SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

STATE *v.* RONY ELIZER ORTEGA, SC 20235
Judicial District of Danbury

Criminal; Hearsay; Tender Years Exception; Whether Trial Court Properly Admitted Evidence of Complainant's Out-of-Court Statements to Her Mother; Whether Trial Court Properly Admitted Modified Transcript of Complainant's Conversation with Her Mother Into Evidence. The defendant was convicted of sexual assault and risk of injury to a child in connection with allegations that he sexually assaulted the three-year-old complainant. After the complainant told her mother that the defendant had molested her, her mother recorded a conversation in which the complainant stated that the defendant had touched her inappropriately. An interpreter translated the conversation from Spanish to English and produced a transcript of the recording, which the complainant's mother modified by writing in parentheses her interpretation of what was being said during portions of the recording that the interpreter had marked as inaudible. At trial, the victim's statements to her mother were admitted into evidence over the defendant's objection under the tender years exception to the rule against hearsay, which is set forth in General Statutes § 54-86*l* and § 8-10 of the Connecticut Code of Evidence. That exception allows for the admission of a statement made by a child twelve years of age or younger concerning a sexual offense committed against the child if the court finds, among other things, that "the circumstances of the statement . . . provide particularized guarantees of its trustworthiness." The audio recording was admitted under both the tender years exception and the prior inconsistent statement exception adopted in *State* v. *Whelan*, 200 Conn. 743 (1986), and codified in § 8-5 (1) of the Connecticut Code of Evidence, which allows the substantive use of a prior inconsistent statement if it can be shown that the declarant has personal knowledge of the facts stated therein. The trial court also admitted the modified transcript of the audio recording into evidence over the defendant's objection. In this appeal, which is brought in the Supreme Court pursuant to General Statutes § 51-199 (b) (3), the defendant claims that the trial court improperly admitted evidence of the complainant's out-of-court statements and argues that they were inadmissible under § 8-5 and that they were not supported by particularized guarantees of trustworthiness. The defendant also claims that the trial court improperly admitted the modified transcript, arguing that the state failed to demonstrate that the complainant's

mother was qualified to act as an independent translator and that the evidence amounted to her opinion as to what she heard in the recording. Additionally, the defendant claims that the trial court violated his constitutional rights to present a defense and to a fair trial by denying his request for a continuance, which he argues that he sought "to have Spanish translators come in to ensure the reliability of what was . . . authenticated."

The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.

STATE *v.* BERNARD PELUSO, SC 20303
Judicial District of Waterbury

Criminal; Whether Trial Court Abused Its Discretion in Finding That State Demonstrated "Good Cause" to Amend Information after Start of Trial under Practice Book § 36-18; Whether Defendant Failed to Demonstrate That Amendment Prejudiced His Substantive Rights under Practice Book § 36-18. The defendant was charged with sexual assault in the first degree, sexual assault in the fourth degree, and risk of injury to a child in connection with three separate incidents involving the defendant and the minor victim, whose family lived in the same condominium complex as the defendant at all relevant times. The long form information alleged that the incidents had occurred in 2010 or 2011. During trial, however, the victim testified that the incidents occurred in 2008 or 2009. The defendant filed a motion for a judgment of acquittal the next day, while the state filed a motion to amend its information to allege that the charged offenses occurred in 2008 or 2009. The trial court granted the state's motion and denied the defendant's motion. The case was tried to a jury, which found the defendant guilty as charged. The defendant appealed from the judgment of conviction to the Appellate Court (187 Conn. App. 498). The defendant claimed that the trial court improperly granted the state's motion to amend the information, arguing in support thereof that the state lacked good cause to do so and that the amendment prejudiced his substantive rights. The Appellate Court disagreed and affirmed the judgment of conviction. It observed that the state's amendment of the information was governed by Practice Book § 36-18, which provides in relevant part: "After the commencement of the trial for good cause shown, the judicial authority may permit the prosecuting authority to amend the information at any time before a verdict if . . . no substantive rights of the defendant would be prejudiced." The Appellate Court then determined that the state had good

cause to amend the information in light of the unique challenges attendant to prosecuting child sexual assault cases, the victim's age, and the length of time between the incidents at issue and the prosecution of the case. The Appellate Court further determined that the defendant's substantive rights were not prejudiced by the amendment of the information. It rejected the defendant's argument that his entire defense was predicated on claiming that he did not live in the condominium complex at the time alleged in the information and concluded that the amendment did not deprive the defendant of adequate notice where the victim had stated that the incidents had occurred when she spent time with the defendant in the condominium complex while he lived there and where the defendant had acknowledged that some aspects of the charged offenses had occurred but disputed the allegations asserted therein. In this certified appeal by the defendant, the Supreme Court will decide whether the Appellate Court properly held (1) that the trial court did not abuse its discretion in finding that the state had demonstrated "good cause" to amend the information and (2) that the defendant failed to demonstrate that the amendment caused prejudice to his substantive rights.

The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.

STATE *v.* BERNARD A. BRANDON, SC 20371
Judicial District of Fairfield

Criminal; Whether Trial Court Properly Concluded That *Miranda* Warnings Were Not Required During Defendant's First Police Interview Because He Was Not In Custody; Whether Defendant's Statements Made During Subsequent Interviews Should Have Been Suppressed Because They Were Tainted by Illegality of First Interview. The victim, Jovani Patton, was shot and killed on a street in Bridgeport. The police examined the call log of the victim's cell phone and discovered that he had placed calls to the defendant's cell phone shortly before the time of the shooting. Over the next few days, two police investigators conducted three recorded interviews of the defendant. During the first interview, which took place at the Bridgeport probation office after the conclusion of the defendant's probation appointment, the investigators did not advise the defendant of his *Miranda* rights. The investigators conducted a second interview with the defendant at the police station after he signed a *Miranda* rights waiver form. The third interview took place in the parking lot of a restaurant. During the course of these interviews,

the defendant made inculpatory statements. The defendant was subsequently charged with murder. Prior to trial, the defendant moved to suppress the statements he had made during the three interviews. Specifically, he claimed (1) that his statements during the first interview were illegally obtained during a custodial interrogation without any prior advisement or waiver of his *Miranda* rights; (2) that his statements during the second interview were obtained in violation of *Missouri* v. *Seibert*, 542 U.S. 600 (2004), in which the United States Supreme Court disapproved of a "question-first" interrogation technique where police deliberately fail to provide *Miranda* warnings until they elicit a confession from the suspect and then seek to have the suspect repeat the confession in a subsequent interview conducted after *Miranda* warnings are given; and (3) that his statements during the third interview were obtained in violation of *State* v. *Purcell*, 331 Conn. 318 (2019), in that the investigators failed to clarify his ambiguous request for counsel before continuing with the interrogation. The trial court rejected the defendant's arguments with respect to the first and second interviews. The court, however, agreed that all statements made by the defendant during the third interview following his equivocal request for counsel were inadmissible under *Purcell*. At trial, the state presented the recordings of the first and second interviews, and the parties agreed to the admission of the recording of the third interview in its entirety. Following trial, the jury found the defendant not guilty of murder but guilty of the lesser included offense of manslaughter in the first degree. The defendant filed this appeal in the Supreme Court pursuant to General Statutes § 51-199 (b) (3), challenging the trial court's ruling on his motion to suppress. He claims that the trial court improperly concluded that *Miranda* warnings were not required during the first interview because he was not in custody at that time. The defendant also claims that because his statements in the first interview were obtained in violation of *Miranda*, his subsequent statements in the second and third interviews were tainted by that illegality and, therefore, should have been suppressed under *Seibert*.

VIRLEE KOVACHICH *v.* DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES, SC 20518
Judicial District of New London

Employment Discrimination; Evidence; Harmful Error; Mandatory Mediation Under General Statutes § 46a-83; Whether Appellate Court Properly Concluded that Communications Were Inadmissible Settlement Offers; Whether Deposition Testimony Amended by Eratta Sheet Admissible. While the plaintiff was

employed by the defendant as a licensed practical nurse, she started having adverse reactions to scents and consulted a physician who concluded that she had a debilitating allergy. The plaintiff consequently requested an accommodation in the form of a scent-free work environment. Although the defendant's review committee approved that request, certain employees failed to comply with the conditions put in place, and the plaintiff's counsel contacted the defendant to request a meeting and to engage in the interactive process for purposes of agreeing on reasonable accommodations. Following that meeting, the plaintiff filed a complaint with the Commission on Human Rights and Opportunities (CHRO), alleging that she had been denied a reasonable accommodation. Thereafter, the CHRO issued a release of jurisdiction, and the plaintiff brought the underlying action alleging, inter alia, that the defendant had failed to engage in the interactive process in good faith. The plaintiff sought to introduce into evidence a letter from the plaintiff's counsel to the CHRO's investigator as well as e-mails between the plaintiff's counsel and an assistant attorney general representing the defendant that discussed plaintiff's demands and the defendant's responses. The defendant objected and argued that the documents were inadmissible under § 4-8 of the Code of Evidence as "[e]vidence of an offer to compromise or settle a disputed claim" and because they were prohibited from disclosure as part of the CHRO's mandatory mediation process under General Statutes § 46a-83. The trial court found that the documents were not settlement offers and overruled the objection. Following a bench trial, the court rendered judgment for the plaintiff, and the defendant appealed to the Appellate Court (199 Conn. App. 332), which found that the documents amounted to settlement communications and had been improperly admitted into evidence. That court rejected the plaintiff's claim that the documents were admissible as evidence of the interactive process and relied on the statutory prohibition on disclosing communications made as part of the CHRO's mandatory mediation process. The Appellate Court also concluded that the defendant was substantially prejudiced by that evidentiary error and reversed the judgment of the trial court, remanding the case for a new trial. On the granting of certification, the plaintiff appealed to the Supreme Court, which will decide whether the Appellate Court correctly concluded that the trial court had erroneously admitted written communications between counsel and between the plaintiff's counsel and the CHRO investigator into evidence under § 4-8 of the Code of Evidence. If the answer to the first certified issue is "yes," the Supreme Court will decide whether the Appellate Court correctly concluded that the admission of that evidence caused substantial prejudice requiring reversal of the trial court's judgment. If the answer to either the first

or second certified issue is "no," the Supreme Court will decide whether any of the other evidentiary errors identified by the Appellate Court resulted in harmful error in the trial court.

STATE *v.* TERRANCE POLICE, SC 20528
Judicial District of Stamford-Norwalk

Criminal; Statute of Limitations; Tolling; Whether "John Doe" Warrant Commenced Prosecution Within Statute of Limitations Where Defendant Argues That It Did Not Describe Suspect with Sufficient Particularity For Failure to State Statistical Frequency of DNA Profile and That State Failed to Investigate Case with Due Diligence. On October 10, 2012, the victim was attacked and shot by an unknown assailant while standing outside of her car in a parking lot. The investigating officers recovered certain items from the scene that were analyzed by the state laboratory. The analysts produced a report concluding that the DNA found on each item was a mixture of two or more DNA profiles and excluding the victim as a possible source. Those results were checked against the state database that, pursuant to statute, contains the DNA profiles of convicted felons; the database did not return a match. The defendant's cousin contacted the police reporting that the defendant looked identical to the suspect in a surveillance video that had been released to the public and, moreover, that he had confessed to the crime. The lead detective, however, considered the defendant sufficiently vetted as a suspect because he had been previously convicted of a felony and state records indicated that his DNA profile was in the database. As a result, the database would have presumably found a match if the defendant had been the assailant. About six months before the relevant statute of limitations expired in October, 2017, the lead detective obtained a John Doe arrest warrant that identified the perpetrator using a physical description and the mixed DNA profiles that were reported by the lab. The warrant application did not state the frequency of those DNA profiles in the general population. In April, 2018, the mother of the defendant's child reported that he was the assailant, and, pursuant to a warrant, the state obtained a DNA sample from him. The lab determined that it was at least one billion times more likely that the defendant was a contributor to the DNA recovered from the scene than if it had originated from all unknown individuals. The lab also discovered that certain documentation was incorrect and that the defendant's DNA profile was never entered into the state database. The defendant moved to dismiss the charges against him, claiming that the warrant failed to describe the suspect with sufficient particularity

under the fourth amendment to the federal constitution, and, as a result, the issuance of the warrant failed to toll the statute of limitations, which had expired. The trial court concluded that the warrant identified the defendant "with nearly irrefutable precision" and satisfied the particularity requirement. The court therefore denied the defendant's motion to dismiss and accepted his plea of nolo contendere, conditioned on his right under General Statutes § 54-94a to appeal. After he appealed to the Appellate Court, the Supreme Court transferred the appeal to itself. The defendant claims that the warrant was did not commence the prosecution within the statute of limitations and argues that it was unconstitutional because it failed to identify the statistical frequency of the mixed DNA profiles detected by the lab. The state argues that the defendant's claim is unpreserved and that the mixed DNA profiles, together with the physical description, satisfy the constitutional particularity requirement. The defendant also argues in support of his claim that the warrant failed to toll the statute of limitations because the police failed to investigate with due diligence.

STATE *v.* XAVIER RIVERA, SC 20539
Judicial District of Fairfield

Criminal; Best Evidence; Whether Trial Court Abused Its Discretion in Admitting Copy of Audio Recording of Conversation Between Defendant and His Friend Into Evidence; Whether Trial Court Abused Its Discretion in Directing Jury to Disregard Defense Counsel's Closing Argument That State Never Asked Eyewitness to Make In-Court Identification of Defendant. The defendant was charged with murder in connection with the shooting death of a man in Bridgeport. Weeks later, the defendant discussed the incident with his friend Alexis Vilar, who was recording the conversation on his cell phone, and he admitted that he killed the victim. Vilar brought the recording to the police and e-mailed it to them, per their instructions. At trial, the state offered a copy of the recording into evidence, and defense counsel objected on the grounds that it was not the original recording and that there had been a gap of time between when Vilar recorded it and when he gave it to the police. The court admitted the recording into evidence. The state also presented an eyewitness to the shooting but did not ask him to make an in-court identification of the defendant, stipulating that, during his initial police interview, he failed to identify the defendant in a photographic array. During closing argument, defense counsel highlighted the fact that the state never asked the eyewitness to identify the defendant in the court-

room. The trial court found the argument to be improper and provided a curative instruction, telling the jury to disregard that portion of defense counsel's argument concerning the in-court identification. The defendant was convicted as charged and sentenced to fifty-five years of incarceration. He appealed, claiming that the trial court abused its discretion by admitting a copy of the audio recording into evidence and by directing the jury to disregard the portion of defense counsel's closing argument regarding the state's failure to ask the witness to make an in-court identification. The Appellate Court (200 Conn. App. 487) affirmed the judgment, concluding that the copy of the audio recording was admissible under § 10-3 (1) of the Connecticut Code of Evidence, which provides that a copy is admissible when "[a]ll originals are lost or have been destroyed, unless the proponent destroyed or otherwise failed to produce the originals for the purpose of avoiding production of an original . . . . " The court noted that the original recording was no longer available at the time of trial and that the defendant failed to identify any evidence in the record demonstrating that the original recording was made unavailable to avoid its production at trial. The court also concluded that the trial court was well within its discretion to limit defense counsel's argument, reasoning that defense counsel asked the jury to engage in improper speculation. The court emphasized that the state was precluded from asking the witness to make an in-court identification without first requesting permission from the court pursuant to *State* v. *Dickson*, 322 Conn. 410 (2016), which it did not do. In this certified appeal by the defendant, the Supreme Court will decide whether the Appellate Court correctly concluded that the trial court did not abuse its discretion in admitting the copy of the recording and giving the curative jury instruction.

B. SHAWN MCLOUGHLIN et al. *v.* PLANNING AND ZONING COMMISSION OF THE TOWN OF BETHEL, SC 20541
Judicial District of Hartford

Zoning; Special Permit; Whether Zoning Commission Can Deny Special Permit Application Based on Noncompliance With General Standards Enumerated in Zoning Regulations Despite Full Compliance With Technical Requirements; Whether Substantial Evidence Supported Defendant Commission's Decision to Deny Plaintiffs' Special Permit Application. Plaintiff B. Shawn McLoughlin owns property in an industrial park in Bethel, and plaintiff Mono-Crete Step Co. of CT, LLC, operates a business on the property. The plaintiffs filed an application for a special permit to construct

a crematory on the property with the defendant commission. When determining whether to grant a special permit application, a zoning commission must consider whether the proposed use meets the general health, safety and welfare requirements set forth in the zoning regulations. Here, after holding public hearings, the commission denied the special permit application on the ground that the plaintiffs failed to satisfy the general standards set forth in §§ 8.5.E.3 and 8.5.E.4 of the town's zoning regulations. The plaintiffs appealed to the trial court, which dismissed the appeal on the ground that the commission's denial was supported by substantial evidence in the record. The plaintiffs then appealed to the Appellate Court (200 Conn. App. 307), claiming that the trial court erred in determining that it was bound by the holding in *St. Joseph's High School, Inc.* v. *Planning & Zoning Commission*, 176 Conn. App. 570, 594 (2017). In that case, the Appellate Court held that "a zoning commission may deny a special permit application on the basis of general standards set forth in the zoning regulations, even when all technical requirements of the regulations are met." The plaintiffs asserted that *St. Joseph's* was distinguishable because the evidence supporting the special permit denial there was fact-based and grounded in the firsthand experience of the objecting neighbors. The Appellate Court disagreed and concluded that *St. Joseph's* was applicable. The Appellate Court also ruled that, contrary to the plaintiffs' second claim, the trial court properly concluded that there was substantial evidence in the record to support the commission's determination that the plaintiffs failed to meet their burden of demonstrating that their application satisfied the general standards set forth in §§ 8.5.E.3 and 8.5.E.4 of the zoning regulations. In so ruling, the court determined the commission reasonably could have concluded based on the testimony and the evidence in the record that the development of the industrial park and surrounding area and the welfare of the town would be adversely affected by allowing the plaintiffs to operate a crematory at the location. Accordingly, the Appellate Court affirmed the trial court's judgment. The plaintiffs were granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that, under *St. Joseph's*, a zoning commission can deny a special use permit application based on noncompliance with the general standards enumerated in the zoning regulations despite full compliance with the technical requirements. If the answer to the first question is in the affirmative, the court will then decide whether the Appellate Court correctly determined that substantial evidence supported the commission's decision to deny the plaintiffs' special use permit application.

STATE *v.* MELINDA CHANTEA FISHER, SC 20559
Judicial District of New Britain

Criminal; Evidence; Whether Evidence Was Sufficient for Jury to Find That Defendant Intended to Cause Serious Physical Injury to Victim; Whether Trial Court Properly Refused to Take Judicial Notice of Victim's Civil Complaint and to Allow Defendant to Cross-Examine Victim Regarding Amount Sought; Whether Trial Court Abused Its Discretion in Allowing Paramedic Witness to Testify Regarding Concussion Symptoms. The defendant was charged with, inter alia, two counts of assault in the second degree stemming from an incident in which she physically attacked the victim, who was her supervisor at her job at an elementary school. Patrick Myers, a paramedic who witnessed the attack after bringing his child to the school, helped separate the defendant and the victim. The victim was taken to the emergency room, where the attending physician diagnosed her with a non-displaced fracture of the nasal bone, and she was released the same day. The next day, the victim visited her primary care doctor because she was experiencing vomiting, dizziness, a headache, and an inability to concentrate, and she was diagnosed with a concussion. The victim subsequently brought a civil action against the defendant based on the assault. At the criminal trial, defense counsel sought to question the victim regarding her civil action and asked that the trial court take judicial notice of the civil complaint. The trial court allowed defense counsel to question the victim about the civil suit and her claim for damages and to cross-examine her regarding any inconsistencies between her claims in the civil action and her testimony at the criminal trial. The court, however, refused to allow defense counsel to cross-examine the victim as to the specific dollar amount sought in the civil action and refused to take judicial notice of the complaint. The state also called Myers as a witness and asked him, based on his experience as a paramedic, to identify common symptoms of a concussion. Defense counsel objected, but the trial court overruled the objection, and Myers answered that nausea, headache, and dizziness would be typical symptoms for someone suffering from a concussion. The defendant was convicted of assault in the second degree, and the trial court sentenced her to ten years of incarceration. In this appeal, which was filed in the Appellate Court and transferred to the Supreme Court, the defendant claims that the evidence presented at trial was insufficient for the jury to find that she committed assault in the second degree when there was no evidence establishing that she intended to inflict serious physical injury on the victim. She also claims that the trial court improperly restricted her defense and defense counsel's cross examination regarding the victim's

potential bias by refusing to take judicial notice of the civil complaint and by refusing to allow any inquiry as to the specific dollar amount sought in the civil action. She argues that the trial court's rulings prevented her from establishing the extent of the victim's financial interest in the outcome of the criminal case. Lastly, the defendant claims that the trial court abused its discretion in allowing Myers to testify regarding the symptoms of a concussion, arguing that his testimony lacked an adequate scientific foundation because he never examined the victim.

1ST ALLIANCE LENDING LLC *v.* STATE OF CONNECTICUT DEPARTMENT OF BANKING et al., SC 20560
Judicial District of New Britain

Administrative Appeal; Mortgage Lender License Revocation; Whether Defendant Had Statutory Discretion to Suspend Plaintiff's License and, If So, Whether Defendant Actually and Lawfully Exercised That Discretion; Whether Defendant Was Estopped from Suspending Plaintiff's License. The plaintiff acted as a mortgage lender in Connecticut and therefore was required to maintain a mortgage lender license issued by the defendant. One of the conditions attendant to the license was the maintenance of a surety bond. On May 22, 2019, the issuer of the plaintiff's surety bond sent a notice to both parties stating that the bond would be cancelled as of July 31, 2019. The defendant sent a letter to the plaintiff on June 7, 2019, stating that the failure to have a bond in effect on July 31, 2019, would result in the automatic suspension of the plaintiff's license pursuant to General Statutes § 36a-492 (c) and that the plaintiff could avoid the suspension by (1) submitting a letter indicating the reinstatement of the bond, (2) obtaining an equivalent bond from another surety, or (3) ceasing doing business and surrendering its license. At the time, the parties were engaged in separate license revocation proceedings for reasons unrelated to this action. The plaintiff elected to cease doing business in Connecticut and surrender its license. It notified the defendant in writing of its decision on July 29, 2019, and entered the surrender of its license on or before July 31, 2019. On August 1, 2019, the defendant notified the plaintiff that it was automatically suspending and intended to revoke the plaintiff's license. The plaintiff requested a hearing, after which the defendant entered a final order upholding the suspension and revoking the plaintiff's license. The plaintiff then filed this administrative appeal in the trial court, arguing that the defendant's decision had harmed its ability to conduct business in other states. It claimed that the relevant statutes precluded the defendant from suspending its license and that the defendant should be bound

by the plain language of the June 7 letter. The trial court disagreed and dismissed the appeal. It noted that the relevant statutes establish a process by which a licensee may file a request to surrender its license and that no such surrender is effective until it is accepted by the defendant. It also observed that the relevant statutes provide that, if there are pending license revocation proceedings when a licensee files a request to surrender its license, the surrender will not become effective until the time and under the conditions specified by the defendant. The trial court concluded that the defendant did not abuse its statutory discretion over whether to accept the plaintiff's surrender of its license and that there was substantial evidence in the record to support the defendant's decision. The trial court also rejected the plaintiff's claim that the defendant should be estopped from refusing to accept its surrender of its license by virtue of the June 7 letter, which the trial court characterized as a standard form letter that did not shift the burden of compliance away from the plaintiff. In this appeal, which the plaintiff filed in the Appellate Court and the Supreme Court transferred to its docket, the Supreme Court will decide whether the trial court erred in concluding that § 36a-492 granted discretion to the defendant to suspend the plaintiff's license, that the defendant actually and lawfully exercised that discretion, and that the defendant was not estopped from suspending the plaintiff's license by virtue of the June 7 letter.

RAKSHITT CHUGH *v.* AASHISH KALRA et al., SC 20562
Judicial District of Hartford

Partnerships; Libel; Whether Breach of Partnership Claim Fails as Matter of Law Under Rule Regarding Cessation of Partnership Upon Adoption of Corporate Form Between Partners; Whether Claims Barred by Federal Compulsory Counterclaim Rule; Whether Burden Improperly Put on Defendant to Prove Truth of Allegedly Libelous Statement as Speech on Matter of Public Concern. Rakshitt Chugh brought this action against Aashish Kalra alleging breach of partnership, breach of fiduciary duty and libel. Specifically, Chugh claimed that the parties formed an oral partnership for the purpose of investing in Indian real estate ventures. The parties subsequently incorporated Trikona Advisors, Ltd. (TAL), and several other business entities to carry out the partnership's aims. The parties' business relationship eventually deteriorated to the point that they could no longer work together. Chugh claimed that Kalra then had him removed from TAL's board of directors, which resulted in Kalra's complete control of TAL and its assets. Chugh further claimed that

Kalra withdrew large sums of money from TAL's account and used TAL to unsuccessfully litigate a series of baseless claims against him alleging various business improprieties. Chugh also claimed that Kalra issued a press statement falsely accusing him of bribing court-appointed liquidation officials in corporate winding up proceedings brought by Chugh concerning TAL. The jury found in favor of Chugh on all counts. Kalra filed several motions challenging the verdict, all of which the trial court denied. Kalra appeals from the judgment rendered on the jury's verdict. Kalra claims that the trial court erred in rejecting his argument that Chugh's breach of partnership and breach of fiduciary duty claims failed as a matter of law because, once the parties incorporated TAL, any alleged partnership ceased to have legal effect in accordance with the rule established by *Karanian* v. *Maulucci*, 185 Conn. 320 (1981), regarding the cessation of a partnership upon the adoption of a corporate form between partners. The trial court found that *Karanian* was distinguished or limited by *Bartomeli* v. *Bartomeli*, 65 Conn. App. 408 (2001), which it claimed held that, although a business entity cannot be both a partnership and a corporation, parties can nonetheless be liable to each other for breach of a partnership contract even if they have subsequently formed a corporation. Kalra also claims that the trial court erred in rejecting his argument that all of Chugh's causes of action are barred under the federal compulsory counterclaim rule because he failed to raise them in an action brought by TAL in the federal district court arising out of the same transaction. Kalra additionally claims that judgment on the libel claim should be reversed because the trial court improperly admitted expert testimony concerning lost profits that was unreliable, irrelevant, and highly prejudicial and committed plain error in violation of his first amendment rights by requiring him to prove the truth of the press release as speech on a matter of public concern, where, he argues, the law puts the burden of proving the falsity of the press release on Chugh.

STATE *v.* KEVIN MYERS, SC 20563
Judicial District of Hartford

Criminal; Juvenile Sentencing; Whether Trial Court Erred in Partially Dismissing and Partially Denying Juvenile Offender Defendant's Motion to Correct Illegal Sentence. In 2009, the defendant was convicted by a jury of sexual assault in the first degree and kidnapping committed when he was fifteen years old in 2007, and he was sentenced to a total effective term of eighteen years of

incarceration followed by twenty-two years of special parole. In 2011, the defendant pleaded guilty under the *Alford* doctrine to a separate charge of sexual assault in the first degree also committed in 2007, and he was sentenced in 2012 to fourteen years of incarceration followed by six years of special parole, to run concurrently with the 2009 sentence. In 2015, No. 15-84 of the 2015 Public Acts was enacted in response to changes in federal and state law regarding sentencing procedures for juvenile offenders. Public Act 15-84 amended General Statutes § 54-125a to provide in relevant part that a juvenile offender "serving a sentence of fifty years or less . . . shall be eligible for parole after serving sixty per cent of the sentence or twelve years, whichever is greater." It also provided, via its codification in General Statutes § 54-91g, sentencing criteria for juvenile offenders convicted of class A or B felonies to account for age-related mitigating factors. Because of the structure of the defendant's concurrent sentences, he has been deemed ineligible for parole under § 54-125a until 2023 based on the terms of his 2012 sentence. The defendant filed a motion to correct illegal sentence in 2018, asking for a new sentencing proceeding or an adjustment to his sentence that would provide him with the benefit of juvenile offender parole eligibility under § 54-125a. He took the position that he should have been deemed eligible for parole in 2019 based on the terms of his 2009 sentence. He argued that his sentence as imposed was unconstitutional because it deprived him of a reasonable opportunity for release based on demonstrated growth, maturity, and rehabilitation and because it violated the understanding of the plea agreement underlying his 2012 sentence. The trial court dismissed the defendant's claims that his sentence constituted cruel and unusual punishment and that he was entitled to a new sentencing, concluding that it lacked jurisdiction over them where he was "eligible for parole, just not when he would prefer it to be" and where binding precedent established that the juvenile sentencing criteria of § 54-91g does not apply retroactively. The trial court further dismissed the defendant's claim that his sentence violated his equal protection rights because he was not receiving the same benefit of the parole eligibility scheme as other similarly situated juvenile offenders. In addition, the trial court denied the defendant's due process claim that his operative parole eligibility date constituted an imposition of his sentence in violation of the plea agreement, which he argued that both parties understood to provide that his parole eligibility would be governed by the 2009 sentence. The trial court determined that the plea agreement did not account for parole eligibility, let alone under the subsequently enacted P.A. 15-84. The Supreme Court will decide in the defendant's appeal, which it transferred to its docket, whether

the trial court erred in partially dismissing and partially denying the defendant's motion to correct illegal sentence.

The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.

ROBERT T. MORRIN *v.* FREEDOM OF INFORMATION COMMISSION, SC 20573
Judicial District of New Britain

Administrative Appeal; Mootness; Whether Trial Court Properly Affirmed Defendant's Decision That Plaintiff's Appeal from Denial of Request for Former State Employee's Social Media Postings Was Moot Because Plaintiff Already Had Copies of Postings. Bruce Adams was general counsel of the state Department of Banking from October 2014 to March 2016, during which time the department was involved in litigation regarding payday loans. Adams posted comments concerning the litigation on various social media sites. In September 2015, Hilary Miller filed a written request with the department for social media postings by then-present employees concerning the litigation. In February 2016, the department produced social media postings by Adams "as a courtesy" while taking "no position" as to whether the postings were "public records" under the Freedom of Information Act (FOIA). After Miller's request was received, however, Adams deleted certain of the postings. In May 2016, the plaintiff renewed Miller's request and stated that the postings produced by the department were "not complete." The department reiterated its position that those postings were produced as a courtesy and not as public records under the FOIA, and it concluded that it was "under no obligation to do any more than it already has." The plaintiff appealed the department's response to the defendant, which in relevant part declined to address whether the social media postings were public records that the department was obligated to procure "in light of the fact that the complainant has possessed such records since before he made his first request from the respondents." The plaintiff thereafter filed this administrative appeal, and the trial court affirmed the defendant's decision. It determined in relevant part that there was substantial evidence to support the defendant's finding that Miller had all of Adams' relevant social media postings before he made his request in 2015 and that the plaintiff had them when he renewed Miller's request in 2016. The trial court further determined that the defendant properly concluded that the plaintiff's appeal was essentially moot where it could not afford any practical relief to him because he already

possessed the records at issue in the request. The trial court rejected the plaintiff's reliance on other decisions by the defendant that had ordered public agencies to produce records despite the complainant's possession of those records. It also rejected the plaintiff's argument that he could be afforded practical relief with a determination that the postings were public records under the FOIA and, correspondingly, sanctions against the defendant and/or Adams for failing to turn them over. The plaintiff filed this appeal from the trial court's judgment, which the Supreme Court transferred to itself. The Supreme Court will decide whether the trial court properly held that the plaintiff's complaint to the defendant was moot where he had obtained the records at issue in the complaint on his own.

CARMEN LOPEZ *v.* WILLIAM RAVEIS REAL ESTATE, INC. et al., SC 20574
Judicial District of Danbury

Housing Discrimination; Whether Trial Court Erred in Failing to Consider Whether Statements Were Facially Discriminatory in Denying Plaintiff's Housing Discrimination Claim Based on Lawful Source of Income; Whether Trial Court Improperly Applied "Objective Listener" Standard by Considering Speaker's Intent and Evidence Beyond Statements. The plaintiff engaged the services of real estate agent Sarah Becker for purposes of moving. The defendants Anthony and Eve Vaccaro own property in Danbury that they marketed for lease through the defendant Sarah Henry, a real estate agent and independent contractor with the defendant real estate agency. They wanted the tenancy to begin on April 1, 2017, and sought two months' rent as a security deposit. The plaintiff submitted a signed, partially completed written offer to lease that was contingent on a requested repair. Henry forwarded the offer to Anthony Vaccaro on March 12, 2017, and he approved one month's rent as the security deposit. The plaintiff alleged that Henry then verbally informed Becker that the offer had been accepted, and, on March 13, 2017, a subsequent communication confirmed that the tenancy would begin on April 1. Becker then sent forms to Henry that the plaintiff was required to use as a participant in a federal low-income housing assistance program commonly known as "Section 8." On March 15, 2017, Henry responded to Becker that she was "not upfront [about] section eight and I didn't [present it] to my client[s] that way as well." She stated that she was "not sure if [Anthony Vaccaro] wants to [go] through the process" because the program's approval process might prevent the tenancy from beginning on April 1. Although Becker reassured her that the

plaintiff would be ready, Henry spoke with an agent representing two other prospective tenants interested in immediately leasing the property. Those tenants were not enrolled in the federal program and submitted an unconditional completed offer to lease and a security deposit of two months' rent. Henry informed Becker that her clients had decided to lease the property to those tenants instead, and the plaintiff brought this action alleging that the defendants had violated General Statutes § 46a-64c (a) (3) by making discriminatory statements based on her "lawful source of income." Following a bench trial, the court credited Anthony Vaccaro's testimony that he continued to seek other offers because the plaintiff's offer was incomplete and that the ultimate decision was based on a better offer. The court also found that Henry had not advised the Vaccaros that the plaintiff was enrolled in the federal program and that they previously had leased to tenants in that program. The court concluded that Henry's statements lacked a discriminatory intent, and, upon reconsideration, also found that Henry's statements did not convey to an objective listener a preference against leasing the property to the plaintiff because of her participation in the federal program. The plaintiff appealed to the Appellate Court, and the Supreme Court transferred this appeal to itself. The plaintiff claims that the trial court applied an incorrect standard by looking to Henry's intent and erred in concluding that her statements were not facially discriminatory. The plaintiff also argues that the court erred by looking past whether Henry's statement would be understood by an ordinary listener to be discriminatory and by considering the fact that the plaintiff's offer was incomplete.

THE STRAND/BRC GROUP, LLC, et al. *v.* BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD, SC 20578

Judicial District of Hartford, Land Use Litigation Docket

Municipalities; Administrative Appeal; Land Use; Whether Board Had Jurisdiction to Determine Whether to Accept Protest Petition Objecting to Master Plan Amendments; Whether Board Properly Rejected Amendments. The plaintiffs, who own properties in the city of Stamford, submitted an application to the city's planning board for an amendment to the master plan that would allow the plaintiffs to construct certain residential buildings. The planning board approved a modified version of the amendment and separately approved its own amendment, which pertained to adjacent properties.

The city charter permits the filing of a "protest petition" with the planning board to object to a proposed amendment. If 20 percent or more of the landowners in the area affected by an amendment sign and submit such a petition, the proposed amendment has no force or effect, and the amendment is referred to the defendant Board of Representatives of the city of Stamford (board). Pursuant to the charter, the board "shall approve or reject such proposed amendment," and an "affirmative vote of a majority of the entire membership of [the] board" is required for approval, meaning twenty-one votes of the forty-member board. In this matter, one protest petition objecting to the two amendments was filed, but the petition failed to specify to which amendment each signature applied. When the petition came before the board, seventeen members of the twenty-nine members present voted to accept the petition as to the plaintiffs' amendment. In a subsequent meeting, twenty-one members voted to reject the planning board's approval of the plaintiffs' amendment. The plaintiffs appealed that decision to the trial court, which initially considered whether the board had jurisdiction to review the planning board's decision. The plaintiffs claimed that the board did not because, under the charter, the board is only authorized to "approve or reject [the] proposed amendment." They also claimed that, if the board had such authority, the petition contained an insufficient number of signatures with respect to the plaintiffs' amendment so as to permit review and, furthermore, that the board's vote to accept the petition garnered only seventeen votes. The trial court, relying on substantially similar charter provisions at issue in *Benenson* v. *Board of Representatives*, 223 Conn. 777 (1992), concluded that the board lacked the authority to determine the validity of the petition. Assuming the board has such authority, the court agreed with the plaintiffs that the petition fell short of the twenty-one votes required. The trial court sustained the plaintiffs' appeal after concluding that the board improperly accepted the petition and lacked jurisdiction at its subsequent meeting to reject the amendment. Following the granting of certification to appeal pursuant to General Statute § 8-8 (o), the board appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. The board claims that the trial court erred because the vote on whether to accept the petition was a nullity and did not invalidate the board's subsequent vote rejecting the plaintiffs' amendment, which the board argues was proper under the charter. The plaintiffs disagree and continue to argue that the vote accepting the petition lacked the required majority. As an alternative ground to affirming the judgment, the plaintiffs also claim that the number of signatures on the petition regarding the plaintiffs' amendment was insufficient to authorize the board's review.

POLICE DEPARTMENT, TOWN OF STRATFORD *v.* BOARD OF FIREARMS PERMIT EXAMINERS et al., SC 20580

Judicial District of New Britain

Administrative Appeal; Statutory Interpretation; Whether Trial Court Improperly Interpreted and Applied General Statutes § 29-28 (b) (2) (B) to Require Statutory Equivalency Test for Out-of-State Misdemeanor Convictions; Whether Trial Court Improperly Substituted Its Judgment for Judgment of Board of Firearms Permit Examiners. The defendant Anthony Leo filed an application for a pistol permit that was denied by the plaintiff through its chief of police on the ground that Leo was automatically disqualified from receiving a pistol permit under General Statutes § 29-28 (b) (2) (B) because he had been convicted in New York of possession of ketamine, a controlled substance. Section 29-28 (b) (2) provides in relevant part that a chief of police may issue a temporary pistol permit application if it is found that the applicant "is a suitable person to receive such permit," except that no such permit shall be issued if the applicant "has been convicted of . . . a violation of section 21a-279." General Statutes § 21a-279 (a) (1) in turn provides in relevant part that "[a]ny person who possesses or has under such person's control any quantity of any controlled substance . . . shall be guilty of a class A misdemeanor." The plaintiff took the position that, if Leo's conduct had occurred in Connecticut, he would have been convicted under § 21a-279, such that his conviction automatically disqualified him from receiving a pistol permit under § 29-28 (b) (2) (B) notwithstanding that the conviction had occurred in New York and not Connecticut. Leo appealed to the defendant Board of Firearms Permit Examiners, which reversed the plaintiff's decision and ordered that he be issued a pistol permit. The plaintiff thereafter appealed the board's decision to the trial court, which framed the question before it as whether "§ 29-28 prohibits the issuance of a pistol permit to a person who has been convicted in another state under a statute equivalent to § 21a-279 for behavior that if performed in Connecticut would result in a conviction under § 21a-279." The trial court answered the question in the affirmative. It concluded that an interpretation of the statute that automatically disqualified Leo from receipt of a pistol permit due to his New York conviction was consistent with the legislative intent evident in the statute. It also concluded that an interpretation to the contrary would lead to illogical results in that it would discriminate against similarly situated persons convicted of identical behavior in Connecticut and would allow persons engaged in prohibited controlled substance abuse to receive pistol permits in contravention of the purposes underlying

the inclusion of the automatic disqualifiers in the statute. In addition, the trial court concluded that the board abused its discretion in finding that Leo was a suitable person to receive a pistol permit. The trial court accordingly sustained the plaintiff's appeal and ordered that a pistol permit not be issued to Leo. In this appeal by Leo, which was transferred from the Appellate Court to the Supreme Court, the Supreme Court will decide whether the trial court properly interpreted § 29-28 (b) (2) (B) to determine that Leo was automatically disqualified from receiving a pistol permit and properly held that the board abused its discretion in finding that Leo was a "suitable person" to receive a permit under the statute.

HIGH RIDGE REAL ESTATE OWNER, LLC *v.* BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD, SC 20595

Judicial District of Hartford, Land Use Litigation Docket

Municipalities; Administrative Appeal; Land Use; Whether Board Had Jurisdiction to Determine Whether to Accept Protest Petition Objecting to Amendment to Zoning Regulations; Whether Board Properly Rejected Amendment. The plaintiff owns an office park in the city of Stamford and was approached about constructing a gym in one of its buildings. To that end, the plaintiff applied to the city's zoning board for a text change to the regulations, and the zoning board approved a modified amendment. If an amendment, such as this one, affects two or more zones, the city's charter allows for the filing of a "protest petition" containing the signatures of "landowners" that object to the proposed amendment. If 300 landowners sign and file such a petition, the "amendment shall have no force or effect," and the zoning board's decision is referred to the defendant Board of Representatives of the city of Stamford (board) for review. Under the charter, the board "shall approve or reject any such proposed amendment." In this matter, a petition with 696 signatures was submitted to the zoning board and referred to the board. The board was advised that only 240 of the signatures could be counted because, for a signature to be considered that of a landowner under Connecticut law, all joint owners of the property must sign the petition. For example, a condominium owner is not counted as a landowner because he or she owns only a fractional share of the overall property. The board, however, voted to accept the petition and, at a later meeting, unanimously voted to reject the amendment. The plaintiff appealed to the trial court, and the parties agreed that the threshold issue was whether the board had jurisdiction to review the zoning board's decision. The

plaintiff claimed that the board did not have the authority under the charter to determine whether to accept the petition and that, if it did, the petition did not have sufficient signatures so as to authorize the board's review. The trial court, relying on substantially similar charter provisions at issue in *Benenson* v. *Board of Representatives*, 223 Conn. 777 (1992), concluded that once the petition was filed the board had no authority to determine whether to accept it. If it had such authority, the court held that all joint owners of a property were required to sign the petition to be considered a landowner, and, as a result, certain signatures should not have been counted, including those of the condominium owners. The court found that the petition contained an insufficient number of signatures and that the board did not have jurisdiction to review the zoning board's decision. The trial court sustained the plaintiff's appeal, and the board, on the granting of certification pursuant to General Statutes § 8-8 (o), appealed to the Appellate Court. The Supreme Court transferred the appeal to itself and will consider the board's claim that the trial court erred in concluding that the board did not have jurisdiction to determine whether it could accept the petition. Furthermore, the board claims that the trial court improperly interpreted the term "landowners" in the charter to require the signature of all joint owners of a property. The plaintiff argues that the trial court's decision is sound and, moreover, that the zoning board should determine whether a petition complies with the charter before referring it to the board.

L.H-S. *v.* N.B., SC 20596
Judicial District of New Haven

Civil Protection Order; Whether Trial Court Properly Interpreted General Statutes § 46b-16a as Requiring Applicant to Prove Reasonable Fear for Physical Safety without Regard for Age; Whether Trial Court Properly Considered Respondent's Intent in Sending Text Messages at Issue. L.H-S., a minor female, was friends with N.B., a fellow high school student. N.B. and L.H-S. engaged in a text message exchange regarding a disagreement over L.H-S's attendance at an event where her former boyfriend, who was N.B.'s best friend, would also be present. In the exchange, N.B. called L.H-S. a "bitch" and repeatedly threatened to shoot her. Thereafter, L.H-S. filed an application for a civil protection order against N.B. pursuant to General Statutes § 46b-16a, which provides in relevant part: "Any person who has been the victim of . . . stalking may make an application to the Superior Court for relief . . . .As used in this section, 'stalking' means two or more wilful acts, performed in a threat-

ening, predatory or disturbing manner of . . . sending unwanted . . . messages to another person directly . . . that causes such person to reasonably fear for his or her physical safety." In her application, L.H-S. alleged that N.B. had engaged in a pattern of stalking by sending a series of threatening text messages. After a hearing, the trial court denied the application. In so ruling, the court found that N.B.'s "text messages were a joke and that he had no intentions of carrying out his threats," and that L.H-S.'s testimony that she was and continues to be in fear of her life and physical safety due to N.B.'s text messages was inconsistent "with her conduct and behavior on March 20, 2021, as evidenced in her responses to [N.B.'s] texts." L.H-S. appeals from the trial court's judgment upon the granting of certification by the Chief Justice pursuant to General Statutes § 52-265a. On appeal, L.H-S. claims that the trial court's interpretation of § 46b-16a is erroneous, contrary to the legislative intent, yields an absurd result, and violates her right to equal protection. She argues in support thereof that the trial court's interpretation (1) requires a minor applicant to fully appreciate and understand the significance of a threat and requires him or her to react in a specific way that comports to an adult's course of action, (2) disregards the legislative intent of making the statute more expansive with amendments that updated the definition of stalking, and (3) places the burden of proving subjective actual fear on the applicant. L.H-S. also argues that § 46b-16a (1) is unconstitutionally vague in that it requires the factfinder to determine whether the applicant was reasonably fearful but does not specify at what point in time this inquiry is directed and (2) violates equal protection principles in that, while the statute appears facially neutral, it is applied in a discriminatory fashion because it targets and disproportionately affects women and minor applicants. L.H-S additionally claims on appeal that the trial court erroneously considered N.B.'s intent in sending the text messages.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

Jessie Opinion
Chief Staff Attorney