish a violation of those rules.[7] Though not specifically addressing that standard, the petitioner conceded that it had not set forth sufficient evidence to prove by clear and convincing evidence that the respondent had violated rule 1.4 (a) (1), (2), (3) and (4). It did however claim that there was sufficient evidence to proceed as to rule 1.4 (a) (5) and (b). The court, having reserved decision on the respondent's motion, hereby grants the motion as to rule 1.4 (a) (1), (2), (3) and (4) and denies it as to rule 1.4 (a) (5) and (b).

[7] Though not cited by the respondent, the court took the position that her motion was based upon the standard set forth in Practice Book § 15-8 for regular civil court cases that allows a party to seek a dismissal of a case where a plaintiff has failed to make out a prima facie case upon the conclusion of its evidence and has rested.

Rule 1.4 (a) states in relevant part that "[a] lawyer shall . . . (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law." Rule 1.4 (b) provides that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." The respondent has admitted in her pleadings that the Danbury Judicial Grievance Panel made a finding of probable cause against her relative to a complaint brought against her by Jasmine Williams and that any action for an order of presentment was to be consolidated with the other pending matters that are the subject of this action.

The court finds the following facts as to this count. On December 9, 2014, the Appellate Court in *Coble* v. *Board of Education*, *Willis* v. *Community Health Services*, *Inc.*, *Addo* v. *Rattray*, and *Cimmino* v. *Marcoccia* entered an order that read as follows: "After reviewing Attorney Josephine Smalls Miller's conduct in [*Coble* v. *Board of Education*, AC 36677, *Willis* v. *Community Health Services*, *Inc.*, AC 36955, *Cimmino* v. *Marcoccia*, AC 35944, and *Addo* v. *Rattray*, AC 36837], the Appellate Court has determined that Attorney Josephine Smalls Miller has exhibited a persistent pattern of irresponsibility in handling her professional obligations before this court. Attorney [Josephine] Smalls Miller's conduct has included the filing of frivolous appeals and the failure to file, or to file in timely and appropriate fashion, all documents and materials necessary for the perfection and prosecution of appeals before this court.

"Attorney Josephine Smalls Miller's conduct before this court has threatened the vital interests of her own clients while consuming an inordinate amount of this court's time and her opponents' resources. Attorney Josephine Smalls Miller has neither accepted personal

responsibility for the aforesaid conduct nor offered this court any assurance that such conduct will not be repeated, based upon either her commitment to improving her knowledge of appellate practice and procedure or her institution of changes in her law practice to monitor her cases more effectively and ensure timely compliance with our rules of procedure.

"IT IS HEREBY ORDERED THAT:

"1. Attorney Josephine Smalls Miller is suspended from practice before this court in all cases, except for the case of [*Addo* v. *Rattray*], AC 36837, effective immediately for a period of six months from issuance of notice of this order until June 9, 2015.

"2. After June 9, 2015, Attorney Josephine Smalls Miller may not represent any client before this court until she files a motion for reinstatement and that motion has been granted. The motion for reinstatement shall not be filed until after June 9, 2015. Any motion for reinstatement shall include a personal affidavit in which Attorney Josephine Smalls Miller:

"A) Commits herself to discharging her professional responsibilities before this court in a timely and professional manner;

"B) Provides documentary proof of successful completion of a seminar on legal ethics and a seminar on Connecticut appellate procedure;

"C) Documents any other efforts since the date of this order to improve her knowledge of appellate practice and procedure; and

"D) Offers this court detailed, persuasive assurances that she has implemented changes in her law practice designed to ensure full compliance with the rules of appellate procedure including a written plan indicating what procedures she has implemented in her office to

ensure her compliance with the appellate rules and procedures and to protect her clients' interests.

"3. After June 9, 2015, upon the filing and granting of a motion for reinstatement, Attorney Josephine Smalls Miller may resume the practice of law before the Appellate Court if she is otherwise qualified to practice law in the courts of this state.

"4. The Appellate Court Clerk's Office is directed not to accept for filing and to return any documents filed in violation of this order.

"5. If Attorney Josephine Smalls Miller violates the provisions of this order she is subject to further sanctions.

"It is further ordered that these matters are referred to the Chief Disciplinary Counsel for review and further action as it is deemed appropriate." [Petitioner's Ex. 1; Respondent's Ex. A].

The respondent filed a writ of error to the Connecticut Supreme Court to challenge the order. The writ was dismissed on April 5, 2016. [Tr. 3 58:5–8, Miller].

In October, 2016, the respondent met with Jasmine Williams (Williams). [Tr. 3 44:26–27, Miller]. In a child protection action in the Superior Court, Williams' parental rights to her two minor children had been terminated. Seeking review of the judgment, she retained Attorney James Hardy (Hardy) to file an appeal on her behalf. Hardy attempted to file the appeal but failed to make payment of the necessary filing fee. As a result, that appeal was dismissed by the Appellate Court. Thereafter, Hardy filed a second appeal seeking the same review. The Office of the Attorney General filed an appearance on behalf of the state of Connecticut and moved to have that appeal dismissed also. [Tr. 3 45:12–25, Miller]. At that point in time, Hardy referred Williams to the respondent. He credibly testified as to

his reason for doing so: "I had explained to Ms. Williams that although I have handled some appellate matters previously in the past, it—it doesn't make up a majority of my practice, and I had indicated to her that I thought because of Attorney Miller's supreme knowledge with respect to appellate matters and her expertise and skill set, that she would be better suited at the very least to assist us in filing the appeal." [Tr. 2 6:21–27, Hardy]. He also told Williams that the respondent's involvement would not include going to court but would be primarily behind the scenes by assisting with the preparation and drafting of documents. In meeting with Williams, the respondent understood the purpose for which Williams had come to see her. "Well, I knew from Attorney Hardy that he wanted me to take whatever steps were necessary to try to resurrect this appeal that Ms.—you know, had been rejected and that he had to refile." [Tr. 3 46:9–12, Miller]. The respondent presented Williams with a retainer agreement which was signed on October 1, 2016. [Tr. 3 47:2–4, Miller; Petitioner's Ex. 9]. That agreement provided in relevant part: "Jasmine Williams . . . retains Attorney Miller to represent her with respect to the following: A juvenile court termination of parental rights appeal. This agreement contemplates that Attorney Miller will provide legal services at the appellate court level, specifically reviewing of the relevant trial transcripts, documents, and orders, and drafting of the appellate brief. Attorney James Hardy will be responsible for oral argument of the case." [Petitioner's Ex. 9]. Further, in her answer to the grievance complaint that led to the current presentment, the respondent acknowledged that "[Williams] signed a retainer agreement at that time and paid an initial amount of $2000 toward an estimated cost of $10,000 to fully prosecute the appeal." [Petitioner's Ex. 8].

Even prior to the execution of the agreement, by August or September of 2016, the respondent assisted

Hardy with the appeal by drafting a pleading entitled appellant's objection to petitioner/appellee's motion to dismiss dated September 22, 2016. [Petitioner's Ex. 12]. Thereafter, pursuant to the retainer agreement, the respondent reviewed the forty-five page Superior Court decision, as well as client notes and documents provided by Hardy. [Tr. 3 50:3–14, Miller]. She continued to assist Hardy and Williams with the appeal by drafting a motion for reconsideration of the Appellate Court's granting of a motion to dismiss and forwarded it to Hardy for him to file in the Appellate Court. She also advised Hardy and Williams that a motion for permission to file a late appeal should be pursued. Based on that advice, she drafted the motion dated December 6, 2016, and again forwarded it to Hardy for filing under his letterhead. [Tr. 3 51:21–27, Miller; Petitioner's Ex. 12]. Following a ruling from the Appellate Court denying the motion for permission to do the late filing, the respondent met with Williams to consider other legal options. [Tr. 3 53:15–25, Miller; Petitioner's Ex. 9; Respondent's Ex. U].

At the time of the execution of the retainer letter with Williams, the respondent knew she had been suspended by the Appellate Court from representing clients in that court.[8] The information as to the limitation on her ability to practice before the Appellate Court was not found within any of the terms of the written retainer agreement. Although the retainer agreement indicated Hardy would be responsible for oral argument, this does not excuse the respondent's failure to completely provide all relevant information to Williams that would enable her to make an informed decision regarding the

[8] In fact, the court later clarified the respondent's status with that court by a second order of February 15, 2018, which specifically stated she could not represent any clients in the court. The respondent had contended that the original December 9, 2014 order only prohibited her from *appearing* before the Appellate Court.

respondent's representation of her. At the presentment hearing, the respondent credibly testified that she orally advised Williams that there were some restrictions on her ability to represent her before the Appellate Court. However, her oral advisement was completely inconsistent with the express terms of the retainer letter, which made no reference whatsoever as to any limitations placed upon her by the Appellate Court. Such conflicting information made it impossible for Williams to make an informed decision regarding the respondent's representation of her. The tangible impact of this was exemplified through the respondent's inability to file an appearance in the Appellate Court on Williams' behalf. Because of this, the respondent did not receive any notices from the Appellate Court relative to the case and had to rely upon Hardy for information as to the status of the case. After traveling out of the country to Africa for several weeks from late December, 2016, to sometime in January, 2017, it was only upon her return that she learned from Hardy that the motion to file a late appeal had been denied. By the time the respondent could consult with Williams, the period to seek any further appeal to the Supreme Court had passed.

Notably, Hardy also testified at the hearing that he and the respondent had been involved in a similar arrangement relative to an appeal to the Appellate Court involving an individual by the name of Darric M.[9] [Tr. 2 22:21–23:4, 48:10–50:2, 51:5–52:11, Hardy]. In that instance, while the respondent was under suspension by the Appellate Court, it was agreed that Hardy would file the appearance with the court and physically appear while the respondent would do work similar to what was described relative to the Williams matter. This,

[9] The court takes judicial notice of the matter of *Jordan M.* v. *Darric M.*, Superior Court, judicial district of New Haven, Docket No. FA-15-4066531-S, as well as the Appellate Court case, *Jordan M.* v. *Darric M.*, 168 Conn. App. 314, 146 A.3d 1041, cert. denied, 324 Conn. 902, 151 A.3d 1287 (2016).

along with the rest of Hardy's testimony, the court finds credible.

From the facts above, the court finds that there is clear and convincing evidence that the respondent has committed a violation of rule 1.4 (a) (5) and (b) of the Rules of Professional Conduct.

D

Count Four

As to count four, the petitioner alleges the respondent engaged in the unauthorized practice of law in violation of rule 5.5 of the Rules of Professional Conduct, which states in relevant part: "(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. The practice of law in this jurisdiction is defined in Practice Book Section 2-44A. . . ."[10]

The facts relative to count four are the same as those set forth in count three above and clearly support a

[10] Practice Book § 2-44A provides in relevant part: "(a) General Definition: The practice of law is ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person. This includes, but is not limited to:

"(1) Holding oneself out in any manner as an attorney, lawyer, counselor, advisor or in any other capacity which directly or indirectly represents that such person is either (a) qualified or capable of performing or (b) is engaged in the business or activity of performing any act constituting the practice of law as herein defined.

"(2) Giving advice or counsel to persons concerning or with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or liabilities.

"(3) Drafting any legal document or agreement involving or affecting the legal rights of a person.

* * *

"(6) Engaging in any other act which may indicate an occurrence of the authorized practice of law in the state of Connecticut as established by case law, statute, ruling or other authority.

" 'Documents' includes, but is not limited to . . . pleadings and any other papers incident to legal actions and special proceedings. . . ."

violation of rule 5.5. The Appellate Court's order of December 9, 2014, as supplemented by its order of February 15, 2018, suspended the respondent from practicing and representing any individuals before the court (with one exception) until she had met the conditions set out for reinstatement. The respondent has acknowledged that she had not been reinstated by the court at any time prior to the presentment hearing. She also acknowledged that, while under suspension, she did work for Williams relative to her appeal in the Appellate Court, including, but not limited to, the review of notes and documents, legal research, drafting pleadings, and providing legal advice. Specifically, the retainer letter prepared by the respondent and executed by Williams stated that "[t]his agreement contemplates that Attorney Miller will provide legal services at the Appellate Court level." [Petitioner's Ex. 9]. This language was placed in the agreement despite the express order of the Appellate Court which provided that "Attorney Josephine Smalls Miller is suspended from practice before this court in all cases" and further provided that "[a]fter June 9, 2015, Attorney Josephine Smalls Miller may not represent any client before this court until she files a motion for reinstatement and that motion has been granted."[11] [Petitioner's Ex. 1].

The court finds that the petitioner has established by clear and convincing evidence that the respondent has violated rule 5.5 of the Rules of Professional Conduct

[11] On February 15, 2018, the Appellate Court issued an order clarifying its order of December 9, 2014, by stating that the original order precluded "Attorney [Josephine] Smalls Miller from providing legal services of any kind in connection with any Connecticut Appellate Court matter until she files a motion for reinstatement and that motion has been granted." At the presentment hearing, the respondent acknowledged that this order did clarify the original order. However, the latter order is not necessary for a finding of a violation of rule 5.5, or any other rule, as the facts are sufficient to establish a violation of the rules based on the language of the original order alone. [Petitioner's Ex. 2].

by engaging in the unauthorized practice of law as defined in Practice Book § 2-44A.

IV

THE RESPONDENT'S AFFIRMATIVE DEFENSES

The respondent has raised two amended affirmative defenses to the allegations of the amended presentment complaint. Specifically, the respondent contends that the recommendations of the petitioner and/or the decisions of the SGC were based upon both racially discriminatory and retaliatory reasons in violation of the respondent's constitutional rights under the fourteenth amendment to the United States constitution and article first, § 20, of the Connecticut constitution.

Special defenses are appropriate in a disciplinary hearing. See *Statewide Grievance Committee* v. *Presnick*, 216 Conn. 135, 139, 577 A.2d 1058 (1990) ("[d]espite its sui generis character, we see no reason why a presentment should proceed in a piecemeal fashion and why basic concepts of res judicata are not equally applicable to presentment proceedings"). The respondent's attempt to raise these special defenses, however, is unavailing. While this is not a regular civil proceeding, a review of Practice Book § 10-50 would be instructive in this regard. The purpose of a special defense is to set forth facts that "show that the [petitioner's] statements of fact are untrue." It can also be used to set forth facts that are consistent with such statements but show nonetheless that the petitioner has no cause of action.[12] The respondent's special defenses fail to do

[12] Practice Book § 10-50 provides: "No facts may be proved under either a general or special denial except such as show that the plaintiff's statements of fact are untrue. Facts which are consistent with such statements but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged. Thus, accord and satisfaction, arbitration and award, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded, while advantage may be taken, under a simple

either. They simply recite legal conclusions of racial discrimination or retaliation unsupported by any factual allegations, and such conclusory allegations are insufficient to properly plead a special defense. See *Vendor Resource Management* v. *Estate of Zackowski*, Superior Court, judicial district of Middlesex, Docket No. CV-17-6016941-S (August 10, 2017) (*Vitale, J.*). It has long been held that special defenses must allege facts which the proponent then has the burden to prove. See *Kaye* v. *Housman*, 184 Conn. App. 808, 817, 195 A.3d 1168 (2018).

Moreover, the allegations of her affirmative defenses do not actually constitute a special defense; instead, they constitute an independent cause of action through which the respondent can seek specific damages or other relief. See, e.g., *Sovereign Bank* v. *Harrison*, 184 Conn. App. 436, 444, 194 A.3d 1284 (2018); *Mitchell* v. *Guardian Systems, Inc.*, 72 Conn. App. 158, 167 and n.6, 804 A.2d 1004, cert. denied, 262 Conn. 903, 810 A.2d 269 (2002). "Although a counterclaim is similar to a special defense in that both are employed by a defendant to diminish or defeat a plaintiff's claim, they nonetheless are separate and distinct types of pleadings. . . . The heart of the distinction is that a counterclaim is an independent cause of action, and a special defense is not. See *Historic District Commission* v. *Sciame*, 152 Conn. App. 161, 176, 99 A.3d 207 (a counterclaim is a cause of action . . . on which the defendant might have secured affirmative relief had he sued the plaintiff in a separate action . . .), cert. denied, 314 Conn. 933, 102 A.3d 84 (2014); *Valentine* v. *LaBow*, [95 Conn. App. 436, 447 n.10, 897 A.2d 624 (a special defense is not an independent action), cert. denied, 280 Conn. 933, 909 A.2d 963 (2006)]. . . . [A] special defense operates as a shield, to defeat a cause of action, and not as a sword,

denial, of such matters as the statute of frauds, or title in a third person to what the plaintiff sues upon or alleges to be the plaintiff's own."

to seek a judicial remedy for a wrong . . . .'' (Citations omitted; internal quotation marks omitted.) *Sovereign Bank* v. *Harrison*, supra, 444.

In fact, at the presentment hearing, the respondent presented evidence through her witness Rebecca Johnson that she has in fact done so. In *Johnson* v. *Carrasquilla*, United States District Court, Docket No. 3:17-CV-01429 (MPS) (D. Conn.), the respondent is a coplaintiff who has brought an action against Karyl Carrasquilla as Chief Disciplinary Counsel and Michael Bowler as Bar Counsel for the SGC, alleging that ''Johnson and Miller have been targeted by the attorney discipline authorities in a racially discriminatory manner, and in part because of their civil rights litigation practice.'' [See Respondent's Ex. N, § 27]. In the complaint, the respondent makes the same arguments and allegations that she presented in her testimony and pleadings to this court as part of the presentment hearing. That federal complaint goes into considerable detail relative to her claim of disparate treatment by the disciplinary authorities relative to herself, Rebecca Johnson and other African-American attorneys as compared to the treatment given to Caucasian attorneys engaging in what they describe as similar conduct. From a review of that complaint, it is clear that even if the respondent's special defenses are not viable in the presentment hearing, she will not be prejudiced if precluded from pursuing them as she has already exercised her right to relief from and for such treatment in a prior pending claim in federal court. Indeed, the fact that the respondent has brought an action based on these allegations only reinforces the court's conclusion that her ''affirmative defenses'' are not proper special defenses.

In the matter now before this court, the respondent has, through her own testimony and that of Rebecca Johnson, set forth a lengthy recitation of the conduct that they engaged in which led to disciplinary action

against them compared to the similar conduct of Caucasian attorneys who received no discipline. The respondent particularly referenced her own attempts to have the disciplinary counsel or the SGC investigate complaints against Caucasian attorneys only to have the disciplinary authorities refuse to do so. [Tr. 3 103:1–23, 124:27–125:22, 127:1–135:4; Tr. 4 7:5–11:13, Miller]. However, the respondent's own testimony made clear that upon the respondent's informal presentation of a September 1, 2015 letter and materials containing information relative to the possible misconduct of other attorneys, the disciplinary authorities responded with a September 4, 2015 letter detailing the proper process for lodging such a complaint and advising the respondent that she was free to resubmit it. [Respondent's Ex. S]. That letter provided in relevant part:

"In your letter, you 'ask that these matters be investigated as soon as possible.' If you have evidence of attorney misconduct, you are welcome to file grievance complaints, as you already have done regarding two of the attorneys mentioned in your documents. Any additional grievance complaints which you file will be processed in accordance with Practice Book § 2-32 (a).

"Alternatively, you can submit to our office information you have regarding any alleged attorney misconduct, along with supporting documentation. Our office will then determine whether the information and documentation are sufficient to support a referral of the misconduct to a grievance panel. If so, the grievance panel to which any such referral is made will then investigate the allegations and make a determination as to whether a grievance complaint should be filed. Please note, however, that any such submissions by you should address the alleged misconduct of any such attorney in a separate and individual filing, to allow the consideration of each matter to be conducted without reference to irrelevant and immaterial allegations regarding other

attorneys." [Respondent's Ex. S]. This is clearly contrary to her claim at the hearing, and as addressed in her posthearing brief, that disciplinary authorities refused to investigate. Moreover, there is no evidence that she ever resubmitted the materials consistent with the provisions of Practice Book § 2-32 (a).

Again, the defenses raised by the respondent are not properly before the court in this proceeding and, further, would fail even if they were properly before the court because she has failed to meet her burden of proof in this regard.[13]

V

DISCIPLINE

Pursuant to Practice Book § 2-47 (a), if the court finds following a presentment hearing that an attorney has violated the Rules of Professional Conduct, it may impose a "reprimand, suspension for a period of time, disbarment or such other discipline as the court deems

[13] The respondent spent a considerable portion of her time at the hearing addressing the claim of disparate treatment. She presented her own testimony, that of Rebecca Johnson, and cross-examined witnesses Attorney Michael Bayone and Attorney Betsy Ingraham on the issue. However, her focus on this issue did nothing to address or rebut the allegations contained in the four counts of the presentment. For example, she claims in part that cases were dismissed because she used a caseflow request form to ask for a continuance of a trial date instead of a motion for continuance form. This, however, ignores the ample evidence that there were multiple other reasons that collectively led to the dismissals and it was not based solely on her use of a caseflow request form. She also claimed that when she confronted a judge, claiming that ex parte communications were held between that judge and opposing counsel, the judge failed to respond and such silence constituted an admission on the judge's part. This of course is of no moment as the judge was not a party or witness in the proceeding and therefore was not subject to questioning or any obligation to answer a question posed. The respondent has gone so far as to uniquely characterize her view of the motive behind her treatment by disciplinary authorities. On page 15 of her posthearing brief, the respondent states, "[s]omeone with a desire to remove a pesky Negress from practicing in the Connecticut courts surely had a hand in this matter."

appropriate." The trial court possesses a great deal of discretion in this regard. *Statewide Grievance Committee* v. *Timbers*, 70 Conn. App. 1, 3, 796 A.2d 565, cert. denied, 261 Conn. 908, 804 A.2d 214 (2002), cert. denied, 537 U.S. 1192, 123 S. Ct. 1274, 154 L. Ed. 2d 1027 (2003). As was noted above, in determining whether any discipline should be imposed, discipline or sanctions are not intended to punish an attorney but, rather, to safeguard the courts and the public from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession. Additional facts will be set forth below as necessary to address the issue of what discipline is to be imposed.

Reviews of misconduct are often guided by the use of the American Bar Association's Standards for Imposing Lawyer Sanctions (Standards), which have been approved by the Connecticut Supreme Court. *Burton* v. *Mottolese*, supra, 267 Conn. 55 and n.50. The Standards provide that, after a finding of misconduct, a court should consider: "(1) the nature of the duty violated; (2) the attorney's mental state; (3) the potential or actual injury stemming from the attorney's misconduct; and (4) the existence of aggravating or mitigating factors." [Id., 55; see A.B.A., Standards for Imposing Lawyer Sanctions (1986) standard 3.0, p. 25]. The Standards list the following as aggravating factors: "(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution [and] (k) illegal conduct, including that involving the use of controlled sub-

stances." A.B.A., Standards for Imposing Lawyer Sanctions (2001) standard 9.22, pp. 354–55; see also *Burton* v. *Mottolese*, supra, 55.

The Standards also list the following as mitigating factors which are to be considered: "(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical disability; (i) mental disability or chemical dependency including alcoholism or drug abuse when: (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability; (2) the chemical dependency or mental disability caused the misconduct; (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely . . . (j) delay in disciplinary proceedings . . . (*l*) imposition of other penalties or sanctions; (m) remorse; [and] (n) remoteness of prior offenses." A.B.A., Standards for Imposing Lawyer Sanctions (2001) standard 9.32, pp. 355–56; see also *Burton* v. *Mottolese*, supra, 267 Conn. 55–56.

With these standards in mind, the court must first consider the nature of the duties violated by the respondent. As to count one, the respondent's maintenance of an IOLTA account placed upon her a duty to hold her clients' funds with the care required of a professional fiduciary. Rules of Professional Conduct 1.15, commentary. By depositing the respondent's personal funds into the IOLTA account, she violated a duty owed to her clients and to the legal profession to keep client funds separate from her own. The reason given for the deposit

of the gift from Ms. I Am into the IOLTA account—that she was acting peculiarly—was not reasonable under the circumstances. Nor was the respondent's delay in responding to the petitioner's request for documentation explained by any sort of mental impairment or other valid reason. A breach of this duty to comply with the rules of the profession and to comply with requests from disciplinary authorities reflects adversely on the profession as a whole and not just on the one attorney. The duties to her clients in counts two, three and four all stem from her obligation, individually and as an officer of the court, to abide by the rules and orders of the court and to not engage in any misconduct. By acting in disregard of court orders and failing to diligently attend to her cases, the respondent has engaged in conduct that was prejudicial to the administration of justice. Further, she failed to meet her duty to communicate with her client about the matter for which she was retained.

With respect to her mental state as to all counts, the court does not find any impairment that would have prevented the respondent from acting appropriately or consistently with her obligations under both the Rules of Professional Conduct and the rules of practice, including orders issued by the court.

While no financial harm came to her clients as a result of the deposit of the respondent's personal funds into the IOLTA account as described in count one, there were potentially serious financial consequences to those of her clients whose actions and/or claims were dismissed by different courts without a hearing on the merits as a result of her failure to comply with the Rules of Professional Conduct or court orders as described in count two. Both of her clients in the *Stone* matter (employment discrimination claim) and the *Meszaros* matter (motor vehicle personal injury claim) had their actions/claims dismissed. Neither dismissal was appealed

to the Appellate Court. With respect to counts three and four, the respondent's actions in representing Williams relative to the appeal of the judgment terminating her parental rights resulted in a financial loss to Williams through her payment of a retainer and any other fees to the respondent that she was not rightfully entitled to earn due to the suspension she was actively under. The respondent's actions were done intentionally and in direct contravention of a valid court order.

In reviewing the alleged misconduct under the ABA Standards, the court can also consider any aggravating and mitigating factors that are relevant to the respondent's actions. There are several relevant aggravating factors. First, the court looks to see if there is any history of prior disciplinary actions. The respondent received a reprimand in 2015 based on a violation of rule 11 of the Federal Rules of Civil Procedure in *Miller* v. *Board of Education*, United States District Court, Docket No. 3:12-CV-01287 (JAM) (D. Conn. July 30, 2014). There the court found that as to the complaint filed by the respondent, no objectively reasonable attorney could have made the allegations, in the complaint, without knowing that they were verifiably false. [Id.; see also Tr. 1 92:12–14, Ingraham]. There is, of course, also the ongoing suspension by our Appellate Court.

A pattern of misconduct may also be considered as an aggravating factor. Evidence was presented at the hearing that the respondent has been involved in eleven cases where her client's action or claim has been dismissed directly as a result of the respondent's conduct. Some include the dismissal of the *Stone* and the *Meszaros* matters set forth above. Also, in *Miller* v. *Appellate Court*, 320 Conn. 759, 761, 770, 136 A.3d 1198 (2016), our Supreme Court identified the dismissal by the Appellate Court of the following cases: *Addo* v. *Rattray*, Docket No. AC 36837 (respondent failed to timely file the appellant's brief and appendix in compliance with the appel-

late rules); *Willis* v. *Community Health Services, Inc.*, Docket No. AC 36955 (respondent failed to respond to a July 31, 2014 order nisi informing her that the appeal would be dismissed if, by August 11, 2014, she did not file a certificate indicating the estimated date of delivery of the transcript pursuant to Practice Book § 63-8 (b); also failed to appear at a previously scheduled hearing and falsely certified that certain documents had been sent to opposing counsel); *Cimmino* v. *Marcoccia*, Docket No. AC 35944 (respondent failed to meet deadlines and to comply with the rules of appellate procedure and court orders); *Coble* v. *Board of Education*, Docket No. AC 36677 (dismissed as frivolous). [Respondent's Ex. T]. At the trial level, Coble had been nonsuited for failing to prosecute the action. [Respondent's Ex. B]. This court takes judicial notice that following the nonsuit, the action was refiled under the accidental failure of suit statute. The trial court subsequently entered a summary judgment against the plaintiff, and the court supplemented its decision with a special finding pursuant to General Statutes § 52-226a that the refiled action was meritless and not brought in good faith. [See Judge Gilardi's order #127.20 in the matter of *Coble* v. *Board of Education*, Superior Court, judicial district of Fairfield, Docket No. CV-13-6033790-S]. Additionally, during the course of this presentment, the respondent herself referenced *Igidi* v. *Dept. of Correction* (dismissed for failure to timely respond to discovery). [Tr. 4 109:6–15, Miller]. Even in *Miller* v. *Board of Education*, Superior Court, judicial district of Fairfield, Docket No. CV-10-6011406-S, where the respondent prosecuted her own action for the collection of attorney's fees, the matter was dismissed for her failure to appear at trial on July 10, 2012. [Respondent's Ex. D]. In *Smith* v. *Dept. of Correction*, United States District Court, Docket No. 3:13-CV-00828 (VLB) (D. Conn. August 4, 2014), the respondent sought attorney's fees

for her representation of the plaintiff, but the matter was dismissed. [Tr. 4 107:6–8, Miller]. In that case that court stated: "On August 4, 2014, the defense filed a partial motion for summary judgment, and the Court entered an order dismissing the specious claim for monetary damages from a defendant sued in their official capacity.

"Such a claim is well-known to be barred by the Eleventh Amendment, and the court has, I believe, issued decisions on cases filed by Attorney Miller previously noting that well-settled law.

"Why the plaintiff persists in filing such specious claims to which the defense has to respond and the Court has to waste its time reiterating well-settled law that such a claim is barred is beyond the Court's comprehension."

[Petitioner's Ex. 3, referencing exhibit E; transcript pages 4–5].

As to the aggravating factor of multiple offenses, there have been findings of probable cause by the appropriate grievance panels as to each count which have led to the respondent's presentment. Each count alleges different violations of the Rules of Professional Conduct, and the court has found clear and convincing evidence as to the violation of nine different rules.

Another relevant aggravating factor is the refusal to acknowledge the wrongful nature of one's conduct. The respondent, throughout the presentment process, has not acknowledged any wrongful conduct and has taken no steps to address the issues that led to her suspension by the Appellate Court despite being given a clear roadmap by that court on how to do so. To this factor, the court must recite additional facts. From her testimony, it is clear that the respondent sees herself as a victim of conspiracies by both individual judges as well as

a bureaucratic one through the petitioner and SGC. Generally speaking, she contends that because she is African-American, she is treated differently, in a negative way, than Caucasian attorneys by both judges and the disciplinary offices. Effectively, her contention is that Caucasian attorneys who engage in conduct similar to hers are not referred for discipline or admonished by the courts whereas she has been.

At the presentment hearing, the respondent testified that at a court hearing before Judge Bellis, she saw at least four judges standing there (in or around the courtroom) "obviously waiting to see what was happening" and then immediately going in to talk to Judge Bellis "about what had occurred." [Tr. 4 110:3–12, Miller]. When questioned by this court as to whether a remedy "would be to bring a complaint against Judge Bellis before the Judicial Review Council," the respondent replied, "I think we all know that hardly anybody who was ever brought before that Counsel [sic] gets any kind of relief. Or, rather, I should say, any—judges who are brought before that Counsel [sic], nothin[g] ever happens." [Tr. 3 94:7–10, Miller]. In another matter, the respondent testified that she argued an objection to a motion to dismiss her claim. During the argument, Judge Bellis asked opposing counsel why she had waited almost a year to file the motion to dismiss. The respondent confronted Judge Bellis about the reason for her question and testified that the judge did not respond. As a result, the respondent sought and obtained a transcript of the proceeding but testified that "all reference to this matter had been removed from the hearing transcript." [Tr. 3 121:4–8, Miller]. Her testimony unabashedly implied that the judge had pressured a court monitor or conspired with the monitor to manipulate an official court recording. The court does not find her testimony as to these matters credible, and she submitted no other evidence cor-

roborating this allegation. See Rules of Professional Conduct 8.2 (a).[14]

The respondent also referenced an incident in the *Cimmino* matter in which her client had received a favorable jury verdict. She alleged that after confronting Judge Bellis about having communications with opposing counsel in a different matter, the trial judge in *Cimmino* appeared to have a discussion with Judge Bellis about *Cimmino* and that the jury verdict was set aside shortly thereafter. [Respondent's Ex. G]. In support of this claim, the respondent testified, "[i]n my mind, it appeared to me that the change was because of a conversation I had with Judge Bellis." [Tr. 4 112:12–13, Miller]. In her posthearing brief, the respondent referred to it as "an unexplainable reversal" and that "[t]here is a reasonable inference that this request came at the request of the presiding judge." [Respondent's posthearing brief, p. 12]. The clear implication is that Judge Bellis persuaded or pressured a trial judge to reverse a jury's decision and to have the verdict set aside. No other evidence was presented in support of this claim. The court gives little weight to this testimony as it is simply rank speculation and opinion on her part.

Lastly, the court may consider the respondent's experience in the practice of law. The respondent has been an attorney since 1980 and has been a solo practitioner in Connecticut since 2002. [Respondent's Ex. K].[15] She has practiced in both federal and state court and worked for executive agencies at the state and federal level.

[14] Rule 8.2 (a) of the Rules of Professional Conduct provides: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office." Such comments are sufficient on their own to establish a basis for discipline of an attorney. See *Statewide Grievance Committee* v. *Burton*, 299 Conn. 405, 413, 10 A.3d 507 (2011).

[15] See footnote 3 above.

She has worked as counsel for private corporations. She is not a newcomer to the practice of law and in fact has substantial litigation and appellate experience. In this respect, the respondent presented evidence in the form of her resume; Respondent's Exhibit K; and a court ruling in the matter of *Gaul* v. *New Haven*, United States District Court, Docket No. 3:14-CV-00558 (D. Conn. May 12, 2016), relative to her motion for attorney's fees in which Judge Meyer found her to be "a highly capable and skilled trial attorney, and that those skills were indispensable to the success of her client in this case . . . ." [Respondent's Ex. L]. However, he also noted in that same ruling that the court had "been previously critical of the conduct of [the respondent] in a different case, see *Miller* v. *Board of Education* . . . ." [Id.] From such experience one would normally expect a practitioner to have acquired a well-versed knowledge of the Rules of Professional Conduct, and as a practical matter, a basic understanding of courtroom process, demeanor and the professional expectations that go with it.

The only relevant mitigating factor the court can mine from the testimony presented at the hearing is the physical illness the respondent described she experienced around September, 2014, which she claims prevented her from attending court proceedings before Judge Bellis and in the federal court. Even that testimony and evidence were called into question by virtue of the respondent's conduct in filing other pleadings in other cases that same day after advising the court that she was too ill to appear in court. It was also exposed as misleading and inaccurate through her questioning by Judge Bryant. Though there was some credible evidence presented to demonstrate that she may have had undiagnosed medical issues at the time of the events that led to the presentment with respect to the *Meszaros* matter; Respondent's Exhibit M; it does not appear that

she was unable to represent her client at that time due to a medical condition; nor did it affect her performance with respect to the other matters for which she has been presented. Even if ill, it was the respondent's obligation to ensure that her clients' interests were adequately protected. Her failure to take those steps to protect her clients resulted in adverse outcomes for them.

The court finds that the aggravating factors clearly outweigh any potential mitigation. "A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials." Rules of Professional Conduct, preamble. The respondent's actions have resulted in injury to the legal profession through her disrespect for judicial authority and her unwillingness to abide by specific court orders. Also, despite having had the opportunity since near the end of 2015 to lift the Appellate Court suspension, there was no evidence presented that she has attempted to take any of the steps outlined by that court to do so.

VI

CONCLUSION

As to count one, the respondent is guilty of misconduct in that she violated rules 1.15 (a) (5) and (c) and 8.1 (2) of the Rules of Professional Conduct. The respondent is suspended from the practice of law in Connecticut effective immediately for a period of thirty (30) days. The general conditions stated herein shall apply as to this count.

As to count two, the respondent is guilty of misconduct in that she violated rules 1.3, 3.2, and 8.4 (4) of the Rules of Professional Conduct. The respondent is suspended from the practice of law in Connecticut effective immediately for a period of six (6) months. This suspension shall be concurrent to the suspension

in count one. The general conditions stated herein shall apply to this count.

As to count three, the petitioner has failed to carry its burden of proof as to a violation of rule 1.4 (a) (1), (2), (3) and (4) of the Rules of Professional Conduct and those charges are dismissed. However, the respondent is guilty of misconduct in that she violated rule 1.4 (a) (5) and (b) of the Rules of Professional Conduct. The respondent is suspended from the practice of law in Connecticut effective immediately for a period of one (1) year. The suspension shall be concurrent to the suspensions of counts one and two. The general conditions stated herein shall apply to this count.

As to count four, the respondent is guilty of misconduct in that she violated rule 5.5 of the Rules of Professional Conduct. The respondent is suspended from the practice of law in Connecticut effective immediately for a period of one (1) year. This suspension shall be concurrent to the suspensions in counts one, two and three.

In addition to the above, these general conditions shall apply:

The petitioner is ordered to designate a trustee, subject to the approval of the court, to take such steps as are necessary pursuant to Practice Book § 2-64 to protect the interests of the respondent's clients, to inventory the respondent's files, and to take control of her clients' funds, and any IOLTA or other fiduciary accounts. A hearing shall be held by the court relative to the approval of the designated trustee on January 3, 2019, or sooner upon motion of the petitioner. Once approved, the respondent must fully cooperate with the trustee in all respects. Failure to do so may constitute additional misconduct and subject her to additional sanctions by this court.

The respondent shall comply with all terms and conditions of Practice Book § 2-47B, Restrictions on the Activities of Deactivated Attorneys.

The respondent shall comply with all terms and conditions of Practice Book § 2-53 in the event that she applies for reinstatement to the Connecticut bar following her period of suspension.

Prior to reinstatement in Connecticut, the respondent must satisfy any Connecticut bar requirements and must be otherwise in good standing.

As a condition of reinstatement to the bar, the respondent must agree that upon reinstatement she will be mentored for a period of one year by a practicing attorney with at least ten years of experience in the Connecticut bar. Such mentor shall be a member of the Connecticut Bar Association, be in good standing, have no disciplinary history and shall acknowledge in writing their willingness to so act. The mentor's appointment shall be effective only upon the approval of this court and shall be made by separate motion by the respondent.

The respondent shall, as a condition of reinstatement, attend a Connecticut Bar Association approved continuing legal education course in both legal ethics and law office management. Such courses must be attended in person and not online. Written proof of the attendance shall be required as a condition of reinstatement.

Any relief from suspension relative to her practice before the Appellate Court must be made separately to the Appellate Court consistent with its orders of December 9, 2014, and February 15, 2018.[16]

[16] Though not all exhibits admitted into evidence have been specifically referenced in this decision, the court has reviewed all of the exhibits and considered and reviewed the testimony of each witness.

ORDERS

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STATE OF CONNECTICUT *v.* JOSE LUIS HERNANDEZ

The defendant's petition for certification to appeal from the Appellate Court, 197 Conn. App. 257 (AC 41856), is denied.

ROBINSON, C. J., and KELLER, J., did not participate in the consideration of or decision on this petition.

Emily Graner Sexton, assigned counsel, in support of the petition.

Melissa Patterson, senior assistant state's attorney, in opposition.

Decided October 20, 2020

STATE OF CONNECTICUT *v.* NECTOR MARRERO

The defendant's petition for certification to appeal from the Appellate Court, 198 Conn. App. 90 (AC 41022), is granted, limited to the following issue:

"Did the Appellate Court correctly conclude that the prosecutor's asking leading questions of a hostile witness during direct examination did not constitute prosecutorial impropriety?"

ROBINSON, C. J., did not participate in the consideration of or decision on this petition.

Julia K. Conlin, assigned counsel, and *Emily Graner Sexton*, assigned counsel, in support of the petition.

Sarah Hanna, senior assistant state's attorney, in opposition.

Decided October 20, 2020

STATE OF CONNECTICUT *v.* JERMAINE HARRIS

The defendant's petition for certification to appeal from the Appellate Court, 198 Conn. App. 530 (AC 42888), is denied.

MULLINS, J., did not participate in the consideration of or decision on this petition.

Vishal K. Garg, assigned counsel, in support of the petition.

Robert J. Scheinblum, senior assistant state's attorney, in opposition.

Decided October 20, 2020

STATE OF CONNECTICUT *v.* ERROL J.

The defendant's petition for certification to appeal from the Appellate Court, 199 Conn. App. 800 (AC 42080), is denied.

Alice Osedach, senior assistant public defender, in support of the petition.

Melissa L. Streeto, senior assistant state's attorney, in opposition.

Decided October 20, 2020

SHANE J. CARPENTER *v.* BRADLEY J. DAAR ET AL.

The plaintiff's petition for certification to appeal from the Appellate Court, 199 Conn. App. 367 (AC 42145), is granted, limited to the following issue:

"Did the Appellate Court properly uphold the trial court's dismissal of the plaintiff's medical malpractice action for failure to comply with General Statutes § 52-190a?"

KELLER, J., did not participate in the consideration of or decision on this petition.

Kyle J. Zrenda and *Theodore W. Heiser*, in support of the petition.

Beverly Knapp Anderson, in opposition.

Decided October 20, 2020

RAY BOYD *v.* COMMISSIONER OF CORRECTION

The petitioner Ray Boyd's petition for certification to appeal from the Appellate Court, 199 Conn. App. 575 (AC 42302), is granted, limited to the following issue:

"Did the Appellate Court correctly conclude that the language of General Statutes §§ 18-7a (c) and 54-125a (f) does not support the petitioner's claim that his earned statutory good time credit reduces the sentence used to calculate his parole eligibility date?"

Michael W. Brown, assigned counsel, in support of the petition.

Steven R. Strom, assistant attorney general, in opposition.

Decided October 20, 2020

MADELINE G. FAZIO *v.* MICHAEL A. FAZIO

The plaintiff's petition for certification to appeal from the Appellate Court, 199 Conn. App. 282 (AC 42635), is denied.

Joseph T. O'Connor, in support of the petition.

Kevin F. Collins, in opposition.

Decided October 20, 2020

STATE OF CONNECTICUT *v.* ARAM AGADJANIAN

The defendant's petition for certification to appeal from the Appellate Court (AC 44010) is denied.

D'AURIA and ECKER, Js., did not participate in the consideration of or decision on this petition.

Aram Agadjanian, self-represented, in support of the petition.

Robert B. Teitelman, assistant attorney general, in opposition.

Decided October 20, 2020

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CONNECTICUT APPELLATE REPORTS

Vol. 201

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

STATE OF CONNECTICUT *v.* ANASTASIA SCHIMANSKI
(AC 41802)

Elgo, Bright and Moll, Js.*

Syllabus

Convicted, on a conditional plea of nolo contendere, of the crime of operating a motor vehicle with a suspended license, the defendant appealed to this court, challenging the trial court's denial of her motion to dismiss counts in the state's first substitute information. The defendant was arrested and charged with operating a motor vehicle while under the influence of alcohol, and her license was suspended for forty-five days pursuant to statute (§ 14-227b (i)) as a result of her refusal to take a chemical alcohol test. The defendant was subsequently ordered not to operate a vehicle that was not equipped with an ignition interlock device. Forty-seven days after the suspension began, the defendant operated a vehicle that did not have an ignition interlock device installed in it and allegedly struck another motor vehicle. Thereafter, she was charged with, inter alia, operating a motor vehicle while her license was under suspension in violation of the applicable statute (§ 14-215 (c) (1)) and operating a motor vehicle not equipped with an ignition interlock device in violation of the applicable statute (§ 14-227k (a) (2)). The defendant moved for a dismissal of these charges against her, claiming that the forty-five day suspension of her license had expired and that she had not yet been obligated to operate a motor vehicle with an ignition interlock device installed. The trial court denied the motion to dismiss. The state subsequently filed a second substitute information charging the defendant solely with operating a motor vehicle while her license was under suspension. From the judgment of conviction, the defendant appealed to this court. *Held*:

1. The trial court properly denied the defendant's motion to dismiss the count of the state's first substitute information charging her with operating a motor vehicle while her license was under suspension: the text of § 14-215 (c) (1) penalizes a person who operates a motor vehicle while, inter alia, her license is under suspension pursuant to § 14-227b, and the text of § 14-227b (i) (1) mandates the installation of an ignition interlock device in any motor vehicle operated by that individual before the restoration of her license, thus, the defendant's license remained suspended following the forty-five day statutory period until she installed an ignition interlock device, the defendant's reliance on case law that predated amendments to § 14-227b was unavailing, and this court declined to

* The listing of the judges reflects their seniority status on this court as of the date of oral argument.

apply the rule of lenity where the statutory text concerning the lack of restoration on the forty-five day period of suspension is not ambiguous; moreover, the defendant lacked standing to bring an equal protection claim because she was not aggrieved: although the defendant claimed that requiring the installation of an ignition interlock device before a license suspension can be lifted imposes undue burdens on indigent individuals who cannot afford the fees associated with the installation of such a device, the defendant paid the fees to install an ignition interlock device and to restore her license, she did not identify any specific personal and legal interest that had been specially and injuriously affected, and there was no basis on the record to find that the defendant was reasonably likely to incur future criminal liability relating to the ignition interlock device requirement.

2. The defendant's appeal was dismissed with respect to her claim challenging the trial court's denial of her motion to dismiss the charge against her of operating a motor vehicle not equipped with an ignition interlock device from the state's first substitute information: the defendant's claim was moot as a result of the state's decision not to charge the defendant with a violation of § 14-227k (a) (2) in its second substitute information; moreover, the defendant's claim that the state could not recharge her with a violation of § 14-227k (a) (2) was not justiciable because it was not ripe, as it might never transpire.

Argued June 19—officially released November 3, 2020

Procedural History

Substitute information charging the defendant with the crimes of operating a motor vehicle with a suspended license, avoidance of an interlock ignition device and evading responsibility in the operation of a motor vehicle, brought to the Superior Court in the judicial district of New Haven, geographical area number twenty-three, where the court, *Spader*, *J.*, denied the defendant's motion to dismiss the charges of operating a motor vehicle with a suspended license and avoidance of an interlock ignition device; thereafter, the state filed a second substitute information charging the defendant with the crime of operating a motor vehicle with a suspended license; subsequently, the defendant was presented to the court on a conditional plea of nolo contendere to the charge of operating a motor vehicle

with a suspended license; judgment of guilty in accordance with the plea, from which the defendant appealed to this court. *Appeal dismissed in part*; *affirmed*.

Aaron J. Levin, certified legal intern, with whom was *James B. Streeto*, senior assistant public defender, for the appellant (defendant).

Kathryn W. Bare, assistant state's attorney, with whom, on the brief, were *Patrick J. Griffin*, state's attorney, and *Sean P. McGuinness*, assistant state's attorney, for the appellee (state).

Opinion

MOLL, J. The defendant, Anastasia Schimanski, appeals from the judgment of conviction rendered by the trial court following her conditional plea of nolo contendere to operating a motor vehicle while her license was suspended in violation of General Statutes § 14-215 (c) (1). On appeal, the defendant claims that the court erred in denying her motion to dismiss directed to (1) count one of the state's first substitute information charging her with a violation of § 14-215 (c) (1), and (2) count two of the state's first substitute information charging her with operating a motor vehicle not equipped with a functioning ignition interlock device (IID) in violation of General Statutes § 14-227k (a) (2). We conclude that (1) the court properly denied the defendant's motion to dismiss as to count one of the state's first substitute information, and (2) the defendant's claims directed to the denial of her motion to dismiss as to the second count of the first substitute information are either moot or not ripe. Accordingly, we dismiss the appeal as to the denial of the motion to dismiss the second count of the first substitute information for lack of subject matter jurisdiction, and we affirm the judgment of conviction.

The following procedural history and facts, as undisputed or made a part of the record at the time the defendant entered her plea, are relevant to our resolution of the defendant's claims. On September 18, 2017, the defendant was arrested and charged with operating a motor vehicle while under the influence in violation of General Statutes § 14-227a. Pursuant to General Statutes § 14-227b (i), the Department of Motor Vehicles (department) suspended the defendant's license for a period of forty-five days, beginning on October 18, 2017, and ending on December 2, 2017, as a result of the defendant's refusal to take a chemical alcohol test. On December 4, 2017, the trial court, *Spader*, *J.*, granted the defendant's application for the pretrial alcohol education program. See General Statutes § 54-56g. In connection with doing so, the court engaged in the following colloquy with the defendant:

"The Court: One of the key things about the alcohol education program is if you violate the [department's] interlock device program, that's a violation of the alcohol education program. So just—don't be operating a motor vehicle unless you have the interlock device attached to it.

"[The Defendant]: Yes. Sir—I'm sorry—I don't own a vehicle.

"The Court: No—yeah, well, the thing is, don't borrow a vehicle either that doesn't have an interlock device on it—you know—if there's—once your license is restored, once your privileges are restored, okay?

"[The Defendant]: Yes, sir."

That same day, shortly after leaving the courthouse following the hearing, the defendant operated a motor vehicle, which did not have an IID installed in it, and allegedly struck another motor vehicle. As a result of that incident, the defendant was issued a misdemeanor

summons and complaint, giving rise to the present case, charging her with operating a motor vehicle while her license was under suspension in violation of § 14-215, evasion of responsibility in the operation of a motor vehicle in violation of General Statutes § 14-224 (b), and following another motor vehicle too closely in violation of General Statutes § 14-240. On February 23, 2018, the state filed its first substitute information. In count one, the state charged the defendant with operating a motor vehicle while her license was under suspension in violation of § 14-215 (c) (1). In count two, the state charged the defendant with operating a motor vehicle not equipped with an IID in violation of § 14-227k (a) (2). In count three, the state charged the defendant with evasion of responsibility in the operation of a motor vehicle in violation of § 14-224 (b) (3).

On March 5, 2018, the defendant filed a motion to dismiss counts one and two of the first substitute information. With respect to count one, the defendant argued that she could not properly be charged with having committed a violation of § 14-215 (c) (1) on December 4, 2017, because at such time, her license was not under suspension on account of § 14-227b (i) (1). According to the defendant, the forty-five day suspension of her license pursuant to § 14-227b (i) (1) had expired on December 2, 2017. With respect to count two, the defendant argued that she was not obligated on December 4, 2017, either by direction of the department or by order of the trial court, to operate a motor vehicle with an IID installed, and, thus, she could not properly be charged with having violated § 14-227k (a) (2) on that date.[1]

On March 19, 2018, after having heard argument on March 9, 2018, the trial court issued a memorandum of

[1] Notwithstanding the language in the suspension notice, during oral argument before the trial court, the state conceded that the defendant was not restricted by the department to operate a motor vehicle with an IID installed.

decision denying the defendant's motion to dismiss in its entirety. As to count one charging the defendant with a violation of § 14-215 (c) (1), the court determined that, pursuant to §§ 14-227a and 14-227b, the installation of an IID is a "mandatory statutory requirement implemented by the state legislature that must be fulfilled to 'unsuspend' a suspended license." The court further determined that the defendant did not have an IID installed on December 4, 2017, and that the department did not lift her suspension and restore her privilege to operate a motor vehicle until January 2, 2018, by which time the defendant had installed an IID. In addition, the court addressed and rejected the merits of a claim raised by the defendant during oral argument that requiring the installation of an IID in order to lift the suspension of a person's license would violate the equal protection clause of the United States constitution by imposing undue burdens on indigent individuals. In light of the foregoing, with respect to count one, the court concluded that the state could prosecute the defendant for a violation of § 14-215 (c) (1). With respect to count two, the court determined that during the hearing held on December 4, 2017, it unequivocally and directly had ordered the defendant not to operate any motor vehicle without an IID installed. Thus, the court concluded, the state could prosecute the defendant for a violation of § 14-227k (a) (2).

On May 9, 2018, the state filed a second substitute information charging the defendant solely with operating a motor vehicle while her license was under suspension in violation of § 14-215 (c) (1). On May 25, 2018, pursuant to General Statutes § 54-94a, the defendant entered a plea of nolo contendere to that charge, conditioned on her right to take an appeal from her conviction on the basis of the court's denial of her motion to dismiss. After a canvass, the court accepted the conditional plea, entered a finding of guilty, and sentenced

the defendant to a term of one year of incarceration, execution suspended, with one year of probation.[2] This appeal followed.[3] Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the trial court erred in denying her motion to dismiss count one of the state's first substitute information charging her with operating a motor vehicle while her license was under suspension in violation of § 14-215 (c) (1). Specifically, the defendant contends that, as a matter of statutory interpretation, her failure to have installed an IID did not extend the suspension of her license under § 14-227b (i) (1) beyond the forty-five day period, which expired on December2, 2017, and, as a result, she could not have been charged with having committed a violation of § 14-215 (c) (1) on December 4, 2017. Additionally, the defendant contends that interpreting the statutory requirements in §§ 14-215 (c), 14-227a, and 14-227b to mandate the installation of an IID as a condition to lift the suspension of a person's license violates the equal protection clause of the United States constitution. These contentions, which we address in turn, are unavailing.

A

The defendant first contends that the trial court should have dismissed the charge under § 14-215 (c) (1) because, pursuant to §§ 14-215 (c) (1), 14-227a, and 14-227b, the suspension of her license expired on December 2, 2017, and was not extended to December 4, 2017, as a result of her failure to install an IID. We disagree.

[2] The thirty day mandatory minimum term of imprisonment was suspended in light of mitigating circumstances determined by the court. See General Statutes § 14-215 (c) (1).

[3] The trial court stayed the execution of the defendant's sentence until the resolution of this appeal.

At the outset, we set forth the standard of review and legal principles that apply to the defendant's claim. "Because a motion to dismiss effectively challenges the jurisdiction of the court, asserting that the state, as a matter of law and fact, cannot state a proper cause of action against the defendant . . . review of the court's legal conclusions and resulting denial of the defendant's motion to dismiss is de novo." (Internal quotation marks omitted.) *State* v. *Kallberg*, 326 Conn. 1, 12, 160 A.3d 1034 (2017).

Resolving the defendant's claim requires us to interpret various provisions in our motor vehicle statutes. "Because statutory interpretation is a question of law, our review is de novo. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language . . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to [the broader statutory scheme]. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *State* v. *Pond*, 315 Conn. 451, 466–67, 108 A.3d 1083 (2015).

We begin with the text of § 14-215 (c) (1), pursuant to which the defendant was convicted, which provides: "*Any person who operates any motor vehicle during the period such person's operator's license or right to operate a motor vehicle in this state is under suspension or revocation* on account of a violation of section 14-227a or 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n or section 53a-56b or 53a-60d or *pursuant to section 14-227b*, or in violation of a restriction or limitation placed on such person's operator's license or right to operate a motor vehicle in this state by the Commissioner of Motor Vehicles pursuant to subsection (i) of section 14-227a or pursuant to an order of the court under subsection (b) of section 14-227j, shall be fined not less than five hundred dollars or more than one thousand dollars and imprisoned not more than one year, and, in the absence of any mitigating circumstances as determined by the court, thirty consecutive days of the sentence imposed may not be suspended or reduced in any manner." (Emphasis added.)

Because the state has prosecuted the § 14-215 (c) (1) charge against the defendant at all times on the basis that the defendant's license was suspended on December 4, 2017, pursuant to § 14-227b (i) (1), we next turn to the text thereof.[4] Section 14-227b (i) (1) provides:

[4] It is unclear, but irrelevant to our analysis, why the state did not posit before the trial court that the defendant could be charged with § 14-215 (c) on the separate ground that she was operating a motor vehicle in violation of a restriction placed on her driver's license pursuant to an order of the court pursuant to General Statutes § 14-227j (b), which is another enumerated basis set forth in § 14-215 (c) (1). See General Statutes § 14-227j (b) ("Any person who has been arrested for a violation of section 14-227a or 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n or section 53a-56b or 53a-60d, may be ordered by the court not to operate any motor vehicle unless such motor vehicle is equipped with an ignition interlock device. Any such order may be made as a condition of such person's release on bail, as a condition of probation or as a condition of granting such person's application for participation in the pretrial alcohol education program under section 54-56g and may include any other terms and conditions as to duration, use, proof of installation or any other matter that the court determines to be appropriate or necessary."). In light of the condition attached to the

"The commissioner [of motor vehicles] shall suspend the operator's license or nonresident operating privilege of a person who did not contact the department to schedule a hearing, who failed to appear at a hearing, or against whom a decision was issued, after a hearing, pursuant to subsection (h) of this section, as of the effective date contained in the suspension notice, for a period of forty-five days. As a condition for the restoration of such operator's license or nonresident operating privilege, such person shall be required to install an ignition interlock device on each motor vehicle owned or operated by such person and, upon such restoration, be prohibited from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device, as defined in section 14-227j, for the longer of either (A) the period prescribed in subdivision (2) of this subsection for the present arrest and suspension, or (B) the period prescribed in subdivision (1), (2) or (3) of subsection (g) of section 14-227a . . . for the present arrest and conviction, if any."[5]

The state argues, and we agree, that § 14-227b (i) (1) speaks to *two* periods of time, namely, the period of

defendant's plea of nolo contendere, we limit our analysis to the parties' arguments in connection with the defendant's motion to dismiss, which exclusively focused on the defendant's suspension pursuant to § 14-227b. See General Statutes § 54-94a ("[t]he issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied . . . the motion to dismiss").

[5] General Statutes § 14-227a (g), which contains similar suspension and restoration language applicable to an individual convicted of a violation of § 14-227a (a), provides in relevant part: "Penalties for operation while under the influence. Any person who violates any provision of subsection (a) of this section shall: (1) For conviction of a first violation . . . (C) *have such person's motor vehicle operator's license or nonresident operating privilege suspended for forty-five days and, as a condition for the restoration of such license, be required to install an ignition interlock device on each motor vehicle owned or operated by such person* and, upon such restoration, be prohibited for the one-year period following such restoration from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device. . . ." (Emphasis added.)

suspension and the period following restoration of the operator's license (or nonresident operating privilege). By using the prefatory language, "[a]s a condition for the restoration of such operator's license or nonresident operating privilege," the legislature clearly and unambiguously created a statutorily mandated condition—i.e., the installation of an IID in any motor vehicle owned or operated by the individual—that must be satisfied before an individual may have his or her license restored and thereupon legally operate a motor vehicle. Stated differently, § 14-227b (i) (1) does not contemplate an interim period between suspension and restoration, whereby an individual whose license or operating privilege has been suspended thereunder could operate a motor vehicle, while escaping the responsibility of installing an IID (and thereupon operating only a motor vehicle equipped with a functioning, approved IID) and avoiding exposure to criminal liability under, inter alia, § 14-215 (c). Applying the foregoing analysis to the present case, we conclude that the defendant's license remained suspended on December 4, 2017, pursuant to § 14-227b (i) (1), because she had not yet installed an IID and had her license restored by that date.

The defendant argues, in contrast, that § 14-227b (i) (1) effectively contains such an interim period, during which an individual who has not restored his or her license and installed an IID can avoid exposure to liability under § 14-215 (c) and is subject only to a lesser penalty. As a textual matter, the defendant contends that the forty-five day period of suspension is fixed and cannot be extended by the lack of restoration. We reject the interpretation advanced by the defendant, however, because it would incentivize an individual, whose license or operating privilege has been suspended pursuant to § 14-227b (i) (1), *not* to install an IID and

complete the restoration process. In this connection, we conclude such interpretation would yield an absurd result and not one intended by the legislature.

The defendant also relies on *State* v. *Jacobson*, 31 Conn. App. 797, 627 A.2d 474 (1993), aff'd, 229 Conn. 824, 644 A.2d 331 (1994), and *State* v. *Cook*, 36 Conn. App. 710, 653 A.2d 829 (1995), in support of her claim. As the state correctly points out, this reliance is misplaced. In *Jacobson*, the defendant's license was suspended for one year after he was convicted of operating a motor vehicle under the influence of alcohol in violation of General Statutes (Rev. to 1991) § 14-227a.[6] *State* v. *Jacobson*, supra, 799. After the one year period had expired, the defendant was eligible for restoration of his license by presenting proof of financial responsibility to the Commissioner of Motor Vehicles pursuant to General Statutes (Rev. to 1991) § 14-112. Id. The defendant failed to complete this administrative step and was subsequently arrested and convicted of operating a motor vehicle while his license was under suspension in violation of General Statutes (Rev. to 1991) § 14-215 (c). Id. On appeal, this court concluded that the financial responsibility requirement was merely administrative and contained in General Statutes (Rev. to 1991) § 14-112, a separate statute, such that "[n]othing in the statutory scheme . . . indefinitely extends the period of suspension, pursuant to [General Statutes (Rev. to

[6] General Statutes (Rev. to 1991) § 14-227a (h) provides in relevant part: "Any person who violates any provision of subsection (a) of this section shall: (1) For conviction of a first violation, (A) be fined not less than five hundred dollars nor more than one thousand dollars and (B) be (i) imprisoned not more than six months, forty-eight consecutive hours of which may not be suspended or reduced in any manner or (ii) imprisoned not more than six months, with the execution of such sentence of imprisonment suspended entirely and a period of probation imposed requiring as a condition of such probation that such person perform one hundred hours of community service, as defined in section 14-227e, and (C) *have his motor vehicle operator's license or nonresident operating privilege suspended for one year* . . . ." (Emphasis added.)

1991)] § 14-227a, past one year." Id., 804; see also *State* v. *Cook*, supra, 714 ("[In *Jacobson*] [w]e reviewed the language of [General Statutes (Rev. to 1991)] § 14-227a and determined that the suspension provision provided therein was limited to the one year period enumerated. . . . The statute does not require the suspension to continue in effect after the statutory period has expired until the violator has taken the necessary administrative steps to restore his privileges." (Citations omitted.)).

In *State* v. *Cook*, supra, 36 Conn. App. 710, the defendant's nonresident operator's privileges were suspended for six months based on his refusal to take a blood alcohol test pursuant to General Statutes (Rev. to 1991) § 14-227b.[7] Id., 711. After the six month period had expired, the defendant was arrested and convicted of driving while his license was under suspension in violation of General Statutes (Rev. to 1991) § 14-215 (c). Id., 712. On appeal, following the reasoning in *Jacobson*, this court concluded that General Statutes (Rev. to 1991) § 14-227b was "unambiguous" in "subject[ing] a driver to the suspension of his license or operation privileges for a period of six months. It does not require that the suspension continue beyond the six month period until such time that the driver's privileges are formally restored. Therefore, upon completion of the

[7] General Statutes (Rev. to 1991) § 14-227b (h) provides in relevant part: "The commissioner [of motor vehicles] shall suspend the operator's license or nonresident operating privilege, and revoke the temporary operator's license or nonresident operating privilege issued pursuant to subsection (c) of this section, of a person who did not contact the department to schedule a hearing, who failed to appear at a hearing or against whom, after a hearing, the commissioner held pursuant to subsection (g) of this section, as of the effective date contained in the suspension notice or the date the commissioner renders his decision, whichever is later, for a period of: (1) (A) Ninety days, if such person submitted to a test or analysis and the results of such test or analysis indicated that at the time of the alleged offense the ratio of alcohol in the blood of such person was ten-hundredths of one per cent or more of alcohol, by weight, or (B) *six months if such person refused to submit to such test or analysis* . . . ." (Emphasis added.)

six month period, a driver's license or operating privileges are no longer suspended on account of a violation of [General Statutes (Rev. to 1991)] § 14-227b and the driver may not be subjected to the enhanced penalties of [General Statutes (Rev. to 1991)] § 14-215 (c)." Id., 714–15.

In deciding *Jacobson* and *Cook*, this court analyzed prior revisions of §§ 14-227a and 14-227b. As the trial court in the present case observed in its memorandum of decision, although *Jacobson* and *Cook* have not been overruled, §§ 14-227a and 14-227b have been amended since those decisions were published. The 1991 revision of § 14-227a at issue in *Jacobson* specified a fixed one year license suspension without statutorily mandated conditions for restoration, and the 1991 revision of § 14-227b at issue in *Cook* contained a fixed six month license suspension, also without statutorily mandated conditions for restoration. Sections 14-227a and 14-227b were amended in 2014, effective in 2015, to shorten the mandatory license suspension period to forty-five days *and* to add the IID requirement in connection with restoration.[8] Accordingly, *Jacobson* and *Cook* are inapplicable to the present case.

Finally, the defendant argues that we should strictly construe the relevant statutes in her favor; in doing so, she presses the application of the rule of lenity. Because the text of § 14-227b (i) (1) concerning the effect of the lack of restoration on the forty-five day period of suspension thereunder is not ambiguous after engaging in the statutory interpretation required by § 1-2z, we decline to apply the rule of lenity. See, e.g., *State* v. *Lutters*, 270 Conn. 198, 219, 853 A.2d 434 (2004) ("courts do not apply the rule of lenity unless a reasonable doubt persists about a statute's intended scope *even after*

[8] See Public Acts 2014, No. 14-228, §§ 5 and 6.

resort to the language and structure, legislative history, and motivating policies of the statute" (emphasis in original; internal quotation marks omitted)).

In sum, we conclude that, pursuant to § 14-227b (i) (1), the suspension of the defendant's license remained in effect until the defendant had installed an IID and restored her license. Thus, the defendant's license remained suspended on December 4, 2017, the date of her violation of § 14-215 (c) (1). Accordingly, the trial court properly denied the defendant's motion to dismiss as to count one of the state's first substitute information charging the defendant with operating a motor vehicle while her license was under suspension in violation of § 14-215 (c) (1).

B

The defendant also claims that interpreting the relevant motor vehicle statutes to require the installation of an IID before lifting the suspension of a person's license would result in a violation of the equal protection clause of the United States constitution. More specifically, the defendant claims that such an interpretation has a prejudicial effect on indigent individuals who cannot afford the fees associated with the installation of an IID. The state argues, inter alia, that the defendant lacks standing to raise this argument. We agree with the state.

We begin by reviewing certain well established principles of standing. A party's lack of standing to bring a claim implicates the court's subject matter jurisdiction. See *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 511, 518, 970 A.2d 583 (2009). "Generally, standing is inherently intertwined with a court's subject matter jurisdiction. . . . We have long held that because [a] determination regarding a trial court's subject matter jurisdiction is a question of law,

our review is plenary. . . . In addition, because standing implicates the court's subject matter jurisdiction, the issue of standing is not subject to waiver and may be raised at any time." (Internal quotation marks omitted.) *State* v. *Brito*, 170 Conn. App. 269, 285, 154 A.3d 535, cert. denied, 324 Conn. 925, 155 A.3d 755 (2017).

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . .

"Standing is established by showing that the party claiming it is authorized by statute to bring suit or is classically aggrieved. . . . The fundamental test for determining [classical] aggrievement encompasses a [well settled] twofold determination: [F]irst, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]. . . . Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) *State* v. *Long*, 268 Conn. 508, 531–32, 847 A.2d 862, cert. denied, 543 U.S. 969, 125 S. Ct. 424, 160 L. Ed. 2d 340 (2004).

In the present case, the defendant lacks standing to raise an equal protection claim relating to the IID

requirement because she is not aggrieved. As the defendant readily concedes, immediately following the December 4, 2017 hearing in which her application for the alcohol education program was granted, she paid the necessary fees to install an IID and to restore her license. Moreover, she has not identified any specific personal and legal interest that has been specially and injuriously affected. Accordingly, the defendant lacks standing to raise her equal protection claim.

The defendant argues that she has standing pursuant to *State* v. *Bradley*, 195 Conn. App. 36, 223 A.3d 62 (2019), cert. granted, 334 Conn. 925, 223 A.3d 379 (2020). The defendant relies on language in *Bradley* stating that "[our Supreme Court] previously [has] concluded that a genuine likelihood of criminal liability or civil incarceration is sufficient to confer standing. . . . Consequently, because the defendant risks actual prospective deprivation of his liberty interest under the challenged statute, we conclude that he is classically aggrieved, and has standing to challenge the statute." Id., 46–47. The court later clarified that "although a party has only individual standing to challenge alleged violations of his own constitutional rights, such challenges are not necessarily limited to ongoing violations of those rights, but may be directed to future violations of such rights that are reasonably likely to occur." Id., 47.

The defendant does not fall within the carve out discussed in *Bradley*. In order to qualify for standing under *Bradley*, "future violations of [her] rights [must be] reasonably likely to occur." Id. There simply is no basis on this record to find that the defendant is reasonably likely to incur future criminal liability relating to the IID requirement. Therefore, the defendant lacks standing to bring her equal protection claim.[9]

[9] We also observe that General Statutes § 14-227o, which was effective on October 1, 2018, provides in relevant part: "Notwithstanding any provision of the general statutes requiring a person subject to an order to install and

II

The defendant next claims that the trial court erred in denying her motion to dismiss count two of the state's first substitute information charging her with operating a motor vehicle not equipped with an IID in violation of § 14-227k (a) (2). Recognizing that, following the denial of her motion to dismiss, the state filed a second substitute information charging her solely with a violation of § 14-215 (c) (1), the defendant asserts that she is raising this claim "in anticipation of an attempt by the state to resurrect the [violation of § 14-227k (a) (2) charge], or to argue for its consideration as an alternative ground for affirmance." The defendant contends that (1) the state cannot recharge her for violating § 14-227k (a) (2) because the state dropped that charge when it filed the second substitute information solely charging her with a violation of § 14-215 (c) (1), or (2) alternatively, if this court reaches the merits of the trial court's denial of her motion to dismiss count two, then the trial court improperly concluded that it had issued an unequivocal order on December 4, 2017, prohibiting her from operating a motor vehicle without an IID installed. The state counters, inter alia, that (1) because it did not charge the defendant in its second substitute information with violating § 14-227k (a) (2), the defendant's challenge to the denial of her motion to dismiss as to count two of the first substitute information is moot, and (2) to the extent that the defendant is seeking to litigate any future attempt by the state to recharge her with violating § 12-227k (a) (2), the defendant's claim is not ripe. We agree with the state.

maintain an ignition interlock device to bear all costs associated with such installation and maintenance, any provider of ignition interlock device services, including installation, maintenance and removal of such devices, may include in a lease agreement with a person required to install such device pursuant to section . . . 14-227a [or] 14-227b . . . a reduction to or an elimination of the charge for such services if such person is indigent. . . ."

A

We first address whether the defendant's claim challenging the merits of the trial court's denial of her motion to dismiss count two of the state's first substitute information is moot as a result of the state's decision not to charge the defendant with a violation of § 14-227k (a) (2) in its second substitute information. We conclude that the defendant's claim is moot.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [a] court's subject matter jurisdiction . . . . A case is considered moot if [the] court cannot grant . . . any practical relief through its disposition of the merits . . . ." (Internal quotation marks omitted.) *Glastonbury* v. *Metropolitan District Commission*, 328 Conn. 326, 333, 179 A.3d 201 (2018). "For a case to be justiciable, it is required, among other things, that there be an actual controversy between or among the parties to the dispute . . . . [T]he requirement of an actual controversy . . . is premised upon the notion that courts are called upon to determine existing controversies, and thus may not be used as a vehicle to obtain advisory judicial opinions on points of law. . . . Moreover, [a]n actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal." (Citation omitted; internal quotation marks omitted.) *State* v. *T.D.*, 286 Conn. 353, 361, 944 A.2d 288 (2008). Because mootness implicates a court's subject matter jurisdiction, it presents a question of law over which we exercise plenary review. See *State* v. *Milner*, 309 Conn. 744, 751, 72 A.3d 1068 (2013).

By way of review, following the trial court's denial of the defendant's motion to dismiss counts one and two of the first substitute information, the state filed a second substitute information charging the defendant solely with a violation of § 14-215 (c) (1). Thereafter,

the defendant entered a conditional plea of nolo contendere to the charge of § 14-215 (c) (1), the only charge pending against her. Thus, there is no practical relief that we can afford the defendant with regard to count two of the first substitute information, and, therefore, the issue of whether the trial court improperly denied the defendant's motion to dismiss count two thereof is moot.

B

To the extent that the defendant claims that the state cannot recharge her with violating § 14-227k (a) (1) as a result of the incident that occurred on December 4, 2017, we consider whether the defendant's claim is ripe. We conclude that this issue is not justiciable because it is not ripe.

"[J]usticiability comprises several related doctrines, namely, standing, *ripeness*, mootness and the political question doctrine, that implicate a court's subject matter jurisdiction and its competency to adjudicate a particular matter." (Emphasis added; footnote omitted.) *Office of the Governor* v. *Select Committee of Inquiry*, 271 Conn. 540, 569, 858 A.2d 709 (2004). "A case that is nonjusticiable must be dismissed for lack of subject matter jurisdiction." *Mayer* v. *Biafore*, *Florek & O'Neill*, 245 Conn. 88, 91, 713 A.2d 1267 (1998). "[B]ecause an issue regarding justiciability raises a question of law, our appellate review [of the defendant's ripeness claim] is plenary." *Office of the Governor* v. *Select Committee of Inquiry*, supra, 569.

The defendant's claim regarding the state's ability to recharge her with violating § 14-227k (a) (2) is not ripe because it "may never transpire." (Internal quotation marks omitted.) *Chapman Lumber, Inc.* v. *Tager*, 288 Conn. 69, 87, 952 A.2d 1 (2008). At oral argument, the state indicated that, although it maintains the right to charge the defendant for a violation of § 14-227k (a)

(2), it has no intent to do so. Thus, the issue is not ripe, and, therefore, we decline to address it.

The appeal is dismissed with respect to the denial of the defendant's motion to dismiss the second count of the state's first substitute information; the judgment is affirmed.

In this opinion the other judges concurred.

IN RE MADISON C. ET AL.*
(AC 43721)

Bright, C. J., and Suarez and Lavery, Js.

Syllabus

The respondent mother appealed from the judgments of the trial court terminating her parental rights with respect to her three minor children. She claimed that the trial court deprived her of her substantive due process rights under the United States constitution because termination of her parental rights was not the least restrictive means necessary to ensure the state's compelling interest in protecting the best interests of the children, and that the record disclosed that narrower means were available to protect the children from harm and afford them statutory permanency. *Held* that this court declined to review the respondent's unpreserved constitutional claim because the inadequate record failed to satisfy the requirement of the first prong of *State* v. *Golding* (213 Conn. 233); the evidence at trial supported the decision of the petitioner, the Commissioner of Children and Families, to pursue termination of the respondent's parental rights, the respondent did not propose any alternative permanency plans, and, after the trial court granted the termination petitions, the respondent did not attempt to raise her claim by filing a motion to reargue or reconsider, nor did she ask the court to articulate whether it had considered other options, and the respondent's

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

failure to pursue any of these avenues left the record devoid of evidence and findings necessary to review her constitutional claim.

Argued September 9—officially released October 29, 2020**

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor children, brought to the Superior Court in the judicial district of New Britain, Juvenile Matters, where the petitions were withdrawn as to the respondent father; thereafter, the matter was tried to the court, *Aaron, J.*; judgments terminating the respondent mother's parental rights, from which the respondent mother appealed to this court. *Affirmed.*

Albert J. Oneto IV, assigned counsel, for the appellant (respondent mother).

Alina Bricklin-Goldstein, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Benjamin Zivyon*, assistant attorney general, for the appellee (petitioner).

Opinion

SUAREZ, J. The respondent mother, Patricia K., appeals from the judgments of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights with respect to each of her three minor children on the ground that the respondent failed to achieve a sufficient degree of personal rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B) (i).[1] On appeal, the respondent claims that the court deprived her of her substantive due process rights as guaranteed by the fourteenth amendment to the United States constitution because

** October 29, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] Counsel for the three minor children have each adopted the brief filed by the petitioner.

termination of her parental rights was not the least restrictive means necessary to ensure the state's compelling interest in protecting the best interests of the children. As part of her claim, the respondent further asserts that the record disclosed that narrower means other than termination were available to protect the children from harm and afford them statutory permanency. We conclude that the record was inadequate to review the respondent's constitutional claim, and, accordingly, we affirm the judgments of the trial court.

The following facts, as found by the court, and procedural history are relevant to the claim raised on appeal. Madison, Ryan, and Andrew were born to the respondent and their father, Chester C. The Department of Children and Families (department) became involved with the family in November, 2013, when Madison tested positive for marijuana and methadone upon her birth. Upon discharge from the hospital, Madison was released into the care of her parents. In December, 2015, the respondent gave birth to Ryan, who also tested positive for marijuana and methadone. Ryan subsequently was released from the hospital to the care of his parents.

On April 25, 2017, the Plymouth Police Department responded to reports of a domestic dispute between the respondent and Chester C. The Plymouth police found the couple's home in deplorable condition and located drug paraphernalia inside the home. On May 2, 2017, Madison and Ryan were removed from their parents' home, pursuant to an order of temporary custody filed by the petitioner and granted by the court. The children were placed in a licensed, nonrelative foster home. The petitioner also filed a neglect petition alleging that the children were being permitted to live under conditions, circumstances, or associations injurious to their well-being. The order of temporary custody was sustained by agreement of the parties on May 12, 2017.

In November, 2017, the respondent gave birth to Andrew, who tested positive for marijuana, methadone, and cocaine. On November 20, 2017, the court granted an order of temporary custody as to Andrew, and he was placed in his current, nonrelative foster family upon discharge from the hospital. On the same date, the petitioner filed a neglect petition as to Andrew on the basis of predictive neglect.

The neglect petitions with respect to all three children were consolidated on November 30, 2017. The court adjudicated the children neglected and committed the children to the care and custody of the petitioner until further order by the court. On the same date, the court ordered specific steps with which the parents were required to comply.

On February 1, 2019, the petitioner filed termination of parental rights petitions with respect to the parental rights of the respondent and Chester C. as to their three children on the grounds that the court in the prior proceeding found the children to have been neglected, and they had failed to achieve the degree of personal rehabilitation that would encourage the belief that, within a reasonable time and considering the ages and needs of the children, they could assume a responsible position in their children's lives.

The respondent has a long history of substance abuse, specifically with heroin, and has been on methadone maintenance intermittently since 2012. The department reported that "[h]er success in treatment has oscillated, with periods of sobriety interrupted by intense relapses."

The respondent's substance abuse issues have led to numerous interactions with the criminal justice system. In April, 2017, the respondent was arrested and charged with risk of injury to a child in connection with the incident that led to the removal of Madison and Ryan. In July, 2018, the respondent was arrested for stealing

a generator from Home Depot and later charged with fifth degree larceny. On July 17, 2018, she was arrested and later charged with driving with a suspended license and other motor vehicle charges. On October 18, 2018, due to possessing hypodermic needles and crack pipes, the respondent was arrested and later charged with, inter alia, possession of drug paraphernalia, possession of cocaine and five bags of heroin, and operating a motor vehicle with a suspended license. On March 10, 2019, the respondent was arrested and charged with breach of the peace. She also has a history of not appearing in court and has resultant failure to appear charges. During the underlying termination of parental rights trial, the respondent was incarcerated as a result of the April, 2017 arrest for risk of injury to a minor, having been sentenced on April 17, 2019, to seven years of incarceration, execution suspended after eighteen months, and three years of probation.

A trial was held on August 5, 6, 7, and 16, 2019. The petitioner called three witnesses and entered seventeen exhibits into evidence. The respondent did not call any witnesses and did not introduce any exhibits. On August 16, the petitioner withdrew its termination petitions as to Chester C.

On November 8, 2019, the court, in a thorough memorandum of decision, granted the termination petitions as to the respondent. In the adjudicatory phase of the trial, the court found, by clear and convincing evidence, that the department made reasonable efforts to reunify the respondent with the children pursuant to § 17a-112 (j) (1), and that she remained unwilling or unable to benefit from services. The court based its decision on the respondent's failure to follow through with the specific steps that were agreed upon and ordered by the court, along with her unwillingness or inability to maintain her sobriety.

The court further found, by clear and convincing evidence, that the respondent had not and will not achieve the degree of personal rehabilitation that would encourage the belief that within a reasonable time, considering the ages and needs of all three children, she could assume a responsible position in their lives. The court stated that the petitioner remained unable to be an appropriate caretaker for the children and that there was no evidence or reason to believe that she would be able to assume a responsible position in the children's lives within a reasonable time.

In the dispositional phase, the court made findings on the seven criteria set out in § 17a-112 (k) as to the best interests of the children. The court examined the relevant factors related to the children's development, mental and emotional health, safety, long-term stability, their relationship with their respective foster parents, and their relationship with the petitioner. The court noted that the respondent had not successfully taken advantage of or complied with the services provided by the department and had not shown a willingness or ability to provide a safe and nurturing environment in which she appropriately could parent the children. Additionally, the court found that there was credible evidence to suggest that the "toxic relationship between the parents and [the] respondent's overbearing and manipulative behavior toward [Chester C.] is an impediment to [Chester C.'s] effective parenting of the children." This appeal followed. Additional facts and procedural history will be set forth as necessary.

On appeal, the respondent does not challenge the trial court's adjudicatory findings. Rather, she claims that the court deprived her of her substantive due process rights as guaranteed by the fourteenth amendment to the United States constitution because termination of her parental rights was not the least restrictive means necessary to ensure the state's compelling interests in

protecting the best interests of the children. The respondent argues that narrower means, other than termination, were available to protect the children from harm and afford them statutory permanency. She concedes that this claim of constitutional error was not presented at trial. Accordingly, she seeks review under the bypass doctrine codified in *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015). The petitioner responds that the record is inadequate for review of the claim. We agree with the petitioner.

"Under *Golding*, a [party] can prevail on a claim of constitutional error not preserved at trial only if the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the [party] of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the [party's] claim will fail. The appellate tribunal is free, therefore, to respond to the [party's] claim by focusing on whichever condition is most relevant in the particular circumstances." (Internal quotation marks omitted.) *In re Adelina A.*, 169 Conn. App. 111, 119, 148 A.3d 621, cert. denied, 323 Conn. 949, 169 A.3d 792 (2016).

"In assessing whether the first prong of *Golding* has been satisfied, it is well recognized that [t]he [respondent] bears the responsibility for providing a record that is adequate for review of [her] claim of constitutional error. If the facts revealed by the record are insufficient, unclear or ambiguous as to whether a constitutional violation has occurred, we will not attempt to supplement or reconstruct the record, or to make

factual determinations, in order to decide the [respondent's] claim. . . . The reason for this requirement demands no great elaboration: in the absence of a sufficient record, there is no way to know whether a violation of constitutional magnitude in fact has occurred." (Citations omitted; internal quotation marks omitted.) *In re Anthony L.*, 194 Conn. App. 111, 114–15, 219 A.3d 979 (2019), cert. denied, 334 Conn. 914, 221 A.3d 447 (2020).

In the present appeal, the crux of the respondent's argument is that there were less restrictive alternatives to the termination of her parental rights and that the court violated her substantive due process rights by failing to consider these alternatives. She argues that when the petitioner withdrew the termination petitions as to Chester C., the state's plan was no longer to place the children for adoption but to reunify them with him. The respondent argues that after this decision was made, termination of her parental rights was no longer necessary. The respondent asserts that alternatives to termination were appropriate because the court did not base its decision on a finding that she posed a physical threat to the safety of the children or that she would abuse her parental status in ways that could harm the children if the children were reunified with Chester C. Rather, she argues, the court based its decision to terminate on its concern that she was "an impediment to [the] father's effective parenting of the children." She contends that the trial court's concerns about the potential for her to undermine Chester C.'s parenting could have been addressed through further orders limiting her guardianship, rather than by terminating her parental rights. Her brief, however, lacks specificity as to how she believes the trial court should have addressed its concerns.

In *In re Azareon Y.*, 309 Conn. 626, 72 A.3d 1074 (2013), our Supreme Court addressed a similar claim.

On appeal, the respondent in *In re Azareon Y.* sought review under *Golding* of a claim that she previously had not advanced, "namely, that the trial court's application of § 17a-112 to her was unconstitutional because substantive due process required the trial court to find by clear and convincing evidence that termination of her parental rights was the least restrictive means necessary to ensure the state's compelling interest in protecting the children's safety and well-being (best interests), and no such finding was made." Id., 630. At trial, the respondent did not request the court to consider any alternatives to the petitioner's permanency plan. Id., 632. The trial court's memorandum of decision did not indicate whether the court considered a permanency plan other than the one advocated by the petitioner, and the respondent did not ask the court to articulate whether it had considered other options. Id., 632–33. In determining that the record was inadequate for review under *Golding*'s first prong, our Supreme Court stated that the respondent was attempting to "characterize her claim as a mere question of law lacking factual predicates beyond those she has cited." Id., 637. The court declined to reach the merits of the claim. See id., 638.

More recently, this court considered an appeal in which a respondent mother claimed that the trial court had violated her substantive due process rights during its best interest analysis by failing to conduct a factual inquiry into the petitioner's permanency plans, which called for the termination of her parental rights and adoption. *In re Anthony L.*, supra, 194 Conn. App. 112–13. The respondent in *In re Anthony L.* claimed that, "because adoption was not going to occur immediately, due process required the court to determine whether the permanency plans secured a more permanent and stable life for each of the children compared to that

which she could provide if she were given time to rehabilitate herself." Id., 113. She did not raise or pursue this claim at trial, however, nor did she make the trial court and the petitioner aware that she would assert this claim on appeal. Id. This court stated that "the respondent's claim mirrors that of the respondent in *In re Azareon Y.*," and we went on to apply the same reasoning as our Supreme Court in that case. Id., 118. Accordingly, this court determined that the record contained insufficient evidence and declined to review the respondent's request for *Golding* review in light of an inadequate record. Id., 120.

Here, the facts are analogous to both *In re Anthony L.* and *In re Azareon Y.* At trial, the petitioner called three witnesses to testify. Each witness' testimony provided support for the petitioner's decision to pursue termination of the respondent's parental rights. Derek A. Franklin, a licensed clinical psychologist and the court-appointed evaluator, testified that it was unlikely that the respondent would be able to achieve a degree of rehabilitation that is sustainable. He stated that the respondent had co-opted Chester C. and that they had a pathological, one-sided relationship. He further opined that any consideration of the children's reunification with Chester C. would be contingent upon Chester C.'s distancing himself from the respondent because, otherwise, reunification would serve as a conduit for the respondent to have access to the children. On cross-examination by counsel for Chester C., Franklin testified that Chester C. appeared to be unduly influenced by the respondent such that, even if he followed through with all of the other steps for rehabilitation, reunification may not be viable.

Chanel Cranford, a social worker for the department, testified that at the time the department received the case, its plan was to pursue reunification. This plan changed, however, when the department determined

that Chester C. still lacked insight into how the respondent's substance abuse and untreated mental health issues would affect the children. This decision was further influenced by the department's findings that the respondent was not participating in the substance abuse and mental health treatment programs that the department provided for her.

Rachelle Chevalier-Jackson, the owner of Ahava Family Services (Ahava), testified about the parent education program and supervised visitation services in which the respondent participated. After participating in Ahava's parent education program for several weeks, the respondent withdrew from the program and indicated that she no longer wanted to take direction from its staff. Chevalier-Jackson also testified that there were instances in which the respondent was argumentative with staff members. When staff members relayed concerns about the respondent's behavior to Chester C., he decided to start visiting the children separately.

At trial, the respondent did not propose any alternative permanency plans. In fact, the only possible reference to an alternative plan came, not during the presentation of evidence, but during closing arguments when the respondent's counsel stated: "If your plan is to reunify with the father and not free these children for adoption, I submit that my client's parental rights should not be terminated in this matter."

After the trial court granted the termination petitions, the respondent did not attempt to raise this claim by filing a motion to reargue or reconsider, nor did she ask the court to articulate whether it had considered other options. The respondent's failure to pursue any of these avenues left the record devoid of evidence and findings necessary to review her constitutional claim.

The respondent attempts to rely on our Supreme Court's decision in *In re Brayden E.-H.*, 309 Conn.

642, 72 A.3d 1083 (2013). In that case, the trial court terminated a respondent mother's parental rights on the basis of evidence of substance abuse and mental health issues, a "chronic history of relapses and failed substance abuse treatment," and numerous interactions with the criminal justice system. (Internal quotation marks omitted.) Id., 647–49. The trial court granted permanent legal guardianship to the children's paternal great-aunt and her husband, and declined to terminate the father's parental rights. Id., 644 and n.1. After the trial court issued its decision, the respondent filed a motion to reargue in which she asserted that the substantive due process clauses of the state and federal constitutions required the petitioner to prove that termination was the least restrictive permanency plan available to secure the best interests of the children. Id., 653–54. She presented less restrictive alternatives to termination, including "severely circumscrib[ing] visitation rights with her children," which would have addressed the court's concerns while allowing her to maintain a legal relationship with her children. (Internal quotation marks omitted.) Id., 654.

Our Supreme Court found that the respondent preserved this constitutional claim by filing a motion to reargue but it declined to address the constitutional question, in part, because the record made it "readily apparent" that the respondent was not entitled to the relief she sought. Id., 656–57. The court also noted that, even if it was to assume that such a right existed; id., 657; the trial court's decision revealed that the standard was met because it concluded that "*any* avenue that would permit the respondent to exert *any* further control or influence over the children would undermine the guardians' relationship with the children and would be contrary to the children's best interests." (Emphasis in original.) Id., 661–62.

Unlike the respondent in *In re Brayden E.-H.*, the respondent here never proposed a plan that would have addressed the court's concerns while allowing her to maintain a legal relationship with the children. In the absence of such a proposal, the court had no factual predicates upon which to make a finding.

"Our role is not to guess at possibilities, but to review claims based on a complete factual record developed by the trial court. . . . Without the necessary factual and legal conclusions furnished by the trial court . . . any decision made by us respecting [the respondent's claims] would be entirely speculative." (Internal quotation marks omitted.) *In re Anthony L.*, supra, 194 Conn. App. 119–20. Accordingly, we decline to review the respondent's unpreserved constitutional claim because the inadequate record fails to satisfy the requirement of *Golding*'s first prong.

The judgments are affirmed.

In this opinion the other judges concurred.

COREY TURNER *v.* COMMISSIONER OF CORRECTION (AC 42437)

Lavine, Moll and Suarez, Js.

Syllabus

The petitioner, who previously had been convicted of the crimes of murder and assault in the first degree in connection with the shooting death of the victim, sought a writ of habeas corpus, claiming, inter alia, that the respondent Commissioner of Correction violated his due process rights by eliciting perjured testimony from his criminal trial counsel at his first habeas trial. The habeas court rendered judgment dismissing in part and denying in part the habeas petition. Thereafter, the habeas court denied his petition for certification to appeal, and the petitioner appealed to this court. Subsequently, the petitioner filed a motion to open the judgment and to disqualify the judicial authority, which the court denied and the petitioner amended his appeal. *Held*:

1. The habeas court did not abuse its discretion in denying the petition for certification to appeal; the habeas court reasonably determined that the petitioner's claims were frivolous and not debatable among jurists of reason.
2. The habeas court properly dismissed as nonjusticiable that count of the petition that alleged that the petitioner's due process rights had been violated due to newly discovered evidence that the respondent's counsel elicited perjured testimony from his criminal trial counsel at his first habeas trial: the court lacked authority to open the judgment rendered in the first habeas action and, therefore, the court could provide no practical relief to the petitioner on his claim, rendering the case moot; moreover, the petitioner's allegations regarding his criminal trial counsel's testimony at the first habeas trial did not constitute a constitutional violation of the petitioner's liberty and, therefore, the court did not have subject matter jurisdiction.
3. The habeas court did not improperly deny those counts of the petitioner's petition alleging suppression of and failure to preserve evidence of K-9 tracking of the alleged perpetrator during the police investigation of the murder: the court concluded that evidence of K-9 tracking had not been proven to exist, and the petitioner failed to demonstrate that there was evidence of the K-9 track that the state suppressed or the police failed to preserve; moreover, the court's decision was predicated in part on its determination that the testimony of a patrol sergeant, that if he had performed a K-9 track, he would have written a report, and that he could not recall using a K-9, was credible, and it is not the role of appellate courts to second-guess credibility determinations.
4. This court declined to review the petitioner's claim that the habeas court abused its discretion in denying his postjudgment motion to open the judgment and disqualify the judicial authority because the record was inadequate; the petitioner failed to follow the procedures required for disqualification, as the petitioner's affidavit and good faith certificate failed to comport with legal standards, the motion was not timely filed, there was no opportunity for a hearing to be held on the motion to disqualify to create a factual record for review and the petitioner failed to demonstrate good cause for failing to comply with the rules of practice.

Argued September 14—officially released November 3, 2020

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *Westbrook*, *J.*; judgment dismissing the petition in part and denying the petition in part; thereafter, the court denied the petition for certification to appeal, and the plaintiff appealed to this court; subsequently, the court, *Westbrook*, *J.*, denied

the petitioner's motion to open the judgment and to disqualify the judicial authority, and the petitioner filed an amended appeal. *Appeal dismissed.*

Corey Turner, self-represented, the appellant (petitioner).

Melissa L. Streeto, senior assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, former state's attorney, and *JoAnne Sulik*, senior assistant state's attorney, for the appellee (respondent).

Opinion

LAVINE, J. The self-represented petitioner, Corey Turner, appeals from the judgment of the habeas court, *Westbrook, J.*, denying his petition for certification to appeal from the court's judgment dismissing in part and denying in part his second amended fifth petition for a writ of habeas corpus. On appeal, the petitioner claims that the habeas court abused its discretion by (1) denying his petition for certification to appeal, (2) dismissing his claim that he was deprived of a fair trial during his first habeas trial, (3) denying his claims that the prosecuting authority violated his state and federal constitutional rights by failing (a) to disclose exculpatory evidence and (b) to preserve the exculpatory evidence, and (4) denying his motion to open the judgment and disqualify the judicial authority. We dismiss the appeal.

The following procedural summary provides context for the petitioner's present appeal. In 1997, the jury found the petitioner guilty of murder in violation of General Statutes § 53a-54a and assault in the first degree in violation of General Statutes § 53a-59 for fatally shooting Richard Woods in Hartford in 1995. See *State* v. *Turner*, 252 Conn. 714, 716–17, 751 A.2d 372 (2000).[1]

[1] The jury reasonably could have found the following facts. On the evening of August 11, 1995, the petitioner and Woods had an argument in front of a house at 141 Homestead Avenue in Hartford. *State* v. *Turner*, supra, 252 Conn. 717. At approximately 11 p.m., a group of people were standing in front of the house when the petitioner and his brother, Charles Turner, drove by the house in a tan Oldsmobile. Id., 717–18. Shortly thereafter,

The trial court, *Koletsky*, *J.*, sentenced the petitioner to a total effective term of sixty years of incarceration. *Turner* v. *Commissioner of Correction*, 86 Conn. App. 341, 342, 861 A.2d 522 (2004), cert. denied, 272 Conn. 914, 866 A.2d 1286 (2005). Our Supreme Court upheld the petitioner's conviction on direct appeal. *State* v. *Turner*, supra, 750. The petitioner subsequently filed a succession of state and federal petitions for a writ of habeas corpus, as well as, a writ of error coram nobis, motions to open and set aside judgments, and a statutory petition for a new trial.[2] None of the petitioner's

Charles Turner, alone in the car, drove back and parked the car. Id., 718. Charles Turner got out of the car and approached the group standing in front of the house and began "dancing around." Id., 718. Meanwhile, the petitioner "wearing a mask and dark clothing, approached the group and shot at Woods with a handgun. . . . Woods shouted 'Boku shot me. Boku did it.' 'Boku' is [the petitioner's] street name." Id. Darius Powell and Kendrick Hampton recognized the petitioner as the assailant. Id. The petitioner escaped by running behind 141 Homestead Avenue and through the yards of other houses on the street. Id. "Charles Turner, who had jumped back into the tan Oldsmobile when the shooting began, drove down Homestead Avenue and picked up [the petitioner] four houses away." Id.

[2] See *Turner* v. *Commissioner of Correction*, supra, 86 Conn. App. 341 (appeal from denial of petition alleging ineffective assistance of trial and appellate counsel); *Turner* v. *Commissioner of Correction*, 97 Conn. App. 15, 902 A.2d 716 (appeal from dismissal of petition alleging ineffective assistance of trial counsel), cert. denied, 280 Conn. 922, 908 A.2d 546 (2006); *Turner* v. *Dzurenda*, 596 F. Supp. 2d 525 (D. Conn. 2009) (petition alleging state habeas court unreasonably applied *Strickland* v. *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 672 (1984)), aff'd, 381 Fed. Appx. 41 (2d Cir.), cert. denied, 562 U.S. 1032, 131 S. Ct. 574, 178 L. Ed. 2d 419 (2010); *Turner* v. *Commissioner of Correction*, 118 Conn. App. 565, 984 A.2d 793 (2009) (appeal from denial of petition alleging ineffective assistance of first habeas appellate counsel), cert. denied, 296 Conn. 901, 991 A.2d 1104 (2010); *Turner* v. *Commissioner of Correction*, 134 Conn. App. 906, 40 A.3d 345 (appeal from denial of writ of error coram nobis), cert. denied, 307 Conn. 904, 53 A.3d 219 (2012); *Turner* v. *Commissioner of Correction*, 139 Conn. App. 906, 55 A.3d 626 (appeal from denial of motion to set aside judgment of conviction), cert. denied, 308 Conn. 946, 67 A.3d 289 (2012); *Turner* v. *Warden*, Superior Court, judicial district of Tolland, CV-11-4003901-S (July 9, 2013); *Turner* v. *Commissioner of Correction*, 163 Conn. App. 556, 134 A.3d 1253 (appeal from denial of motion to open first habeas judgment), cert. denied, 323 Conn. 909, 149 A.3d 1253 (2016); *Turner* v. *State*, 172 Conn. App. 352, 1604 A.2d 398 (2017) (appeal from denial of petition for new trial).

myriad efforts for postconviction relief has been successful.

The issues in the present appeal are related to the denials of the petitioner's first petition for a writ of habeas corpus and his motion to open the first habeas court judgment. The relevant procedural history was summarized comprehensively by this court in *Turner* v. *Commissioner of Correction*, 163 Conn. App. 556, 134 A.3d 1253, cert. denied, 323 Conn. 909, 149 A.3d 1253 (2016), in which the petitioner appealed from the judgment of the habeas court, *Cobb*, *J.*, claiming in part that Judge Cobb improperly determined that the petitioner's motion to open and set aside the judgment rendered by the first habeas court, *White*, *J.*, was time barred. Id., 558.

"The petitioner's first petition for writ of habeas corpus . . . was adjudicated in 2002. In that case, [Judge White] denied the petitioner's writ of habeas corpus alleging claims of ineffective assistance of counsel both in his underlying criminal trial and on his direct appeal. This court dismissed the petitioner's appeal. *Turner* v. *Commissioner of Correction*, 86 Conn. App. 341, 861 A.2d 522 (2004), cert. denied, 272 Conn. 914, 866 A.2d 1286 (2005).

"During [the first] habeas trial, the petitioner alleged that his criminal trial counsel had been ineffective for failing to convince the criminal trial court to admit evidence that supported his defense of alibi. The petitioner had testified, during his criminal trial, that he was with [Fonda Williams, the mother of his child] at the time of the murder. He called [Williams] to testify and she repeated the same story. During cross-examina-

In addition, the petitioner has filed an appeal from the denial of his sixth petition for a writ of habeas corpus, which currently is pending in this court. *Turner* v. *Commissioner of Correction*, Connecticut Appellate Court, Docket No. AC 43401 (appeal filed September 16, 2019).

tion of the petitioner, the state questioned him about a recorded prison [telephone] call between the petitioner and [Williams], suggesting that he had fabricated the story. In an attempt to refute the state's rebuttal evidence, the petitioner's criminal trial counsel [Leon Kaatz] attempted to admit into evidence the recording of the [telephone] call between the petitioner and [Williams], but the trial court sustained the state's objection.[3]

"In his first habeas trial, the petitioner called [Kaatz] as a witness in an effort to elicit testimony that would show that he had been ineffective by failing to have the recorded [telephone] call admitted as evidence in the criminal trial. On cross-examination, [Kaatz] testified that the petitioner presented him with two witnesses who would testify to an alibi, in addition to and separate from [Williams]. [Kaatz] testified that initially during the trial, he interviewed one of the two additional witnesses and found that she was not credible and thus did not present their testimony in the petitioner's defense. The petitioner, representing himself at the habeas trial, attempted to impeach [Kaatz] through use of a prior inconsistent statement concerning the additional witnesses. The petitioner sought to admit as evidence [Kaatz'] written response to a 1997 grievance that was filed against him by the petitioner. The petitioner claimed that the written response proved that the petitioner provided [Kaatz] with only [Williams] in regard to his alibi, contra-

[3] On direct appeal, the petitioner claimed that the trial court abused its discretion by sustaining the state's objection to the tape recording of the petitioner's conversation with Williams. *State* v. *Turner*, supra, 252 Conn. 724. Our Supreme Court concluded that the trial court did not abuse its discretion, reasoning that the petitioner "did not point to anything in the offered tape that would have been helpful to his case with regard to the state's rebuttal evidence. Rather, he argued that the offered tape would substantiate his testimony on cross-examination concerning his conversation with Williams. Bolstering of defense evidence is not permitted on surrebuttal." Id.

dicting [Kaatz'] habeas testimony.[4] However, [Judge White] sustained the objection of the respondent . . . to the introduction of this extrinsic evidence because the habeas court concluded that the statement would be cumulative and involved a collateral matter. The next day, the petitioner moved for a mistrial because he claimed that [Kaatz] had perjured himself and the court denied him the opportunity to present evidence that would have supported that claim. The court denied the motion. Ultimately, [Judge White] denied the petitioner's writ of habeas corpus. The petitioner appealed from [Judge White's judgment], but he did not argue that the court had erred by sustaining the [respondent's] objection to his admission of the grievance response into evidence. This court dismissed the appeal. *Turner* v. *Commissioner of Correction*, supra, 86 Conn. App. 343 . . . .

"On July 27, 2011, the petitioner filed a motion to open and set aside the . . . judgment [rendered by Judge White] on his first petition for writ of habeas corpus. The petitioner claimed that the judgment resulted from a fraud committed upon the court through the col-

[4] In deciding the appeal, this court carefully reviewed the grievance response and concluded that it did not reveal a clear discrepancy between the response and Kaatz' testimony at the criminal trial. "In the 1997 grievance, [Kaatz] was writing in response to the petitioner's specific claims that he did not interview the witness who supported his alibi: 'On Friday, July 25, at the end of the first week of evidence in the trial, Petitioner did, for the first time, reveal to me the identity of his alibi witness, her name was Fonda Williams.' The state argues that any discrepancy was explained by [Kaatz] in his response to a second grievance filed by the petitioner. The statement was made in a grievance response dated March 21, 2003; a document that the petitioner included in his pretrial brief to the habeas court supporting his motion to open and vacate the judgment. [Kaatz] stated: 'My dialogue with these women took place 7 years ago and my recollection of precisely what was said may be sketchy. I do recall, however, that at no time did either of these women tell me they were acting on their own. Further . . . in future dialogues I had with [the petitioner] about these women, [the petitioner] never stated or even suggested that the two women were acting on their own without his knowledge.' " *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 560 n.3.

lusion of [Kaatz] and the respondent's counsel [Angela Macchiarulo] in the first habeas action. Specifically, the petitioner claimed that [Kaatz] had perjured himself in testimony before [Judge White] and that [Macchiarulo] had intentionally elicited this testimony even though she knew that it was false. During [Judge Cobb's] hearing on the motion, the petitioner argued that [Kaatz'] statement regarding multiple alibis had undermined his petition for writ of habeas corpus because it supported the respondent's contention that [Williams'] testimony as to the petitioner's alibi had been fabricated. [Judge Cobb] denied the petitioner's motion to open and set aside the judgment based on his failure to satisfy any of the factors set out in *Varley* v. *Varley*, 180 Conn. 1, 4, 428 A.2d 317 (1980), to prove that the judgment was based on fraud.[5] [Judge Cobb] also denied the petitioner certification to appeal." (Footnotes added and omitted.) *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 558–62.

After Judge Cobb denied the motion to open and set aside the judgment in a memorandum of decision dated December 19, 2012, the petitioner filed two motions for reconsideration, which were denied. Id., 562 n.6. In June, 2013, the petitioner sought to appeal from the denial of his motion to open and set aside the judgment, but this court dismissed the appeal because the petitioner had failed to seek certification to appeal from the habeas court judgment. Id. The petitioner filed a petition for certification to appeal, which was denied in November, 2013. Id. In March, 2014, the petitioner appealed from the habeas court's denial of his petition for certification. Id.

[5] Judge Cobb stated: "The petitioner's delay in filing the motion to open is unreasonable, the prosecution of said motion has not been diligent, there is no clear proof of perjury or fraud, and there is no reasonable probability that the result of a new habeas trial will be different." (Internal quotation marks omitted.) *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 562 n.5.

In deciding the petitioner's appeal from the judgment, this court considered the controlling law. "Habeas corpus is a civil proceeding. . . . The principles that govern motions to open or set aside a civil judgment are well established. A motion to open and vacate a judgment . . . is addressed to the [habeas] court's discretion, and the action of the [habeas] court will not be disturbed on appeal unless it acted unreasonably and in clear abuse of its discretion." (Internal quotation marks omitted.) Id., 563.

"A motion to open and set aside judgment is governed by General Statutes § 52-212a and Practice Book § 17-4. . . . Section 52-212a provides in relevant part: 'Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . .' " (Citation omitted.) Id., 563–64.

"For claims of fraud brought in a civil action, our Supreme Court has established the criteria necessary for a party to overcome the statutory time limitation governing a motion to open and set aside judgment. *Varley* v. *Varley*, supra, 180 Conn. 4 . . . . To have a judgment set aside on the basis of fraud which occurred during the course of the trial upon a subject on which both parties presented evidence is especially difficult. . . . The question presented by a charge of fraud is whether a judgment that is fair on its face should be examined in its underpinnings concerning the very matters it purports to resolve. Such relief will only be granted if the unsuccessful party is not barred by any of the following restrictions: (1) There must have been no laches or unreasonable delay by the injured party after the fraud was discovered. (2) There must have been diligence in the original action, that is, diligence in trying to discover and expose the fraud. (3) There

must be clear proof of the perjury or fraud. (4) There must be a substantial likelihood that the result of the new trial will be different." (Internal quotation marks omitted.) *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 564.

This court concluded that Judge Cobb "properly denied the petitioner's motion to open and set aside the judgment [rendered in the first habeas trial] because it was raised after an unreasonable delay. [Judge White] denied the petitioner's first petition for a writ of habeas corpus on January 4, 2002. More than eight years later, the petitioner filed the present motion with [Judge Cobb]. During that span of time, the petitioner did not develop any new facts or claims to support his assertion of fraud. The petitioner instead seeks to set aside [Judge White's] judgment with facts that were known to him, as well as to the habeas court, at the time of his first petition for a writ of habeas corpus. The petitioner has not offered this court any argument that justifies his lengthy delay in bringing this motion in a habeas action. The determination that the petitioner delayed an unreasonable period of time in pursuit of his claim of fraud is not debatable among jurists of reason." Id., 564–65. This court dismissed the appeal from the denial of the motion to open and set aside the judgment in the first habeas case. Id., 565.

On September 10, 2014, the petitioner filed a fifth petition for a writ of habeas corpus, which is the subject of the present appeal. He filed a second amended petition (amended petition) on May 31, 2017, in which he alleged five counts: (1) the respondent violated his rights to due process at the first habeas trial by eliciting perjured testimony from Kaatz; (2) Kaatz rendered ineffective assistance at the criminal trial by failing to rehabilitate the credibility of the petitioner and Williams after their credibility had been impeached by the state with false claims of a recently fabricated alibi defense; (3) Kaatz rendered ineffective assistance by failing to

investigate deficiencies in the police investigation; (4) the state suppressed exculpatory evidence of K-9 tracking during the police search; and (5) the police department failed to preserve exculpatory evidence of K-9 tracking during the police search. Prior to trial, the petitioner withdrew his second and third counts. In her September 17, 2018 memorandum of decision, Judge Westbrook concluded that the petitioner's claim that Kaatz testified falsely at the first habeas trial was not justiciable and dismissed it. She also concluded that the evidence that the petitioner claims the state suppressed and that the police department did not preserve never existed and, therefore, she denied the petitioner's second and third counts.[6] The habeas court also denied the petitioner's petition for certification to appeal. The petitioner appealed on December 31, 2018.

On January 7, 2019, the petitioner filed a motion with the habeas court to open the judgment and to disqualify the judicial authority (motion to open and disqualify). Judge Westbrook denied the motion to open and disqualify on January 15, 2019. On February 15, 2019, the petitioner filed an amended appeal to challenge the habeas court's denial of his motion to open and disqualify filed postjudgment. Additional facts will be set forth as necessary.

I

The petitioner first claims that the habeas court abused its discretion by denying his petition for certification to appeal. We conclude that the habeas court did not abuse its discretion.

Pursuant to General Statutes § 52-470 (g), a petitioner may appeal from the decision of the habeas court if

[6] In her memorandum of decision, Judge Westbrook renumbered the petitioner's counts and referenced them as count one, count two, and count three. We have adopted the habeas court's reference to the counts of the amended fifth habeas petition.

"the judge before whom the case was tried . . . [certifies] that a question is involved in the decision which ought to be reviewed by the court having jurisdiction . . . ." Section 52-470 (g) was enacted to discourage frivolous habeas corpus appeals by conditioning the petitioner's right to appeal upon obtaining certification from the habeas court. See *Simms* v. *Warden*, 230 Conn. 608, 616, 646 A.2d 126 (1994). A petitioner who was denied certification to appeal but nonetheless appeals must first demonstrate that the denial of certification constituted an abuse of the habeas court's discretion. See id.

A petitioner can establish that the habeas court abused its discretion by denying certification to appeal if the petitioner can demonstrate that either "[1] the issues are debatable among jurists of reason; [2] that a court could resolve the issues [in a different manner]; or [3] that the questions are adequate to deserve encouragement to proceed further." (Emphasis omitted; internal quotation marks omitted.) *Lozada* v. *Deeds*, 498 U.S. 430, 432, 111 S. Ct. 860, 112 L. Ed. 2d 956 (1991); see also *Simms* v. *Warden*, supra, 230 Conn. 616. Pursuant to *Simms*, the reviewing court consequently must consider the merits of the petitioner's claims in order to determine whether a certifiable issue exists under *Lozada*. *Simm*s v. *Warden*, supra, 616. "In determining whether the habeas court abused its discretion in denying the petitioner's request for certification, we necessarily must consider the merits of the petitioner's underlying claims to determine whether the habeas court reasonably determined that the petitioner's appeal was frivolous." *Taylor* v. *Commissioner of Correction*, 284 Conn. 433, 449, 936 A.2d 611 (2007). Pursuant to our review of the petitioner's claims as addressed herein, we conclude that the habeas court reasonably determined that the petitioner's claims are frivolous and denied certification to appeal.

II

The petitioner claims that the court improperly dismissed count one of his amended petition as nonjusticiable. We disagree that the habeas court improperly determined that count one was nonjusticiable.

A claim regarding the court's subject matter jurisdiction raises a question of law. See *Windels* v. *Environmental Protection Commission*, 284 Conn. 268, 279, 933 A.2d 256 (2007). The plenary standard of review applies to questions of law. Id.

The following facts are relevant to this claim. In count one of his amended petition, the petitioner alleged that his due process rights were violated due to newly discovered evidence related to the first habeas trial in 2002. The petitioner alleged that, Macchiarulo, counsel for the respondent, elicited testimony from Kaatz that she knew or should have known was perjured, false or misleading and that there was a reasonable likelihood that the false testimony could have affected the judgment Judge White rendered.

In its return, the respondent pleaded that the claim alleged in count one failed to state a cause of action and was otherwise barred by the doctrine of res judicata or collateral estoppel.[7] The respondent argued that, although the petitioner claimed that he was entitled to a new habeas corpus trial on the basis of false testimony allegedly given at the first habeas trial, he was not challenging the lawfulness of his custody. Furthermore, the respondent argued, the purpose of habeas corpus is to challenge the legality of custody and because the petitioner did not challenge the legality of his custody in count one, the claim is not cognizable.

[7] Because we conclude that the habeas court properly concluded that the allegations contained in count one were not justiciable, we decline to address the respondent's res judicata argument.

The habeas trial was held on July 26 and September 20, 2017. The habeas court issued a memorandum of decision on September 17, 2018, after the parties submitted posttrial briefs. In its memorandum of decision, the habeas court demonstrated its familiarity with the factual history of the underlying crime as set forth in *State* v. *Turner*, supra, 252 Conn. 717–18, and the procedural history set forth in this court's opinion in *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 559–61 (dismissing appeal from denial of motion to open judgment in first habeas trial).[8] The court agreed with the respondent that there was no relief that it could provide the petitioner and, therefore, that the claim was not justiciable.

The habeas court cited the controlling law. "A petition for a writ of habeas corpus is a civil action . . . ." (Citation omitted.) *Gonzalez* v. *Commissioner of Correction*, 127 Conn. App. 454, 460, 14 A.3d 1053 (2011). "A court will not resolve a claimed controversy on the merits unless it is satisfied that the controversy is justiciable. . . . Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) *that the determination of the controversy will result in practical relief to the complainant*." (Citation omitted; emphasis added; internal quotation marks omitted.) *Mejia* v. *Commissioner of Correction*, 112 Conn. App. 137, 146, 962 A.2d 148, cert. denied, 291 Conn. 910, 969 A.2d 171 (2009).

[8] Judge Westbrook noted when dismissing the petitioner's appeal from the motion to open that "the petitioner did not develop any new facts or claims to support his assertion of fraud. The petitioner instead seeks to set aside the habeas court's judgment with facts that were known to him, as well as to [Judge White], at the time of his first petition for a writ of habeas corpus." *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 565–66.

A habeas court may not set aside or vacate the judgment of a prior habeas court. General Statutes § 52-212a provides in relevant part: "Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . ."

Our Supreme Court has stated that Connecticut's "jurisprudence concerning the trial court's authority to overturn or to modify a ruling in a particular case assumes, as a proposition so basic that it requires no citation of authority, that any such action will be taken only by the trial court with continuing jurisdiction over the case, and that the only court with continuing jurisdiction is the court that originally rendered the ruling." *Valvo* v. *Freedom of Information Commission*, 294 Conn. 534, 543–44, 985 A.2d 1052 (2010). "This assumption is well justified in light of the public policies favoring consistency and stability of judgments and the orderly administration of justice." Id., 545. It would wreak havoc on the judicial system to permit a trial court to second guess the judgment of another trial court in a separate proceeding. Id. "This is especially true when a direct challenge to the original ruling can be made by any person at any time in the trial court with continuing jurisdiction"; id.; as in the present case. The petitioner took a direct appeal from his criminal conviction, which was denied; *State* v. *Turner*, supra, 252 Conn. 714; and from the denial of his first petition for a writ of habeas corpus. *Turner* v. *Commissioner of Correction*, supra, 86 Conn. App. 341.

In the present case, Judge Westbrook lacked authority to open the judgment rendered in the first habeas action. For that reason, she was not able to render practical relief to the petitioner on count one. "[C]ourts

are established to resolve actual controversies [and] before a claimed controversy is entitled to a resolution on the merits it must be justiciable." (Internal quotation marks omitted.) *Valvo* v. *Freedom of Information Commission*, supra, 294 Conn. 540. If the court is not capable of providing practical relief to the complainant, the case is moot. Id., 541. Mootness is a question of justiciability that implicates the court's subject matter jurisdiction. Id. If a court lacks subject matter jurisdiction over an alleged claim, the claim must be dismissed. See, e.g., *O'Reilly* v. *Valletta*, 139 Conn. App. 208, 216, 55 A.3d 583 (2012), cert. denied, 308 Conn. 914, 61 A.3d 1101 (2013).[9]

The petitioner also claims that the habeas court improperly dismissed count one for lack of subject matter jurisdiction because, as a court of equity, it was "permitted to fashion a remedy or provide practical relief commensurate with the scope of the constitutional violation alleged . . . ." The respondent contends that the petitioner's claim that Kaatz testified falsely at the first habeas trial, not at his criminal trial, does not implicate a constitutional right. We agree with the respondent. "Subject matter jurisdiction for adjudicating habeas petitions is conferred on the Superior Court by General Statutes § 52-466, which gives it the authority to hear those petitions that allege illegal confinement or deprivation of liberty." (Internal quotation marks omitted.) *Anthony A.* v. *Commissioner of Correction*, 159 Conn. App. 226, 234, 122 A.3d 730 (2015).[10]

[9] The habeas court also pointed out that a habeas petitioner seeking relief on a claim that a witness testified falsely at the habeas trial may file (1) a motion to open and set aside the judgment pursuant to § 52-212a and Practice Book § 17-4, or (2) a petition for a new trial pursuant to General Statutes § 52-270 and Practice Book § 17-4A. The respondent correctly notes that the petitioner has availed himself of those options, albeit without success.

[10] The petitioner also claims on appeal that the habeas court failed to exercise its discretion to fashion a remedy for the relief sought. As we have pointed out, the habeas court had no authority to affect the judgments rendered in the petitioner's criminal or first habeas trials. Moreover, the basic premise of the petitioner's claim that there is newly found evidence

"Habeas corpus provides a special and extraordinary legal remedy for illegal detention. . . . The deprivation of legal rights is essential before the writ may be issued. . . . Questions which do not concern the lawfulness of the detention cannot properly be reviewed on habeas corpus. . . . When a habeas petition is properly before a court, the remedies it may award depend on the constitutional rights being vindicated." (Citations omitted; internal quotation marks omitted.) *Vincenzo* v. *Warden*, 26 Conn. App. 132, 137–38, 599 A.2d 31 (1991). In the present case, the petitioner's allegations regarding Kaatz' testimony do not constitute a constitutional violation of the petitioner's liberty and, therefore, the habeas court had no subject matter jurisdiction. When a court finds that it lacks jurisdiction, it must dismiss the case. See *Pet* v. *Dept. of Health Services*, 207 Conn. 346, 351, 542 A.2d 672 (1988), overruled on other grounds by *Mangiafico* v. *Farmington*, 331 Conn. 404, 425, 204 A.3d 1138 (2019).

In the present case, the habeas court lacked subject matter jurisdiction because the petitioner's claim is not justiciable and, therefore, the habeas court properly dismissed count one of the petition.

III

The defendant's second claim is that the habeas court abused its discretion by denying those counts alleging violation of his constitutional rights under the fifth and fourteenth amendments to the United States constitution and article first, §§ 8 and 9, of the constitution of Connecticut in that (a) the state suppressed evidence of a K-9 track used during the police investigation of the crime scene in violation of *Brady* v. *Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963),[11] and

is fundamentally flawed. During the first habeas trial, the petitioner moved for a mistrial on the basis of Kaatz' testimony.

[11] "[I]n *Brady* v. *Maryland*, [supra, 373 U.S. 87], the United States Supreme Court held that the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material

(b) the police failed to preserve evidence of the K-9 track in violation of *Arizona* v. *Youngblood*, 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988),[12] and *State* v. *Morales*, 232 Conn. 707, 657 A.2d 585 (1995). We disagree.

The petitioner has predicated his claim on the following testimony presented at his criminal trial. A Hartford police officer, Mark Castagna, was dispatched to the scene of the shooting and notified the patrol commander, Sergeant Stephen O'Donnell, of the seriousness of Woods' injuries. The crime scene had been secured when O'Donnell arrived. Castagna learned from Betty Lewis, who lived at 141 Homestead Avenue, that the perpetrator of the shooting came from the backyards of 143-145 Homestead Avenue and fled there after the shooting. According to Castagna, it would have been normal to call in a K-9 to track of the perpetrator in an investigation such as this, but he did not know whether it was done in this case. The state's lead investigator, Keith Knight, responded to the crime scene after it had been processed. According to Knight, a police sergeant would have been in charge of the investigation. Knight

either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. To establish a *Brady* violation, the defendant must show that (1) the government suppressed evidence, (2) the suppressed evidence was favorable to the defendant, and (3) it was material [either to guilt or to punishment]." (Internal quotation marks omitted.) *State* v. *Kelsey*, 93 Conn. App. 408, 418, 889 A.2d 855, cert. denied, 277 Conn. 928, 895 A.2d 800 (2006).

[12] "The United States Supreme Court, employing a federal due process clause analysis, explained that when confronted with a claim that the state failed to preserve evidence that could have been subjected to tests, the results of which might have exonerated the defendant; *Arizona* v. *Youngblood*, [supra, 488 U.S. 57]; unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." (Internal quotation marks omitted.) *State* v. *Barnes*, 127 Conn. App. 24, 30–31, 15 A.3d 170 (2011), aff'd, 308 Conn. 38, 60 A.3d 256 (2013). But see *State* v. *Morales*, supra, 232 Conn. 720–27 (applying balancing test under constitution of Connecticut).

reviewed the police reports submitted to determine whether follow-up was needed. He did not know whether a K-9 unit was called to assist in the investigation, and he did not see one. According to Knight, it would have been good police work to call in a K-9 unit in a case such as this. In 2015, the petitioner retained private investigators to investigate whether there was evidence to challenge his conviction.

On the basis of the record and evidence presented at the habeas trial, Judge Westbrook made the following findings in her memorandum of decision. "At the petitioner's criminal trial [Castagna], Detective Jim Chrystal and Detective Keith Knight were all questioned on whether a K-9 unit was present at the crime scene during the investigation on August 11 and August 12, 1995, and none of the witnesses could recall seeing one there. At the present habeas trial, the petitioner presented the court with a supplemental police report involving the crime scene filed by [O'Donnell, who is now retired]. The supplemental report does not reference any use of a K-9. The petitioner also presented documentary evidence indicating that [O'Donnell] attended a K-9 training program from February 2, 1992, to April 17, 1992.

"[The petitioner's] [p]rivate investigators, Thomas LaPointe and Jacqueline Bainer, testified at the habeas trial as to interviews they each had with [O'Donnell]. LaPointe's report . . . indicates that [O'Donnell] informed him that he had a vague recollection of performing a K-9 track in the area the crime occurred, but that he had performed tracking in that area on other occasions so he could not be certain that his recollection was related to the petitioner's case. Bainer's report . . . indicates that [O'Donnell] informed her that he could not recall if he was handling a K-9 [unit] during the investigation of the petitioner's case, but he would have reported it if the dog had hit upon a scent.

"At the habeas trial [O'Donnell] testified that on the night of the underlying incident, he responded to the crime scene as a patrol sergeant. He also testified that he believed he was a K-9 handler during that time, but that there was a period of time where he stopped being a K-9 handler so that he could accept a promotion to sergeant. [O'Donnell] further testified that he does not recall whether a track was performed that night, but that he would have written a report if he had performed one. The court finds [O'Donnell's] *testimony to be credible*."[13] (Emphasis added.) We now turn to the petitioner's claims regarding evidence of an alleged K-9 track at the scene of the shooting.

A

In count two of the amended petition, the petitioner alleged that the state suppressed evidence that would have raised opportunities for the defense to attack the thoroughness or good faith of the police investigation. Specifically, the petitioner alleged that the state failed to disclose the use of a K-9 to track the perpetrator of the crime.

In its memorandum of decision, the habeas court found that "there was no evidence presented that a K-9 track actually occurred during the course of the police investigation in the petitioner's case. The police officers

[13] On appeal, the respondent notes that a determination of a habeas claim that required "the court to perform its legitimate and essential role of weighing and evaluating the credibility of conflicting testimony does not, by itself, render a court's conclusion debatable among jurists of reason for the purpose of appellate review." (Internal quotation marks omitted.) *Bellino* v. *Commissioner of Correction*, 75 Conn. App. 743, 748, 817 A.2d 704, cert. denied, 264 Conn. 915, 826 A.2d 1159 (2003). The respondent argues that because credibility determinations are not reviewable for error, they necessarily are not debatable among reasonable jurists, subject to a different resolution or deserving of further argument, citing *Washington* v. *Commissioner of Correction*, 166 Conn. App. 331, 344–45, 141 A.3d 956, cert. denied, 323 Conn. 912, 149 A.3d 981 (2016). We agree with the respondent.

who were present at the scene and testified at the underlying criminal trial could not recall the use of a K-9 during the investigation. . . . O'Donnell, a trained K-9 handler present at the crime scene, testified that he could not recall the use of a K-9 during the investigation of the petitioner's case. There is no reference to the use of a K-9 team in any of the police reports submitted. As a result, a claim that the state suppressed such evidence that has not been proven to exist cannot survive." The court, therefore, denied count two of the amended petition.

B

In count three of the amended petition, the petitioner alleged that the Hartford Police Department violated his constitutional right to due process because it failed, in bad faith, to document or otherwise preserve material scientific or technical evidence, i.e., dog tracking evidence, which was subject to misinterpretation by the jury.

With respect to this count, in which the petitioner alleged a violation of *Arizona* v. *Youngblood*, supra, 488 U.S. 51, the habeas court noted that in *State* v. *Morales*, supra, 232 Conn. 707, our Supreme Court "rejected the bad faith litmus test from *Youngblood* as inadequate to determine whether the defendant had been afforded due process under the state constitution, and instead [the court] incorporated the *Asherman*[14] balancing test as the appropriate framework for deciding whether the failure of the police to preserve evidence deprived the defendant of his state constitutional rights to due process. . . . Accordingly, applying the *Asherman* test, [the court] weigh[s] the reasons for the unavailability of the evidence, the materiality of the missing evidence,

[14] See *State* v. *Asherman*, 193 Conn. 695, 724, 478 A.2d 227 (1984), cert. denied, 470 U.S. 1050, 105 S. Ct. 1749, 84 L. Ed. 3d 814 (1985).

the likelihood of mistaken interpretation of it by witnesses or the jury and the prejudice to the defendant." (Citation omitted; footnote added.) *State* v. *Estrella*, 277 Conn. 458, 483, 893 A.2d 348 (2006). The habeas court found no proof that evidence of the K-9 track the petitioner alleged that the police failed to preserve actually existed. The court therefore denied count three of the amended petition.

C

We thoroughly have reviewed the record and the briefs of the parties, and conclude that the petitioner has failed to demonstrate that the habeas court improperly denied counts two and three of his amended petition regarding the alleged suppression and failure to preserve K-9 evidence. The petitioner has failed to demonstrate that there was evidence that the state suppressed or that the police failed to preserve. Moreover, the habeas court's decision is predicated in part on its credibility determination. It is not the role of appellate courts to second-guess credibility determinations made by the habeas court. See *Fields* v. *Commissioner of Correction*, 179 Conn. App. 567, 577, 180 A.3d 638 (2018). The petitioner's claims regarding suppressed or unpreserved evidence of a K-9 track therefore fail.

IV

In his amended appeal, the petitioner claims that the habeas court abused its discretion by denying his postjudgment motion to open the judgment and disqualify the judicial authority (motion to open and disqualify). The respondent contends that the claim is not reviewable because the record is inadequate due to the petitioner's failure to comply with Practice Book § 1-23. We agree that the claim is not reviewable.

The record discloses the following procedural history. The habeas court issued its memorandum of decision on September 17, 2018, and the petitioner filed an appeal therefrom on December 31, 2018. On January

7, 2019, almost four months after the judgment was rendered, the petitioner filed the motion seeking to open the September 17, 2018 judgment dismissing count one and denying counts two and three of his amended petition and the recusal of Judge Westbrook "for the reasons set forth in the accompanying memorandum of law . . . ." In the accompanying memorandum of law, the petitioner stated that "the court's ruling dismissing the claims raised in count one of his amended petition evidences a deep-seated favoritism for the respondent warden or antagonism towards the petitioner that made a fair judgment on the merits of the petitioner's claims impossible." He represented that the record demonstrates that, during the habeas trial, Macchiarulo uttered a false statement in violation of General Statutes § 53a-156[15] by testifying that Kaatz' testimony during the first habeas trial was not an indication of perjury. The petitioner also represented that the habeas court hindered prosecution in violation of General Statutes § 53a-167 (a)[16] by failing to hold Macchiarulo accountable for having committed perjury before the court or to otherwise report her conduct to authorities.

On January 15, 2019, the habeas court denied the motion to open and disqualify.[17] The petitioner requested,

[15] General Statutes § 53a-156 (a) provides in relevant part: "A person is guilty of perjury if, in any official proceeding, such person intentionally, under oath or in an unsworn declaration . . . makes a false statement swears, affirms or testifies falsely, to a material statement which such person does not believe to be true."

[16] General Statutes § 53a-167 (a) provides: "A person is guilty of hindering prosecution in the third degree when such person renders criminal assistance to another person who has committed a class C, D or E felony or an unclassified felony for which the maximum penalty is imprisonment for ten years or less but more than one year."

[17] On February 28, 2019, the petitioner filed a motion for articulation of the habeas court's September 17, 2018 memorandum of decision denying his petition for a writ of habeas corpus. The court denied the motion for articulation on March 14, 2019. On April 1, 2019, the petitioner filed a motion for review of the habeas court's denial of his motion for articulation with this court. This court granted the motion for review but denied the relief requested on May 16, 2019.

pursuant to Practice Book § 64-1, that the habeas court file a memorandum of decision regarding its denial of the motion to open and disqualify. On February 15, 2019, the petitioner filed an amended appeal to challenge the habeas court's denial of his motion to open and disqualify.

On February 25, 2019, the habeas court issued an order pursuant to the petitioner's request.[18] The court stated: "The principles that govern motions to open or set aside a civil judgment are well established. Within four months of the date of the original judgment, Practice Book [§ 17-4] vests discretion in the trial court to determine whether there is a good and compelling reason for its modification or vacation. . . . *Chapman Lumber*, *Inc.* v. *Tager*, 288 Conn. 69, 94, 952 A.2d 1 (2008). Practice Book § 1-22 (a) provides in relevant part: A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct . . . . Rule 2.11 (a) of the Code of Judicial Conduct states in pertinent part: A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might be reasonably questioned . . . . Practice Book § 1-23 provides: A motion to disqualify a judicial authority shall be in writ-

On April 9, 2019, the petitioner filed a revised motion for summary reversal of the habeas court's judgment, which was directed to the postjudgment motion to open and disqualify underlying the amended appeal. On May 16, 2019, this court denied the revised motion for summary reversal.

[18] The habeas court first noted that the petitioner had filed numerous posttrial pleadings during the pendency of the present appeal, including the motion to open and disqualify. The court opined that given the procedural posture of the case, the motion to open and disqualify should not be considered a final judgment for purposes of Practice Book § 64-1 (a), and that it was illogical for the motion to open and disqualify to constitute a final judgment for purposes of appeal when there is an appeal pending from the judgment on the merits after trial. The court, nevertheless, set forth its reasons for denying the motion to open and disqualify.

ing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time." (Internal quotation marks omitted.)

The court found that the petitioner had alleged that its denial of his petition for a writ of habeas corpus "evidences a deep-seated favoritism for the respondent warden or antagonism toward the petitioner that made a fair judgment on the merits of the petitioner's claims impossible." The petitioner alleges that the court "rendered criminal assistance" to Macchiarulo by declining to hold her in contempt or to report her to the appropriate authorities for having committed perjury for soliciting and offering false testimony from Kaatz in a prior habeas proceeding. The court, however, found that the petitioner had failed to demonstrate that perjury in violation of § 53-156, in fact, had occurred. See footnote 15 of this opinion. The court found that the petitioner had not shown that Kaatz intentionally made a material false statement under oath or that Macchiarulo knew or should have known that Kaatz intentionally made a material false statement under oath.

The habeas court also found that the petitioner had failed to demonstrate that the court's failure to take certain action "rendered criminal assistance" for purposes of the offense of hindering prosecution pursuant to General Statutes § 53a-165.[19] The court found no indication that it had committed any of the specific acts

[19] General Statutes § 53a-165 provides that "a person 'renders criminal assistance' when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, another person whom such person knows or believes has committed a felony or is being sought by law enforcement officials for the commission of a felony, or with intent to assist another person in profiting or benefiting from the commission of a felony, such person: (1) Harbors or conceals such person; or (2) warns

that constitute the offense of hindering prosecution as defined by § 53a-165.

Significantly, the habeas court also found that the petitioner had failed to file the motion to disqualify with a proper affidavit or within ten days of the proceeding as required by Practice Book § 1-23. The petitioner also had not demonstrated good cause for failing to do so. The court concluded, therefore, that the petitioner had failed to demonstrate a good and compelling reason for opening the judgment or questioning the court's impartiality for disqualification purposes and reaffirmed its denial of the motion to open and disqualify.

We decline to review the petitioner's claim due to an inadequate record because the petitioner failed to follow the procedures required for disqualification. Practice Book § 1-23 provides that "[a] motion to disqualify the judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time." The respondent argues that we should not review the petitioner's claim because he failed to file the motion to open and disqualify at

such other person of impending discovery or apprehension; or (3) provides such other person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or (4) prevents or obstructs, by means of force, intimidation or deception, any person from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against such person; or (5) suppresses, by an act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such other person or in the lodging of a criminal charge against such other person, or (6) aids such other person to protect or expeditiously profit from an advantage derived from such crime."

least ten days prior to the habeas trial and failed to file an affidavit and good faith certificate, citing *Olson* v. *Olson*, 71 Conn. App. 826, 830, 804 A.2d 851 (2002). The failure to file an affidavit and good faith certificate, however, is not always fatal to a motion to disqualify. See *State* v. *Milner*, 325 Conn. 1, 6–10, 155 A.3d 730 (2017), and cases cited therein. The petitioner argues that he, in fact, filed an affidavit with the motion to open and disqualify.

Our review of the record disclosed that the petitioner attached to the motion to open and disqualify a document titled "Petitioner's Affidavit Filed in Support of his Motion for Recusal." The document, which is signed by the petitioner but not witnessed, states: "The undersigned is over the age of 21, and has personal knowledge of the facts stated herein. In particular, the facts stated in the undersigned's memorandum of law dated January 3, 2019 are hereby incorporated by reference and made the facts of this affidavit. See Petitioner's Memorandum of Law dated January 3, 2019. Pursuant to Connecticut Practice [Book] § 1-23 the undersigned hereby [certifies] that this motion is made in good faith." *Milner* teaches that the import of an affidavit is to provide a factual record. *State* v. *Milner*, supra, 325 Conn. 9–10. Evidence of bias sufficient to support a claim of judicial disqualification must be "based on more than opinion or conclusion." (Internal quotation marks omitted.) *State* v. *Bunker*, 89 Conn. App. 605, 613, 874 A.2d 301 (2005), appeal dismissed, 280 Conn. 512, 909 A.2d 521 (2006). "Our Supreme Court has indicated that, where there is a factual dispute involved in a claim of judicial bias, an evidentiary hearing may be in order, and it has implied that the hearing be before another judge. See *Papa* v. *New Haven Federation of Teachers*, 186 Conn. 725, 750–53, 444 A.2d 196 (1982)." *Szypula* v. *Szypula*, 2 Conn. App. 650, 653, 482 A.2d 85 (1984).

Although the petitioner's affidavit does not comport with legal standards nor does his purported good faith certificate, we need not decide that the record is inadequate for review on that basis alone. The petitioner's appellate claim is not reviewable because his motion to open and disqualify was not timely filed and there was no opportunity for a hearing to be held on the motion to disqualify to create a factual record for review. Practice Book § 1-23 provides that the motion be filed at least ten days before the judicial proceeding. If the motion is not filed within that time, good cause must be shown for failure to do so. In his appellate brief, the petitioner responds to the respondent's position that the claim is not reviewable, stating that the motion to open and disqualify is "based upon an issue that did not materialize until after trial" and therefore he can demonstrate good cause for failing to comply with the rules of practice. He relies on *State* v. *Rizzo*, 303 Conn. 71, 122, 31 A.3d 1094 (2011) ("[b]ecause the defendant could not have been aware of this claimed basis for disqualification at the time of the [relevant proceedings], he cannot be faulted for his failure to raise it in an objection"). The petitioner's argument is disingenuous, to say the least. For almost two decades, the petitioner has represented himself in habeas appeals in this court trying to undo his criminal conviction.[20]

The petitioner's argument also is unpersuasive. He waited almost four months after the habeas court rendered judgment on his petition to file the motion to open and disqualify. The petitioner may not legitimately claim judicial bias after he receives a judgment that is not to his liking. See *McGuire* v. *McGuire*, 102 Conn. App. 79, 83, 924 A.2d 886 (2007) (parties not permitted to anticipate favorable decision, reserving right to

[20] In the twenty-three years since the petitioner murdered Woods, he has freely leveled serious, unsubstantiated accusations at a number of people. We view this claim to be another such accusation.

impeach it or set it aside if it happens to be against them, for cause known to them before or during trial).

"Although we allow [self-represented parties] some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law. . . . Self-represented parties are not afforded a lesser standard of compliance and although we are solicitous of the rights of [self-represented parties] . . . [s]uch a litigant is bound by the same rules . . . and procedure as those qualified to practice law." (Internal quotation marks omitted.) *In re Enrico S.*, 136 Conn. App. 754, 757, 46 A.3d 173 (2012). It is the policy of Connecticut courts to be solicitous of self-represented parties and to construe the rules of practice liberally "when it does not interfere with the rights of other parties . . . ." (Emphasis omitted; internal quotation marks omitted.) *Rosato* v. *Rosato*, 53 Conn. App. 387, 390, 731 A.2d 323 (1999). Our liberal policy toward self-represented parties is, however, "severely curtailed in cases where it interferes with the rights of other parties." Id.

The petitioner in the present case is no ordinary self-represented party in the Appellate Court, as footnote 2 of this opinion and the record in the present appeal demonstrate. He files habeas petitions and appeals frequently. He is well versed in the rules of practice as demonstrated by his several petitions for a writ of habeas corpus and appeals, many motions for articulation, to reargue, to reopen and set aside and for permission to file late. The petitioner's failure to comply with the requirements of Practice Book § 1-23 has interfered with the rights of the respondent who was not afforded an opportunity to respond and to appear at a hearing on the motion. Moreover, the petitioner's claims against the habeas court are of the most serious nature in that they attack the court's impartiality and integrity and the fairness of our judicial system. Motions to disqualify

are to be filed no fewer than ten days before the judicial proceeding in order for the factual allegations against the court to be adjudicated by a different judge. The path taken by the petitioner interfered with the respondent's rights and was an affront to the court itself. We decline to review the claim because the record is inadequate.

For the reasons stated herein, we conclude that the habeas court did not abuse its discretion by denying certification to appeal from the judgment dismissing in part and denying in part the petitioner's second amended fifth petition for a writ of habeas corpus. The issues are not debatable among jurists of reason. See *Lozada* v. *Deeds*, supra, 498 U.S. 431–32.

The appeal is dismissed.

In this opinion the other judges concurred.

MEMORANDUM DECISIONS

CONNECTICUT APPELLATE REPORTS

VOL. 201

MEMORANDUM DECISIONS

STATE OF CONNECTICUT *v.* ADRIAN BENNETT
(AC 43150)

Elgo, Cradle and Alexander, Js.

Submitted on briefs October 19—officially released November 3, 2020

Defendant's appeal from the Superior Court in the judicial district of New Haven, *Clifford*, *J.*

Per Curiam. The judgment is affirmed.

WELLS FARGO BANK, N.A. *v.* DONALD M. BROWN
(AC 43441)

Alvord, Cradle and Alexander, Js.

Argued October 20—officially released November 3, 2020

Defendant's appeal from the Superior Court in the judicial district of Waterbury, *M. Taylor*, *J.*

Per Curiam. The judgment is affirmed; see *HSBC Bank USA, N.A.* v. *Hallums*, 183 Conn. App. 175, 178–80, 192 A.3d 517 (2018); and the case is remanded for the purpose of setting new law days.

THEDRESS CAMPBELL *v.* SHILOH BAPTIST CHURCH ET AL.
(AC 42600)

Lavine, Prescott and Suarez, Js.

Argued October 20—officially released November 3, 2020

Plaintiff's appeal from the Superior Court in the judicial district of Hartford, *Hon. Constance L. Epstein*, judge trial referee.

Per Curiam. The judgment is affirmed.

PETER J. PANARONI, JR. *v.* JAMES J. DOODY III, TRUSTEE, ET AL.
(AC 43077)

Lavine, Moll and Bishop, Js.

Submitted on briefs October 15—officially released November 3, 2020

Appeal by the named defendant from the Superior Court in the judicial district of New Haven, *S. Richards*, *J.*

Per Curiam. The judgment is affirmed. The named defendant's claims on appeal are inadequately briefed, and, thus, we decline to review them. See *Pryor* v. *Pryor*, 162 Conn. App. 451, 458, 133 A.3d 463 (2016).

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NOTICES OF CONNECTICUT STATE AGENCIES

CONNECTICUT PORT AUTHORITY

Notice of Intent to Adopt an Updated Equal Employment Opportunity and Affirmative Action Policy.

In accordance with Conn. Gen. Stat. § 1-121, the Connecticut Port Authority (the ''Port Authority'') hereby gives notice that it intends to adopt a revised Equal Employment Opportunity and Affirmative Action Policy (EEO/AA).

Statement of the substance and purpose of the proposed amendments: The Port Authority intends to adopt an updated EEO/AA policy. The State of Connecticut Auditors of Public Accounts audit report for fiscal years ended June 30, 2018 and 2019, found that the Port Authority ''did not post the notice to adopt its board-approved Equal Employment Opportunity and Affirmative Action Plan in the Connecticut Law Journal. Additionally, the authority did not develop procedures to ensure that it accomplishes the policy's objectives, as required by its plan.'' The updated EEO/AA policy seeks to address these two issues.

A description of the updated policy is included below.

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION POLICY
(Updated 2020)

It is the policy of the Connecticut Port Authority (the Authority) to provide equal employment opportunities to all applicants and employees regardless of race, color, religious creed, sex, sexual orientation, gender identity or expression, marital status, age, national origin, ancestry, mental disability, intellectual disability, learning disability, physical disability, veteran status, or any other characteristic protected by federal, state, or local law. It is also the policy of the Authority to take affirmative action to employ and to advance in employment, all persons regardless of race, color, religious creed, sex, sexual orientation, gender identity or expression, marital status, age, national origin, ancestry, mental disability, intellectual disability, learning disability, physical disability, veteran status, or any other characteristic protected by federal, state, or local law, and to base all employment decisions only on valid job requirements. This policy shall apply to all employment actions, including but not limited to recruitment, hiring, upgrading, promotion, transfer, demotion, layoff, recall, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship, at all levels of employment.

Employees and applicants of the Authority will not be subject to harassment on the basis of race, color, religious creed, sex, sexual orientation, gender identity or expression, marital status, age, national origin, ancestry, mental disability, intellectual disability, learning disability, physical disability, veteran status, or any other characteristic protected by federal, state, or local law. Additionally, retaliation, including intimidation, threats, or coercion, because an employee or applicant has objected to discrimination, engaged or may engage in filing a complaint, assisted in a review, investigation, or hearing or have otherwise sought to obtain their legal rights under any federal, state, or local Equal Employment Opportunity law is

prohibited. For information regarding the Authority's policy for addressing complaints of harassment, please refer to the Policy Against Sexual Harassment in the Authority's Employee Manual.

The Authority is committed to the principles of Equal Employment Opportunity and Affirmative Action. In order to ensure dissemination and implementation of Equal Employment Opportunity and Affirmative Action throughout the Authority, the Board of Directors of the Authority has the overall responsibility for the establishment of the affirmative action policies of the agency. The Chairperson of the board maintains ultimate responsibility for the implementation of the Equal Employment Opportunity and Affirmative Action Policy for all staff and the Executive Director is charged with the day-to-day responsibility. Chairperson David Kooris can be reached at dkooris@ctportauthority.com or (860) 500-2340. Executive Director John Henshaw can be reached at jhenshaw@ctportauthority.com or (860) 577-5174.

Employees who feel they have been treated less favorably on the basis of any protected characteristic should contact the Authority's Executive Director, the Chairperson of the Board of Directors or the Chairperson immediately. Retaliation for making a complaint or otherwise participating in an investigation of potential violations of this policy is not tolerated.

In furtherance of the Authority's policy regarding Equal Employment Opportunity and Affirmative Action, the Authority will present an annual internal workforce analysis to be distributed to the Board of Directors no later than June 30 of each fiscal year, to ensure that its policy of nondiscrimination and affirmative action for women, minorities, individuals with disabilities, and protected veterans is accomplished.

The undersigned are committed to ensuring that the Connecticut Port Authority upholds the principles of equal employment opportunity and pursues an aggressive affirmative action policy in all aspects of the organization's operation.

*Signature:*_____ *Date:*_____
David Kooris, Board Chair

*Signature:*_____ *Date:*_____
John H. Henshaw, Executive Director

A copy of the above proposed updates to the Connecticut Port Authority's Equal Employment Opportunity and Affirmative Action Policy will also be made available on the Port Authority's website (https://ctportauthority.com/rfqs-rfps-3/) under ''Public Notices.''

Manner of presenting views: All interested persons are invited to present their views in writing no later than ***December 3, 2020***. Comments are to be submitted to the Connecticut Port Authority, Andrew Lavigne either by e–mail to alavigne@ctportauthority.com (please put ''Public Comment re: EEO/AA'' in the subject line) or by postal mail addressed to him at:

Connecticut Port Authority
ATTN: Andrew Lavigne
455 Boston Post Road, Suite 204
Old Saybrook, CT, 06475

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)
STATE PLAN FFY 2021 - 2023

The State of Connecticut Department of Social Services has revised the State Plan for the Temporary Assistance for Needy Families (TANF) program to plan for federal fiscal years 2021 through 2023. Connecticut has made revisions to reflect changes in program funding and program implementation.

The Department of Social Services is the agency responsible for the administration and coordination of the TANF program.

The TANF Plan 2021-2023 is available for review on the Department of Social Services website: http://portal.ct.gov/DSS/Economic-Security/State-Plans

Anyone wishing to comment on the TANF Plan shall have from October 27, 2020 to December 13, 2020 to submit comments.

Please direct comments and/or questions to:

Peter Hadler, Director – Division of Program Oversight & Grant Administration at peter.hadler@ct.gov before December 14, 2020.

The State of Connecticut is hereby consulting with local governments, tribal nations and private sector organizations and giving the opportunity to comment on the plan and the design of the services provided by the program described in this plan, so that services are provided in a manner appropriate to local populations. The department also hereby gives notice and seeks comments from the public at this time and any time it amends its regulations.

NOTICES

Notice of Certification as Authorized House Counsel

Upon recommendation of the Bar Examining Committee, in accordance with § 2-15A of the Connecticut Practice Book, notice is hereby given that the following individuals have been certified by the Superior Court as Authorized House Counsel for the organization named:

Certified as of September 15, 2020:

John C. Markow	Biohaven Pharmaceuticals

Certified as of September 17, 2020:

Anu Mehta	Lime Rock Management LP

Certified as of September 25, 2020:

Richhard F. Buckley, Jr.	Barings LLC

Certified as of September 28, 2020:

Cheryl B. Schacht	Citizens Financial Group, Inc.

Certified as of September 29, 2020:

Michael S. Russo	Pratt & Whitney
Herbert J. Wilcox	AQR Capital Management, LLC

Certified as of October 2, 2020:

Evan J. Gordon	AQR Capital Management, LLC

Certified as of October 10, 2020:

Enante Darout	Travelers

Hon. Patrick L. Carroll III
Chief Court Administrator

Notice of Certification as Authorized House Counsel

Upon recommendation of the Bar Examining Committee, in accordance with § 2-15A of the Connecticut Practice Book, notice is hereby given that the following individuals have been certified by the Superior Court as Authorized House Counsel for the organization named:

Certified as of August 24, 2020:

Deanna Davis Aldenberg	United Healthcare, Inc.
Michael A. Firgeleski	K2/D&S Management Co., LLC

Certified as of September 4, 2020:

Kristy Berner
Martin William Fleming

People's United Financial, Inc.
Collins Aerospace

Hon. Patrick L. Carroll III
Chief Court Administrator

CONNECTICUT BAR EXAMINING COMMITTEE

The following individuals applied for admission to the Connecticut bar without examination in September 2020. Written objections or comments regarding any candidate should be addressed to the Connecticut Bar Examining Committee, 100 Washington Street, 1st Floor, Hartford, CT 06106 as soon as possible.

Jessica F. Kallipolites
Administrative Director

Allen, David Robert of Stamford, CT
Brounell, Geoffrey Stuart of Morristown, NJ
Carter, DaQuana of Bloomfield, CT
Cho, Stephen P. of New York, NY
Clarke, Jr., John J. of New Canaan, CT
Genis, Robert Joel of Bronx, NY
Gocel, Casey Lynn of Parsippany, NJ
Gonnella, John T. of Hoffman Estates, IL
Mahmoud, Nancy Sami of Westport, CT
McGarrah, James Robert of Avon, CT

CONNECTICUT BAR EXAMINING COMMITTEE

The following individuals applied for admission to the Connecticut bar by Uniform Bar Examination score transfer in September 2020. Written objections or comments regarding any candidate should be addressed to the Connecticut Bar Examining Committee, 100 Washington Street, 1st Floor, Hartford, CT 06106 as soon as possible.

Jessica F. Kallipolites
Administrative Director

Blonval, Adolfo Manuel of Indianapolis, IN
Castello, Derek Anthony of North Attleboro, MA
Cinquemani, Sarah Jean of Manchester, CT
Fisher, Randoll Theodora of New York, NY
Jasper, Michael Gabriel of South Salem, NY
Kelly, Christopher Patrick of Hartford, CT
Kesselbrenner, Louis of Morristown, NJ
Lozito, Nicholas C. of Stormville, NY
Lust, Rachel Meryl of Greenwich, CT
Mezey, Peter Matthew of New York, NY
Morris, Bryan Kane of Endwell, NY
Sayet, David Uncas of Norwich, CT
Scott, Sean Travis of Windsor, CT
Verfuss, Victoria Lynn of Stamford, CT
Young, Brittany Rose of Stratford, CT