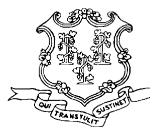
CONNECTICUT LAW JOURNAL



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VOL. LXXXIV No. 42 April 25, 2023 246 Pages

Table of Contents

CONNECTICUT REPORTS

Bank of America, National Assn. *v.* Sorrentino (Order), 346 C 927 33
Bank of New York Mellon *v.* Fisher (Order), 346 C 926 32
Crump *v.* Commissioner of Correction (Order), 346 C 926 32
D. S. *v.* D. S. (Order), 346 C 924 30
Houghtaling *v.* Benevides (Order), 346 C 924 30
In re Kylie P. (Order), 346 C 926 32
In re Nevaeh G.-M. (Order), 346 C 925 31
Menard *v.* State, 346 C 506 2
Underinsured motorist benefits; certification from Appellate Court; whether Appellate Court correctly concluded that plaintiffs were not entitled to recover underinsured motorist benefits for their alleged post-traumatic stress disorder; whether trial court arbitrarily rejected opinion of plaintiffs' therapist regarding plaintiffs' alleged post-traumatic stress disorder; whether Appellate Court correctly concluded that trial court should have reduced trial court's damages awards by amounts received as pretrial settlement for claim pursuant to Dram Shop Act (§ 30-102); claim that dram shop settlement payments are collateral sources for which reduction of trial court's awards was appropriate.
State *v.* Delacruz-Gomez (Order), 346 C 925 31
State *v.* Hurdle (Order), 346 C 923 29
Waterford *v.* Traylor (Order), 346 C 923 29
Volume 346 Cumulative Table of Cases 35

CONNECTICUT APPELLATE REPORTS

ARVYS Protein, Inc. *v.* A/F Protein, Inc., 219 CA 20 . . . . . 22A
Arbitration; whether trial court improperly denied plaintiff's application to modify or vacate arbitration award; claim that arbitrator's award exceeded scope of submission by awarding noncontractual relief; claim that arbitrator manifestly disregarded law by ignoring undisputed contract provisions limiting damages and disclaiming warranties; claim that award violated public policy because it arose from unauthorized practice of law.
C. M. *v.* R. M., 219 CA 57 . . . . . 59A
Dissolution of marriage; postdissolution motion to relocate; subject matter jurisdiction; whether defendant was aggrieved by judgment of trial court granting his motion to relocate pursuant to statute (§ 46b-56d).
O'Reggio *v.* Commission on Human Rights & Opportunities, 219 CA 1 . . . . . 3A
Employment discrimination; claim that trial court erred in affirming administrative decision of defendant Commission on Human Rights and Opportunities;

CONNECTICUT PRACTICE BOOK

Notice of Public Hearing on Practice Book Revisions being considered by the Rules Committee of the Superior Court appears beginning on Page 1PB. The proposed revisions were published in the Law Journal of April 25, 2022, and are posted on the Judicial Branch website at: www.jud.ct.gov/pb.htm.

(continued on next page)

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whether defendant employer was liable to plaintiff under Connecticut Fair Employment Practices Act (CFEPA) ((Rev. to 2015) § 46a-51 et seq.) for claim of hostile work environment created by one of its employees; whether definition of "supervisor" adopted by United States Supreme Court in Vance *v.* Ball State University *(570 U.S. 421) for purposes of Title VII of Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) applied to hostile work environment claims brought under CFEPA.*

State *v.* Santiago, 219 CA 44 . . . . 46A

Motion to correct illegal sentence; mootness; motion to dismiss; postappeal motion for sentence modification; whether consideration of claims on appeal would result in practical relief to defendant in light of sentence modification granted by trial court during pendency of appeal; whether trial court's ruling on appeal dismissing motion to correct had been superseded during pendency of appeal by sentence modification.

Volume 219 Cumulative Table of Cases 75A

CONNECTICUT PRACTICE BOOK

Notice of Public Hearing for Practice Book Revision Being Considered by the Rules Committee 1PB

Notice of Public Hearing for Practice Book Revisions to the Rules of Appellate Procedure being considered by the Rules Committee 65PB

MISCELLANEOUS

Notice of Suspension of Attorney 1B

Notice of Resignation of Attorney. 3B

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CONNECTICUT REPORTS

Vol. 346

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

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SCOTT MENARD *v.* STATE OF CONNECTICUT

DARREN CONNOLLY *v.* STATE OF CONNECTICUT
(SC 20663)

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

Syllabus

The plaintiffs M and C, state police officers who suffered injuries when a motor vehicle driven by a nonparty tortfeasor struck a police cruiser, sought to recover underinsured motorist benefits in connection with certain insurance coverage provided by the self-insured defendant, the state of Connecticut. The plaintiffs' cases were consolidated for a trial to the court, which found for the plaintiffs on the issue of liability but awarded only a fraction of the damages they had sought. The trial court concluded that the plaintiffs were not entitled to damages for their alleged post-traumatic stress disorder (PTSD) on the ground that such damages are not available under the statute (§ 38a-336 (a) (1) (A))

governing uninsured and underinsured motorist coverage and prescribing coverage for damages "because of bodily injury," insofar as the plaintiffs' alleged PTSD was not a result of physical injuries. The trial court also did not credit the expert opinion and testimony of H, the plaintiffs' therapist, that the plaintiffs had suffered from PTSD. Subsequently, the court held a collateral source hearing, after which it concluded that certain workers' compensation benefits that the plaintiffs had received were deductible from the plaintiffs' damages but that certain amounts the plaintiffs had received from a pretrial settlement under the Dram Shop Act (§ 30-102) were not. Accordingly, the court adjusted the plaintiffs' damages and rendered judgments for the plaintiffs. The plaintiffs appealed and the defendant filed a cross appeal. On appeal, the Appellate Court rejected the plaintiffs' claim that the trial court had misconstrued § 38a-336 (a) (1) (A) as limiting underinsured motorist coverage to damages for physical injury and agreed with the defendant that the trial court improperly had failed to reduce the plaintiffs' damages by the amounts of their dram shop recoveries. In light of the Appellate Court's holdings and the fact that the plaintiffs' damages were reduced to zero dollars, the Appellate Court reversed the trial court's judgments and remanded the cases with direction to render judgments for the defendant. On the granting of certification, the plaintiffs appealed to this court. *Held*:

1. The Appellate Court correctly concluded that the plaintiffs were not entitled to recover underinsured motorist benefits for their alleged PTSD:

Even if this court were to conclude that coverage for PTSD was permitted under § 38a-336, expert testimony was required to establish that the plaintiffs suffered from PTSD, and the trial court did not arbitrarily reject the opinion of H, the plaintiffs' only expert witness, regarding the plaintiffs' alleged PTSD in light of H's failure to independently assess the credibility of the plaintiffs' statements to her concerning their claims of emotional distress.

Although it may be standard practice for therapists to presume the truthfulness of their patients' reporting of PTSD symptoms for treatment purposes, the trial court reasonably determined that such an assumption was not sufficient for purposes of a forensic assessment, which is a view shared by some experts in the field, and the cross-examination of H by the defendant's counsel provided further grounds for questioning her assumption that the plaintiffs had honestly and accurately reported their symptoms to her.

Moreover, notwithstanding the plaintiffs' claim that H did not rely exclusively on the plaintiffs' reporting of their symptoms but also on her observations of them during treatment, the trial court reasonably could have rejected H's testimony that she was able to observe the plaintiffs'

reactions while she was treating them and instead have relied on H's session notes, which almost exclusively recounted symptoms as reported by the plaintiffs and in which H recorded few personal observations.

2. The Appellate Court incorrectly concluded that the trial court should have reduced any award by the plaintiffs' dram shop recoveries:

Pretrial settlement payments, such as the sums the plaintiffs received in settlement of their dram shop claims, are deductible from a jury award only if the trial court finds that the award would otherwise be excessive as a matter of law in the absence of such a reduction, and the amounts the trial court awarded the plaintiffs could not be deemed excessive as a matter of law, as the pretrial settlement amounts may have contemplated payment for damages that were not included, or available, in the present action, such as damages for the plaintiffs' alleged PTSD.

Moreover, the defendant could not prevail on its claim that the dram shop payments were collateral sources for which a reduction was appropriate, as settlements expressly have been excluded from the statutory (§ 52-225b) definition of "collateral sources" for purposes of civil actions, either in tort or in contract, in which a plaintiff seeks to recover damages for personal injuries.

Furthermore, although a statute or regulation may provide for a reduction from specific sources in an action seeking to recover uninsured or underinsured motorist benefits, including settlement payments, this court previously has concluded that Dram Shop Act payments do not fall within the exception, set forth in the state regulations (§ 38a-334-6 (d) (1) (A)), for sums "paid by or on behalf of any person responsible for the injury," insofar as a claim under the Dram Shop Act does not require proof that the dram shop was responsible for the injury, and no other statutory or regulatory exception applied under the facts of the present case.

Argued January 12—officially released April 25, 2023

Procedural History

Actions to recover underinsured motorist benefits allegedly due under certain automobile insurance coverage provided by the defendant pursuant to a collective bargaining agreement, brought to the Superior Court in the judicial district of Hartford, where the cases were consolidated and tried to the court, *Shapiro, J.*; thereafter, the court, *Hon. Robert B. Shapiro*, judge trial referee, issued a decision, and the plaintiffs appealed to the Appellate Court; subsequently, the court, *Hon. Robert B. Shapiro*, judge trial referee, reduced the plain-

tiffs' damages and, exercising the powers of the Superior Court, rendered judgments for the plaintiffs, and the plaintiffs filed an amended appeal and the defendant filed a cross appeal with the Appellate Court; thereafter, the Appellate Court, *Bright*, *C. J.*, and *Moll* and *Bear*, *Js.*, dismissed the appeal in part, reversed the trial court's judgments as to the plaintiffs and remanded the cases with direction to render judgments for the defendant, and the plaintiffs, on the granting of certification, appealed to this court. *Affirmed in part*; *reversed in part*; *judgment directed in part.*

Daniel J. Krisch, with whom was *Jeffrey L. Ment*, for the appellants (plaintiffs).

David A. Haught, for the appellee (defendant).

Ryan K. Sullivan filed a brief for the Connecticut Trial Lawyers Association as amicus curiae.

Opinion

McDONALD, J. This certified appeal raises questions regarding the recovery of underinsured motorist benefits by Connecticut state troopers injured in a motor vehicle accident involving an intoxicated driver. Two of the three plaintiffs in the underlying consolidated cases, Scott Menard and Darren Connolly (plaintiffs), appeal from the Appellate Court's judgment reversing the trial court's judgments in their favor and remanding the cases to the trial court with direction to render judgments for the defendant, the state of Connecticut (state). The third plaintiff, Robert Zdrojeski, withdrew his portion of the joint appeal to the Appellate Court and is not a party to this certified appeal.[1] The plaintiffs

[1] The state had cross appealed from the trial court's judgment rendered in favor of Zdrojeski but subsequently abandoned its appeal as to him. See *Menard* v. *State*, 208 Conn. App. 303, 312 n.8, 333 n.17, 264 A.3d 1034 (2021). The Appellate Court therefore affirmed the judgment in favor of Zdrojeski in the amount of $29,963.03. See id. We refer to Menard and Connolly collectively as the plaintiffs and to the parties individually by name. We discuss the matter as it pertains to Zdrojeski only insofar as it sheds light on the issues raised by the plaintiffs.

contend that the Appellate Court improperly (1) affirmed the trial court's judgments insofar as the trial court concluded that the plaintiffs were not entitled to recover underinsured motorist benefits for alleged post-traumatic stress disorder (PTSD), and (2) reversed the judgments insofar as the trial court determined that the state was not entitled to a reduction in the trial court's awards for sums received by the plaintiffs in settlement of a claim under Connecticut's Dram Shop Act, General Statutes § 30-102. We agree with the Appellate Court's conclusion as to the first issue, although on the basis of a different ground from the one relied on by that court. We disagree with its conclusion as to the second issue. We therefore reverse in part the judgment of the Appellate Court.

The Appellate Court's opinion sets forth the following account of the incident that gave rise to the present cases, as described by the trial court. "[O]n September 1, 2012, [the plaintiffs and Zdrojeski] were on duty as Connecticut state troopers with the Connecticut State Police. At approximately 1:40 a.m. . . . Connolly was on patrol on Interstate 84 and pulled over a vehicle traveling westbound, due to suspected intoxicated driving, at exit 46 in Hartford, the Sisson Avenue exit. After reaching the bottom of the exit ramp, Connolly parked his [police] cruiser on the right side of the exit, under the directional sign, to the rear of the vehicle, which had stopped before the intersection with Sisson Avenue. The Sisson Avenue exit has four lanes at this point.

"Connolly exited his cruiser to speak with the driver of the vehicle and then returned to his cruiser. . . . Menard drove up to the scene also, parked his police cruiser and also exited to speak with the occupants of the vehicle [that] . . . Connolly had pulled over. Both cruisers had their lights activated.

"[The plaintiffs] then began to approach the vehicle. Unbeknownst to [the plaintiffs] . . . Zdrojeski also

responded to the scene in his police cruiser. He parked his cruiser to the rear and left of Connolly's cruiser, and to the left of Menard's cruiser, in the right center travel lane, also with lights activated. [While Zdrojeski was still in his cruiser], another vehicle, driven by nonparty William Bowers, struck Zdrojeski's cruiser from behind, sending Zdrojeski's parked cruiser forward toward [the plaintiffs], [after which] physical contact occurred.

"Menard attempted to jump clear of the cruiser, tumbled in the air, and came down on his head between Zdrojeski's cruiser and the stopped vehicle. Connolly pushed himself away from the cruiser, using his right arm against the hood of the cruiser. . . . [The plaintiffs and Zdrojeski] were ambulatory after the accident and were transported by ambulance to Hartford Hospital." (Internal quotation marks omitted.) *Menard* v. *State*, 208 Conn. App. 303, 306–308, 264 A.3d 1034 (2021).

The record reveals the following additional undisputed facts and procedural history. Menard, Connolly, and Zdrojeski commenced separate underinsured motorist actions against the state. In their complaints, which were largely identical, the plaintiffs alleged in relevant part that (1) they sustained injuries from the accident, which occurred as a result of the negligence and/or carelessness of Bowers (nonparty tortfeasor), who was driving while under the influence of intoxicating liquor, (2) their personal automobile liability insurance policies and the nonparty tortfeasor's automobile liability insurance policy were insufficient to compensate them in full for their injuries, (3) at the time of the accident, the state carried underinsured motorist coverage for their benefit pursuant to a collective bargaining agreement between the state and the Connecticut State Police Union, (4) the state was self-insured with respect to its underinsured motorist coverage, and

(5) the state had not disbursed underinsured motorist benefits to them for their injuries.

The plaintiffs further alleged that, as a consequence of the accident, they suffered physical injuries, some permanent, and PTSD. They alleged that these injuries had not only caused pain and suffering for which they had incurred and would incur medical expenses, but also had impaired personal and recreational activities, and had other negative effects.

The state answered the plaintiffs' complaints and asserted special defenses. The state asserted that the plaintiffs' recoveries, if any, were limited to the $1 million amount of underinsured motorist coverage and any other terms and conditions set forth in the state's self-insured motorist coverage form. It also asserted that, in the event that the plaintiffs succeeded on their claims, it was entitled to (1) a reduction for any amount paid to a plaintiff "for bodily injury and lost wages from collateral sources or under any workers' compensation law, disability benefits law or any similar law," and (2) a setoff for any payments made to a plaintiff by, or on behalf of, the nonparty tortfeasor.

The plaintiffs' cases were consolidated for a trial to the court. At the parties' joint request, the trial court agreed that an initial stage of trial would focus exclusively on questions of liability and damages. The court noted that it would deal with any issues related to "offsets or coverage or collateral sources," if necessary, at a later date.

At trial, in addition to presenting medical evidence regarding treatment and assessments of certain permanent impairments, each plaintiff testified regarding the effect that the accident had on him, physically and mentally, and how those effects impacted his ability to par-

ticipate in activities and to perform his job.[2] Each plaintiff testified about seeking treatment, of varying duration, from a licensed professional counselor, Jennifer Honen, to deal with issues that arose after the accident. Honen, in turn, testified regarding that treatment and attested that she had diagnosed each of the plaintiffs with PTSD.

Following trial, the parties filed briefs. In their joint posttrial brief, the plaintiffs requested $1 million in damages for Menard, approximately $859,000 of which was for noneconomic damages, and approximately $889,000 in damages for Connolly, $750,000 of which was for noneconomic damages.

The trial court thereafter issued a joint memorandum of decision, finding for the plaintiffs on liability but awarding only a fraction of the damages they had sought. This difference evidently was due in large part to the court's rejection of the plaintiffs' claim that they were entitled to damages for PTSD. The court cited two reasons for rejecting the plaintiffs' respective PTSD claims. First, it concluded that PTSD damages are not compensable under the uninsured motorist/underinsured motorist (UM/UIM) statute prescribing coverage for damages "because of *bodily* injury"; (emphasis added) General Statutes § 38a-336 (a) (1) (A);[3] interpreting that term to mean physical injury and its sequelae. The court found that "the plaintiffs' PTSD claims are not a result of their [physical] injuries. Rather, they are premised on having gone through a life-threatening accident and

[2] Menard also introduced the testimony of his wife and his supervising officer to describe changes in his conduct and demeanor following the accident.

[3] Section 38a-336 has been amended by the legislature since the incident in question. See Public Acts 2015, No. 15-118, § 69; Public Acts 2014, No. 14-71, § 1; Public Acts 2014, No. 14-20, § 1. These amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

having to reexperience similar work-related scenarios on a regular basis." Second, it did not credit the diagnostic opinion and the testimony of the plaintiffs' expert witness, Honen, that the plaintiffs suffered from PTSD. The court ultimately awarded Menard approximately $172,000, consisting of approximately $112,000 in economic damages (for lost wages, lost overtime, and medical expenses) and $60,000 in unspecified noneconomic damages. The court calculated Connolly's damages to be approximately $187,000, consisting of approximately $117,000 in economic damages and $70,000 in unspecified noneconomic damages.

The plaintiffs jointly filed a motion to reconsider and for additur. They contended that the PTSD that they developed was accompanied by physical manifestations, "including sleeplessness, hyper alertness, rapid heart beating, sweating, anxiety, and outbursts of anger," such that the PTSD from which they suffer constitutes a "bodily injury" under § 38a-336 (a) (1) (A). The state argued, in opposition, that the PTSD allegedly developed by the plaintiffs was a "purely psychological injury" and that the trial court correctly concluded that the statutory term "bodily injury" does not encompass such emotional distress. The court denied the plaintiffs' motion without addressing the distinction raised by the parties. The plaintiffs then filed a joint appeal with the Appellate Court, challenging the trial court's conclusion that they were not entitled to recover damages for PTSD.

While that appeal was pending, the trial court took up the state's motion for a collateral source hearing. The parties submitted a stipulation of facts, setting forth all sums that each plaintiff had received on account of the personal injuries sustained in the motor vehicle collision. Those included workers' compensation benefits for medical bills, lost wages, and permanent partial disabilities; recovery from the nonparty tortfeasor; per-

sonal underinsured motorist coverage payments; and a dram shop payment in the amount of approximately $83,333.[4] The stipulation made clear that the parties were not stipulating as to the state's right to any setoff or reduction by acknowledging these sums.

The parties' disagreement focused on sums that the plaintiffs had received from two sources: payments under workers' compensation law and the dram shop settlement payments. The trial court determined that the workers' compensation benefits were deductible from the plaintiffs' damages but that the dram shop recoveries were not. In reaching the latter conclusion, the trial court reasoned that it was bound by *American Universal Ins. Co.* v. *DelGreco*, 205 Conn. 178, 530 A.2d 171 (1987), in which this court had stated that the statutory and regulatory scheme governing underinsured motorist coverage "do[es] not allow an insurer to reduce its liability for underinsured motorist coverage by an amount of money received by the insured pursuant to a dram shop policy." Id., 199. After taking into account the workers' compensation benefits, along with the additional sums stipulated to by the parties other than the dram shop payments, the trial court reduced Menard's damages to zero dollars and Connolly's damages to $32,905.67. The court then rendered judgments for the plaintiffs in accordance with that determination.

The plaintiffs filed an amended joint appeal to include a challenge to the trial court's reduction of the damages award by the workers' compensation benefits that the plaintiffs had received. The state filed a cross appeal, challenging the trial court's denial of the state's claim

[4] The Dram Shop Act sets an aggregate cap of $250,000 in damages. See General Statutes § 30-102. It appears to be undisputed that Menard, Connolly, and Zdrojeski each received an equal one-third portion of that cap in settlement of their respective dram shop claims. For a breakdown of all sums recovered by the plaintiffs in connection with the collision, see *Menard* v. *State*, supra, 208 Conn. App. 310–11.

that it was entitled to a reduction to account for the dram shop payments.

The Appellate Court rejected the claims raised in the plaintiffs' amended appeal. See *Menard* v. *State*, supra, 208 Conn. App. 314–32. Of relevance to the present appeal, the Appellate Court disagreed that the trial court had misconstrued § 38a-336 (a) (1) (A) to limit UM/UIM coverage to damages for physical injury. See id., 319–20. The Appellate Court rejected the notion that it was material whether the plaintiffs' alleged PTSD, which was not caused by physical injuries sustained in the collision, had accompanying physical manifestations. See id., 320–23. In light of its conclusion that there was no coverage for the plaintiffs' PTSD claims under the statute, the Appellate Court declined to reach the plaintiffs' claim that the trial court had erred in failing to credit the opinion of Honen, who diagnosed them with PTSD. Id., 314 n.9.

The Appellate Court agreed with the claim raised by the state in its cross appeal. Id., 332–33. Specifically, it agreed that the trial court's failure to reduce the plaintiffs' damages by their dram shop recovery violated the common-law rule against double recovery. See id., 333; see also id., 337 (citing "[the] simple and time-honored maxim that [a] plaintiff may be compensated only once for his just damages for the same injury" (internal quotation marks omitted)). The Appellate Court surveyed case law that had applied or recognized the common-law rule in the context of automobile liability policies, as well as case law recognizing the limited purpose of UM/UIM coverage. See id., 338–40. It determined that the trial court had failed to recognize that the concern underlying the common-law rule was not implicated in *DelGreco*, in which this court held that dram shop payments were not deductible under the UM/UIM statute and regulation, because the plaintiffs' recovery in *DelGreco* fell short of their actual damages. See id.,

335–36. Because the trial court had already reduced Menard's damages to zero dollars, the Appellate Court limited its application of the common-law rule to Connolly. See id., 333 n.17. It reduced Connolly's damages by his dram shop payment, which also left Connolly with zero dollars in damages. Id., 340. In accordance with these determinations, the Appellate Court reversed the judgments in favor of the plaintiffs and remanded the cases to the trial court with direction to render judgments for the state in those cases.[5] Id., 341.

This court granted the plaintiffs' request for certification to appeal, limited to the following issues: (1) whether the Appellate Court correctly determined that the plaintiffs' PTSD with physical manifestations is not a compensable bodily injury under § 38a-336 (a) (1) (A), and (2) whether the Appellate Court correctly determined that the common-law rule precluding double recovery required that the underinsured motorist damages awarded to Connolly be reduced by the amount that a third party paid to him in settlement of a Dram Shop Act claim. *Menard* v. *State*, 340 Conn. 916, 916–17, 266 A.3d 886 (2021). In its brief to this court, the state asserts an alternative ground for affirmance on the first issue. Specifically, the state contends that, even if this court were to agree with the plaintiffs' interpretation of § 38a-336, the plaintiffs could not prevail because they failed to prove that they had PTSD given the trial court's rejection of the opinion of their expert.

[5] The Appellate Court reversed the judgments in favor of both plaintiffs under the principle that the state is entitled to judgment in its favor when its insured's damages have been reduced to zero dollars. See *Menard* v. *State*, supra, 208 Conn. App. 340–41. Although the trial court had reduced Menard's damages to zero dollars for payments from sources other than the dram shop settlement, it had rendered judgment in Menard's favor. Id., 312, 341. Accordingly, the Appellate Court reversed the judgments as to both plaintiffs and remanded the cases to the trial court with direction to render judgments for the state as to them. Id., 341. The Appellate Court affirmed the judgment as to Zdrojeski. Id.

We conclude that the plaintiffs' liability claim fails on grounds of evidentiary insufficiency and, therefore, decline to reach the broader legal question as to whether the UM/UIM statute affords coverage for PTSD, if accompanied by physical manifestations.[6] We also conclude, however, that the plaintiffs' damages should not have been reduced by the sum of the plaintiffs' pretrial dram shop settlement payments.

I

We begin with the plaintiffs' contention that the trial court erroneously concluded that neither Honen's testimony nor her diagnosis of PTSD was credible. The plaintiffs submit that the court's rejection of Honen's

[6] The state argues that this court should not reach the first certified issue because the trial court's rejection of Honen's PTSD diagnosis is independently dispositive of this appeal. It also argues that the plaintiffs abandoned their challenge to the trial court's rejection of their expert's PTSD diagnosis by neither raising that issue in their certified appeal nor asking this court to remand the cases to the Appellate Court to decide that issue should they prevail on the certified issues in their main brief. As a consequence, the state contends that this court is without jurisdiction over the first certified issue because we cannot afford practical relief to the plaintiffs with respect to their PTSD claims in any event. We disagree. The plaintiffs could have sought permission to seek certification on an issue that the Appellate Court did not reach on grounds of judicial economy. See, e.g., *State* v. *McClain*, 324 Conn. 802, 804 n.1, 155 A.3d 209 (2017) (granting defendant's motion to modify certified issue to include issue that Appellate Court did not reach in interests of judicial economy to avoid remand to Appellate Court on single issue); see also, e.g., *Mueller* v. *Tepler*, 312 Conn. 631, 635 n.3, 646 n.14, 95 A.3d 1011 (2014) (addressing issue that was not decided by Appellate Court because issue had been briefed and was likely to arise on remand to trial court); *Stamford Hospital* v. *Vega*, 236 Conn. 646, 648 n.1 and 656, 674 A.2d 821 (1996) (revising certified questions to include issues that Appellate Court did not reach after this court sua sponte directed parties to brief those issues). Even though the plaintiffs have not done so, we conclude that it is appropriate for us to address the merits of the state's alternative ground for affirmance. It is apparent from the plaintiffs' request for relief in their main brief that they overlooked this unresolved issue rather than consciously abandoned it. They fully briefed the issue in their reply brief, as did the state in its responsive brief. Our decision not to reach the first certified issue should not be construed as taking any position on the Appellate Court's interpretation of § 38a-336.

expert opinion was impermissibly arbitrary because the opinion was unrebutted and supported by the record. We disagree.

The record reveals the following additional facts. On direct examination, Honen testified that she holds a master's degree in counseling psychology, is a licensed professional counselor, specializes in trauma issues in her private practice, and is certified in "EMDR, which is eye movement desensitization and reprocessing . . . an evidence-based psychotherapy modality used specifically for trauma and PTSD, and other anxiety disorders . . . ." She explained that PTSD is defined in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders by eight criteria. See American Psychiatric Assn., Diagnostic and Statistical Manual of Mental Disorders (5th Ed. 2013) pp. 271–72 (DSM-5). She testified that she had treated the plaintiffs and Zdrojeski, for varying periods, and had diagnosed all three with PTSD because they met all of the DSM-5 criteria. She noted that they had complained of multiple symptoms that were consistent with PTSD following a stressor event, such as hypervigilance, flashbacks, and negative alterations in mood. When asked why the plaintiffs and Zdrojeski, whose jobs had previously exposed them to all sorts of dangerous situations, would sustain PTSD as a result of this particular incident, Honen explained: "[W]hen someone has repeated trauma, trauma upon trauma, we kind of have this bucket, and we're okay, as long as the trauma stays in the bucket. But each trauma adds another drop in the bucket, and, truthfully, once you're at the top of a bucket, the next drop can be small; it doesn't matter, right? It will overflow . . . . [Y]our brain and nervous system can only take so much before something tips it over."

On cross-examination, Honen admitted that she had not reviewed any outside sources to confirm the plain-

tiffs' and Zdrojeski's accounts of the incident and, thus, was unaware, for example, that Connolly was not factually accurate in reporting to her that he had been "run over . . . ." The state's counsel also questioned the likelihood that the plaintiffs and Zdrojeski had all sustained PTSD from the same accident, despite their varied experience both before and during the incident.

After the state's counsel concluded his initial cross-examination of Honen, the following exchange ensued:

"The Court: I have a question. In your practice, how do you discern whether . . . someone who comes to you is dissembling?

"[Honen]: Dissembling?

"The Court: Lying.

"[Honen]: Uh-huh. I think for me, in my practice, and most of us, is that, if we don't have any reason to believe they're lying, if nothing jumps out as a reason to believe they're lying, then we believe that they're telling us their perception of what occurred.

"I'd be looking more for something that seems odd in their—in their personality or character strategy or different—a specific type of way that they interact with me or with other people, different reports of, you know, like stormy and short relationships, and different things that I would look at, in terms of like a, you know, kind of a more characterological disorder.

"But if there's—so, it's more, like, if none of those flags goes up, we're kind of in the position of believing our clients. The criteria help us stay to things that are more, kind of, scientific. . . .

* * *

"[The State's Counsel]: There are standard tests in the field for what they call 'malingering.'

"[Honen]: Yes.

"[The State's Counsel]: You don't do any of those diagnostic tests?

"[Honen]: I'm not a psychologist. Mostly psychologists do those tests.

* * *

"[The Plaintiffs' Counsel]: Did you have any indication that something wasn't adding up when you talked to any of the three troopers?

"[Honen]: None whatsoever.

"[The Plaintiffs' Counsel]: Did you have any doubt in the sincerity and [honesty] that they told you?

"[Honen]: No, I did not."

In its memorandum of decision, the trial court stated: "[T]he three [troopers] rely on the diagnosis of their therapist, [Honen], that each met the criteria for having PTSD. In her testimony, Honen acknowledged that she did no screening to assess the validity of their statements concerning their claims of emotional distress. Rather, she accepted their statements without making an independent assessment. The court does not credit her testimony or her diagnosis."

The plaintiffs appear to concede that expert testimony was required to prove that they suffered from PTSD. See, e.g., *Osborn* v. *Waterbury*, 333 Conn. 816, 826, 220 A.3d 1 (2019) ("[e]xpert testimony is required when the question involved goes beyond the field of the ordinary knowledge and experience of judges or jurors" (internal quotation marks omitted)). Our review of the trial court's rejection of Honen's testimony, therefore, is governed by settled principles. This court has recently reiterated the proposition that a trier of fact may accept or reject, in whole or in part, the testimony

of an expert offered by one party. See *State* v. *LeRoya M.*, 340 Conn. 590, 612–13, 264 A.3d 983 (2021); *State* v. *Weathers*, 339 Conn. 187, 210–11, 260 A.3d 440 (2021). This principle holds true even when the opposing party offers no rebuttal expert. See, e.g., *State* v. *LeRoya M.*, supra, 613; see also, e.g., *Goldstar Medical Services, Inc.* v. *Dept. of Social Services*, 288 Conn. 790, 831, 955 A.2d 15 (2008). "[I]n its consideration of the testimony of an expert witness, the [trier of fact] might weigh, as it sees fit, the expert's expertise, his opportunity to observe the [person being examined] and to form an opinion, and his thoroughness. It might consider also the reasonableness of his judgments about the underlying facts and of the conclusions [that] he drew from them." (Internal quotation marks omitted.) *State* v. *Weathers*, supra, 210–11. Thus, it is permissible for the trier of fact to entirely reject uncontradicted expert testimony as not worthy of belief. Id., 211.

We have also recognized, however, that the trier's discretion is not without limits. "[T]he trier's freedom to discount or reject expert testimony does not . . . allow it to arbitrarily disregard, disbelieve or reject an expert's testimony in the first instance. . . . [When] the [trier] rejects the testimony of [an] . . . expert, there must be some basis in the record to support the conclusion that the evidence of the [expert witness] is unworthy of belief. . . . That said, given the myriad bases on which the trier properly may reject expert testimony and the reviewing court's obligation to construe all of the evidence in the light most favorable to sustaining the trier's [finding or] verdict, it would be the rare case in which the reviewing court could conclude that the trier's rejection of the expert testimony was arbitrary." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *LeRoya M.*, supra, 340 Conn. 613–14.

The record in the present case clearly demonstrates that the trial court's rejection of Honen's opinion was not arbitrary. The court provided a specific reason why it rejected her testimony, namely, Honen's failure to independently assess the credibility of the plaintiffs' reports. Honen acknowledged that tests for malingering exist and that they are applied by psychologists. She admitted that she assumed that the plaintiffs' descriptions of their symptoms were truthful. Honen did not testify that there were any particular factors that weighed against concluding that the plaintiffs were malingering, only that malingering would be considered if there were red "flags . . . ." See, e.g., 2 B. Stern & J. Brown, Litigating Brain Injuries (2006) § 14:18, pp. 14-59 through 14-60 (noting that authors of seminal article on malingered post-traumatic symptoms have presented eleven factors suggesting malingering of psychological distress after trauma).

It may well be standard practice for therapists to presume the truthfulness of their patients' reporting of PTSD symptoms for treatment purposes. The trial court did not act arbitrarily, however, by concluding that such an assumption is not sufficient for purposes of a forensic assessment, a view shared by some experts in the field. See, e.g., American Psychiatric Assn., Diagnostic and Statistical Manual of Mental Disorders (4th Ed. Text Rev. 2000) p. 467; S. Rubenzer, "Personal Injury Settings: Malingering Psychiatric Disorders and Cognitive Impairment," 47 For the Defense, no. 4, April, 2005, pp. 18–25, 67; see also, e.g., D. Smith, "Diagnosing Liability: The Legal History of Posttraumatic Stress Disorder," 84 Temp. L. Rev. 1, 55 (2011) (citing concern among some members of psychiatric community, relating to PTSD diagnosis, "about the heavy reliance during the diagnostic process on subjective reporting by the patient of both the stressor event and the resulting reactions, as well as the subjective impressions of the diagnosti-

cian"). But see, e.g., *Cooper* v. *Carl A. Nelson & Co.*, 211 F.3d 1008, 1020–21 (7th Cir. 2000) ("[I]n clinical medicine, the methodology of physical examination and self-reported medical history . . . is generally appropriate. . . . [T]he accuracy and truthfulness of the underlying medical history is subject to meaningful exploration on cross-examination and ultimately to jury evaluation." (Citations omitted.)).

The plaintiffs contend that Honen did not rely exclusively on the plaintiffs' reporting of their conditions but also on her observations of them during treatment. The trial court reasonably could have relied on Honen's session notes, however, which indicate that Honen diagnosed the plaintiffs and Zdrojeski with PTSD, or determined that the protocol for treating PTSD should be followed, after their initial evaluations. Her notes from subsequent treatment sessions almost exclusively recounted symptoms as reported by the plaintiffs; few observations were recorded. Although Honen did testify that she was able to observe the plaintiffs' reactions while she was treating them, the trial court was not required to credit that testimony.[7]

The cross-examination of Honen also provided fodder for questioning her assumption that the plaintiffs were honestly and accurately reporting their symptoms. The state's counsel repeatedly underscored the unlikelihood that, just prior to this accident, the plaintiffs and Zdrojeski each had reached their maximum capacity for processing trauma and that this incident, which each trooper experienced differently, was the tipping point, causing each to suffer PTSD. Counsel pointed out Honen's unawareness of inconsistencies between the plaintiffs' reporting of the circumstances of the accident and

[7] The trial court made no credibility assessment regarding the plaintiffs' own testimony recounting their past and present symptoms. Nevertheless, it is fair to infer from its rejection of Honen's diagnosis that the court may have had reservations about that testimony.

the actual facts. Honen also acknowledged that her notes reflected that the plaintiffs, during their treatment, were involved in pending litigation to recover for their injuries.[8]

The record in the present case demonstrates that the trial court's rejection of Honen's testimony was not impermissibly arbitrary. Therefore, in the absence of credible expert testimony, the plaintiffs cannot recover damages for PTSD, even if coverage was afforded for such an injury under the UM/UIM statutory scheme and the state's UM/UIM policy.

II

We next turn to the plaintiffs' claim that the Appellate Court incorrectly concluded that the trial court should have reduced their award by the sums received in settlement of their dram shop claims. They contend that such payments are not deductible, either as a consequence of the common-law rule against double recovery or under the UM/UIM scheme. The state contends that the dram shop payments must be deducted, either under the common-law rule or as a collateral source. In light of our conclusion in part I of this opinion, which leaves Menard's recovery at zero dollars, we note that this issue only affects Connolly. We agree with the plaintiffs.

We begin by underscoring that it is undisputed that the reduction was sought not for sums awarded following a final judgment in a fully litigated case, but for sums obtained by pretrial settlement. This court has repeatedly recognized that the legislature abrogated the common-law rule with respect to pretrial settlement payments when it adopted General Statutes § 52-216a.

[8] The state's counsel referred obliquely to pending litigation, and it is unclear whether Honen's notes referring to litigation refer to the present action and/or other actions relating to the same incident. See *Zdrojeski* v. *Combs*, Superior Court, judicial district of Hartford, Docket No. CV-14-6053975-S.

See, e.g., *Mahon* v. *B.V. Unitron Mfg., Inc.*, 284 Conn. 645, 663–65, 935 A.2d 1004 (2007); *Bovat* v. *Waterbury*, 258 Conn. 574, 598–99, 783 A.2d 1001 (2001); *Peck* v. *Jacquemin*, 196 Conn. 53, 70–72, 491 A.2d 1043 (1985); *Seals* v. *Hickey*, 186 Conn. 337, 346, 441 A.2d 604 (1982). A jury award may be reduced by amounts obtained pursuant to such settlements only by way of a trial court's order of remittitur, which is available only if the court "determine[s] that the settlement payments, when added to the jury award, render that award excessive as a matter of law, a threshold that is met only when the total amount received so far exceeds what is fair and reasonable as to be unconscionable." *Mahon* v. *B.V. Unitron Mfg., Inc.*, supra, 665; see also *Imbrogno* v. *Chamberlin*, 89 F.3d 87, 90 (2d Cir. 1996) (trial court may reduce jury verdict under § 52-216a by amount plaintiff received in settlement only if jury award is excessive when considered in light of amount of settlement payment).

Although liability in the present case was determined by the court in a bench trial, not by a jury, the same principles apply. We recently acknowledged that § 52-216a allows the trial court to consider a settlement payment in a bench trial and that such consideration might prevent double recovery. See *Caverly* v. *State*, 342 Conn. 226, 237–39, 269 A.3d 94 (2022). We also explained, however, that the use of this evidence should not result in any substantive difference from what would be permitted in a jury trial. See id., 239 n.12, citing *Peck* v. *Jacquemin*, supra, 196 Conn. 73. In other words, the trial court may reduce the damages to account for pretrial settlement payments, whether in a trial to the jury or to the court, when the award would otherwise be excessive as a matter of law in the absence of such a reduction.

In contemplating what it means for the award to be excessive in light of a settlement by a joint tortfeasor

or another party legally responsible for the payment of damages, it is important to appreciate what the settlement represents. We have explained that a settlement "does not necessarily represent a claimant's fair, just and reasonable damages but, rather, represents, in part, the parties' assessments of the risks of litigation." (Internal quotation marks omitted.) *Caverly* v. *State*, supra, 342 Conn. 237. "[I]t does not equate to a satisfaction of a judgment represent[ing] full compensation for injuries"; (internal quotation marks omitted) id.; and cannot have any preclusive effect on a subsequent action. *Black* v. *Goodwin, Loomis & Britton, Inc.*, 239 Conn. 144, 168, 681 A.2d 293 (1996); cf. *Gionfriddo* v. *Gartenhaus Cafe*, 211 Conn. 67, 69, 75, 557 A.2d 540 (1989) (concluding that rule against double recovery precluded plaintiff from prevailing in dram shop action when there was no question that damages claimed in that action were "identical" to those awarded and recovered in earlier judgment rendered against tortfeasors, which were in excess of $1 million, and there was "no doubt that the plaintiff recovered 'just damages' ").

Of particular relevance in the present case, the settlement may contemplate payment for damages that are not included, or available, in the subsequent action on the matter. The dram shop settlement payments in the present case, for example, may have contemplated damages for PTSD, which were not included as part of the trial court's award, and, according to the state, were legally unavailable in this action. What portion, if any, of the settlement payments was dedicated to such damages, which the courts below deemed unavailable by law in a UM/UIM action, is entirely speculative. The plaintiffs' damages award cannot be deemed excessive as a matter of law under such circumstances. Cf. *Jones* v. *Kramer*, 267 Conn. 336, 350–51, 838 A.2d 170 (2004) (defendant was not entitled to reduction of damages for collateral sources when it was unclear whether jury

award included medical bills and other benefits claimed as collateral sources).

The state fares no better with its argument that the dram shop settlement payments are a "collateral source" for which a reduction is appropriate. "[S]ettlements expressly have been excluded from the statutory definition of 'collateral sources' for purposes of civil actions, either in tort or in contract, in which a plaintiff seeks to recover damages for personal injuries. See General Statutes §§ 52-225a and 52-225b." (Footnote omitted.) *Bovat* v. *Waterbury*, supra, 258 Conn. 601–602. The state seeks to avoid this impediment by contending that its right to reduce its obligations by collateral sources is not limited by the collateral source definition in § 52-225b because its rights derive from its contract.[9] Even if we assume, for the sake of argument, that the document relied on by the state prescribes binding terms, there is no indication in that document that "collateral source," as used therein, has a different meaning from the statutory definition in effect for more than three decades.

Finally, we observe that a statute or regulation may provide for a reduction from specific sources in a UM/UIM action, including payments obtained by settlement. See, e.g., *Anastasia* v. *General Casualty Co. of Wiscon-*

[9] The state points to a 2012 memo, which is available as a public record but was not distributed to employees, in which it summarized the coverage it provides. The memo provides that the state "reserves the right to limit its liability pursuant to [§ 38a-334-6 (d) of] the Regulations of Connecticut State Agencies . . . by reducing the limits of its UM/UIM coverage by all sums (A) paid by or on behalf of any person responsible for the injury, (B) paid or payable under any workers' compensation law, or (C) paid under the policy in settlement of a liability claim *and to apply such payments, and any collateral source benefits payable to the claimant, the claimant's estate or beneficiaries, as a credit against amounts payable to the claimant under this coverage*." (Emphasis added.) The regulation cited mirrors the language in the memo that identifies the three sources for reducing coverage limits but does not include the emphasized text. See Regs., Conn. State Agencies § 38a-334-6 (d) (1).

sin, 307 Conn. 706, 725, 59 A.3d 207 (2013) ("it expressly has been left to the [Insurance] [C]ommissioner to determine whether an alternative source of recovery available to the insured should be an applicable offset . . . and . . . a duly promulgated regulation has the force and effect of statute" (citation omitted; emphasis omitted; internal quotation marks omitted)). The Insurance Commissioner has, for example, provided for the reduction of UM/UIM limits by sums "paid or . . . payable under any workers' compensation law . . . ." Regs., Conn. State Agencies § 38a-334-6 (d) (1) (B). In *DelGreco*, this court concluded that Dram Shop Act payments do not fall within the exception, in the state agency regulations, for sums "paid by or on behalf of any person responsible for the injury" because a claim under that act does not require proof that the dram shop was responsible for the injury. (Emphasis omitted; internal quotation marks omitted.) *American Universal Ins. Co.* v. *DelGreco*, supra, 205 Conn. 197–99; see also Regs., Conn. State Agencies § 38a-334-6 (d) (1) (A); cf. *Hartford Casualty Ins. Co.* v. *Farrish-LeDuc*, 275 Conn. 748, 757–61, 882 A.2d 44 (2005) (concluding that injured party's settlement payment from professional liability insurer of law firm for legal malpractice resulting in inability to pursue claim against tortfeasor constituted sums " 'paid by or on behalf of any person responsible for the injury' " that reduced UM/UIM limits); *Buell* v. *American Universal Ins. Co.*, 224 Conn. 766, 768, 774–75, 621 A.2d 262 (1993) (concluding that UM/UIM insurer's payment under policy issued to operator of vehicle that struck claimant's vehicle constituted "payment made by or on behalf of any person responsible for the injury" that reduced UM/UIM limits (internal quotation marks omitted)). Although this court later observed that cases decided after *DelGreco* did not strictly limit application of the regulation to "amounts received from other *automobile liability policies* of those responsible

for the injury"; (emphasis added; internal quotation marks omitted) *American Universal Ins. Co.* v. *DelGreco*, supra, 197; we reiterated *DelGreco*'s rationale regarding the strict liability nature of a dram shop claim. See *Hartford Casualty Ins. Co.* v. *Farrish-LeDuc*, supra, 763–64. No other exception applies. See footnote 9 of this opinion. The Appellate Court therefore incorrectly concluded that the trial court should have reduced Connolly's award by the sums received in settlement of his dram shop claim.

The judgment of the Appellate Court is reversed in part and the case is remanded to that court with direction to affirm the judgment of the trial court as to Connolly; the judgment of the Appellate Court is affirmed in all other respects.

In this opinion the other justices concurred.

ORDERS

CONNECTICUT REPORTS

VOL. 346

TOWN OF WATERFORD *v.* SYLVESTER TRAYLOR ET AL.

The named defendant's petition for certification to appeal from the Appellate Court, 216 Conn. App. 902 (AC 45125), is dismissed.

Sylvester Traylor, self-represented, in support of the petition.

Decided April 11, 2023

STATE OF CONNECTICUT *v.* MARCUS HURDLE

The defendant's petition for certification to appeal from the Appellate Court, 217 Conn. App. 453 (AC 44701), is granted, limited to the following issues:

"1. Did the Appellate Court correctly conclude that the trial court lacked authority to award the defendant presentence confinement credit at the time of sentencing?

"2. Did the Appellate Court correctly conclude that the plea agreement did not include presentence confinement credit?"

James B. Streeto, senior assistant public defender, in support of the petition.

Linda F. Rubertone, senior assistant state's attorney, in opposition.

Decided April 11, 2023

D. S. *v.* D. S.

The plaintiff's petition for certification to appeal from the Appellate Court, 217 Conn. App. 530 (AC 44748), is granted, limited to the following issues:

"1. Did the Appellate Court correctly conclude that the defendant's interest in her law firm's retirement plan was too uncertain to qualify as marital property subject to equitable distribution pursuant to General Statutes § 46b-81?

"2. Did the Appellate Court correctly conclude that the trial court had not abused its discretion in awarding alimony that (1) was terminable at the defendant's sole discretion, and (2) was specific to the defendant's employment at one particular firm?"

Charles D. Ray and *Justyn P. Stokely*, in support of the petition.

Kenneth J. Bartschi and *Karen L. Dowd*, in opposition.

Decided April 11, 2023

AURORA HOUGHTALING *v.* KIMBERLY BENEVIDES ET AL.

The plaintiff's petition for certification to appeal from the Appellate Court, 217 Conn. App. 754 (AC 45568), is denied.

Christopher D. DePalma, in support of the petition.

Daniel J. Krisch and *Jesse D. Conrad*, in opposition.

Decided April 11, 2023

IN RE NEVAEH G.-M. ET AL.

The respondent mother's petition for certification to appeal from the Appellate Court, 217 Conn. App. 854 (AC 45686), is denied.

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

Robert M. Fitzgerald, in support of the petition.

Carolyn Signorelli, assistant attorney general, in opposition.

Decided April 11, 2023

STATE OF CONNECTCUT *v.* RAIKES Y. DELACRUZ-GOMEZ

The defendant's petition for certification to appeal from the Appellate Court, 218 Conn. App. 260 (AC 44356), is granted, limited to the following issues:

"1. Did the Appellate Court correctly conclude that the trial court had not erred in admitting uncharged misconduct evidence about the names of outstanding felony charges from an unrelated case in the defendant's arrest warrant?

"2. Did the Appellate Court correctly conclude that the admission of evidence that the Violent Fugitive Task Force arrested the defendant was not unfairly prejudicial?"

Jennifer B. Smith, assistant public defender, in support of the petition.

Jonathan M. Sousa, assistant state's attorney, in opposition.

Decided April 11, 2023

IN RE KYLIE P.

The respondent mother's petition for certification to appeal from the Appellate Court, 218 Conn. App. 85 (AC 45434), is denied.

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

Benjamin M. Wattenmaker, assigned counsel, in support of the petition.

Nisa Khan, assistant attorney general, in opposition.

Decided April 11, 2023

DUROSOLA CRUMP *v.* COMMISSIONER OF CORRECTION

The petitioner Durosola Crump's petition for certification to appeal from the Appellate Court, 218 Conn. App. 902 (AC 45455), is denied.

Lisa J. Steele, assigned counsel, in support of the petition.

Michele C. Lukban, senior assistant state's attorney, in opposition.

Decided April 11, 2023

THE BANK OF NEW YORK MELLON *v.* CHARLES H. FISHER ET AL.

The named defendant's petition for certification to appeal from the Appellate Court (AC 46017) is denied.

Charles H. Fisher, self-represented, in support of the petition.

Kent J. Mancini, in opposition.

Decided April 11, 2023

BANK OF AMERICA, NATIONAL ASSOCIATION
v. KATHRYN M. SORRENTINO ET AL.

The named defendant's petition for certification to appeal from the Appellate Court (AC 46202) is denied.

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

Kathryn M. Sorrentino, self-represented, in support of the petition.

Joseph R. Dunaj, in opposition.

Decided April 11, 2023

Cumulative Table of Cases
Connecticut Reports
Volume 346

(Replaces Prior Cumulative Table)

Bank of America, National Assn. *v.* Sorrentino (Order) 927
Bank of New York Mellon *v.* Fisher (Order). 926
Bank of New York Mellon *v.* Mercier (Order) 905
Barthelemy *v.* Commissioner of Correction (Order) 913
Bayview Loan Servicing, LLC *v.* Gallant (Order) 922
Berka *v.* Middletown (Order) 906
Britto *v.* Bimbo Foods, Inc. (Order). 921
Capital Financial Management, LLC *v.* Craw (Order). 916
Carpenter *v.* Daar 80

Dental malpractice; motion to dismiss; certification from Appellate Court; claim that Appellate Court improperly upheld trial court's judgment dismissing dental malpractice action for failure to comply with statute (§ 52-190a) requiring that good faith opinion letter from similar health care provider be attached to complaint; whether Morgan *v.* Hartford Hospital *(301 Conn. 388) should be overruled insofar as it held that motion to dismiss challenging adequacy of opinion letter under § 52-190a implicates court's personal jurisdiction; whether endodontist who authored opinion letter was "similar health care provider" to defendant general dentist under applicable statute (§ 52-184c).*

Cerame *v.* Lamont 422

Declaratory and injunctive relief; motion to dismiss; subject matter jurisdiction; standing; certification of question of law from United States District Court for District of Connecticut pursuant to statute (§ 51-199b (d)); whether personal, noncommercial speech alleged in plaintiff's complaint fell within scope of statute (§ 53-37) that criminalizes ridiculing or holding up to contempt any person or class of persons on account of creed, religion, color, denomination, nationality, or race through speaker's advertisement.

Cheswold (TL), LLC, BMO Harris Bank, N.A. *v.* Kwong (Order) 910
Connecticut Dermatology Group, PC *v.* Twin City Fire Ins. Co. 33

Insurance; declaratory judgment; summary judgment; action for judgment declaring that defendant insurers were required to provide coverage under certain commercial insurance policies for losses plaintiffs sustained as result of their suspension of business operations during COVID-19 pandemic; claim that trial court incorrectly concluded that plaintiffs' claimed losses were subject to exclusion in insurance policy for loss or damage caused by presence, growth, or spread of virus; whether there was genuine issue of material fact as to whether insurance policies did not cover plaintiffs' claimed losses because plaintiffs did not suffer "direct physical loss" of covered property; whether phrase "direct physical loss" of property was ambiguous as applied to losses incurred from suspension of business operations during COVID-19 pandemic.

Crump *v.* Commissioner of Correction (Order) 926
CT Freedom Alliance, LLC *v.* Dept. of Education 1

Action seeking injunctive and declaratory relief from governmental mandate that children wear face masks in school during public health and civil preparedness emergency that governor declared in response to COVID-19 pandemic pursuant to statute (§§ 19a-131a and 28-9); motion to dismiss appeal as moot; whether plaintiffs' claims were reviewable pursuant to capable of repetition, yet evading review exception or voluntary cessation exception to mootness doctrine; claim that issuance of school mask mandate violated requirements under Uniform Administrative Procedure Act (§ 4-166 et seq.) of notice and opportunity to be heard; claim that governor unlawfully extended executive order multiple times; claim that General Assembly improperly delegated legislative power to governor in violation of separation of powers provision of Connecticut constitution; claim that mask mandate violated rights of schoolchildren to free public education under Connecticut constitution.

Derblom *v.* Archdiocese of Hartford 333
Charitable gifts; constructive trusts; standing; certification from Appellate Court; whether Appellate Court properly upheld judgment of trial court, which dismissed plaintiffs' action for lack of standing; claim that Appellate Court incorrectly determined that testamentary charitable bequest was unrestricted, when donor's will made gift to donee archdiocesan school or its "successor, for its general uses and purposes"; claim that Appellate Court incorrectly concluded that plaintiffs, as putative beneficiaries of donor's testamentary bequest, did not have standing to enforce terms of that bequest under special interest exception to common-law rule conferring exclusive authority to enforce terms of charitable gift on state attorney general.

Devine *v.* Fusaro. 29
Wrongful death; sovereign immunity; certification from Appellate Court; whether Appellate Court properly reversed judgment of trial court, which dismissed plaintiff's action on ground that it was barred by doctrine of sovereign immunity pursuant to four factor test set forth in Spring *v.* Constantino *(168 Conn. 563); claim that Appellate Court incorrectly concluded that, when court determines whether sovereign immunity bars claim against state officials for actions taken in exercise of their duties,* Spring *test is not applicable when plaintiff designates that state officials have been sued in their individual capacities; appeal dismissed on ground that certification was improvidently granted.*

Dobie *v.* New Haven 487
Highway defect; negligence; motion to dismiss for lack of subject matter jurisdiction; certification from Appellate Court; whether Appellate Court correctly concluded that trial court improperly had denied defendant's posttrial motion to dismiss for lack of subject matter jurisdiction; whether concession by defendant city's counsel before Appellate Court that trial court had properly denied pretrial motion to dismiss equated to concession that trial court also had properly denied posttrial motion to dismiss, when facts alleged in complaint differed from facts established at trial; whether Appellate Court correctly concluded that highway defect statute (§ 13a-149) was plaintiff's exclusive remedy for injuries that he sustained when he drove vehicle over uncovered manhole on municipal roadway maintained by defendant city.

Donald *v.* Commissioner of Correction (Order). 911
D. S. *v.* D. S. (Order) 924
Downing *v.* Dragone (Order). 903
Dunn *v.* Northeast Helicopters Flight Services, LLC 360
Wrongful termination of employment; summary judgment; certification from Appellate Court; whether Appellate Court improperly upheld trial court's decision to grant defendant employer's motion for summary judgment; whether Appellate Court correctly concluded that public policy contained in statute (§ 31-73 (b)), which prohibits employer from demanding any "sum of money" from employee upon "representation or . . . understanding" that employee must comply with demand to continue employment, was inapplicable to undisputed facts of case; whether phrase "sum of money," as used in § 31-73 (b), was limited to money derived from or directly related to employment relationship; whether phrase "representation or . . . understanding," as used in § 31-73 (b), encompassed both unilateral and bilateral understandings, as well as implicit and explicit representations, that continued employment is conditioned on employee's acceptance of employer's demand; whether plaintiff employee presented sufficient evidence to support his assertion that defendant had violated § 31-73 (b) by demanding share of fees that plaintiff expected to collect in connection with plaintiff's purportedly independent business.

Federal National Mortgage Assn. *v.* Trojan (Order). 922
Fischer *v.* People's United Bank, N.A. (Order) 904
Garces *v.* Haydusky (Order) 918
Gershon *v.* Back 181
Choice of law; dissolution of marriage; motion to open and set aside final judgment of divorce rendered by New York court and registered in Connecticut Superior Court pursuant to statute (§ 46b-71 (a)); certification from Appellate Court; whether Appellate Court correctly concluded that New York rule requiring party seeking to modify or vacate separation agreement that survives final judgment of divorce to file plenary action on contract, was substantive and not procedural for choice of law purposes; whether plaintiff's motion to open and set aside was

governed by New York's plenary action rule; whether Appellate Court correctly concluded that trial court should have denied rather than dismissed plaintiff's motion to open and vacate New York divorce judgment.
Gervais *v.* JACC Healthcare Center of Danielson, LLC (Order) 910
Goshen Mortgage, LLC *v.* Androulidakis (Order) 908
Greenfield *v.* Commissioner of Correction (Order) 901
Hartford Fire Insurance Co. *v.* Moda, LLC 64
Insurance; declaratory judgment; summary judgment; action for judgment declaring that plaintiff insurer was not obligated to cover certain business losses suffered by defendant companies during COVID-19 pandemic; claim that trial court incorrectly concluded that defendants' business losses were subject to exclusion in insurance policy for loss or damage caused by presence, growth, or spread of virus; whether, under Connecticut law, there was genuine issue of material fact as to whether insurance policy did not cover defendants' business losses because their property did not suffer direct physical loss; decision in companion case, Connecticut Dermatology Group, PC *v.* Twin City Fire Ins. Co. *(346 Conn. 33), dispositive of issue on appeal; whether trial court correctly concluded that, under New York law, insurance policy providing coverage for "direct physical loss or direct physical damage to" insured property did not cover defendants' business losses during COVID-19 pandemic.*
Horrocks *v.* Keepers, Inc. (Order). 902
Houghtaling *v.* Benevides (Order). 924
Idlibi *v.* Hartford Courant Co. (Order) 908
In re Eric M. (Order) 921
In re Kylie P. (Order) 926
In re Nevaeh G.-M. (Order). 925
Jefferson Solar, LLC *v.* FuelCell Energy, Inc. (Order) 917
JPMorgan Chase Bank, National Assn. *v.* Essaghof (Order). 909
Laiuppa *v.* Moritz (Order) 906
Markatos *v.* Zoning Board of Appeals. 277
Zoning; motion to intervene; intervention as of right; whether trial court abused its discretion in denying proposed intervenors' motion to intervene in plaintiffs' administrative appeal on ground that motion was untimely.
Mazza *v.* Mazza (Order). 904
Menard *v.* State 506
Underinsured motorist benefits; certification from Appellate Court; whether Appellate Court correctly concluded that plaintiffs were not entitled to recover underinsured motorist benefits for their alleged post-traumatic stress disorder; whether trial court arbitrarily rejected opinion of plaintiffs' therapist regarding plaintiffs' alleged post-traumatic stress disorder; whether Appellate Court correctly concluded that trial court should have reduced trial court's damages awards by amounts received as pretrial settlement for claim pursuant to Dram Shop Act (§ 30-102); claim that dram shop settlement payments are collateral sources for which reduction of trial court's awards was appropriate.
Metropolitan District Commission *v.* Marriott International, Inc. (Order) 918
Reserve Realty, LLC *v.* BLT Reserve, LLC (see Reserve Realty, LLC *v.* Windemere Reserve, LLC). 391
Nationstar Mortgage, LLC *v.* Zanett (Order) 917
Nationwide Mutual Ins. Co. *v.* Pasiak. 216
Insurance; declaratory judgment action; whether plaintiff insurance companies were obligated to defend and indemnify defendant business owner under personal umbrella insurance policy for damages awarded in tort action brought against him; whether trial court properly applied preponderance of evidence standard to determine whether plaintiffs established that business pursuits exclusion in umbrella policy barred coverage; whether trial court should have construed business pursuits exclusion in favor of defendant, as insured, unless it had "high degree of certainty" that insurance policy language clearly and unambiguously excluded claim; whether trial court improperly found in plaintiffs' favor after they allegedly failed to produce new, credible evidence that was not raised during first trial in declaratory judgment action; whether record, viewed as whole, contained evidence that supported factual findings of trial court; whether trial court improperly found in plaintiffs' favor on public policy grounds.
Pollard *v.* GEICO General Ins. Co. (Order) 910

Renstrup *v.* Renstrup (Order) 915
Reserve Realty, LLC *v.* Windemere Reserve, LLC 391
Breach of contract; anticipatory breach; antitrust; claim that plaintiffs could not recover brokerage fees under certain real estate listing agreements because those agreements were unenforceable; certification from Appellate Court; whether listing agreements satisfied statutory (§ 20-325a (c)) requirement that commercial real estate listing agreements specify "the duration of the [brokerage] authorization"; whether listing agreements were personal service contracts that required personal performance of named broker.
Ross *v.* Commissioner of Correction (Order) 915
Russo *v.* Thornton (Order) 921
Santander Bank, N.A. *v.* Clark (Order) 922
Schaghticoke Tribal Nation *v.* State (Order) 901
Smorodska *v.* Commissioner of Correction (Order) 907
Speer *v.* Norwich (Order) 914
Speer *v.* U.S. Bank Trust, N.A. (Order) 911
Stanley *v.* Commissioner of Correction (Order) 919
State *v.* Ardizzone (Order) 905
State *v.* Billings (Order) 907
State *v.* Calhoun 288
Murder; claim that trial court improperly declined to give jailhouse informant instruction, requested by defense counsel, for eyewitnesses to shooting who were incarcerated at time of trial; claim that trial court improperly admitted into evidence entirety of incarcerated witnesses' cooperation agreements with state; whether provisions in cooperation agreements served to impermissibly vouch for credibility of witnesses; whether trial court abused its discretion in permitting prosecutor to use witnesses' cooperation agreements, during direct examination and before witnesses had been impeached; claim that trial court improperly declined to allow defense counsel to cross-examine witness regarding certain details of prior arrest.
State *v.* Charles L. (Order) 920
State *v.* Curet 306
Possession of narcotics with intent to sell; conditional plea of nolo contendere; certification from Appellate Court; claim that trial court improperly denied defendant's motion to suppress certain evidence seized by police following their warrantless entry into her apartment; whether officers' warrantless entry was justified under exigent circumstances exception to warrant requirement of fourth amendment to United States constitution; whether officers' warrantless entry was justified under emergency aid doctrine; whether, under totality of facts known to officers at time of their entry, it was objectively reasonable for them to believe that someone in defendant's apartment was in need of emergency medical assistance.
State *v.* Delacruz-Gomez (Order) 925
State *v.* Foster (Order) 920
State *v.* Griffin (Order) 917
State *v.* Henry (Order) 913
State *v.* Hurdle (Order) 923
State *v.* Juan A. G.-P. 132
Aggravated sexual assault of minor; risk of injury to child; claim that trial court violated defendant's federal constitutional right to confrontation by not ordering disclosure of victims' psychiatric records to defense; request that this court conduct independent review of victims' psychiatric records to determine whether trial court correctly determined that records contained no exculpatory or relevant impeachment material; whether trial court's failure to order disclosure of victims' psychiatric records was harmless error; claim that trial court violated defendant's right to confrontation by precluding defense counsel from questioning victims' mothers about their applications for certain visas available to undocumented immigrants who are victims of crimes if they assist in investigation and prosecution of those crimes; claim that trial court improperly instructed jury that, if evidence was subject to two different interpretations, jury was not required to accept interpretation consistent with innocence or that consistent with guilt; claim that trial court improperly failed to instruct jury in accordance with instruction 2.6-11 of Connecticut's model criminal jury instructions.
State *v.* King 238
Operating motor vehicle while under influence of intoxicating liquor or drugs; sentence enhancement pursuant to statute (§ 14-227a (g)) for repeat offenders; certi-

fication from Appellate Court; whether Appellate Court properly upheld defendant's sentence enhancement under § 14-227a (g); whether essential elements of Florida's driving under influence statute (§ 316.193 (1)) were "substantially the same" as elements of Connecticut's operating under influence statute, § 14-227a (a), for purposes of sentence enhancement; whether essential element in Florida statute requiring "actual physical control" of vehicle was "substantially the same" as "operating" motor vehicle element in § 14-227a (a); definitions of "essential elements" and "substantially the same," as used in § 14-227a (g), discussed.
State *v.* Kosuda-Bigazzi (Order) 913
State *v.* Marcello E. (Order) 901
State *v.* McLaurin (Order) 903
State *v.* Michael R.. 432
Sexual assault first degree; risk of injury to child; employing minor in obscene performance; assault third degree; criminal violation of protective order; stalking first degree; claim that trial court abused its discretion when it granted state's motion for joinder and consolidated charged sexual offenses and nonsexual offenses for trial; whether evidence of sexual offenses was cross admissible to prove nonsexual offenses; unpreserved claim that statute (§ 53a-196a (a) (1)) prohibiting employment of minor in obscene performance was unconstitutionally vague as applied to defendant; unpreserved claim that photographs that served as evidence of defendant's violation of § 53a-196a (a) (1) were not obscene and, therefore, warranted protection under first amendment to United States constitution; whether reasonable person would have anticipated that defendant's conduct in directing nine year old girl to model in suggestive poses and to take photographs of herself partially and fully nude constituted violation of § 53a-196a (a) (1); claim that trial court's exclusion of video recordings of forensic interviews violated defendant's rights to confrontation and to present defense; claim that evidence was insufficient to support defendant's conviction of third degree assault, violation of protective order, and first degree stalking.
State *v.* Stanley (Order). 916
State *v.* Sumler (Order). 914
State *v.* White (Order) 918
Strazza Building & Construction, Inc. *v.* Harris 205
Foreclosure of mechanic's liens; res judicata; summary judgment; certification from Appellate Court; whether Appellate Court incorrectly concluded that presumption of privity between general contractors and subcontractors that this court recognized in Girolametti *v.* Michael Horton Associates, Inc. *(332 Conn. 67), was inapplicable in present case, in which plaintiff general contractor sought to foreclose mechanic's liens against defendants, one of which owned property on which general contractor performed renovation work, when plaintiff was not party to prior action between defendant and subcontractor.*
Stenner *v.* Commissioner of Correction (Order) 914
Tracey *v.* Miami Beach Assn. (Order). 919
Tremont Public Advisors, LLC *v.* Materials Innovation & Recycling Authority (Order) . . 906
U.S. Bank National Assn. *v.* O'Hara (Order) 908
Wahba *v.* JPMorgan Chase Bank, N.A. (Order) 912
Waterbury *v.* Administrator, Unemployment Compensation Act (Order) 903
Waterford *v.* Traylor (Order). 923
Wells Fargo Bank, N.A. *v.* Vollenweider (Order) 916

CONNECTICUT APPELLATE REPORTS

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CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

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CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

TENISHA O'REGGIO *v.* COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES ET AL. (AC 45011)

Prescott, Seeley and Eveleigh, Js.

Syllabus

The plaintiff employee appealed from the decision of the trial court affirming the decision of the defendant Commission on Human Rights and Opportunities, which concluded that the defendant employer was not liable to the plaintiff under the Connecticut Fair Employment Practices Act (CFEPA) ((Rev. to 2015) § 46a-51) for her claim of a hostile work environment created by one of its employees, K. The commission's presiding human rights referee determined that, although K, whom the referee referred to as the plaintiff's "supervisor," had created a hostile work environment, the employer had acted promptly and reasonably under the circumstances to remedy the situation and, accordingly, was not negligent. The trial court affirmed the decision of the commission, concluding that K was required to be a "supervisor," as that term had been defined by the United States Supreme Court in *Vance* v. *Ball State University* (570 U.S. 421) for purposes of CFEPA's federal counterpart, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.), in order for liability to be imputed to the employer on the basis of a supervisor theory of liability. The trial court acknowledged that the referee's decision was ambiguous as to whether K's responsibilities satisfied such definition, but it determined that a remand was unnecessary because the plaintiff's counsel had conceded that K's responsibilities did not satisfy the definition, as she was not empowered to take tangible employment actions against the plaintiff. Accordingly, the trial court concluded that the commission had properly applied the negligence standard for harassment by a coworker to the plaintiff's claim.

On the plaintiff's appeal to this court, *held* that the definition of "supervisor" set forth in *Vance* was the appropriate definition for distinguishing between the coworker and supervisor theories of liability for hostile work environment claims brought under CFEPA and that the trial court properly applied the *Vance* test to the plaintiff's CFEPA claim: this court assumed, without deciding, that the framework for determining whether an employer could be held liable for the creation of a hostile work environment by its employees for purposes of claims brought under Title VII applied to claims brought under CFEPA, and, under that framework, an employer could be held strictly liable for the actions of a supervisor but could be held directly liable for the actions of a coworker only if the plaintiff could prove that the employer was negligent; moreover, although Connecticut appellate courts had not previously decided whether to adopt or to reject the *Vance* definition of "supervisor" for purposes of CFEPA claims, federal courts had applied it to CFEPA claims, and, in interpreting antidiscrimination statutes, our state courts consistently have looked to federal precedent for guidance; furthermore, our state courts have interpreted CFEPA differently than Title VII only in circumstances in which there is clear evidence of a contrary legislative intent, the plaintiff in the present case did not present any evidence to suggest that our legislature intended for the term "supervisor" to be more broadly construed than the definition used by the courts for Title VII purposes, and the mere facts that CFEPA was remedial in nature and was required to be construed to effectuate its beneficent purpose were not sufficient for this court to reject federal guidance; additionally, the plaintiff's argument that the broader definition of "supervisor" set forth in the United States Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance was better suited for CFEPA claims than the *Vance* definition was unpersuasive, as, under either definition, employers would be prompted to focus their attention on all employees, not just on decision makers, and the plaintiff had failed to address the rationales of the United States Supreme Court for rejecting the EEOC guidance and adopting the *Vance* definition, all of which this court found compelling; accordingly, although the commission did not make a factual finding specific to whether K fell within the *Vance* definition of supervisor, because the plaintiff had conceded that K's responsibilities did not satisfy such definition and, at oral argument before this court, that she could not prove negligence on behalf of the employer as required by the coworker theory of liability, the evidence supported only one conclusion as a matter of law and a remand for further proceedings was unnecessary.

Argued October 5, 2022—officially released April 25, 2023

Procedural History

Appeal from the decision by a human rights referee for the named defendant concluding that the defendant

Department of Labor was not liable to the plaintiff for her claim of a hostile work environment, brought to the Superior Court in the judicial district of New Britain and tried to the court, *Klau, J.*; judgment affirming the decision, from which the plaintiff appealed to this court. *Affirmed.*

James V. Sabatini, for the appellant (plaintiff).

Michael E. Roberts, human rights attorney, for the appellee (named defendant).

Colleen Valentine, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Michael Skold*, deputy solicitor general, for the appellee (defendant Department of Labor).

Opinion

SEELEY, J. In this appeal, we are asked to consider whether the Superior Court erred in affirming the administrative decision of the named defendant, the Commission on Human Rights and Opportunities (commission), which concluded that the defendant employer, the Department of Labor (department), was not liable to the plaintiff, Tenisha O'Reggio,[1] for the claim of a hostile work environment created by one of its employees brought under the Connecticut Fair Employment Practices Act (CFEPA), General Statutes (Rev. to 2015) § 46a-51 et seq.

The framework for determining when an employer can be held liable for a claim of the creation of a hostile work environment by its employees brought under CFEPA's federal counterpart, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (2018) (Title VII),[2] was set out in *Burlington Industries, Inc.*

[1] The plaintiff now goes by Tenisha Minfield.

[2] Title VII makes it an "unlawful employment practice for an employer— (1) to . . . discriminate against any individual . . . because of such individual's race [or] color . . . ." 42 U.S.C. § 2000e-2 (a) (2018). As discussed more fully later in this opinion, CFEPA was modeled after Title VII.

v. *Ellerth*, 524 U.S. 742, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998), and *Faragher* v. *Boca Raton*, 524 U.S. 775, 118 S. Ct. 2275, 141 L. Ed. 2d 662 (1998). As summarized by the United States Supreme Court in *Vance* v. *Ball State University*, 570 U.S. 421, 133 S. Ct. 2434, 186 L. Ed. 2d 565 (2013), the federal framework provides that if the employee who created the hostile work environment is the plaintiff's " 'supervisor,' " then the employer will be vicariously liable, regardless of whether the harassment resulted in a "tangible employment action," unless the employer satisfies an affirmative defense; id., 429; namely, the *Ellerth/Faragher* defense, which requires showing "(1) that it exercised reasonable care to prevent and promptly correct any harassing behavior and (2) that the plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities that were provided." Id., 430. If the employee is the plaintiff's coworker, then the framework provides that the employer will be liable only if the plaintiff establishes that the employer was negligent in controlling the working conditions. Id., 424.

In the present case, the Superior Court concluded that the department was not liable because the employee who created the hostile work environment, Diane Krevolin, was not the plaintiff's "supervisor" pursuant to the definition adopted by the United States Supreme Court for Title VII purposes in *Vance* v. *Ball State University*, supra, 570 U.S. 424; that is, someone "empowered by the employer to take tangible employment actions against the [plaintiff] . . . ." Id. The court determined that because Krevolin was not a supervisor, there was consequently "no merit to the plaintiff's argument that [the commission] should have imputed liability to [the department] on the basis of a supervisor theory of liability," and because the plaintiff did not challenge the decision on any other ground, it affirmed

the decision of the commission in favor of the department.

On appeal to this court, the plaintiff asks us to conclude, contrary to the determination of the Superior Court, that the *Vance* definition of a "supervisor" for Title VII purposes does not apply to hostile work environment claims that are brought under CFEPA. She asks us, instead, to adopt a broader definition of the term for CFEPA purposes that would include employees like Krevolin who cannot "take tangible employment actions" but nonetheless control the day-to-day conditions of their subordinate's work. We conclude that the Superior Court properly determined that the *Vance* definition applies to claims brought under CFEPA, and, accordingly, we affirm the judgment of the court.

The following facts, as found by the commission's presiding human rights referee (referee), and procedural history are relevant to our resolution of this appeal. The plaintiff began working for the department in 2009. In early 2012, she was promoted to the position of an adjudicator[3] in the unemployment unit of the Bridgeport office, where she reported to Krevolin, the program services coordinator. The plaintiff is Black, and Krevolin is white. On October 21, 2016, the plaintiff filed an internal complaint with the department's human resources (HR) team alleging that, over the years, Krevolin had made several upsetting and racially biased statements to her or in her presence.[4] On October 27,

[3] Ken Petow, the overseer of the department's adjudication division, explained in his testimony that, when the department identifies an eligibility issue with an unemployment benefits application, the adjudicator is the person who "calls [the applicant] up, gets a statement from them, and then just makes a decision within our laws to determine whether or not the individual is eligible for unemployment and whether or not the employer should be charged."

[4] The plaintiff described the following incidents that took place over the years: at a one-on-one meeting with Krevolin six months after the plaintiff began her adjudicator position, Krevolin asked the plaintiff what she would

2016, the plaintiff met with HR personnel and, the following day, the department placed Krevolin on paid administrative leave so it could conduct its internal investigations. The department conducted two investigations: one by HR and one by its equal employment opportunity manager. Following the completion of the investigations and a subsequent *Loudermill* hearing,[5] the department's commissioner, weighing Krevolin's nearly forty year long career at the department with an unblemished record, issued a one day suspension to Krevolin and required her to attend diversity training.

On November 22, 2016, while the department's investigations were ongoing, the plaintiff filed a complaint with the commission against the department alleging, inter alia,[6] that the department subjected her to a hostile work environment based on her race and color in viola-

do if someone called her a racial epithet; on a later date, Krevolin made a comment suggesting that the man with whom she was talking to must have been lying about looking for work because he was Black; at a meeting, Krevolin stated to the plaintiff and other adjudicators, "You know Hispanics don't have bank accounts"; Krevolin made a comment that the plaintiff believed was implying that the plaintiff had no reason to be in Sweden on vacation because she is Black; Krevolin said to the plaintiff's coworker, who had dreadlocks but then changed her hairstyle, "I'm glad you . . . took that mess out of your head, you looked like Whoopi Goldberg"; and Krevolin complimented the plaintiff's hairstyle and stated that she did not like the plaintiff's old hairstyle because it reminded her of "Aunt Jemima." (Internal quotation marks omitted.)

[5] "Pursuant to *Board of Education* v. *Loudermill*, 470 U.S. 532, 546, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985), due process entitles a tenured public employee to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. The opportunity to present one's side of the story is generally referred to as a *Loudermill* hearing." (Internal quotation marks omitted.) *Meriden* v. *American Federation of State, County & Municipal Employees, Local 1016*, 213 Conn. App. 184, 189 n.6, 277 A.3d 902 (2022).

[6] The plaintiff also alleged that she was subjected to discrimination based on her national origin and age and that she was retaliated against, but those claims were dismissed following the public hearing. The plaintiff did not challenge the dismissal of those claims on appeal to the Superior Court, and, therefore, they are not at issue in the present appeal.

tion of General Statutes (Rev. to 2015) § 46a-60 (a) (1)[7] and General Statutes §§ 46a-58 (a)[8] and 46a-70.[9] On January 31, 2018, following an initial investigation, the commission issued a finding indicating that there was reasonable cause for believing that a discriminatory practice had been or was being committed as alleged in the complaint, after which the parties unsuccessfully attempted to conciliate the matter. The case was then certified to a public hearing before the referee, which took place over three days.[10] At the close of the hearing, the plaintiff, the department, and the commission submitted posthearing briefs. Notably, the commission urged the referee to conclude that the plaintiff had been subjected to a hostile work environment for which the department was liable. On July 10, 2020, the referee

[7] General Statutes (Rev. to 2015) § 46a-60 (a) provides in relevant part: "It shall be a discriminatory practice in violation of this section: (1) For an employer, by the employer or the employer's agent . . . to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individuals race [or] color . . . ."

[8] General Statutes § 46a-58 (a) provides in relevant part: "It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of . . . color [or] race . . . ."

Although § 46a-58 has been amended since the filing of the plaintiff's complaint; see Public Acts 2022, No. 22-82, § 11; Public Acts 2017, No. 17-127, § 2; Public Acts 2017, No. 17-111, § 1; Public Acts, Spec. Sess., June, 2015, No. 15-5, § 73; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[9] General Statutes § 46a-70 (a) provides in relevant part: "State officials and supervisory personnel shall recruit, appoint, assign, train, evaluate and promote state personnel on the basis of merit and qualifications, without regard for race [or] color . . . ."

Although § 46a-70 has been amended since the filing of the plaintiff's complaint; see Public Acts 2022, No. 22-82, § 16; Public Acts 2018, No. 18-72, § 44; Public Acts 2017, No. 17-127, § 8; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[10] The hearing was held on April 30, May 1, and August 1, 2019.

issued her final decision in which she ruled in favor of the department. The referee concluded that, although Krevolin, whom the referee referred to as the plaintiff's "supervisor," had in fact created a hostile work environment, the department acted promptly and reasonably under the circumstances to remedy the situation and, therefore, was not negligent. As a result, the referee held that the department was not liable. Thereafter, the plaintiff timely appealed the commission's decision to the Superior Court pursuant to General Statutes § 4-183.[11]

On appeal to the court, the plaintiff argued in her brief that the referee failed to apply the applicable law. She specifically argued that, because the referee concluded that the plaintiff was subjected to a hostile work environment created by her supervisor, Krevolin, the referee *was required to* impute liability to the department as a matter of law unless it proved the *Ellerth/Faragher* defense. She further argued that, because the department did not prove that defense, the referee erred in declining to find it liable.

In response, the department argued in its brief that the referee's decision should be affirmed because the *Ellerth/Faragher* defense is applicable only to instances in which the employee who created the hostile work environment was a "supervisor" as defined by *Vance*, and, although the referee in her decision referred to Krevolin as the plaintiff's supervisor, she did not make a specific finding of supervisor liability, nor could she have, because the record was clear that Krevolin could not have taken " 'tangible employment actions' " against the plaintiff. The plaintiff's attorney addressed the department's contention at oral argument before the

[11] General Statutes § 4-183 (a) provides a right of appeal to the Superior Court to persons who have "exhausted all administrative remedies available within the agency and who [are] aggrieved by a final decision . . . ."

trial court. Although he conceded that Krevolin would not meet the definition of a "supervisor" under *Vance*, he argued that *Vance* is not controlling because no Connecticut case has applied it to a CFEPA claim and because CFEPA must be liberally construed in order to promote its underlying remedial purpose. He further argued that the court need not decide what the appropriate definition of a "supervisor" is for CFEPA purposes because the fact that the department itself had referred to Krevolin as the plaintiff's supervisor was dispositive of the issue.

The commission, despite having argued to the referee that the department should be liable to the plaintiff, changed its position on appeal and argued that the court should affirm the referee's decision. Like the department, it argued in its brief that the *Ellerth/Faragher* defense was inapplicable, but for different reasons. The commission contended that the defense was waived because the department failed to plead it. The commission also argued that the court should affirm the referee's decision because the plaintiff's claim was inadequately briefed. At oral argument, the commission declined to take a position on whether the *Vance* definition was applicable to the matter and, instead, argued that the court need not decide the question to resolve the appeal.

The court, *Klau, J.*, agreed with the department. It specifically determined that, for liability to be imputed to the department based on a supervisor theory of liability, Krevolin must have been a supervisor as defined by the United States Supreme Court in *Vance*. Although the court acknowledged that the referee's decision was ambiguous as to Krevolin's status as a supervisor under *Vance*, it reasoned that a remand was unnecessary because the plaintiff's counsel had conceded that Krevolin's responsibilities did not satisfy that definition. Thus, the court concluded that the referee had properly

applied the negligence standard for harassment by a coworker to the plaintiff's claim. Because the plaintiff did not challenge the referee's decision on any other ground, the court affirmed it. This appeal followed.

The plaintiff's sole claim on appeal is that the Superior Court erred in applying the *Vance* definition of a supervisor to her CFEPA claim. The plaintiff argues that the Title VII definition as set forth in *Vance* is inconsistent with the remedial nature of CFEPA, and, therefore, this court should reverse the judgment of the Superior Court. The plaintiff further asserts that, for hostile work environment claims brought under CFEPA, we should adopt a definition of supervisor that includes employees like Krevolin who have the power to control the day-to-day conditions of their subordinates' work rather than limit the definition only to those who have authority to take tangible employment actions. The department argues that this court should affirm the court's decision because it properly applied the *Vance* definition of a supervisor to the plaintiff's CFEPA claim, as "Connecticut state courts have consistently looked to federal law and Title VII when interpreting CFEPA claims, and thus the *Vance* definition of supervisor should apply."[12] We agree with the department.

[12] The commission argues on appeal that the court reached "the right destination, but by the wrong road." As a result, the commission asserts two alternative arguments for affirmance. It first argues that the court should have affirmed the referee's decision, not because Krevolin was not a supervisor under *Vance*, but because the plaintiff abandoned her claim due to inadequate briefing. Secondly, the commission argues that the court should have affirmed the referee's decision because the department waived the *Ellerth/Faragher* defense, and, therefore, the court should not have considered the merits of the plaintiff's claim. Given our conclusion that the Superior Court reached the right destination by the *right* road, we need not reach these alternative grounds.

The commission further argues that, if we are not persuaded by its alternative grounds for affirmance, we should remand the case for further proceedings because the commission never determined in its final decision whether *Vance* is applicable to CFEPA claims, and, therefore, "[i]t was not the role of the Superior Court to decide that question in the first instance; [and] it is no more the role of this court to decide the question now." To the extent

We begin by setting forth the standard of review and legal principles relevant to the plaintiff's claim. Our review of a Superior Court's decision to affirm an administrative appeal is governed by the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq. "Under the UAPA, it is [not] the function . . . of this court to retry the case or to substitute its judgment for that of the administrative agency. . . . Even for conclusions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Cases that present pure questions of law, however, invoke a broader standard of review . . . ." (Internal quotation marks omitted.) *Commission on Human Rights & Opportunities* v. *Echo Hose Ambulance*, 156 Conn. App. 239, 245, 113 A.3d 463 (2015), aff'd, 322 Conn. 154, 140 A.3d 190 (2016). For pure questions of law, "plenary review should be applied . . . [if] the issue of law ha[s] not been time-tested by the [agency] or previously considered by the courts." (Internal quotation marks omitted.) *Longley* v. *State Employees Retirement Commission*, 284 Conn. 149, 166, 931 A.2d 890 (2007). Because the present case presents a pure question of law that never has been considered by the commission or by our appellate courts, our review is plenary.

As discussed earlier in this opinion, in *Burlington Industries, Inc.* v. *Ellerth*, supra, 524 U.S. 742, and *Faragher* v. *Boca Raton*, supra, 524 U.S. 775, the United States Supreme Court established a framework rooted in agency principles for determining when an employer can be held liable for the creation of a hostile work

that this argument by the commission is an independent challenge to the Superior Court's judgment, we decline to address it because the commission did not file a cross appeal. See Practice Book § 61-8; *Campbell* v. *Porter*, 212 Conn. App. 377, 387–88 n.11, 275 A.3d 684 (2022); *William Raveis Real Estate, Inc.* v. *Newtown Group Properties Ltd. Partnership*, 95 Conn. App. 772, 773 n.3, 898 A.2d 265 (2006).

environment by its employees for purposes of claims brought under Title VII of federal law. This framework provides that if the employee was the plaintiff's coworker, then the employer can be held directly liable only if the plaintiff can show that the employer was negligent. *Vance* v. *Ball State University*, supra, 570 U.S. 427. If, however, the employee was the plaintiff's "supervisor," then the employer's liability will depend on the circumstances. Id., 428. If the supervisor engaged in harassment that resulted in a "tangible employment action," then the employer will be strictly liable. (Internal quotation marks omitted.) Id., 428–29. If the supervisor did not take a tangible employment action, the employer will still be vicariously liable—even in the absence of negligence—*unless* the employer satisfies an affirmative defense, the *Ellerth/Faragher* defense. Id., 429–30. This defense provides that "an employer can mitigate or avoid liability by showing (1) that it exercised reasonable care to prevent and promptly correct any harassing behavior and (2) that the plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities that were provided." Id., 430.

Although, to date, our appellate courts have not been presented with a CFEPA case that has required the application of this framework, there appears to be no dispute among the parties that it applies to CFEPA claims. Moreover, this framework has been applied to CFEPA claims by the United States Court of Appeals for the Second Circuit; see *Bentley* v. *AutoZoners, LLC*, 935 F.3d 76, 90–91 (2d Cir. 2019); as well as the United States District Court for the District of Connecticut; see, e.g., *Salen* v. *Blackburn Building Services, LLC*, United States District Court, Docket No. 3:14-CV-01361 (VAB) (D. Conn. January 6, 2017); and it has been acknowledged by our Supreme Court in a CFEPA case. See *Brittell* v. *Dept. of Correction*, 247 Conn. 148, 166

n.30, 717 A.2d 1254 (1998). Therefore, we will assume, without deciding, that this framework is applicable.

This framework is predicated on the distinction between a coworker and a supervisor and, thus, posits the question of who constitutes a "supervisor." The term "supervisor" does not appear within the text of CFEPA, and, consequently, it is not defined therein, nor has it been defined by a Connecticut court. Likewise, the term does not appear and, therefore, is not defined within Title VII. The United States Supreme Court thus defined it in *Vance* v. *Ball State University*, supra, 570 U.S. 424, for Title VII purposes. In doing so, the court clarified that the term is not a statutory term, but a term that must be interpreted so as to best fit within the highly structured *Ellerth/Faragher* framework. Id., 436.

"In *Vance*, the Supreme Court resolved a circuit split. Some courts [had] held that an employee is not a supervisor unless he or she has the power to hire, fire, demote, promote, transfer, or discipline the victim; other courts had substantially followed the more open-ended approach advocated by the [Equal Employment Opportunity Commission's (EEOC)] Enforcement Guidance [EEOC Guidance],[13] which tie[d] supervisor status to the ability to exercise significant direction over another's daily work. . . . The Supreme Court rejected the latter position, holding that [t]he ability to direct another employee's tasks is simply not sufficient to make one a supervisor. . . . Rather, an employee is a supervisor only when the employer has empowered that employee to take tangible employment actions against the victim, i.e., to effect a significant change in employment status, such as hiring, firing, failing to

[13] U.S. Equal Employment Opportunity Commission, Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors (June 18, 1999), available at https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors (last visited April 11, 2023).

promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." (Citations omitted; footnote added; internal quotation marks omitted.) *Bentley* v. *AutoZoners, LLC*, supra, 935 F.3d 91.

Although Connecticut appellate courts have not yet been presented with the opportunity to adopt or reject the *Vance* definition for purposes of CFEPA claims, it has been applied to CFEPA claims by the United States Court of Appeals for the Second Circuit; see id., 91–92; as well as the United States District Court for the District of Connecticut; see, e.g., *Salen* v. *Blackburn Building Services, LLC*, supra, United States District Court, Docket No. 3:14-CV-01361 (VAB); *Savage* v. *Southern Connecticut State University*, United States District Court, Docket No. 3:09-CV-00302 (JAM) (D. Conn. March 3, 2016). Moreover, "[i]n interpreting our antidiscrimination and antiretaliation statutes, we look to federal law for guidance. In drafting and modifying [CFEPA] . . . our legislature modeled that act on its federal counterpart, Title VII . . . and it has sought to keep our state law consistent with federal law in this area. . . . Accordingly, in matters involving the interpretation of the scope of our antidiscrimination statutes, our courts consistently have looked to federal precedent for guidance. . . . Furthermore, our Supreme Court has held that in defining the contours of an employer's duties under our state antidiscrimination statutes, we have looked for guidance to federal case law interpreting Title VII . . . the federal statutory counterpart to [CFEPA]." (Citations omitted; internal quotation marks omitted.) *Commission on Human Rights & Opportunities* v. *Echo Hose Ambulance*, supra, 156 Conn. App. 249–50.

The plaintiff argues that we should decline to adopt the "narrow" *Vance* definition for CFEPA claims

because doing so would undermine the remedial purpose of Connecticut's statutory scheme. The plaintiff contends that we should, instead, adopt a definition that is more in line with the EEOC guidance on vicarious employer liability for unlawful harassment by supervisors, which encompasses those who have the authority to direct an employee's daily work but cannot take tangible employment actions, such as Krevolin. In support of her argument, the plaintiff contends that our courts have declined to adopt federal interpretations of similar federal employment antidiscrimination statutes when doing so would not effectuate the remedial purpose of the state statute and that adopting the *Vance* definition would not effectuate the remedial purpose of CFEPA.

The plaintiff is correct that, at times, this court and our Supreme Court have interpreted CFEPA differently than its federal counterpart, Title VII. However, the court has done so "only in circumstances in which there is clear evidence of a contrary legislative intent." *Commission on Human Rights & Opportunities* v. *Echo Hose Ambulance*, 322 Conn. 154, 162, 140 A.3d 190 (2016); see also *McWeeny* v. *Hartford*, 287 Conn. 56, 69, 946 A.2d 862 (2008) ("[a]lthough it is true . . . that we generally look for guidance to case law interpreting Title VII when construing our state fair employment legislation . . . such guidance is unnecessary when the language of our statutory scheme . . . is susceptible of only one reasonable interpretation" (citation omitted)). For instance, in *Vollemans* v. *Wallingford*, 103 Conn. App. 188, 194, 928 A.2d 586 (2007), aff'd, 289 Conn. 57, 956 A.2d 579 (2008), this court was tasked with construing CFEPA's 180 day filing period, as set forth in General Statutes (Rev. to 2007) § 46a-82 (e).[14]

[14] Hereinafter, unless otherwise indicated, all references to § 46a-82 in this opinion are to the 2007 revision of the statute.

Although a federal interpretation of Title VII's analogous 180 day limitation period existed, we declined to adopt it and, instead, adopted a more liberal construction of the provision that would allow for more claims to survive the filing period. Id., 218–19. In doing so, we recognized that the legislative history surrounding § 46a-82 (e) provides "strong evidence"; id., 198; of our legislature's intent to "avoid the defeat of such complaints for filing faults rather than on their merits"; id., 219; and, accordingly, we concluded that "[o]ur interpretation of § 46a-82 (e) must be mindful of that legislative policy." Id., 218. In the present case, the plaintiff has failed to direct us to *any* evidence to suggest that our legislature, despite not having statutorily defined the term "supervisor" for CFEPA claims, intended for the term to be more broadly construed than the definition used by courts for Title VII purposes. When asked at oral argument whether there was any such evidence within the statute that the plaintiff could point to, the plaintiff's counsel stated, "All I can point to is silence." Silence is, undoubtedly, not enough to constitute clear evidence of a contrary legislative intent.

Further, the plaintiff's argument rests entirely on the fact that CFEPA is remedial in nature, but the mere fact that a statute is remedial in nature and must be construed to effectuate its beneficent purpose is not enough for this court to reject federal guidance. "*Although CFEPA is a remedial statute*, such that ambiguities in [CFEPA] should be construed in favor of persons seeking redress thereunder . . . *our fundamental objective is to ascertain and give effect to the apparent intent of the legislature*"; (citations omitted; emphasis added; internal quotation marks omitted) *Commission on Human Rights & Opportunities* v. *Echo Hose Ambulance*, supra, 322 Conn. 165; and "our

legislature's intent, in general, was to make CFEPA complement the provisions of Title VII." Id., 160.[15]

We also are not persuaded by the plaintiff's argument that the EEOC Guidance definition of a supervisor is better suited for CFEPA claims than the definition set out in *Vance*. The plaintiff has pointed us to one jurisdiction only, New Jersey, that has elected a more expansive definition of supervisor for purposes of its state law discrimination claims, and we do not find the court's reasoning to be sufficiently persuasive. In *Aguas* v. *State*, 220 N.J. 494, 107 A.3d 1250 (2015), the Supreme Court of New Jersey reasoned that adopting the EEOC Guidance would further the paramount goal of the state's antidiscrimination statute because "[i]t prompts employers to focus attention not only on an elite group of decision-makers at the pinnacle of the organization, but on all employees granted the authority to direct the day-to-day responsibilities of subordinates, and to ensure that those employees are carefully selected and thoroughly trained." Id., 528. We disagree with this rationale because adopting the *Vance* definition does not eradicate employer liability for conduct of nonsupervisory employees; rather, it requires an additional showing of negligence. Thus, we are confident that, under either definition, employers are prompted to focus their attention on *all* employees, not just decision makers.

Moreover, the plaintiff has not addressed, let alone countered, the United States Supreme Court's numerous rationales for rejecting the EEOC Guidance and

[15] The plaintiff also argues that "[r]ejecting *Vance* finds further support in retaliation claims brought under the CFEPA," because, for claims of retaliation, plaintiffs need to prove only that there was a materially adverse employment action taken against them, not an action that affects the terms and conditions of employment. We are not persuaded by this undeveloped argument. Although hostile work environment claims and retaliation claims may both fall within the realm of CFEPA, the standards that they invoke are distinctive.

instead adopting the *Vance* definition, all of which we find compelling. The United States Supreme Court reasoned: "We reject the nebulous definition of a 'supervisor' advocated in the EEOC Guidance and substantially adopted by several [c]ourts of [a]ppeals. [The] [p]etitioner's reliance on colloquial uses of the term 'supervisor' is misplaced, and her contention that our cases require the EEOC's abstract definition is simply wrong. . . . [T]he framework set out in *Ellerth* and *Faragher* presupposes a clear distinction between supervisors and co-workers. Those decisions contemplate a unitary category of supervisors, i.e., those employees with the authority to make tangible employment decisions. There is no hint in either decision that the [c]ourt had in mind two categories of supervisors: first, those who have such authority and, second, those who, although lacking this power, nevertheless have the ability to direct a co-worker's labor to some ill-defined degree. On the contrary, the *Ellerth/Faragher* framework is one under which supervisory status can usually be readily determined, generally by written documentation. The approach recommended by the EEOC Guidance, by contrast, would make the determination of supervisor status depend on a highly case-specific evaluation of numerous factors.

"The *Ellerth/Faragher* framework represents what the [c]ourt saw as a workable compromise between the aided-in-the-accomplishment theory of vicarious liability and the legitimate interests of employers. The Seventh Circuit's understanding of the concept of a 'supervisor,' with which we agree, is easily workable; it can be applied without undue difficulty at both the summary judgment stage and at trial. The alternative, in many cases, would frustrate judges and confound jurors." (Footnote omitted.) *Vance* v. *Ball State University*, supra, 570 U.S. 431–32.

In sum, we conclude that the *Vance* definition of supervisor as used by the courts in Title VII cases is the appropriate definition for distinguishing between the coworker and supervisor theories of liability for hostile work environment claims brought under CFEPA. Accordingly, we further conclude that the Superior Court properly applied the *Vance* test to the plaintiff's CFEPA claim.

We acknowledge that the commission did not make the factual findings specific to whether Krevolin falls within that definition and that, typically, when "an administrative agency has made invalid or insufficient findings, the court must remand the case to the agency for further proceedings . . . ." (Internal quotation marks omitted.) *Slootskin* v. *Commission on Human Rights & Opportunities*, 72 Conn. App. 452, 466 n.12, 806 A.2d 87, cert. denied, 262 Conn. 910, 810 A.2d 275 (2002). That is not the case, however, if the evidence supports "only one conclusion as a matter of law . . . ." (Internal quotation marks omitted.) Id. The plaintiff has conceded to this court that Krevolin's responsibilities do not satisfy the *Vance* definition. Thus, the plaintiff would have to prove negligence on the part of the department, as required by the coworker theory of liability. In this case, the plaintiff has further conceded that she cannot do so.[16] Accordingly, the evidence supports only one conclusion as a matter of law:

[16] At oral argument before this court, counsel for the plaintiff specifically stated: "When the harassment is committed by a nonsupervisor, a coworker, the plaintiff is then required to prove negligence on the part of the employer in order to hold the employer liable for that employee's workplace harassment. . . . In this case, [the plaintiff] cannot prove negligence."

The commission argues that it is improper for us to rely on the plaintiff's concessions because they were made on appeal and were not in the record before the commission, which courts are confined to in reviewing administrative decisions on appeal. *Commission on Human Rights & Opportunities* v. *Echo Hose Ambulance*, supra, 156 Conn. App. 239, is instructive. There, the referee granted the defendant's motion to strike the CFEPA complaint on the ground that the plaintiff was not an employee pursuant to the federal renumeration test. Id., 244. On appeal, the plaintiff argued that the referee

the department is not liable. A remand, therefore, is unnecessary.

The judgment is affirmed.

In this opinion the other judges concurred.

ARVYS PROTEIN, INC. *v.* A/F PROTEIN, INC. (AC 44867)

Prescott, Elgo and DiPentima, Js.

Syllabus

The plaintiff appealed to this court from the judgment of the trial court denying its application to modify or vacate an arbitration award. The plaintiff and the defendant had executed a series of contracts in which the plaintiff was to perform research services for the defendant. The defendant was dissatisfied with the plaintiff's results following the first contract, and the parties entered into a second contract. The defendant was again dissatisfied with the plaintiff's results and cancelled the second contract. Thereafter, the defendant demanded arbitration under the terms of the contracts and requested damages incurred as a result of the plaintiff's performance. Both parties voluntarily participated in the arbitration and were represented by their respective corporate presidents. The arbitrator issued a decision awarding the defendant damages in an amount exceeding the money it had paid to the plaintiff under the contracts, and the plaintiff filed an application to modify or vacate the award. The court concluded that, on the basis of the record, it could not definitively determine whether the award was beyond the scope of the submission or that the arbitrator's decision was manifestly, obviously and indisputably wrong, and it found no authority to support the plaintiff's claim that the award arose from the unauthorized practice of law and, thus, violated public policy. *Held*:

1. The plaintiff could not prevail on its claim that the trial court improperly denied its application to modify or vacate the arbitration award because

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erroneously applied the federal renumeration test and that, if it were the applicable test, she should have been afforded an opportunity to engage in further discovery or an evidentiary hearing. Id., 253. During her oral arguments before us, however, the plaintiff conceded that she was unable to satisfy the renumeration test. Id. Because we concluded that the renumeration test was the applicable test, and because the plaintiff conceded to this court that she could not satisfy it, we rejected her claim. Id. Thus, we disagree with the commission that relying on the plaintiff's concessions on appeal is improper.

it was beyond the scope of the submission: the broad, unrestricted language of the submission gave the arbitrator the authority to resolve disputes under the contracts, and the award clearly stated that it was in full settlement of all claims and counterclaims submitted in the arbitration, which included the defendant's claims under the parties' contracts; moreover, the plaintiff's claim that the arbitrator resolved the claims submitted to him incorrectly by misconstruing the parties' contracts could not be the basis for vacating an arbitration award for failure to conform to the submission.

2. The plaintiff could not prevail on its claim that the arbitrator manifestly disregarded the law in awarding breach of warranty damages and awarding damages in excess of the limitations of liability provisions in the contracts: the plaintiff failed to articulate a clearly governing legal principle that the arbitrator appreciated and ignored, and this court declined to address the plaintiff's claim that its interpretation of the contractual provisions was more correct than the arbitrator's, as it could not review the record for errors or misapplication of law.

3. The trial court properly denied the plaintiff's application to modify or vacate the arbitration award when it concluded that the arbitration proceeding did not violate public policy prohibiting the unauthorized practice of law: the plaintiff failed to establish a clear, well-defined and dominant policy against the representation of corporate entities by corporate officers in arbitration proceedings that would warrant vacating an award that was otherwise beyond challenge; moreover, there is no well-defined and dominant public policy that only licensed attorneys can represent corporate parties in arbitration proceedings in Connecticut, as the rules that govern representation in arbitration proceedings in this state clearly provide that any party, including a corporation, may participate in an arbitration proceeding with whatever representation it chooses, including self-representation; furthermore, the plaintiff voluntarily chose to be represented by its president during the proceedings and did not raise an objection to that conduct in which it willingly participated until it lost.

Argued September 12, 2022—officially released April 25, 2023

Procedural History

Application to modify or vacate an arbitration award, brought to the Superior Court in the judicial district of Fairfield, where the court, *Stevens*, *J.*, rendered judgment denying the application, and the plaintiff appealed to this court. *Affirmed.*

Peter J. Zarella, for the appellant (plaintiff).

Trevin C. Schmidt, for the appellee (defendant).

Opinion

ELGO, J. The plaintiff, ARVYS Protein, Inc., appeals from the judgment of the trial court, rendered in favor of the defendant, A/F Protein, Inc., on the plaintiff's application to modify or vacate an arbitration award. On appeal, the plaintiff claims that the court improperly concluded that (1) the arbitrator's award did not exceed the scope of submission by awarding noncontractual relief, (2) the arbitrator did not manifestly disregard the law by ignoring undisputed contract provisions that limited damages and disclaimed warranties, and (3) the award did not violate public policy because it did not arise from the unauthorized practice of law. We disagree and, accordingly, affirm the judgment.

The record reveals the following facts and procedural history relevant to this appeal.[1] The plaintiff is a contract research organization (CRO)[2] that provides services to assist in the development of medical, pharmaceutical or biotechnical products. The defendant is a biotechnology company that specializes in the research and sale

[1] We note that a portion of the facts that gave rise to these claims, as presented by the parties to the trial court and to this court on appeal, remain disputed. However, because factual findings of the arbitrator "are not subject to judicial review"; *Burr Road Operating Co. II, LLC* v. *New England Health Care Employees Union, District 1199*, 316 Conn. 618, 638, 114 A.3d 144 (2015); neither the trial court nor this court can review the record to make our own independent findings with respect to disputed questions of fact. Furthermore, to the extent the arbitrator failed to make factual findings pertinent to the analysis in this case, we are not free to supplement the record with factual findings of our own. See *State* v. *Connecticut Employees Union Independent*, 322 Conn. 713, 726 n.12, 142 A.3d 1122 (2016). Instead, "[e]very reasonable presumption and intendment will be made in favor of the award and of the arbitrator's acts and proceedings." (Internal quotation marks omitted.) *Harty* v. *Cantor Fitzgerald & Co.*, 275 Conn. 72, 88–89, 881 A.2d 139 (2005).

[2] A CRO is a company retained by another company to perform clinical trials, most commonly for pharmaceutical, biotechnology and medical device industries.

of antifreeze proteins.[3] Antifreeze proteins are specific proteins, glycopeptides and peptides made by different organisms to allow cells to survive in subzero conditions.

Beginning in early 2018, the parties executed a series of contracts. Each of these contracts concerned a project focused on the purification of antifreeze proteins from fish serum, in which the plaintiff was to perform contract research services aimed at establishing a standard operating procedure to produce such antifreeze proteins. Given the experimental nature of contract research services, neither a CRO nor its client can define or predict the output of those services; therefore, to address the uncertainty, the parties adopted a "fee-for-service" contractual model. Under this contractual model, the CRO and the client negotiate prices for itemized services and use project completion "milestones," in which the client pays a percentage of the contract price at the commencement of a specific subset of services and the remaining amount on completion of all work required under the contract. The parties do not move to the next milestone in the contract until the first one is met.

The parties' first milestone of the initial contract (contract one) required the plaintiff to perform a small-scale trial of purification and, if that was successful, the second milestone of contract one required the development of a process to accomplish this purification on a larger scale. The defendant was required to pay 30 percent of the total cost for the project on commencement of the first milestone, and the remaining balance was due on its completion. At the completion of the first milestone, the defendant paid the plaintiff a total

[3] As explained by the trial court in its memorandum of decision, "[a]ntifreeze proteins are used in the medical field to aid in laboratory procedures designed to preserve live cells, tissues, and organs stored in cold conditions."

of $8500. The defendant was dissatisfied with the results of the first milestone, however, and decided not to proceed with the second milestone of contract one.

After contract one was unsuccessful, the parties agree that, at some point in mid-2018, they entered into a second contract (contract two), which modified the purification process requested by the defendant in contract one. When the purification process of contract two failed to yield the anticipated results, the defendant was once again dissatisfied with the results and cancelled the contract. As the memorandum of decision noted, however, the following factual representations are disputed between the parties. The defendant claimed that the plaintiff, during its work on contract two, contaminated the antifreeze proteins it was testing and, as a result, the defendant lost a contract with one of its leading clients. From the defendant's standpoint, the parties' relationship then ended after it rejected a proposed third contract from the plaintiff and, instead, requested the return of all materials in the plaintiff's possession derived from the plasma the defendant had provided. The plaintiff had a different point of view. It believed that contract two had been amended to reinsert a purification process that was initially removed from contract two and that this change in process produced a successful yield of antifreeze proteins, which required the parties to proceed to the next milestone in the contract. The plaintiff also took the position that the parties entered into a third contract and that the defendant initiated and paid for the first milestone of that contract, but it refused to pay the invoice for additional work.

On June 9, 2020, the defendant demanded arbitration with the American Arbitration Association (association) under the terms of the parties' contracts. Paragraph 9 of each contract provides that "[d]isputes under this [a]greement shall be resolved exclusively by final

and binding arbitration before a neutral arbitrator in accordance with the then-existing rules of the American Arbitration Association as applicable in the State of Connecticut.'' The demand requested damages incurred as a result of the plaintiff's performance under the contracts. The defendant specifically requested damages that included $45,200 that the defendant had paid to the plaintiff under the contracts, $13,500 for the estimated value of the original plasma the defendant provided to the plaintiff to jumpstart the purification efforts, $80,500 for the termination of the defendant's contract with its leading client, and $7095 for the loss of gross profits from sales the defendant had forgone as a result of the depletion of its inventory stemming from the plaintiff's failure to provide the necessary volume of product from purification. On June 30, 2020, the plaintiff filed a response to the defendant's demand disputing the defendant's claims and asserting defenses based on the limitation on liability term in the parties' contracts. The relevant provisions of contract one, as well as each contract thereafter, stated that the plaintiff's services were performed without guarantees and with limits on the plaintiff's liability for damages arising from its services.[4] The plaintiff also counterclaimed for $10,589.96 in damages for unpaid invoices.

[4] Specifically, paragraphs 11 and 12 of the parties' contracts state:

''11. WARRANTIES. Contract research services are provided 'as is' without any warranties of any kind. Except as provided in the terms and conditions of Quote, [the plaintiff] hereby disclaims all warranties, whether express, implied, or statutory, regarding the services, the project deliverables, including any warranties of fitness for a particular purpose and non-infringement of third party rights.

''12. LIMITATION OF LIABILITY. In no event will [the plaintiff] be liable for any consequential, indirect, exemplary, special, or incidental damages, including any lost profits, arising from or relating to the services even if [the plaintiff] has been advised of the possibility of such damages. [The plaintiff's] total cumulative liability in connection with the services will not exceed the fees paid for the services. One or more claims will not enlarge this limit.''

On August 26, 2020, the arbitration hearing took place before an arbitrator who was agreed upon by the parties. Neither party was represented by an attorney at that hearing. The plaintiff was represented by its president, Yelena Sheptovitsky, and the defendant was represented by its president, Elliot Entis.

On September 4, 2020, the arbitrator issued a decision awarding the defendant $66,345 in damages, and he declined to award any damages to the plaintiff. In that decision, the arbitrator stated in relevant part: "This [a]ward is in full settlement of all claims and counterclaims submitted to this [a]rbitration. All claims not expressly granted herein are hereby denied." The defendant subsequently sought clarification of the award regarding its request that the arbitrator order the plaintiff to return the fish plasma inventory that the plaintiff retained. The arbitrator responded that he incorporated the value of the unreturned materials into the damages awarded to the defendant and, therefore, denied the defendant's request. The plaintiff did not make any requests to the arbitrator to clarify or articulate the award.

On October 2, 2020, the plaintiff filed an application to modify or vacate the arbitration award.[5] The trial

[5] The plaintiff's application to vacate, modify, or correct the arbitration award requested the following relief:

"(1) [v]acate the award under General Statutes § 52-418 (a) (1) because it was procured by the defendant's submission of a fraudulent exhibit on a central issue of the case;

"(2) vacate the award under . . . § 52-418 (a) (4) because (a) the arbitrator exceeded the scope of the submission by issuing a noncontractual remedy, (b) the arbitrator manifestly disregarded the parties' contract by awarding damages exceeding the unambiguous and uncontested limitation of liability provision, and (c) the arbitrator manifestly disregarded the [parties'] contract by ignoring the disclaimer of warranties provision;

"(3) vacate the award as it violates public policy in that it was procured pursuant to the unauthorized practice of law; or

"(4) modify or correct the award because there was a clear error in the arbitrator's calculation of damages."

During oral arguments before the trial court, the plaintiff also argued that "the arbitration was a restricted one in that the arbitration provision is

court conducted a hearing on February 8, 2021, and issued a memorandum of decision on June 7, 2021, denying the plaintiff's application. With regard to the plaintiff's claim that the arbitrator went beyond the scope of the submission, the court concluded that the record is "unclear on how the arbitrator actually construed or applied the limitation of liability provisions," and, therefore, the court could not definitively determine whether the award was beyond the scope of the submission. With regard to the plaintiff's manifest disregard of the law claim, the court similarly concluded that the record and arbitration award did not definitively demonstrate that the arbitrator's decision was " 'manifestly, obviously and indisputably wrong.' " The court specifically concluded that "[t]here [was] nothing in the record to clearly establish that the arbitrator awarded what the plaintiff describes as being prohibited damages because the award does not explain what types of damages were awarded or how they were calculated." The court also concluded that the plaintiff's disagreement with the arbitrator's interpretation and application of the contract or his factual findings regarding the contract were insufficient to establish manifest disregard of the law. Last, with respect to the plaintiff's public policy claim, the court concluded that the plaintiff did not cite, nor was the court able to locate, any Connecticut authority establishing a well-defined, dominant public policy that an arbitration award "must be voided and vacated when corporate entities pursue arbitration without legal representation, particularly when both corporate parties voluntarily participated in the arbitration without exception or complaint pursuant to an arbitration clause executed by them as part of a

limited to disputes, quote, under the agreement, end quote." Nevertheless, the court concluded in its memorandum of decision that the arbitration submission was unrestricted.

commercial transaction."[6] The court therefore denied the plaintiff's application to vacate the arbitration award,[7] and this appeal followed.

The principles governing our review of the plaintiff's claims on appeal are well established. "Judicial review of arbitral decisions is narrowly confined." (Internal quotation marks omitted.) *Harty* v. *Cantor Fitzgerald & Co.*, 275 Conn. 72, 80, 881 A.2d 139 (2005). "Because we favor arbitration as a means of settling private disputes, we undertake judicial review of arbitration awards in a manner designed to minimize interference with an efficient and economical system of alternative dispute resolution. . . . Furthermore, in applying this general rule of deference to an arbitrator's award, [e]very reasonable presumption and intendment will be made in favor of the [arbitration] award and of the arbitrators' acts and proceedings. . . . When the parties agree to arbitration and establish the authority of the arbitrator through the terms of their submission, the extent of our judicial review of the award is delineated by the scope of the parties' [arbitration] agreement. . . . This is because [a]rbitration is a creature of contract and the parties themselves, by the terms of their

[6] In the plaintiff's application to vacate the arbitration award, the plaintiff also claimed that the defendant submitted a fraudulent document to the arbitrator. In this appeal, the plaintiff does not challenge the court's finding that there was no evidence of fraud. Before the trial court, the plaintiff also asserted a claim that the arbitrator's award should be corrected pursuant to General Statutes § 52-419 (a) (1) because there was a miscalculation in the damages award for the defendant. The plaintiff does not challenge on appeal the court's decision to decline modification of the award on the basis that a miscalculation was not evident on the face of the award.

[7] On June 17, 2021, the defendant filed an application to confirm the award, in which it also sought an award of attorney's fees. The plaintiff filed an objection to the defendant's request for attorney's fees but acknowledged that, short of appeal, the plaintiff could not contest the basis for confirming the award in light of the court's decision on its application to vacate. The court heard oral argument and granted the defendant's application to confirm but denied the request for attorney's fees and interest on the award.

submission, define the powers of the arbitrators." (Citations omitted; internal quotation marks omitted.) *Blondeau* v. *Baltierra*, 337 Conn. 127, 152–53, 252 A.3d 317 (2020). Thus, the standard of review of the claims in the present case is dependent on whether the submission to the arbitrator was restricted or unrestricted. See id., 153.

"A restricted submission, which expressly restrict[s] the breadth of the issues [to be resolved by the arbitrator], reserv[es] explicit rights, or condition[s] the award on court review, is subject to de novo review." (Internal quotation marks omitted.) Id. By contrast, an unrestricted submission to the arbitrator is considered "final and binding; thus the courts will not review the . . . award for errors of law or fact." (Internal quotation marks omitted.) Id. "Where the submission does not otherwise state, the arbitrators are empowered to decide factual and legal questions and an award cannot be vacated on the grounds that . . . the interpretation of the agreement by the arbitrators was erroneous. Courts will not review the evidence nor, where the submission is unrestricted, will they review the arbitrators' decision of the legal questions involved." (Internal quotation marks omitted.) Id., 153–54.

In the present case, we concur with the trial court's conclusion that the arbitration submission was unrestricted. The arbitration clauses of the parties' contracts state that "[d]isputes under this [a]greement shall be resolved exclusively by final and binding arbitration before a neutral arbitrator in accordance with the then-existing rules of the American Arbitration Association as applicable in the State of Connecticut." The plaintiff argues that the submission to arbitration was restricted because the arbitration provisions were limited to "disputes under" the contracts, rather than "any and all disputes between the parties" or "disputes related" to the contracts. The plaintiff's attempt to characterize

the broad language used in the arbitration clauses as restrictive, however, does not make it so. The arbitration provision language in the parties' contracts does not limit the breadth of issues before the arbitrator, reserve explicit rights, or condition the award on court review. See *Blondeau* v. *Baltierra*, supra, 337 Conn. 153–54. Therefore, the submission to the arbitrator was unrestricted.

"Even in the case of an unrestricted submission, we have . . . recognized three grounds for vacating an award: (1) the award rules on the constitutionality of a statute . . . (2) the award violates clear public policy . . . [and] (3) the award contravenes one or more of the statutory proscriptions of [General Statutes] § 52-418." (Internal quotation marks omitted.) *Harty* v. *Cantor Fitzgerald & Co.*, supra, 275 Conn. 81. The only statutory proscription relevant to our discussion is found in § 52-418 (a) (4) and provides that a judge shall vacate an arbitration award "if the arbitrators have *exceeded their powers* or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made." (Emphasis added.) Our Supreme Court has stated that "a claim that the arbitrators have exceeded their powers may be established under § 52-418 in either one of two ways: (1) the award fails to conform to the submission, or, in other words, falls outside the scope of the submission; or (2) the arbitrators manifestly disregarded the law." (Internal quotation marks omitted.) *Harty* v. *Cantor Fitzgerald and Co.*, supra, 85.

The plaintiff claimed to the trial court, and to this court on appeal, that the arbitration award in the present case must be vacated because it violates § 52-418 (a) (4) in that (1) the award was beyond the scope of the submission and (2) the arbitrator manifestly disregarded the law; the plaintiff also claims that (3) the

award violates public policy. Because this case implicates both a challenge under public policy and statutory proscription grounds, "[w]e review the trial court's decision with regard to each ground de novo." *Toland* v. *Toland*, 179 Conn. App. 800, 810, 182 A.3d 651, cert. denied, 328 Conn. 935, 183 A.3d 1174 (2018).

I

The plaintiff first claims that the court improperly denied its application to vacate the arbitration award when it concluded that the arbitrator's award was not beyond the scope of the submission. The plaintiff argues that the arbitrator was empowered to award relief only under the contracts but that the arbitrator nevertheless awarded noncontractual relief in violation of § 52-418 (a) (4). The defendant argues in response that, because the arbitration provisions in the contracts are devoid of any restrictive language, the submission was unrestricted and the court correctly evaluated whether the arbitrator's findings and award fell outside the scope of the submission. We agree with the defendant.

"The standard for reviewing a claim that the award does not conform to the submission requires what [our Supreme Court has] termed in effect, de novo judicial review. . . . The de novo label in this context means something very different from typical de novo review because review under this standard and in this setting is limited to a comparison of the award to the submission. Our inquiry generally is limited to a determination as to whether the parties have vested the arbitrators with the authority to decide the issue presented or to award the relief conferred. With respect to the latter, we have explained that, as long as the arbitrator's remedies were consistent with the agreement they were within the scope of the submission. . . . In making this determination, the court may not engage in fact-finding by providing an independent interpretation of the contract,

but simply is charged with determining if the arbitrators have ignored their obligation to interpret and to apply the contract as written. . . . [S]ee also *AFSCME, Council 4, Local 2663* v. *Dept. of Children & Families*, 317 Conn. 238, 252 n.8, 117 A.3d 470 (2015) (although [our Supreme Court] has stated that a court's review of an arbitration award is in effect, de novo judicial review, this means only that we draw our own conclusions regarding whether an arbitration award conforms to the submission . . .)." (Citations omitted; internal quotation marks omitted.) *Blondeau* v. *Baltierra*, supra, 337 Conn. 155–56.

For this court "[t]o justify vacating an award on the ground that the award exceeds the scope of the submission, we must determine that the award *necessarily* falls outside the scope of the submission. . . . [S]ee also *United Paperworkers International Union, AFL-CIO* v. *Misco, Inc.*, 484 U.S. 29, 38, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987) (as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision); *AFSCME, Council 4, Local 1303-325* v. *Westbrook*, 309 Conn. 767, 780, 75 A.3d 1 (2013) (It is not [the court's] role to determine whether the arbitrator's interpretation of the collective bargaining agreement was correct. It is enough to uphold the judgment of the court, denying the [union's] application to vacate the award, that such interpretation was a good faith effort to interpret the terms of the collective bargaining agreement. . . .)." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Blondeau* v. *Baltierra*, supra, 337 Conn. 156.

Specifically, "[t]he question for this court is not whether the arbitrator decided the issues correctly but only whether the issues were submitted for [him] to decide. In determining whether an arbitrator has

exceeded the authority granted under the contract, a court cannot base the decision on whether the court would have ordered the same relief, or whether . . . the arbitrator correctly interpreted the contract. The court must instead focus on whether the [arbitrator] had authority to reach a certain issue . . . . [A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of the authority, the award must be enforced. The arbitrator's decision cannot be overturned even if the court is convinced that the arbitrator committed serious error. . . . [A]s long as the arbitrator's remedies were consistent with the agreement they were within the scope of the submission. . . . [T]he court may not engage in fact-finding by providing an independent interpretation of the contract, but simply is charged with determining if the arbitrators have ignored their obligation to interpret and to apply the contract as written. . . . [S]ee also *Stratford* v. *International Assn. of Firefighters, AFL-CIO, Local 998*, 248 Conn. 108, 116, 728 A.2d 1063 (1999) (it is the arbitrator's judgment that was bargained for and contracted for by the parties, and we do not substitute our own judgment merely because our interpretation of the agreement or contract at issue might differ from that of the arbitrator)." (Citations omitted; internal quotation marks omitted.) *Blondeau* v. *Baltierra*, supra, 337 Conn. 158–59.

In the present case, from the plaintiff's perspective, the contracts had clear and unequivocal provisions that limited damages to the amounts the parties paid under the contracts and disclaimed all warranties. See footnote 4 of this opinion. Specifically, the plaintiff argues that the arbitrator's award included damages amounting to $21,145 for materials under the contracts but that the materials under the contract were only valued at $13,500 with no other evidence to contradict this value. The plaintiff also claims that the arbitrator had no basis

in the contracts for awarding the value of the property as damages, regardless of what that value was determined to be, because paragraph 12 of the contracts stated that the plaintiff's liability "will not exceed fees paid for services," which, the plaintiff argues, cannot be read to include the value of materials as damages. Finally, the plaintiff argues that paragraph 5 of the contracts specifically addresses the defendant's property but does not create any contractual rights or obligations concerning the return of the defendant's property and, therefore, should not have been addressed by the arbitrator or included in the award.[8] Thus, the plaintiff argues that the arbitrator's award of damages exceeding the amount paid under the contracts cannot be reconciled with these provisions and, therefore, the arbitration award was beyond the scope of the submission. These arguments are unpersuasive in light of our governing case law.

The broad, unrestricted language of the arbitration submission gave the arbitrator the authority to resolve "[d]isputes under this [a]greement." Here, the arbitration award is clear that it was in "full settlement of all claims and counterclaims submitted in this [a]rbitration," which included the defendant's claims under the parties' agreements. The plaintiff's real complaint is not that the arbitrator failed to address the claims submitted to him but that he resolved them incorrectly by misconstruing the parties' agreements. As previously noted, such a claimed error cannot be the basis to vacate an arbitration award for failing to conform to the submission. Thus, the plaintiff has failed to show that the arbitration award was beyond the scope of the submission.

[8] Paragraph 5 of each contract states in relevant part: "[The plaintiff] agrees that all . . . materials . . . provided to [the plaintiff] by [the defendant] hereunder . . . are the sole property of [the defendant]."

II

The plaintiff next argues that the court improperly denied its application to vacate the arbitration award when it concluded that the arbitrator did not manifestly disregard the law in rendering the arbitration award. On appeal, the plaintiff claims that the arbitrator manifestly disregarded applicable law when he awarded breach of warranty damages despite the contractual warranties provisions and awarded damages in excess of the limitations of liability provisions in the contracts. The defendant argues in response that the court properly denied the application to vacate on manifest disregard of the law grounds because the arbitration award, on its face, does not show a readily and instantly perceivable error because the award does not provide an itemized breakdown of the damages award. The defendant also argues that, even if this court were to find that the arbitrator incorrectly interpreted the contract provisions, a reviewing court cannot supplant the arbitrator's interpretation of a contract for its own. We agree with the defendant.

"Manifest disregard of the law is an extremely deferential standard of review. [T]he manifest disregard of the law ground for vacating an arbitration award is narrow and should be reserved for circumstances of an arbitrator's extraordinary lack of fidelity to established legal principles. . . . This level of deference is appropriate because the parties voluntarily have chosen arbitration as a means to resolve their legal dispute. . . . As an essential component of that choice, they have agreed to bypass the usual adjudicative apparatus, including its conventional appellate features, for the advantages that accompany private arbitration. To borrow a phrase from the marriage ceremony, that choice is made for better or for worse, which, in this context, means that the arbitrator's decision is final and binding unless it is manifestly, obviously, and indisputably

wrong. Review by a judicial authority is not forfeited entirely, but it is conducted under a different and far less rigorous level of scrutiny." (Citations omitted; internal quotation marks omitted.) *Blondeau* v. *Baltierra*, supra, 337 Conn. 161.

In order for the plaintiff to prove that the arbitrator manifestly disregarded the law under this "highly deferential standard"; *Harty* v. *Cantor Fitzgerald & Co.*, supra, 275 Conn. 102; it must prove three elements: "(1) the error was obvious and capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator; (2) the [arbitrator] appreciated the existence of a clearly governing legal principle but decided to ignore it; and (3) the governing law alleged to have been ignored by the [arbitrator] is [well-defined], explicit, and clearly applicable." (Internal quotation marks omitted.) *Blondeau* v. *Baltierra*, supra, 337 Conn. 162.

Further, "[t]he deference owed to the arbitrator's decision is not defeated, even if the losing party's preferred interpretation finds substantial support upon a close analysis of the controlling legal principles at issue. In other words, the plaintiff does not satisfy the manifest disregard standard simply by persuading us that the arbitrator misinterpreted [a contractual provision]. See *State* v. *Connecticut State Employees Assn., SEIU Local 2001*, [287 Conn. 258, 281, 947 A.2d 928 (2008)] ('even if the arbitrator's decision constitutes a misapplication of the relevant law, we are not at liberty to set aside an [arbitrator's] award because of an arguable difference regarding the meaning or *applicability* of laws' . . .); *Garrity* v. *McCaskey*, [223 Conn. 1, 11–12, 612 A.2d 742 (1992)] ('[W]e do not review an arbitrator's decision merely for errors of law . . . . Even if the arbitrators were to have misapplied the [applicable law], such a misconstruction of the law would not demonstrate the arbitrators' egregious or patently irrational rejection

of clearly controlling legal principles.')." (Emphasis in original; footnote omitted.) *Blondeau* v. *Baltierra*, supra, 337 Conn. 167.

In the present case, the plaintiff's claim that the arbitration award reflected a manifest disregard of the law must fail because the plaintiff has not articulated a clearly governing legal principle that the arbitrator appreciated and ignored. The plaintiff's claim rests solely on whether its interpretation of the contractual provisions is the better or more correct interpretation than that of the arbitrator. The plaintiff's argument presents a question of contract interpretation that this court cannot address on appeal because we cannot review the record for errors or misapplication of law. See id.; *State* v. *Connecticut State Employees Assn., SEIU Local 2001*, supra, 287 Conn. 281; *Garrity* v. *McCaskey*, supra, 223 Conn. 11–12. Here, the arbitration submission provided the arbitrator with the authority to hear disputes under the contract. The arbitrator did just that and issued an award. Because there is nothing in the award to indicate that the arbitrator appreciated governing legal principles and chose to ignore them, the plaintiff's manifest disregard of the law claim fails.

III

The plaintiff's third and final claim on appeal is that the court improperly denied its application to vacate when it concluded that the arbitration proceedings did not violate public policy prohibiting the unauthorized practice of law. The plaintiff contends that the arbitration proceeding violated that public policy because neither party was represented by an attorney during the proceedings before the arbitrator but, rather, both were represented by corporate officers. Specifically, the plaintiff argues that General Statutes § 51-88[9] and Prac-

[9] General Statutes § 51-88 provides in relevant part: "(a) Unless a person is providing legal services pursuant to statute or rule of the Superior Court, a person who has not been admitted as an attorney under the provisions of section 51-80 or, having been admitted under section 51-80, has been

tice Book § 2-44A (a)[10] establish a well-defined public policy in Connecticut that prohibits self-representation of a corporate party in arbitration proceedings. The defendant counters that there is no well-defined and dominant public policy in Connecticut that explicitly prohibits representation of a corporation by the corporation's president or other officer in arbitration proceedings. We agree with the defendant.

Our Supreme Court has recognized that, even in the case of an unrestricted submission, an arbitration award may be vacated if the award violates clear public policy. See *Garrity* v. *McCaskey*, supra, 223 Conn. 6. Such challenges are "premised on the fact that the parties cannot expect an arbitration award approving conduct which is illegal or contrary to public policy to receive judicial enforcement any more than parties can expect a court to enforce such a contract between them. . . . When a challenge to the arbitrator's authority is made on public policy grounds, however, the court is not concerned with the correctness of the arbitrator's decision but with the lawfulness of enforcing the award. . . . Accordingly, the public policy exception to arbitral authority should be *narrowly construed* and [a] court's

disqualified from the practice of law due to resignation, disbarment, being placed on inactive status or suspension, shall not: (1) Practice law or appear as an attorney-at-law for another in any court of record in this state, (2) make it a business to practice law or appear as an attorney-at-law for another in any such court . . . or (8) otherwise engage in the practice of law as defined by statute or rule of the Superior Court. . . .

"(d) The provisions of this section shall not be construed as prohibiting . . . (2) any person from practicing law or pleading at the bar of any court of this state in his or her own cause . . . ."

[10] Practice Book § 2-44A (a) provides in relevant part: "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 . . . (4) [r]epresenting any person in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in any administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review. . . ."

refusal to enforce an arbitrator's interpretation of [a contract] is limited to situations where the contract as interpreted would violate some explicit public policy that is well-defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests. . . . The party challenging the award bears the burden of proving that illegality or conflict with public policy is clearly demonstrated. . . . Therefore, given the narrow scope of the public policy limitation on arbitral authority, the plaintiff can prevail in the present case only if it demonstrates that the [arbitrator's] award *clearly* violates an established public policy mandate." (Emphasis added; internal quotation marks omitted.) *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, 252 Conn. 467, 474–75, 747 A.2d 480 (2000).

The question of whether an arbitral award implicates and violates public policy is subject to plenary review. See *LaSalla* v. *Doctor's Associates, Inc.*, 278 Conn. 578, 586, 898 A.2d 803 (2006); *DeRose* v. *Jason Robert's, Inc.*, 191 Conn. App. 781, 806, 216 A.3d 699, cert. denied, 333 Conn. 934, 218 A.3d 593 (2019). "Where there is no clearly established public policy against which to measure the propriety of the arbitrator's award, there is no public policy ground for vacatur. If, on the other hand, it has been determined that an arbitral award does implicate a clearly established public policy, the ultimate question remains as to whether the award itself comports with that policy. . . . [W]here a party challenges a consensual arbitral award on the ground that it violates public policy, and where that challenge has a legitimate, colorable basis, [plenary] review of the award is appropriate in order to determine whether the award does in fact violate public policy." (Internal quotation marks omitted.) *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, supra, 252 Conn. 475–76; see also *State* v. *AFSCME, Council 4, Local 391*, 125 Conn.

App. 408, 419, 7 A.3d 931 (2010) (trial court properly vacated arbitral award at issue when reinstatement of grievant as correctional officer would frustrate state's strong public policy against workplace sexual harassment); *Board of Police Commissioners* v. *Stanley*, 92 Conn. App. 723, 740, 887 A.2d 394 (2005) (trial court properly vacated arbitration award on basis of public policy against inappropriate behavior by police officer on and off duty, and against implied municipal endorsement of such conduct).

When reviewing a claim that an arbitration award violates public policy, our Supreme Court has established a two step analysis. *Stratford* v. *AFSCME, Council 15, Local 407*, 315 Conn. 49, 56, 105 A.3d 148 (2014). "First, the court must determine whether an explicit, well-defined and dominant public policy can be identified." (Internal quotation marks omitted.) Id. In making this determination, the court looks to "statutes, administrative decisions, and case law to determine the existence of public policy." Id. Second, if the court finds that there is a well-defined and dominant public policy, the court must next consider the specific facts and circumstances to determine if the relevant public policy was in fact violated. See id., 58.

In the present case, we conclude that the plaintiff has failed to meet its burden to show that the arbitration award conflicts with public policy because there is no well-defined and dominant public policy that only licensed attorneys can represent corporate parties in arbitration proceedings in Connecticut. Rule R-26 of the association's Commercial Arbitration Rules and Mediation Procedures, which governs representation in arbitration proceedings in this state, clearly provides that "[a]ny party may participate without representation (pro se), or by counsel or any other representative of the party's choosing, unless such choice is prohibited

by applicable law." Thus, as long as there is no applicable law prohibiting it, any party, including a corporation, may participate in arbitration proceedings with whatever representation it chooses.

In the context of judicial proceedings, this court has recognized that "[t]he authorization to appear [as a self-represented party] is limited to representing one's own cause, and does not permit individuals to appear . . . in a representative capacity. In Connecticut, a corporation may not appear pro se. . . . A corporation may not appear by an officer of the corporation who is not an attorney." (Internal quotation marks omitted.) *Purtill* v. *Cook*, 197 Conn. App. 22, 30, 231 A.3d 245 (2020). At the same time, the plaintiff has provided insufficient authority to meet the burden necessary to demonstrate that this precedent has been extended to the representation of corporate parties in arbitration proceedings. The lack of such authority is fatal to the plaintiff, which bears the burden of demonstrating that a clearly established, well-defined and dominant public policy requires vacatur of the arbitration award. See *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, supra, 252 Conn. 475.

Although the plaintiff is correct that the prohibition against self-representation of corporate parties is clearly defined and established in the context of judicial proceedings; see *Purtill* v. *Cook*, supra, 197 Conn. App. 30; it is less clear that Connecticut law prohibits self-representation of corporate parties in arbitration proceedings.[11] In the absence of any Connecticut appellate

[11] Although the plaintiff cites to several cases from other states as precedent to support its argument that self-representation of a corporation is prohibited in arbitration proceedings, we reiterate that Rule R-26 of the association's Commercial Arbitration Rules and Mediation Procedures provides in relevant part that "[a]ny party may participate without representation (pro se), or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law." Because we are obligated to narrowly construe the public policy exception to arbitral authority; see *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, supra, 252 Conn.

authority specifically so holding, the plaintiff, primarily in its reply brief, relies on various statutory provisions and rules of practice from which it argues we can infer that prohibition. The plaintiff addresses first the definitional section of Practice Book § 2-44A (a) (4), which provides in relevant part that the practice of law includes "[r]epresenting any person in a . . . formal dispute resolution process," and subsection (6), which notes that a person includes, inter alia, a corporate entity. Because there is no explicit exception that specifically permits persons to act as agents or representatives for a corporate party in domestic arbitrations, as there is for international arbitrations under § 51-88 (d) (3)[12] and for individuals participating in labor arbitrations pursuant to Practice Book § 2-44A (b) (4), the plaintiff contends that "it must be *presumed* that the drafters of these provisions intentionally declined to create a broader exception for [self-representation of corporate entities in] all arbitrations." (Emphasis added.) Finally, the plaintiff references the criminal and civil penalties pursuant to § 51-88 (b) (1) and Practice Book § 2-44A (h) to underscore the important public policy underlying the unauthorized practice of law.

Our difficulty with the plaintiff's contentions lies in our precedent which contemplates that the public policy must be not only clear, well-defined and dominant but implicate the award itself. See, e.g., *Board of Police Commissioners* v. *Stanley*, supra, 92 Conn. App. 741; see also *Groton* v. *United Steelworkers of America*, 254 Conn. 35, 36–37, 757 A.2d 501 (2000) (trial court

474–75; we decline to predicate our analysis on such nonbinding cases from other jurisdictions. To do so would cast an unreasonably wide net to create a public policy provision that does not already exist in the statutory law, administrative decisions, or decisional law of this state.

[12] General Statutes § 51-88 provides in relevant part: "(d) The provisions of this section shall not be construed as prohibiting . . . (3) any person from acting as an agent or representative for a party in an international arbitration, as defined in subsection (3) of section 50a-101 . . . ."

properly determined that arbitrator's award reinstating employee who embezzled from former employer violated public policy); *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, supra, 252 Conn. 478, (finding that award reinstating correction officer who made harassing, racist telephone calls to state legislator while on duty violated public policy because conduct violated criminal statute and employment regulations of Department of Correction); *South Windsor* v. *South Windsor Police Union*, 41 Conn. App. 649, 654, 677 A.2d 464 (finding award that reinstated police officer who deliberately revealed identity of confidential informant violated public policy), cert. denied, 239 Conn. 926, 683 A.2d 22 (1996); *State* v. *Council 4, AFSCME*, 27 Conn. App. 635, 641, 608 A.2d 718 (1992) (trial court properly determined that arbitrator's award reinstating employee who misappropriated state funds violated public policy).[13] In the present case, there is no claim that the award violated public policy. Nor is there any claim that the arbitrator violated public policy in how he rendered the award. Instead, the plaintiff seeks to vacate an award on the basis of an alleged violation of public policy in which it in fact engaged. Here, we emphasize that both corporate parties voluntarily participated in the arbitration and were represented by their respective corporate presidents. Furthermore, the plaintiff did not raise any objection or complaint related to this issue until the arbitrator ruled against it. We fail to see how public policy is served by allowing a disappointed party the opportunity to object to an arbitration award on the basis of a procedure in which it willingly participated.

[13] Like the plaintiff's claim of fraud, which was not pursued on appeal; see footnote 6 of this opinion; claims for procedural improprieties are asserted pursuant to General Statutes § 52-418 (a), which provides in relevant part: "Upon the application of any party to an arbitration, the superior court . . . shall make an order vacating the award if it finds any of the following defects: (1) If the award has been procured by corruption, fraud or undue means; (2) if there has been evident partiality or corruption on the part of any arbitrator; (3) if the arbitrators have been guilty of misconduct . . . ."

On the basis of our review of the relevant statutory authority, rules of practice and decisional law of this state, we conclude that the plaintiff has failed to establish a clear, well-defined and dominant policy against the self-representation of corporate parties in arbitration proceedings that would warrant vacating an award that is otherwise beyond challenge. This is especially so when the party challenging the award engaged in that very same conduct and raised no objection to such conduct during the arbitration proceeding. The court, therefore, properly denied the plaintiff's application to modify or vacate the arbitration award.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* DANIEL SANTIAGO (AC 44780)

Suarez, Clark and Seeley, Js.

Syllabus

The defendant, who had been previously convicted, following a jury trial, of manslaughter in the first degree with a firearm and assault in the first degree, appealed to this court from the judgment of the trial court dismissing his motion to correct an illegal sentence. In his motion to correct, the defendant claimed that the trial court, at the time of sentencing, had not considered his youth as a mitigating factor, despite the fact that the underlying offenses occurred when he was eighteen years old and that his total effective sentence of sixty years was an effective life sentence under Connecticut law, thus violating the principles announced in *Miller* v. *Alabama* (567 U.S. 460) and *Graham* v. *Florida* (560 U.S. 48) pertaining to the sentencing of juvenile offenders. The trial court granted the state's motion to dismiss the motion to correct, on the ground that the defendant failed to raise a colorable claim pursuant to the relevant rule of practice (§ 43-22) because he was not entitled under the federal or state constitution to have the sentencing court consider his youth as a mitigating factor at the time of sentencing. After the defendant brought this appeal, he filed a motion for sentence modification pursuant to statute (§ 53a-39). The trial court granted the motion

after finding good cause to reduce the defendant's sixty year sentence. The trial court's sentence modification made the defendant eligible for parole at fifty years of age, reduced the sentence for the manslaughter conviction from forty years to thirty-seven years, reduced the sentence for the assault conviction from twenty years to fifteen years, and ordered the sentences for each conviction to run concurrently, thereby reducing the original sixty year sentence to thirty-seven years. *Held* that the defendant's appeal was dismissed as moot, as any consideration of the claims raised on appeal, in which the defendant challenged the dismissal of the motion to correct, would not result in practical relief to the defendant in light of the fact that the defendant was no longer burdened by the sentence he sought to correct; moreover, although the ruling dismissing the motion to correct had not been altered during the pendency of this appeal, it could not be disputed that the significance of that ruling nonetheless had been undermined by the fact that the subject of the motion to correct, the defendant's original sixty year sentence, had been superseded by the sentence modification.

Argued January 9—officially released April 25, 2023

Procedural History

Substitute information charging the defendant with the crimes of murder, manslaughter in the first degree with a firearm and assault in the first degree, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Dewey, J.*; verdict and judgment of guilty of manslaughter in the first degree with a firearm and assault in the first degree; thereafter, the defendant filed a motion to correct an illegal sentence; subsequently, the court, *Graham, J.*, granted the state's motion to dismiss the defendant's motion to correct an illegal sentence, and the defendant appealed to this court; thereafter, the trial court, *Gold, J.*, granted the defendant's motion for sentence modification. *Appeal dismissed.*

James B. Streeto, senior assistant public defender, for the appellant (defendant).

Michele C. Lukban, senior assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott*, state's attorney, and *Debra A. Ware*, former senior assistant state's attorney, for the appellee (state).

Opinion

SUAREZ, J. The defendant, Daniel Santiago, appeals from the judgment of the trial court, *Graham*, *J*., dismissing his motion to correct an illegal sentence. In the motion to correct, the defendant argued that he was serving the functional equivalent of a life sentence, despite being eligible for parole, and that, when his sentence was imposed, the sentencing court violated his rights by not taking into account his youth as a mitigating factor. The defendant claims that, in dismissing his motion, the court improperly (1) denied him the right to "an evidentiary hearing concerning the current state of science on the maturity, impulse control, and over receptiveness to peer pressure of [eighteen year olds], and the effect of science on Connecticut law" and (2) concluded that he did not present a colorable claim that he was entitled to relief under the Connecticut and United States constitutions. We dismiss the appeal as moot.

The following procedural history is relevant to our resolution of this appeal. Following a jury trial, the defendant was convicted of manslaughter in the first degree with a firearm in violation of General Statutes § 53a-55a (a), and assault in the first degree in violation of General Statutes § 53a-59 (a) (1). On April 25, 2000, the court, *Dewey*, *J*., sentenced the defendant to a total effective sentence of sixty-five years of incarceration.[1] On July 25, 2000, the court granted the defendant's motion to correct the sentence, thereby reducing his total effective sentence by five years.[2]

[1] The court imposed a sentence of forty years for the manslaughter conviction and ordered an additional five year period of incarceration pursuant to General Statutes § 53-202k. The court imposed a sentence of twenty years for the assault conviction.

[2] The court reduced the sentence to omit the portion of the sentence that it had imposed under General Statutes § 53-202k. Both the defendant's motion to correct and the court's decision were based on the then recent decision of the United States Supreme Court in *Apprendi* v. *New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) (defendant's

The defendant appealed from the judgment of conviction to this court. This court agreed with the defendant that prosecutorial impropriety during cross-examination and closing argument had deprived him of a fair trial, reversed the judgment of conviction, and remanded the case for a new trial. *State* v. *Santiago*, 73 Conn. App. 205, 230–231, 246, 807 A.2d 1048 (2002). Our Supreme Court granted the state's petition for certification to appeal. *State* v. *Santiago*, 262 Conn. 939, 815 A.2d 673 (2003). Thereafter, our Supreme Court reversed this court's judgment and remanded the case to this court with direction to consider a remaining claim that it had not considered on its merits. *State* v. *Santiago*, 269 Conn. 726, 763, 850 A.2d 199 (2004). In compliance with the remand order, this court considered the merits of the remaining claim and affirmed the judgment of conviction. *State* v. *Santiago*, 87 Conn. App. 754, 867 A.2d 138, cert. denied, 273 Conn. 938, 875 A.2d 45 (2005).[3]

On November 1, 2019, pursuant to Practice Book § 43-22,[4] the defendant filed a motion to correct an illegal

sixth amendment right to jury trial requires that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt"). See *State* v. *Santiago*, Superior Court, judicial district of Hartford, Docket No. CR-97-514778 (July 25, 2000).

[3] The defendant applied to have his sixty year sentence modified by the sentence review division of the Superior Court pursuant to General Statutes § 51-195 and Practice Book § 43-28. He argued that the sentence was disproportionate to other sentences of a like kind and that he was "functionally illiterate." *State* v. *Santiago*, Superior Court, judicial district of Hartford, Docket No. CR-97-514778 (March 20, 2006). Pursuant to General Statutes § 51-196, in 2006, a three judge panel rendered a written decision in which it affirmed the defendant's sentence after determining that it was neither inappropriate nor disproportionate. Id.

In 2005, the defendant petitioned for a writ of habeas corpus and, after the habeas court denied his amended petition as well as his petition for certification to appeal from that judgment, this court dismissed the defendant's subsequent appeal. See *Santiago* v. *Commissioner of Correction*, 125 Conn. App. 641, 648, 9 A.3d 402 (2010).

[4] Practice Book § 43-22 provides: "The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a

sentence. The trial court's resolution of that motion is the subject of the present appeal. The defendant asserted that, at the time of sentencing, Judge Dewey had not considered "[his] youth or its attendant features as a mitigating factor" despite the fact that the underlying offenses occurred when he was eighteen years of age. The defendant argued that his total effective sentence of sixty years was, as a matter of law, "a life sentence under Connecticut law." The defendant argued that the court's sentence ran afoul of the principles announced in *Miller* v. *Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), and *Graham* v. *Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), that pertain to the sentencing of juvenile offenders.[5] The defendant also argued that the sixty

sentence imposed in an illegal manner or any other disposition made in an illegal manner."

[5] By way of background, in *Graham* v. *Florida*, supra, 560 U.S. 79–80, 82, the United States Supreme Court barred life imprisonment without the possibility of parole for juvenile nonhomicide offenders. In *Miller* v. *Alabama*, supra, 567 U.S. 467, the United States Supreme Court held that mandatory sentencing schemes that impose a term of life imprisonment without parole on juvenile homicide offenders, thus precluding consideration of the offender's youth (and all that accompanies it) as a mitigating factor against such a severe punishment, violate the principle of proportionate punishment under the eighth amendment to the United States constitution.

"Thus, an offender's age and the hallmarks of adolescence must be considered as mitigating factors before a juvenile can serve [a mandatory sentence of life imprisonment without the possibility of parole]. [Our Supreme Court] has interpreted *Miller* to apply not only to mandatory sentences for the literal life of the offender, but also to discretionary sentences and sentences that result in imprisonment for the 'functional equivalent' of an offender's life. . . . [Our Supreme Court also has] ruled that *Miller* applies not only prospectively, but retroactively, and also to challenges to sentences on collateral review." (Citations omitted; footnote omitted.) *State* v. *McCleese*, 333 Conn. 378, 383, 215 A.3d 1154 (2019). We note that "*Miller*'s holding is limited to cases in which the defendant is younger than eighteen at the time of the crime. . . . [A]n offender who has reached the age of eighteen is not considered a juvenile for sentencing procedures and eighth amendment protections articulated in *Miller*." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Woods* v. *Commissioner of Correction*, 197 Conn. App. 597, 620, 232 A.3d 63 (2020), appeal dismissed, 341 Conn. 506, 267 A.3d 193 (2021) (certification improvidently granted).

year sentence violated his "rights under the greater protections afforded by article first, §§ 8 and 9, of the Connecticut constitution because it is a cruel and unusual punishment and violates [his] right to substantive and procedural due process" and that "[his] sentence is also illegal and imposed in an illegal manner under the greater protections afforded by article first, § 20, of the Connecticut constitution."

In the defendant's accompanying memorandum of law, he argued that, first, the court must consider whether, under the federal and state constitutions, the principles requiring sentencing courts to consider a juvenile offender's youth in mitigation against severe punishment should also be applied to individuals, like him, "who were eighteen [years old] at the time of the offense and still in the stage of development that would scientifically constitute 'adolescence.' " Essentially, he argued that the "brain science" that underlies the holdings in *Miller* and its progeny, as well as the enactment of General Statutes § 54-125a (f),[6] supports a determination that he "share[s] the lessened culpability that other adolescents have." Second, the defendant argued, the court must consider "whether [his] sixty year sentence

[6] General Statutes § 54-125a (f) provides: "(1) Notwithstanding the provisions of subsections (a) to (e), inclusive, of this section, a person convicted of one or more crimes committed while such person was under eighteen years of age, who is incarcerated on or after October 1, 2015, and who received a definite sentence or total effective sentence of more than ten years for such crime or crimes prior to, on or after October 1, 2015, may be allowed to go at large on parole in the discretion of the panel of the Board of Pardons and Paroles for the institution in which such person is confined, provided (A) if such person is serving a sentence of fifty years or less, such person shall be eligible for parole after serving sixty per cent of the sentence or twelve years, whichever is greater, or (B) if such person is serving a sentence of more than fifty years, such person shall be eligible for parole after serving thirty years. Nothing in this subsection shall limit a person's eligibility for parole release under the provisions of subsections (a) to (e), inclusive, of this section if such person would be eligible for parole release at an earlier date under any of such provisions."

of incarceration for a crime he committed when he was eighteen years old is subject to this broader application of these principles."

On May 6, 2020, the state filed a motion to dismiss the motion to correct and an accompanying memorandum of law. The state argued that the court lacked subject matter jurisdiction because (1) the defendant was eligible for parole and (2) there was no support under the federal or state constitutions for the defendant's belief that a court, sentencing a defendant who committed an offense at eighteen years of age, was bound to consider the defendant's youth as a mitigating factor. The defendant filed an objection to the state's motion to dismiss. The defendant argued therein that (1) his parole eligibility did not undermine his arguments and (2) the due process provision of the state constitution compels a conclusion that the principles of *Miller* should be extended to persons who were eighteen at the time of the offense of which they stood convicted. Thereafter, the state filed a supplemental memorandum of law in support of its motion to dismiss. The defendant filed a supplemental memorandum in support of his objection to the motion to dismiss.

On April 15, 2021, following a hearing, the court, *Graham, J.*, granted the state's motion to dismiss the defendant's motion to correct an illegal sentence. In its memorandum of decision, the court concluded that the defendant failed to raise a colorable claim under Practice Book § 43-22 because, in consideration of the undisputed relevant facts in the record, he was not entitled, under either the federal or state constitutions, to have the sentencing court consider his youth as a mitigating factor at the time of sentencing. The court stated: "Because the defendant was eighteen years of age at the time of the offense, and because he will be eligible for parole, he was not entitled to consideration of youth related mitigating factors in imposing his sentence. Nor

does the imposition of a sixty year sentence with the possibility of parole upon a defendant that was eighteen years old at the time of his offense violate article first, §§ 8 and 9, of the Connecticut constitution. The defendant has failed to raise a colorable claim within the scope of Practice Book § 43-22." Thereafter, the defendant filed the present appeal, in which he claims error in what he characterizes as the court "denying" him an evidentiary hearing in connection with the motion to dismiss, as well as the court's conclusion that he did not state a colorable claim for relief under the federal and state constitutions.

On January 3, 2022, after the defendant brought this appeal, he filed a motion for sentence modification pursuant to General Statutes § 53a-39.[7] In the memorandum of law in support of that motion, the defendant argued that his sixty year total effective sentence should be modified primarily because his efforts "to redeem himself . . . and to rehabilitate in prison have earned him a chance at a new sentence—one that can enable him to deepen his personal growth, and to do everything possible to right the wrongs of his adolescence." The defendant also argued that modification was warranted in light of the "sea change in legal and scientific thought" pertaining to juvenile offenders that had taken place since the time of his sentencing in 2000. In particular, the defendant relied on *Miller* v. *Alabama*, supra, 567 U.S. 467, and *State* v. *Riley*, 315 Conn. 637, 110 A.3d 1205 (2015) (interpreting and applying *Miller*), cert. denied, 577 U.S. 1202, 136 S. Ct. 1361, 194 L. Ed. 2d 376

[7] General Statutes § 53a-39 provides in relevant part: "(a) Except as provided in subsection (b) of this section, at any time during an executed period of incarceration, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced. . . ."

(2016). On March 22, 2022, the court, *Gold*, *J*., held a hearing on the motion.

On July 19, 2022, the court granted the motion after finding good cause to reduce the sixty year sentence. The court stated: "Having considered and balanced what it believes to be the factors relevant to determining whether the defendant's sentence should be reduced, the court has concluded that the defendant is deserving of some measure of relief. This is not to say that the [eighteen year old defendant], who in 1997 shot and killed one person and seriously injured another, and the [twenty-one year old defendant] who stood before Judge Dewey in April, 2000, did not deserve the severe sentence that was imposed. Yet, at the same time, the [forty-three year old defendant] who comes before this court is not that same individual, and, significantly, his personal transformation over the years is of a nature and breadth that would not have been foreseeable when his original sentence was imposed." Accordingly, the court crafted a new sentence so as to make the defendant eligible for parole not when he reaches seventy years of age, but fifty years of age. The court modified the sentence for the manslaughter conviction from forty years to thirty-seven years. The court modified the sentence for the assault conviction from twenty years to fifteen years. Contrary to the terms of the original sentence, the court ordered that the sentences for each conviction were to run concurrently, thereby reducing the original sixty year sentence to thirty-seven years.

The state argues that this appeal is moot because, after the defendant's sixty year sentence was modified by Judge Gold, there is no longer any practical relief that this court may afford the defendant.[8] The state

[8] The parties have thoroughly addressed the issue of whether the present appeal is moot. As we stated previously in this opinion, the defendant filed the motion for sentence modification after he filed the present appeal. In its initial brief, which the state filed before Judge Gold granted the motion for sentence modification, the state argued that this court should conclude

argues that the March 22, 2022 hearing before Judge Gold on the defendant's application for sentence reduction has rendered the present appeal moot because, by virtue of that hearing, the defendant achieved the remedy that he sought in connection with the underlying motion to correct, namely, a resentencing. Alternatively, the state argues that the appeal is moot because, assuming that the rationale of *Miller*, *Graham*, and their progeny applied to an eighteen year old offender, the fact that the defendant's modified sentence of thirty-seven years makes him eligible for parole at age fifty should compel the conclusion that he is not burdened by the functional equivalent of life without the possibility of parole. Thus, the state argues, the modified sentence falls outside of the ambit of precedent on which the defendant relies.

In his reply brief, the defendant "acknowledges that the case law from this court and the Supreme Court would hold that [his] 'modified' sentence is no longer a life sentence within the meaning of *Miller* [and] *Graham*. Case law from this court and the Supreme Court also holds that the modification represents a change in the case which deprives this court and the trial court of jurisdiction over the defendant's motion for modification."[9] Nonetheless, the defendant, suggesting that this

that the present appeal is moot because the defendant had filed the motion and, in arguing that the motion should be granted, relied, in part, on the sentencing court's failure to view his age at the time of the offenses as a mitigating factor. After Judge Gold granted the motion, this court granted the state's subsequent motion for permission to file a supplemental brief to address the significance of Judge Gold's sentence modification on the present appeal. The state filed its supplemental brief on September 9, 2022, arguing that the appeal is moot in light of the modified sentence. On October 7, 2022, the defendant filed his reply brief, in which he responded to the state's mootness argument. Oral argument in this appeal took place on January 9, 2023.

[9] The defendant states that "there is no consensus in this nation's case law on when a lengthy sentence becomes a de facto life sentence" and "acknowledges [that] it is difficult to read [relevant precedent] without concluding that a sentence which results in a defendant's release at the age of fifty years is not a life sentence for *Miller-Graham* purposes. This would

court should consider the appeal even if it is moot, "requests the opportunity to move forward in this case" in an attempt to advocate, contrary to well established precedent, that (1) the modified sentence constitutes a life sentence, and (2) the sentencing court's failure to consider his youth as a mitigating factor constitutes a constitutional violation, "even if [he] receives a sentence of less than life in prison." The defendant argues that Judge Gold, in modifying his sentence, did not base his decision on the fact that his youth entitled him to a shorter sentence. The defendant also argues that this court can grant him relief in connection with this appeal because it may "order the trial court [to] hold an evidentiary hearing on [his] motion to correct an illegal sentence" and may "order a new sentencing hearing."

"[M]ootness implicates [this] court's subject matter jurisdiction and is thus a threshold matter for us to resolve" before we may reach the merits of an appeal. (Internal quotation marks omitted.) *In re Emma F.*, 315 Conn. 414, 423, 107 A.3d 947 (2015). "Mootness presents a circumstance wherein the issue before the court has been resolved or had lost its significance because of a change in the condition or affairs between the parties. . . . A case is moot when due to intervening circumstances a controversy between the parties no longer exists." (Internal quotation marks omitted.) *Barber* v. *Barber*, 193 Conn. App. 190, 221, 219 A.3d 378 (2019). "It is well established that an appeal is considered moot if there is no possible relief that the appeals court can grant to the appealing party, even if the court were to be persuaded that the appellant's arguments are correct." *Wallingford Center Associates* v. *Board of Tax Review*,

mean that the sentence modification court reduced the defendant's sentence to one in which he would be released and have an opportunity to engage in meaningful life activities. A careful reading of the modification decision reveals that this was the court's intention."

68 Conn. App. 803, 807, 793 A.2d 260 (2002). "[T]he existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal. . . . When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot. . . . Because mootness implicates subject matter jurisdiction, it presents a question of law over which our review is plenary." (Citation omitted; internal quotation marks omitted.) *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 502, 506–507, 970 A.2d 578 (2009).

Generally speaking, if, during the pendency of an appeal, the ruling at issue has been superseded, the appeal becomes moot. This court has applied this principle in various contexts. See, e.g., *In re Probate Appeal of Tunick*, 215 Conn. App. 551, 553, 284 A.3d 26 (2022) (dismissing appeal as moot because "probate decree at issue in this appeal was superseded by a subsequent probate decree, which is the subject of a separate probate appeal pending in the Superior Court"); *Dempsey* v. *Cappuccino*, 200 Conn. App. 653, 659, 240 A.3d 1072 (2020) (subsequent visitation orders superseded orders challenged on appeal, rendering appeal moot); *Thunelius* v. *Posacki*, 193 Conn. App. 666, 686, 220 A.3d 194 (2019) (dismissing portion of appeal as moot because it pertained to order that was superseded by subsequent orders addressing appointment of guardian ad litem for child); *Brown* v. *Brown*, 132 Conn. App. 30, 34–35, 31

A.3d 55 (2011) (dismissing appeal as moot because "we are asked to reverse the trial court even though the order in question has been superseded"); *Kennedy* v. *Kennedy*, 109 Conn. App. 591, 599–600, 952 A.2d 115 (2008) (dismissing portion of appeal as moot because challenged order "has been superseded and is no longer in effect" and thus "[the Appellate Court] is not able to afford the [appellant] any practical relief"); *Schult* v. *Schult*, 40 Conn. App. 675, 692, 672 A.2d 959 (1996) (claim regarding temporary custody order was moot when order merged with final dissolution decree), aff'd, 241 Conn. 767, 699 A.2d 134 (1997).

This rationale applies in the present case despite the fact that Judge Graham's ruling dismissing the motion to correct has not been altered during the pendency of the present appeal. It cannot be disputed that the significance of that ruling nonetheless has been undermined by the fact that the subject of the motion to correct, the defendant's original sixty year sentence, has been superseded by Judge Gold's sentence modification on July 19, 2022. We are persuaded that any consideration of the claims raised on appeal, in which the defendant challenges the dismissal of the motion to correct, would not result in practical relief to the defendant in light of the fact that the defendant is no longer burdened by the sentence he sought to correct. The modified sentence effectively has resulted in a situation in which the issues before this court, relating to the original sentence, have lost their significance because the order that was the subject of the challenged judgment has been superseded during the pendency of the appeal.

The appeal is dismissed.

In this opinion the other judges concurred.

C. M. *v.* R. M.*
(AC 44911)

Bright, C. J., and Cradle and Seeley, Js.

Syllabus

The defendant father, whose marriage to the plaintiff mother previously had been dissolved, appealed to this court from the judgment of the trial court granting his postdissolution motion to move the parties' minor children from Greenwich to New York City. After a hearing, the court granted the defendant's motion on a temporary basis, pending a full evidentiary hearing. On appeal, the defendant argued that the trial court erred in finding that the proposed move constituted a relocation under the statute (§ 46b-56d) governing relocations because the move would not have a significant impact on the existing parenting plan, and, therefore, the motion should have been granted pursuant to the statute (§ 46b-56) governing typical modifications of parenting orders. *Held* that the defendant's appeal was dismissed for lack of subject matter jurisdiction as the defendant was not aggrieved by the order permitting him to move to New York City with his children: the defendant received the very relief sought in his motion, and, following a full hearing on his motion, the defendant will still not be aggrieved if the trial court permits him to relocate with the minor children to New York City on a permanent basis, pursuant to either § 46b-56 or § 46b-56d; moreover, the defendant would be aggrieved only if, at the conclusion of the full hearing and final resolution of his motion, the trial court determines that the defendant failed to meet his burden under either § 46b-56 or § 46b-56d; furthermore, under the facts and circumstances presented in this case, a trial court, after a full hearing, will not be bound by the court's previous determination when granting the motion on a temporary basis that this was a relocation case pursuant to § 46b-56d.

Argued January 5—officially released April 25, 2023

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Hon. Stanley Novack*, judge trial referee, rendered judgment dissolving the marriage and granting certain other relief

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

in accordance with the parties' separation agreement; thereafter, the court, *Hon. Michael E. Shay*, judge trial referee, granted the defendant's motion to relocate on a temporary basis, and the defendant appealed to this court. *Appeal dismissed.*

Jon T. Kukucka, with whom, on the brief, were *Stacie L. Provencher* and *Campbell D. Barrett*, for the appellant (defendant).

Alexander J. Cuda, for the appellee (plaintiff).

Louise Truax, guardian ad litem, for the minor children.

Opinion

SEELEY, J. The defendant father, R. M., appeals from the granting of his postdissolution motion to move to New York City with the parties' two minor children, over the objection of the plaintiff mother, C. M. Despite obtaining the relief requested, the defendant filed the present appeal, claiming that the court improperly concluded that the move to New York City constituted a relocation under General Statutes § 46b-56d and that this determination requires that, in a future proceeding, the defendant satisfy a more difficult burden as compared to a motion to modify the parties' parenting plan filed pursuant to General Statutes § 46b-56. We dismiss the defendant's appeal for lack of aggrievement.

The record reveals the following factual and procedural history. On September 18, 2018, the plaintiff commenced an action to dissolve the parties' marriage of approximately ten years. On January 30, 2019, the court approved the parties' parenting plan, providing for joint legal custody of the two children of the marriage, who would reside primarily with the defendant. With respect to the plaintiff's parenting time with the children, the parenting plan required alcohol testing of the plaintiff and the imposition of certain conditions in the event

of a positive test. Paragraph 20 of the parenting plan provided: "During the children's minority, in the event that any party wishes to relocate his or her residence, such party shall give the other at least ninety (90) days written notice of the intent to relocate, the address and/or specific locale of the new location, and the reason(s) for the move. Nothing herein shall be deemed to be an agreement for the children to relocate any particular distance, but rather is intended to allow the issue of relocation to be left to the time it becomes an issue." On July 17, 2019, the court rendered a judgment of dissolution, which incorporated the parties' separation agreement, which, in turn, adopted the terms of the parenting plan, subject to minor modification.

On February 11, 2020, the defendant filed a motion to modify the parenting plan. He alleged therein that the plaintiff had not participated in the required alcohol testing since at least October 24, 2019, she had failed to exercise her scheduled parenting time with little or no notice to the defendant, she had disparaged the defendant to the children, and there had been an increase of issues relating to the plaintiff's "serious mental health and substance abuse issues." The defendant further claimed that the plaintiff had been arrested on numerous felony and misdemeanor charges and had fled the country. The defendant requested, inter alia, that the court issue an order that any contact between the plaintiff and the children occur in the presence of a professional supervisor. On February 25, 2020, the court ordered that the plaintiff was not to have any contact with the children outside the presence of professional supervision.

On February 16, 2021, the defendant filed a motion requesting that the minor children be permitted to relocate with him from Greenwich, Connecticut, to the Upper East Side of Manhattan, New York, pursuant to

§§ 46b-56[1] and 46b-56d.[2] He claimed that the plaintiff had returned to Connecticut, posted bail with respect to her pending criminal charges, and presently resided in Bedford, New York. The defendant also stated that, on January 11, 2021, pursuant to paragraph 20 of the parenting plan, he had sent the plaintiff a letter indicating his intention to relocate to Manhattan. In his motion, the defendant stated: "The letter contained the specific reasons for the move. The letter stated that the proposed relocation was to foster the general well-being of the children, including but not limited to [the defendant's] belief that the parties' son would benefit from being in a more diverse environment. [The defendant]

[1] General Statutes § 46b-56 provides in relevant part that "[i]n any controversy before the Superior Court as to the custody or care of minor children . . . the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children . . . [and] [i]n making or modifying any [such] order . . . the rights and responsibilities of both parents shall be considered and *the court shall enter orders accordingly that serve the best interests of the child* and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests." (Emphasis added.) See generally *Dolan* v. *Dolan*, 211 Conn. App. 390, 398–99, 272 A.3d 768, cert. denied, 343 Conn. 924, 275 A.3d 626 (2022).

[2] General Statutes § 46b-56d provides: "(a) In any proceeding before the Superior Court arising after the entry of a judgment awarding custody of a minor child and involving the relocation of either parent with the child, where such relocation would have a significant impact on an existing parenting plan, the relocating parent shall bear the burden of proving, by a preponderance of the evidence, that (1) *the relocation is for a legitimate purpose*, (2) *the proposed location is reasonable in light of such purpose, and* (3) *the relocation is in the best interests of the child.*

"(b) In determining whether to approve the relocation of the child under subsection (a) of this section, the court shall consider, but such consideration shall not be limited to: (1) Each parent's reasons for seeking or opposing the relocation; (2) the quality of the relationships between the child and each parent; (3) the impact of the relocation on the quantity and the quality of the child's future contact with the nonrelocating parent; (4) the degree to which the relocating parent's and the child's life may be enhanced economically, emotionally and educationally by the relocation; and (5) the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements." (Emphasis added.) See generally *O'Neill* v. *O'Neill*, 209 Conn. App. 165, 182–83, 268 A.3d 79 (2021).

also indicated that he believes that both children would benefit from the rich cultural environment that New York City offers. On January 12, 2021, counsel for the plaintiff responded indicating that the plaintiff did not agree to the relocation." The defendant further stated in his motion that it would be in the best interests of the children to relocate to Manhattan. The defendant then requested the following relief: "(1) that the court grant his motion and determine that his move to the Upper East Side, New York, is not a relocation under . . . § 46b-56d; or, in the alternative (2) grant the motion to relocate and permit him to move to the Upper East Side of New York City; and (3) to enter such other and further relief that the court deems appropriate under the circumstances." Following the agreement of the parties, the court ordered the appointment of a guardian ad litem on February 22, 2021.

On July 20, 2021, the plaintiff filed a motion for contempt. She claimed that, at that time, she lived in Pound Ridge, New York, while the children lived and attended a private school in Connecticut. In her motion, the plaintiff alleged that on April 27, 2021, she received an email from a school located in New York City that provided information for the upcoming 2021–2022 school year. In May, 2021, the children informed the plaintiff that they would be moving to New York City and attending a new school. In July, 2021, the defendant's counsel sent an email confirming the defendant's intention to move to Manhattan and that the children had been enrolled in a school there. The plaintiff argued that the defendant had submitted an application for the children to attend the Manhattan school in April, 2021, while his February 16, 2021 motion remained pending before the court, and that his conduct regarding this move and enrollment constituted "a wilful and intentional violation of the clear and unambiguous provisions of the parties' parenting plan . . . ." She sought, inter alia, a

finding of contempt and an order that the defendant be prohibited from having the children attend the Manhattan school until the adjudication of the defendant's February 16, 2021 motion.[3]

On August 5, 2021, the court, *Hon. Michael E. Shay*, judge trial referee, held a hearing on the defendant's motion. At the outset, the guardian ad litem recounted the procedural history and identified the present issue before the court as whether the defendant's proposed move to New York City constituted a relocation for purposes of § 46b-56d.[4] The defendant's counsel argued that this move would not have a significant impact on the parenting plan and, therefore, did not implicate that statute. During a discussion with counsel, the court observed that the start of the school year was approaching and that, in order to provide stability for the children with respect to their education, a need existed for an immediate but temporary decision with respect to the school issue.

The guardian ad litem agreed with the defendant's counsel that § 46b-56d was not implicated by the defendant's proposed move to New York City and further opined that the move was in the best interests of the children. The guardian ad litem also acknowledged that the court might choose to issue a temporary order at the conclusion of the hearing, subject to a "fuller hearing down the road." The court subsequently stated: "Well, as far as [the children] are concerned . . . one of the things that, again, looking at the calendar, you know, the education is probably front and center. You know, in terms of your impression *of their best interests on a going forward basis even if it's on a short-term,*

[3] On July 26, 2021, the plaintiff filed an application for an emergency ex parte order of custody. The court, *Heller, J.*, denied this application on the same day.

[4] The guardian ad litem was not sworn in as a witness at this hearing.

you know, temporary circumstance." (Emphasis added.)

After hearing from the guardian ad litem, both counsel presented argument, but no witnesses testified. The court stated that it was "convinced that this is in fact a relocation case" and then determined that, "in the short run," it was in the best interests of the children to remain with the defendant in New York City and attend school there.[5] The court further stated that "we're going to revisit this because [the plaintiff] has a right to reengage on a more substantial basis with these children in the long run. [The plaintiff] has that right. And I think we need to accord her that right, and the only way we do that is not, you know, making unilateral decisions. We do that certainly in this particular forum." The court referred the matter to family services for a full evaluation and observed that there could be a hearing scheduled at some point in the future.[6] The court also issued a written order stating: "Parties are referred to family services for a full evaluation. Children to go to school in Manhattan and live with [the defendant] *on a temporary basis*." (Emphasis added.)

Although he received permission from the court to move to New York City with the children, the defendant filed the present appeal on August 24, 2021.[7] The next day, the plaintiff filed a motion to reargue pursuant to Practice Book § 11-11, which the court denied on September 6, 2021, stating, inter alia: "Although the

[5] On August 10, 2021, Judge Shay signed the transcript from the August 5, 2021 hearing in accordance with Practice Book § 64-1 (a).

[6] The full evidentiary hearing on the defendant's February 16, 2021 motion to relocate has not yet occurred.

[7] We note that a complete resolution of this matter appears to have been delayed for an extended period of time. We take this opportunity to repeat the statement from our Supreme Court that "it is the sacrosanct obligation of both the courts and the parties to these types of disputes to take all necessary steps to resolve such matters promptly." *DiGiovanna* v. *St. George*, 300 Conn. 59, 79 n.10, 12 A.3d 900 (2011).

court admonished the defendant for his unilateral action, it found that it was in the BEST INTERESTS of the minor children ON A TEMPORARY BASIS to leave undisturbed the defendant's decision to relocate with the children to New York City and to enroll the children in school there. The court finds that it had sufficient information before it to make its finding[s] that: (a) the defendant's move to New York City was a relocation within the meaning of . . . [§] 46b-56d, and (b) it was appropriate to refer the matter to Family Relations to conduct an evaluation prior to conducting a full hearing at which time, at a minimum, both parties and the guardian ad litem can have input. Among its considerations were the fact that the defendant has been the primary caregiver for the children; that the plaintiff currently resides in New York State; and that the plaintiff has had virtually no significant role in the day to day lives of the children and, in fact, has supervised visitation with them, which will not be adversely affected by the move." (Emphasis in original.)

On appeal, the defendant argues that the court's determination that the move from Greenwich to New York City constituted a relocation under § 46b-56d was improper because the existing parenting plan was not substantially impacted. He further argues that the court's determination of a relocation, as set forth in § 46b-56d, will adversely prejudice him in future hearings, as the application of § 46b-56d implicates "a different, steeper burden than a motion to modify parenting orders." The plaintiff contends, inter alia, that the appeal should be dismissed for lack of aggrievement. Specifically, she maintains that the defendant prevailed in the proceedings below in that he received the relief sought in his motion—permission to live with the minor children in Manhattan pending a full hearing—and therefore this court lacks subject matter jurisdiction to consider his appeal. In his reply brief, the defendant

responds that he is aggrieved because he "is presently bound by the higher standard imposed by the relocation statute in future proceedings. . . . This is a much higher burden than a typical modification of the parenting orders pursuant to . . . § 46b-56, which only requires [the defendant] to demonstrate that the new proposed parenting plan is in the best interests of the minor children."

We begin with the question of aggrievement, as it implicates the jurisdiction of this court. See *Healey* v. *Mantell*, 216 Conn. App. 514, 523–24, 285 A.3d 823 (2022). Issues of aggrievement implicate the subject matter jurisdiction of this court and present questions of law subject to plenary review. See *In re Ava W.*, 336 Conn. 545, 553, 248 A.3d 675 (2020). Our Supreme Court has instructed that aggrievement is essential to appellate jurisdiction and must be resolved as a threshold matter. See *Carraway* v. *Commissioner of Correction*, 317 Conn. 594, 601, 119 A.3d 1153 (2015). "It is well settled that [i]n the appellate context, 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.) *Watts* v. *Commissioner of Correction*, 194 Conn. App. 558, 568, 221 A.3d 829 (2019), cert. denied, 334 Conn. 919, 222 A.3d 514 (2020). "General Statutes § 52-263 grants the right of appeal to a party who is aggrieved by the decision of the court or judge upon any question or questions of law arising in the trial . . . . Aggrievement, in essence, is appellate standing. . . . It is axiomatic that aggrievement is a basic requirement of standing, just as standing is a fundamental requirement of jurisdiction. . . . There are two general types of aggrievement, namely, classical and statutory; either type will establish standing, and each has its own unique features. . . . The test for determining [classical] aggrievement encompasses a

well settled twofold determination: first, the party claiming aggrievement must demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest shared by the community as a whole; second, the party claiming aggrievement must establish that this specific personal and legal interest has been specially and injuriously affected by the decision." (Citations omitted; internal quotation marks omitted.) *V. V.* v. *V. V.*, 215 Conn. App. 737, 740, 283 A.3d 1045 (2022); see also *In re Ava W.*, supra, 554–55. With respect to statutory aggrievement, which exists by legislative fiat rather than judicial analysis of the particular facts of a case, "particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *State Marshal Assn. of Connecticut, Inc.* v. *Johnson*, 198 Conn. App. 392, 402, 234 A.3d 111 (2020). We conclude that the defendant was neither classically nor statutorily aggrieved by the August 5, 2021 order of the trial court finding that it was in the best interests of the children to leave undisturbed, on a temporary basis, the defendant's decision to relocate with the children to New York City.

The defendant received the relief sought in his February 16, 2021 motion. In its August 5, 2021 oral decision, the court found that it was in the children's "best interests that they follow [the defendant]; that they go to school in New York in the short run."[8] The defendant, therefore, prevailed with respect to his motion because he received the relief requested: the court permitted him to move to New York City with the children pending a full hearing. "As a general rule, a party that prevails

[8] The court also noted that the matter would need to be revisited and referred the matter to the family relations office. In the court's order denying the plaintiff's motion for reconsideration, it emphasized the temporary nature of the order permitting the defendant's move to New York City with the children.

in the trial court is not aggrieved. . . . Moreover, [a] party cannot be aggrieved by a decision that grants the very relief sought. . . . Such a party cannot establish that a specific personal and legal interest has been specially and injuriously affected by the decision . . . [see] 5 Am. Jur. 2d 47, Appellate Review § 276 (1995) (One who has received in the trial court all the relief that he or she has sought therein is not aggrieved by the judgment and has no standing to appeal. In particular, a litigant has no right to appeal a judgment in his favor merely for the purpose of having the judgment based on a different legal ground than that relied upon by the trial court . . . .). [A] prevailing party . . . can be aggrieved [however] if the relief awarded to that party falls short of the relief sought." (Citations omitted; internal quotation marks omitted.) *In re Allison G.*, 276 Conn. 146, 158, 883 A.2d 1226 (2005); see *Avon* v. *Freedom of Information Commission*, 210 Conn. App. 225, 237–38, 269 A.3d 852 (2022).

The defendant contends, however, that he has been aggrieved by the court's statement that the case constituted a relocation pursuant to § 46b-56d and, furthermore, that the present appeal is necessary to preserve his ability to challenge this determination. In support of this contention, he cites to *Bauer* v. *Bauer*, 308 Conn. 124, 60 A.3d 950 (2013), and *Fazio* v. *Fazio*, 199 Conn. App. 282, 235 A.3d 687, cert. denied, 335 Conn. 963, 239 A.3d 1213 (2020). Specifically, the defendant argues that, pursuant to these cases, if he did not challenge the determination of a relocation pursuant to § 46b-56d at this time, he would be precluded from doing so in the future. We disagree.

Both *Bauer* and *Fazio* are distinguishable from the present case. In *Bauer* v. *Bauer*, supra, 308 Conn. 126–27, the court dissolved the marriage of the parties, but the financial orders section of its memorandum of decision did not include the notation made earlier in that

decision indicating that they had agreed to split equally the pension accounts of the defendant husband. Neither party appealed from the dissolution judgment, which was rendered in 2005. Id. In 2009, the plaintiff wife filed a motion for clarification asking the court to "reconfirm its previous order" with respect to the equal sharing of these pension accounts. Id., 127. The court issued the requested clarification. Id., 127–28.

On appeal, this court reversed the judgment granting the plaintiff's requested clarification, concluding that the court's decision constituted a modification of the dissolution judgment. Id., 128–29. Our Supreme Court disagreed. Id., 129. It further noted that, if the defendant disagreed with the court's factual finding that the parties had agreed to split the pension accounts equally, he should have raised this issue in an appeal taken from the dissolution judgment, when the finding was made. Id., 135–37. The defendant husband, therefore, was aggrieved by the court's initial decision awarding the plaintiff wife an equal share of his pension accounts, but he elected not to challenge that finding until years later, after the plaintiff wife sought and obtained a confirmation of the court's earlier financial orders. Id., 126–28.

Our decision in *Fazio* likewise is distinguishable from the present case. In that case, the court dissolved the marriage of the parties in 2006. *Fazio* v. *Fazio*, supra, 199 Conn. App. 284. The separation agreement provided that the plaintiff wife would receive unallocated alimony and child support unless she cohabited as defined by General Statutes § 46b-86 (b). Id. In 2012, the defendant husband filed a motion to modify or terminate the unallocated alimony and child support on the basis of cohabitation by the plaintiff. Id., 285. The trial court found that the plaintiff had cohabitated and that the terms of the separation agreement were clear and unambiguous. Id., 286. In accordance with the separation

agreement, the court terminated the defendant's alimony obligation. Id. The plaintiff appealed, challenging the trial court's interpretation of the separation agreement that a finding of cohabitation resulted in an automatic termination of alimony. Id. The plaintiff did not, however, appeal the court's finding of cohabitation. Id. This court determined that the separation agreement was ambiguous and that additional findings of fact were needed and remanded the case to the trial court. Id., 286–87. Following our remand, the trial court again terminated the defendant's alimony obligation. Id., 287.

The plaintiff filed another appeal, claiming that the second trial court improperly concluded that it was bound by the finding of cohabitation made by the first trial court. Id. We concluded that our initial remand was limited to a consideration of the parties' intent with respect to the separation agreement. Id., 289. "Moreover, the plaintiff did not challenge [the first trial court's] finding that she had cohabitated, which, certainly, was a finding necessary to the judgment. It is well established that when a party brings a subsequent appeal, it cannot raise questions which were or could have been answered in its former appeals. . . . Failure to raise an issue in an initial appeal to this court constitutes a waiver of the right to bring the claim." (Citation omitted; internal quotation marks omitted.) Id. Thus, the plaintiff was aggrieved by the first trial court's finding of cohabitation, a necessary component of that court's ultimate determination to terminate the alimony obligation of the defendant pursuant to the parties' separation agreement. Id., 286. She chose not to challenge that finding during the initial appeal and instead focused on the court's interpretation of the separation agreement. Id. By waiting until her second appeal to challenge the cohabitation finding, she had waived the opportunity to do so. Id., 289.

Unlike *Bauer* and *Fazio*, the defendant in the present case was not aggrieved by the order issued by the trial court permitting him to relocate to New York City with the children at this time. First, as discussed earlier in this opinion, the defendant received the relief requested in his motion. Furthermore, following a full hearing on his motion, the defendant will remain not aggrieved if the trial court permits him to move to New York City on a permanent basis, whether pursuant to § 46b-56 or § 46b-56d. He would become aggrieved only if the court, at the conclusion of the hearing and final resolution of his motion, determines that the defendant failed to meet his burden under either statute. At that point, he may file an appeal to challenge the court's decision denying such a move and, if necessary, its conclusion regarding the applicability of § 46b-56d. Finally, we emphasize that, under the facts and circumstances present in this case, a court, after a full hearing, will not be bound by Judge Shay's determination that "this is . . . a relocation case" pursuant to § 46b-56d.[9] That determination was made at a hearing in which the court recognized that it needed to act expeditiously given the imminent start of the school year.[10] We therefore conclude that

[9] See, e.g., *Kellogg* v. *Middlesex Mutual Assurance Co.*, 211 Conn. App. 335, 352, 272 A.3d 677 (2022) ("The law of the case doctrine expresses the practice of judges generally to refuse to reopen what has been decided and is not a limitation on their power. . . . Where a matter has previously been ruled upon interlocutorily, the court in a subsequent proceeding in the case may treat that decision as the law of the case . . . . [T]he law of the case doctrine does not preclude a judge from deciding an issue in a way contrary to how it was decided by a predecessor judge in the same case. . . . [It] provides that judges may treat a prior ruling as the law of the case if they agree with the determination. He or she may, however, decide the issue differently if he or she is convinced that the prior decision is wrong." (Internal quotation marks omitted.)).

[10] In the present case, the court noted that the school year was about to start and that it was important to provide stability to the children with regard to their education, particularly following the negative effects from the COVID-19 pandemic. It explained: "The question is, though, what are you going to do in the short run because this is something that the court ultimately would want to get the guardian ad litem's input. But the court

the defendant has not been aggrieved, and, therefore, we lack subject matter jurisdiction over his appeal.

The appeal is dismissed.

In this opinion the other judges concurred.

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would also want an evaluation. I mean, the court would want to look at the entire panoply of . . . issues here, so whether it's the [plaintiff's] progress toward . . . full recovery, how is this going to impact the children?" It also pointed out that an evaluation from family relations would take approximately three to four months to complete. In conclusion, the court stated: "That's not fair. That's just not . . . right, so this may call . . . for some Solomonesque approach to this particular . . . problem in the short run so that in the long run it can be all sorted out. It may actually work out in the fullness of time when everybody gets to digest all of the little pieces of it."

Cumulative Table of Cases
Connecticut Appellate Reports
Volume 219

ARVYS Protein, Inc. *v.* A/F Protein, Inc. 20
Arbitration; whether trial court improperly denied plaintiff's application to modify or vacate arbitration award; claim that arbitrator's award exceeded scope of submission by awarding noncontractual relief; claim that arbitrator manifestly disregarded law by ignoring undisputed contract provisions limiting damages and disclaiming warranties; claim that award violated public policy because it arose from unauthorized practice of law.

C. M. *v.* R. M. 57
Dissolution of marriage; postdissolution motion to relocate; subject matter jurisdiction; whether defendant was aggrieved by judgment of trial court granting his motion to relocate pursuant to statute (§ 46b-56d).

O'Reggio *v.* Commission on Human Rights & Opportunities. 1
Employment discrimination; claim that trial court erred in affirming administrative decision of defendant Commission on Human Rights and Opportunities; whether defendant employer was liable to plaintiff under Connecticut Fair Employment Practices Act (CFEPA) ((Rev. to 2015) § 46a-51 et seq.) for claim of hostile work environment created by one of its employees; whether definition of "supervisor" adopted by United States Supreme Court in Vance v. *Ball State University* (570 U.S. 421) for purposes of Title VII of Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) applied to hostile work environment claims brought under CFEPA.

State *v.* Santiago 44
Motion to correct illegal sentence; mootness; motion to dismiss; postappeal motion for sentence modification; whether consideration of claims on appeal would result in practical relief to defendant in light of sentence modification granted by trial court during pendency of appeal; whether trial court's ruling on appeal dismissing motion to correct had been superseded during pendency of appeal by sentence modification.

Practice Book Revisions
Being Considered by the
Rules Committee of the Superior Court

Code of Judicial Conduct
Superior Court Rules

Including Amendment Notes and
Commentaries to Proposals
April 25, 2023

NOTICE

Public Hearing on Practice Book Revisions Being Considered by the Rules Committee of the Superior Court

On Monday, May 8, 2023, at 10:00 a.m., the Rules Committee of the Superior Court will conduct a public hearing for the purpose of receiving comments concerning Practice Book revisions that are being considered by the Committee and for the purpose of receiving comments on any proposed new rule or any change in an existing rule that any member of the public deems desirable. Those revisions follow this notice. All revisions being considered are published on the Judicial Branch website at www.jud.ct.gov/pb.htm. The public hearing will be followed by a Rules Committee meeting.

Comments may be forwarded to the Rules Committee by email at RulesCommittee@jud.ct.gov or by mail at the following address, and should be received on or before Wednesday, May 3, 2023:

Rules Committee of the Superior Court
Attn: Counsel to the Committee
P.O. Box 150474
Hartford, CT 06115-0474

The Rules Committee public hearing and meeting will be conducted electronically using *Microsoft Teams* communication and collaboration platform, and in person at 231 Capitol Avenue, Hartford, CT, in the Attorney's Conference room. The hearing will also be broadcast on the Judicial Branch's YouTube channel.

Individuals who would like to access the public hearing and/or meeting electronically so that they may speak at the hearing, may do so by clicking here. Individuals who would like to access the public hearing and/or meeting electronically but who do not wish to speak at the hearing, may do so by clicking https://www.youtube.com/@connecticutjudicialmeeting6042/featured.

Individuals who would like to speak at the public hearing should access the hearing online or arrive at the hearing one-half hour before the hearing begins in order to be recognized and placed in line while waiting to speak. Each speaker will be allowed five minutes to offer remarks. Anyone who believes that they cannot cover their remarks within the five minute time period allowed during the public hearing, and anyone who does not wish to speak at the public hearing but wishes to offer comments on the proposed revisions, may submit their written comments to the Rules Committee.

It is important that certain procedures are followed by every individual who wishes to access the public hearing and/or meeting through *Microsoft Teams*, and for those who attend the hearing and/or meeting in person who wish to speak at the public hearing. All individuals who access the public hearing and meeting must at all times act in a professional and respectful manner. Any individual whose conduct is deemed by the Rules Committee to be disruptive or inappropriate will be removed from the public hearing or meeting.

Hon. Andrew J. McDonald

Chair, Rules Committee of the Superior Court

INTRODUCTION

The following are revisions that are being considered to the Practice Book. Revisions are indicated by brackets for deletions, underlines for added language, or are explained by the commentary to the particular rule. The designation ''NEW'' is printed with the title of each proposed new rule.

Rules Committee of the
Superior Court

CHAPTER AND SECTION HEADING OF THE RULES

CODE OF JUDICIAL CONDUCT

Rule
2.11. Disqualification

SUPERIOR COURT—GENERAL PROVISIONS

CHAPTER 2
ATTORNEYS

Sec.
2-8. Qualifications for Admission
2-10. Admission by Superior Court; Admission in Absentia
2-13. Attorneys of Other Jurisdictions; Qualifications and Requirements for Admission
2-13A. Military Spouse Temporary Licensing
2-15A. —Authorized House Counsel
2-18. —Filings To Become Foreign Legal Consultant
2-79. —Enforcement of Payment of Fee

CHAPTER 7
CLERKS; FILES AND RECORDS

Sec.
7-11. —Judgments on the Merits—Stripping and Retention
7-19. Issuing Subpoenas for Witnesses on Behalf of Self-Represented Litigants

SUPERIOR COURT—PROCEDURE IN CIVIL MATTERS

CHAPTER 13
DISCOVERY AND DEPOSITIONS

Sec.
13-30. —Deposition Procedure

CHAPTER 21
RECEIVERS

Sec.
21-25. (NEW) Applicability of Rules

SUPERIOR COURT—PROCEDURE IN JUVENILE MATTERS

CHAPTER 35a
HEARINGS CONCERNING NEGLECTED, ABUSED AND UNCARED FOR CHILDREN AND TERMINATION OF PARENTAL RIGHTS

Sec.
35a-24. (NEW) Motions for Posttermination Visitation

SUPERIOR COURT—PROCEDURE IN CRIMINAL MATTERS

CHAPTER 38
PRETRIAL RELEASE

Sec.
38-3. —Release by Bail Commissioner or Intake, Assessment and Referral Specialist
38-4. —Release by Judicial Authority
38-8. **[**Ten**]** Seven Percent Cash Bail

CHAPTER 43
SENTENCING, JUDGMENT, AND APPEAL

Sec.
43-21. Reduction of **[**Definite**]** Sentence or Discharge of Defendant by Sentencing Court

PROPOSED AMENDMENTS TO THE CODE OF JUDICIAL CONDUCT

Rule 2.11. Disqualification

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(A) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(B) acting as a lawyer in the proceeding;

(C) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(D) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to

commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(A) served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(B) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(C) was a material witness concerning the matter.

(b) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(c) A judge subject to disqualification under this Rule, other than for bias or prejudice under subsection (a) (1), may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification, provided that the judge shall disclose on the record the basis of such disqualification. If, following the disclosure, the parties and lawyers agree, either in writing or on the record before another judge, that the judge should not be disqualified, the judge may participate in the proceeding.

(d) Notwithstanding the foregoing, a judge may contribute to a client security fund maintained under the auspices of the court, and such

contribution will not require that the judge disqualify himself or herself from service on such a client security fund committee or from participation in a lawyer disciplinary proceeding or in any matter concerning restitution or subrogation relating to such a client security fund.

(e) A judge is not automatically disqualified from sitting on a proceeding merely because a lawyer or party to the proceeding has filed a lawsuit against the judge or filed a complaint against the judge with the Judicial Review Council or an administrative agency. When the judge becomes aware pursuant to Practice Book Sections 1-22 (b), **[**or**]** 4-8, 66-9, or otherwise that such a lawsuit or complaint has been filed against him or her, the judge shall**[**, on the record, disclose that fact to the lawyers and parties to the proceeding before such judge, and the judge shall thereafter**]** proceed in accordance with Practice Book Section 1-22 (b) or 66-9.

(f) The fact that the judge was represented or defended by the attorney general in a lawsuit that arises out of the judge's judicial duties shall not be the sole basis for recusal by the judge in lawsuits where the attorney general appears.

COMMENT: (1) Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of subsections (a) (1) through (5) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

(2) A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

(3) The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

(4) The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under subsection (a) or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under subsection (a) (2) (C), the judge's disqualification is required.

(5) The Rule does not prevent a judge from relying on personal knowledge of historical or procedural facts acquired as a result of presiding over the proceeding itself.

(6) Subsection (d) is intended to make clear that the restrictions imposed by *Dacey* v. *Connecticut Bar Assn.*, 184 Conn. 21, 441 A.2d 49 (1981), or any implications therefrom should not be considered to apply to judges contributing to a client security fund under the auspices of the court.

AMENDMENT NOTE—2011: Comment (7) to Rule 2.11 was adopted by the judges of the Appellate Court on July 15, 2010, and the justices of the Supreme Court on July 1, 2010. It was not, however, adopted by the judges of the Superior Court.

(7) A justice of the Supreme Court or a judge of the Appellate Court is not disqualified from sitting on a proceeding merely because he or

she previously practiced law with the law firm or attorney who filed an amicus brief in the matter, or the justice's or judge's spouse, domestic partner, parent, or child, or any other member of the justice's or judge's family residing in his or her household is practicing or has practiced law with such law firm or attorney.

AMENDMENT NOTE—2023: The change to this rule deletes the requirement that the judge, on the record, disclose the fact that a lawsuit or complaint has been filed against him or her, because the burden of disclosure under Section 1-22 and under (New) Section 66-9,[1] being considered by the Advisory Committee on Appellate Rules, is on the party or attorney filing the lawsuit or complaint.

PROPOSED AMENDMENTS TO THE GENERAL PROVISIONS OF THE SUPERIOR COURT RULES

Sec. 2-8. Qualifications for Admission

To entitle an applicant to admission to the bar, except under Section 2-13 or 2-13A of these rules, the applicant must satisfy the bar examining committee that:

[1] **(NEW) Sec. 66-9. Disqualification of Appellate Jurists**

(a) A justice of the Supreme Court or a judge of the Appellate Court shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such justice or judge is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct.

(b) A justice of the Supreme Court or a judge of the Appellate Court is not automatically disqualified from acting in a matter merely because: (1) the justice or judge previously practiced law with the law firm or attorney who filed an amicus brief in the matter or the justice's or judge's spouse, domestic partner, parent, or child, or any other member of the justice's or judge's family residing in his or her household is practicing or has practiced law with such law firm or attorney; or (2) an attorney or party to the matter has filed a lawsuit against the justice or judge or filed a complaint against the justice or judge with the Judicial Review Council or an administrative agency.

(c) When an attorney or party who has filed a lawsuit or a complaint against a justice or judge is involved in a matter before the court on which the justice or judge sits, such attorney or party shall so advise the court and other attorneys and parties to the matter, and, thereafter, the justice or judge who is the subject of the disqualification issue shall either decide whether to disqualify himself or herself from acting in the matter or refer the disqualification issue to another justice or judge of the court for a decision.

(1) The applicant is a citizen of the United States or an alien lawfully residing in the United States, which shall include an individual authorized to work lawfully in the United States.

(2) The applicant is not less than eighteen years of age.

(3) The applicant is a person of good moral character, is fit to practice law, and has either passed an examination in professional responsibility, which has been approved or required by the committee, or has completed a course in professional responsibility in accordance with the regulations of the committee. Any inquiries or procedures used by the bar examining committee that relate to the health diagnosis, treatment, or drug or alcohol dependence of an applicant must be narrowly tailored and necessary to a determination of the applicant's current fitness to practice law, in accordance with the Americans with Disabilities Act and amendment twenty-one of the Connecticut constitution, and conducted in a manner consistent with privacy rights afforded under the federal and state constitutions or other applicable law.

(4) The applicant has met the educational requirements as may be set, from time to time, by the bar examining committee.

(5) The applicant has filed with the **[**administrative**]** director of the bar examining committee an application to take the examination and for admission to the bar, all in accordance with these rules and the regulations of the committee, and has paid such application fee as the committee shall from time to time determine.

(6) The applicant has passed an examination in law in accordance with the regulations of the bar examining committee.

(7) The applicant has complied with all of the pertinent rules and regulations of the bar examining committee.

(8) As an alternative to satisfying the bar examining committee that the applicant has met the committee's educational requirements, the applicant who meets all the remaining requirements of this section may**[**, upon payment of such investigation fee as the committee shall from time to time determine,**]** substitute proof satisfactory to the committee that: (A) the applicant has been admitted to practice before the highest court of original jurisdiction in one or more states, the District of Columbia or the Commonwealth of Puerto Rico or in one or more district courts of the United States for ten or more years and at the time of filing the application is a member in good standing of such a bar; <u>and</u> (B) the applicant has actually practiced law in such a jurisdiction for not less than five years during the seven year period immediately preceding the filing date of the application**[**; and (C) the applicant intends, upon a continuing basis, actively to practice law in Connecticut and to devote the major portion of the applicant's working time to the practice of law in Connecticut**]**.

COMMENTARY: The changes to Sections 2-8, 2-10, 2-13, 2-13A, 2-15A, and 2-18 are made to implement the transition from a paper-based bar application process to an online application process, with an applicant portal, and to update and to clarify those sections.

Sec. 2-10. Admission by Superior Court; Admission in Absentia

(a) Each applicant who shall be recommended for admission to the bar, except under subsection (c), shall present himself or herself to the Superior Court, or to either the Supreme Court or the Appellate

Court sitting as the Superior Court, at such place and at such time as shall be prescribed by the bar examining committee, or shall be prescribed by the Supreme Court or the Appellate Court, and such court may then, upon motion, admit such person as an attorney. The **[**administrative**]** director shall give notice to each clerk of the names of the newly admitted attorneys. At the time such applicant is admitted as an attorney, the applicant shall be sworn as a Commissioner of the Superior Court.

(b) The administrative judge of said judicial district or a designee or the chief justice of the Supreme Court or a designee or the chief judge of the Appellate Court or a designee may deliver an address to the applicants so admitted respecting their duties and responsibilities as attorneys.

(c) The bar examining committee may, upon election by a candidate, recommend the candidate for admission in absentia. Upon the administration of the oaths taken as Commissioner of the Superior Court and for admission to the bar by an official duly qualified to administer oaths, the candidate who has taken the oaths shall be admitted to the Connecticut bar in absentia. The candidate shall complete the oaths and submit the original affidavits to the bar examining committee within 180 days from the date of certification.

COMMENTARY: The changes to Sections 2-8, 2-10, 2-13, 2-13A, 2-15A, and 2-18 are made to implement the transition from a paper-based bar application process to an online application process, with an applicant portal, and to update and to clarify those sections.

Sec. 2-13. Attorneys of Other Jurisdictions; Qualifications and Requirements for Admission

(a) Any member of the bar of another state or territory of the United States or the District of Columbia, who, after satisfying the bar examining committee that his or her educational qualifications are such as would entitle him or her to take the examination in Connecticut, and that (i) at least one jurisdiction in which he or she is a member of the bar is reciprocal to Connecticut in that it would admit a member of the bar of Connecticut to its bar without examination under provisions similar to those set out in this section or (ii) he or she is a full-time faculty member or full-time clinical fellow at an accredited Connecticut law school and admitted in a reciprocal or nonreciprocal jurisdiction, shall satisfy the committee that he or she:

(1) is of good moral character, is fit to practice law, and has either passed an examination in professional responsibility or has completed a course in professional responsibility in accordance with the regulations of the committee;

(2) has been duly licensed to practice law before the highest court of a reciprocal state or territory of the United States or in the District of Columbia if reciprocal to Connecticut, or that he or she is a full-time faculty member or full-time clinical fellow at an accredited Connecticut law school and admitted in a reciprocal or nonreciprocal jurisdiction and (A) has lawfully engaged in the practice of law as the applicant's principal means of livelihood for at least five of the ten years immediately preceding the date of the application and is in good standing, or (B) if the applicant has taken the bar examinations of

Connecticut and failed to pass them, the applicant has lawfully engaged in the practice of law as his or her principal means of livelihood for at least five of the ten years immediately preceding the date of the application and is in good standing, provided that such five years of practice shall have occurred subsequent to the applicant's last failed Connecticut examination; and

(3) is a citizen of the United States or an alien lawfully residing in the United States, which shall include an individual authorized to work lawfully in the United States, may be admitted as an attorney without examination upon **[**written**]** application and the payment of such fee as the committee shall from time to time determine, upon compliance with the following requirements. Such application**[**, duly verified,**]** shall be filed with the **[**administrative**]** director of the committee and shall set forth the applicant's qualifications as hereinbefore provided<u>, and shall certify whether such applicant has a grievance pending against him or her, has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such action</u>. The following **[**affidavits**]** <u>recommendations</u> shall be filed by the person **[**completing the affidavit**]** <u>making the recommendation</u>:

(A) <u>recommendations</u> **[**affidavits**]** from two attorneys who personally know the applicant certifying to his or her good moral character and fitness to practice law and supporting, to the satisfaction of the committee, his or her practice of law as defined under subdivision (2) of this subsection; <u>and</u>

(B) recommendations [affidavits] from two members of the bar of Connecticut of at least five years' standing, certifying that the applicant is of good moral character and is fit to practice law.[; and]

[(C) an affidavit from the applicant, certifying whether such applicant has a grievance pending against him or her, has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law, and, if so, setting forth the circumstances concerning such action. Such an affidavit is not required if it has been furnished as part of the application form prescribed by the committee.]

(b) For the purpose of this rule, the "practice of law" shall include the following activities, if performed after the date of the applicant's admission to the jurisdiction in which the activities were performed, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice:

(1) representation of one or more clients in the practice of law;

(2) service as a lawyer with a state, federal, or territorial agency, including military services;

(3) teaching law at an accredited law school, including supervision of law students within a clinical program;

(4) service as a judge in a state, federal, or territorial court of record;

(5) service as a judicial law clerk;

(6) service as authorized house counsel;

(7) service as authorized house counsel in Connecticut before July 1, 2008, or while certified pursuant to Section 2-15A; or

(8) any combination of the above.

COMMENTARY: The changes to Sections 2-8, 2-10, 2-13, 2-13A, 2-15A, and 2-18 are made to implement the transition from a paper-based bar application process to an online application process, with an applicant portal, and to update and to clarify those sections.

Sec. 2-13A. Military Spouse Temporary Licensing

(a) **Qualifications.** An applicant who meets all of the following requirements listed in subdivisions (1) through (11) of this subsection may be temporarily licensed and admitted to the practice of law in Connecticut, upon approval of the bar examining committee. The applicant:

(1) is the spouse of an active duty service member of the United States Army, Navy, Air Force, Marine Corps or Coast Guard and that service member is or will be stationed in Connecticut due to military orders;

(2) is licensed to practice law before the highest court in at least one state or territory of the United States or in the District of Columbia;

(3) is currently an active member in good standing in every jurisdiction to which the applicant has been admitted to practice, or has resigned or become inactive or had a license administratively suspended or revoked while in good standing from every jurisdiction without any pending disciplinary actions;

(4) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(5) meets the educational qualifications required to take the examination in Connecticut;

(6) possesses the good moral character and fitness to practice law required of all applicants for admission in Connecticut;

(7) has passed an examination in professional responsibility or has completed a course in professional responsibility in accordance with the regulation of the bar examining committee;

(8) is or will be physically residing in Connecticut due to the service member's military orders;

(9) has not failed the Connecticut bar examination within the past five years;

(10) has not had an application for admission to the Connecticut bar or the bar of any state, the District of Columbia or United States territory denied on character and fitness grounds; and

(11) has not failed to achieve the Connecticut scaled score on the uniform bar examination administered within any jurisdiction within the past five years.

(b) **Application Requirements.** Any applicant seeking a temporary license to practice law in Connecticut under this section shall file an **[**written**]** application and payment of such fee as the bar examining committee shall from time to time determine. Such application**[**, duly verified,**]** shall be filed with the **[**administrative**]** director of the committee and shall set forth the applicant's qualifications as hereinbefore provided, and shall certify whether the applicant has a grievance pending against him or her, has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such

action. In addition, the applicant shall file with the committee the following:

(1) a copy of the applicant's military spouse dependent identification and documentation evidencing a spousal relationship with the service member;

(2) a copy of the service member's military orders to a military installation in Connecticut or a letter from the service member's command verifying that the requirement in subsection (a) (8) of this section is met;

(3) certificate(s) of good standing from the highest court of each state, the District of Columbia or United States territory to which the applicant has been admitted, or proof that the applicant has resigned, or become inactive or had a license administratively suspended or revoked while in good standing; and

[(4) an affidavit from the applicant, certifying whether such applicant has a grievance pending against him or her, has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law, and, if so, setting forth the circumstances concerning such action; and

(5) affidavits**]** (4) recommendations from two attorneys who personally know the applicant certifying to his or her good moral character and fitness to practice law.

(c) **Duration and Renewal.**

(1) A temporary license to practice law issued under this rule will be valid for three years provided that the temporarily licensed attorney remains a spouse of the service member and resides in Connecticut

due to military orders or continues to reside in Connecticut due to the service member's immediately subsequent assignment specifying that dependents are not authorized to accompany the service member. The temporary license may be renewed for one additional two year period.

(2) A renewal application must be submitted with the appropriate fee as established by the bar examining committee and all other documentation required by the bar examining committee, including a copy of the service member's military orders. Such renewal application shall be filed not less than thirty days before the expiration of the original three year period.

(3) A temporarily licensed attorney who wishes to become a permanent member of the bar of Connecticut may apply for admission by examination or for admission without examination for the standard application fee minus the application fee paid to the committee for the application for temporary license, not including any fees for renewal.

(d) **Termination.**

(1) Termination of Temporary License. A temporary license shall terminate, and a temporarily licensed attorney shall cease the practice of law in Connecticut pursuant to that admission, unless otherwise authorized by these rules, thirty days after any of the following events:

(A) the service member's separation or retirement from military service;

(B) the service member's permanent relocation to another jurisdiction, unless the service member's immediately subsequent assignment specifies that the dependents are not authorized to accompany the service member, in which case the attorney may continue to practice

law in Connecticut as provided in this rule until the service member departs Connecticut for a permanent change of station where the presence of dependents is authorized;

(C) the attorney's permanent relocation outside of the state of Connecticut for reasons other than the service member's relocation;

(D) upon the termination of the attorney's spousal relationship to the service member;

(E) the attorney's failure to meet the annual licensing requirements for an active member of the bar of Connecticut;

(F) the attorney's request;

(G) the attorney's admission to practice law in Connecticut by examination or without examination;

(H) the attorney's denial of admission to the practice of law in Connecticut; or

(I) the death of the service member.

Notice of one of the events set forth in subsection (d) (1) must be filed with the bar examining committee by the temporarily licensed attorney within thirty days of such event. Notice of the event set forth in subsection (d) (1) (I) must be filed with the committee by the temporarily licensed attorney within thirty days of the event, and the attorney shall cease the practice of law within one year of the event. Failure to provide such notice by the temporarily licensed attorney shall be a basis for discipline pursuant to the Rules of Professional Conduct for attorneys.

(2) Notice of Termination of Temporary License. Upon receipt of the notice required by subsection (d) (1), the bar examining committee

shall forward a request to the statewide bar counsel that the license under this chapter be revoked. Notice of the revocation shall be mailed by the statewide bar counsel to the temporarily licensed attorney.

(3) Notices Required. At least sixty days before termination of the temporary admission, or as soon as possible under the circumstances, the attorney shall:

(A) file in each matter pending before any court, tribunal, agency or commission a notice that the attorney will no longer be involved in the case; and

(B) provide written notice to all clients receiving representation from the attorney that the attorney will no longer represent them.

(e) **Responsibilities and Obligations.**

An attorney temporarily licensed under this section shall be subject to all responsibilities and obligations of active members of the Connecticut bar, and shall be subject to the jurisdiction of the courts and agencies of Connecticut, and shall be subject to the laws and rules of Connecticut governing the conduct and discipline of attorneys to the same extent as an active member of the Connecticut bar. The attorney shall maintain participation in a mentoring program provided by a state or local bar association in the state of Connecticut.

COMMENTARY: The changes to Sections 2-8, 2-10, 2-13, 2-13A, 2-15A, and 2-18 are made to implement the transition from a paper-based bar application process to an online application process, with an applicant portal, and to update and to clarify those sections.

Sec. 2-15A. —Authorized House Counsel

(a) **Purpose**

The purpose of this section is to clarify the status of house counsel as authorized house counsel as defined herein, and to confirm that such counsel are subject to regulation by the judges of the Superior Court. Notwithstanding any other section of this chapter relating to admission to the bar, this section shall authorize attorneys licensed to practice in jurisdictions other than Connecticut to be permitted to undertake these activities, as defined herein, in Connecticut without the requirement of taking the bar examination so long as they are exclusively employed by an organization.

(b) **Definitions**

(1) **Authorized House Counsel.** An ''authorized house counsel'' is any person who:

(A) is a member in good standing of the entity governing the practice of law of each state (other than Connecticut) or territory of the United States, or the District of Columbia or any foreign jurisdiction in which the member is licensed;

(B) has been certified on recommendation of the bar examining committee in accordance with this section;

(C) agrees to abide by the rules regulating members of the Connecticut bar and submit to the jurisdiction of the Statewide Grievance Committee and the Superior Court; and

(D) is, at the date of application for registration under this rule, employed in the state of Connecticut by an organization or relocating to the state of Connecticut in furtherance of such employment within

three months prior to starting work in the state of Connecticut or three months after the applicant begins work in the state of Connecticut of such application under this section and receives or shall receive compensation for activities performed for that business organization.

(2) **Organization.** An ''organization'' for the purpose of this rule is a corporation, partnership, association, or employer sponsored benefit plan or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) that is not itself engaged in the practice of law or the rendering of legal services outside such organization, whether for a fee or otherwise, and does not charge or collect a fee for the representation or advice other than to entities comprising such organization for the activities of the authorized house counsel.

(c) **Activities**

(1) **Authorized Activities.** An authorized house counsel, as an employee of an organization, may provide legal services in the state of Connecticut to the organization for which a registration pursuant to subsection (d) is effective, provided, however, that such activities shall be limited to:

(A) the giving of legal advice to the directors, officers, employees, trustees, and agents of the organization with respect to its business and affairs;

(B) negotiating and documenting all matters for the organization; and

(C) representation of the organization in its dealings with any administrative agency, tribunal or commission having jurisdiction; provided, however, authorized house counsel shall not be permitted to make appearances as counsel before any state or municipal administrative

tribunal, agency, or commission, and shall not be permitted to make appearances in any court of this state, unless the attorney is specially admitted to appear in a case before such tribunal, agency, commission or court.

(2) **Disclosure.** Authorized house counsel shall not represent themselves to be members of the Connecticut bar or commissioners of the Superior Court licensed to practice law in this state. Such counsel may represent themselves as Connecticut authorized house counsel.

(3) **Limitation on Representation.** In no event shall the activities permitted hereunder include the individual or personal representation of any shareholder, owner, partner, officer, employee, servant, or agent in any matter or transaction or the giving of advice therefor unless otherwise permitted or authorized by law, code, or rule or as may be permitted by subsection (c) (1). Authorized house counsel shall not be permitted to prepare legal instruments or documents on behalf of anyone other than the organization employing the authorized house counsel.

(4) **Limitation on Opinions to Third Parties.** An authorized house counsel shall not express or render a legal judgment or opinion to be relied upon by any third person or party other than legal opinions rendered in connection with commercial, financial or other business transactions to which the authorized house counsel's employer organization is a party and in which the legal opinions have been requested from the authorized house counsel by another party to the transaction. Nothing in this subsection (c) (4) shall permit authorized house counsel

to render legal opinions or advice in consumer transactions to customers of the organization employing the authorized house counsel.

(5) **Pro Bono Legal Services.** Notwithstanding anything to the contrary in this section, an authorized house counsel may participate in the provision of any and all legal services pro bono publico in Connecticut offered under the supervision of an organized legal aid society or state/local bar association project, or of a member of the Connecticut bar who is also working on the pro bono representation.

(d) **Registration**

(1) **Filing with the Bar Examining Committee.** The bar examining committee shall investigate whether the applicant is at least eighteen years of age and is of good moral character, consistent with the requirement of Section 2-8 (3) regarding applicants for admission to the bar. In addition, the applicant shall file an application and payment of such fee as the committee shall from time to time determine. **[**with the committee, and the committee shall consider, the following:

(A) a certificate from each entity governing the practice of law of a state or territory of the United States, or the District of Columbia or any foreign jurisdiction in which the applicant is licensed to practice law certifying that the applicant is a member in good standing;

(B) a sworn statement by the applicant:

(i) that the applicant has read and is familiar with attorneys and Chapter 2 (Attorneys) of the Superior Court Rules, General Provisions, and will abide by the provisions thereof;

(ii) that the applicant submits to the jurisdiction of the Statewide Grievance Committee and the Superior Court for disciplinary purposes,

and authorizes notification to or from the entity governing the practice of law of each state or territory of the United States, or the District of Columbia in which the applicant is licensed to practice law of any disciplinary action taken against the applicant;

(iii) listing any jurisdiction in which the applicant is now or ever has been licensed to practice law; and

(iv) disclosing any disciplinary sanction or pending proceeding pertaining or relating to his or her license to practice law including, but not limited to, reprimand, censure, suspension or disbarment, or whether the applicant has been placed on inactive status;

(C) a certificate from an organization certifying that it is qualified as set forth in subsection (b) (2); that it is aware that the applicant is not licensed to practice law in Connecticut; and that the applicant is employed or about to be employed in Connecticut by the organization as set forth in subsection (b) (1) (D);

(D) an appropriate application pursuant to the regulations of the bar examining committee;

(E) remittance of a filing fee to the bar examining committee as prescribed and set by that committee; and

(F) an affidavit from each of two members of the Connecticut bar, who have each been licensed to practice law in Connecticut for at least five years, certifying that the applicant is of good moral character and that the applicant is employed or will be employed by an organization as defined above in subsection (b) (2).**]**

(A) The application shall:

(i) certify that the applicant has read and is familiar with the Connecticut Rules of Professional Conduct for attorneys and Chapter 2 (Attorneys) of the Superior Court Rules, General Provisions, and will abide by the provisions thereof;

(ii) certify that the applicant submits to the jurisdiction of the Statewide Grievance Committee and the Superior Court for disciplinary purposes and authorizes notification to or from the entity governing the practice of law of each state or territory of the United States or the District of Columbia in which the applicant is licensed to practice law of any disciplinary action taken against the applicant;

(iii) list any jurisdiction in which the applicant is now or ever has been licensed to practice law; and

(iv) disclose any disciplinary sanction or pending proceeding pertaining or relating to the applicant's license to practice law, including but not limited to reprimand, censure, suspension or disbarment, or whether the applicant has been placed on inactive status.

(B) The applicant shall file with the bar examining committee:

(i) a certificate from each entity governing the practice of law of a state or territory of the United States or the District of Columbia or any foreign jurisdiction in which the applicant is licensed to practice law certifying that the applicant is a member in good standing;

(ii) a certificate from an organization certifying that it is qualified as set forth in subsection (b) (2); that it is aware that the applicant is not licensed to practice law in Connecticut; and that the applicant is employed or about to be employed in Connecticut by the organization as set forth in subsection (b) (1) (D); and

(iii) a recommendation from each of two members of the Connecticut bar, who have each been licensed to practice law in Connecticut for at least five years, certifying that the applicant is of good moral character and that the applicant is employed or will be employed by an organization as defined above in subsection (b) (2).

(2) **Certification.** Upon recommendation of the bar examining committee, the applicant shall be certified as authorized house counsel in absentia. Upon the administration of the oath taken as authorized house counsel by an official duly qualified to administer oaths, the applicant who has taken the oath shall be certified as authorized house counsel in absentia. The applicant shall complete the oath and submit the original affidavit to the bar examining committee within 180 days from the date of certification. The committee shall cause notice of such certification to be published in the Connecticut Law Journal.

(3) **Annual Client Security Fund Fee.** Individuals certified pursuant to this section shall comply with the requirements of Sections 2-68 and 2-70 of this chapter, including payment of the annual fee and shall pay any other fees imposed on attorneys by court rule.

(4) **Annual Registration.** Individuals certified pursuant to this section shall register annually with the Statewide Grievance Committee in accordance with Sections 2-26 and 2-27 (d) of this chapter.

(e) **Termination or Withdrawal of Registration**

(1) **Cessation of Authorization To Perform Services.** Authorization to perform services under this rule shall cease upon the earliest of the following events:

(A) the termination or resignation of employment with the organization for which registration has been filed, provided, however, that if the authorized house counsel shall commence employment with another organization within thirty days of the termination or resignation, authorization to perform services under this rule shall continue upon the filing with the bar examining committee of a certificate as set forth in subsection (d) (1) (C);

(B) the withdrawal of registration by the authorized house counsel;

(C) the relocation of an authorized house counsel outside of Connecticut for a period greater than 180 consecutive days; or

(D) the failure of authorized house counsel to comply with any applicable provision of this rule.

Notice of one of the events set forth in subsections (e) (1) (A) through (C) or a new certificate as provided in subsection (e) (1) (A) must be filed with the bar examining committee by the authorized house counsel within thirty days after such action. Failure to provide such notice by the authorized house counsel shall be a basis for discipline pursuant to the Rules of Professional Conduct for attorneys.

(2) **Notice of Withdrawal of Authorization.** Upon receipt of the notice required by subsection (e) (1), the bar examining committee shall forward a request to the statewide bar counsel that the authorization under this chapter be revoked. Notice of the revocation shall be mailed by the statewide bar counsel to the authorized house counsel and the organization employing the authorized house counsel.

(3) **Reapplication.** Nothing herein shall prevent an individual previously authorized as house counsel to reapply for authorization as set forth in subsection (d).

(f) **Discipline**

(1) **Termination of Authorization by Court.** In addition to any appropriate proceedings and discipline that may be imposed by the Statewide Grievance Committee, the Superior Court may, at any time, with cause, terminate an authorized house counsel's registration, temporarily or permanently.

(2) **Notification to Other States.** The statewide bar counsel shall be authorized to notify each entity governing the practice of law in the state or territory of the United States, or the District of Columbia, in which the authorized house counsel is licensed to practice law, of any disciplinary action against the authorized house counsel.

(g) **Transition**

(1) **Preapplication Employment in Connecticut.** The performance of an applicant's duties as an employee of an organization in Connecticut prior to the effective date of this rule shall not be grounds for the denial of registration of such applicant if application for registration is made within six months of the effective date of this rule.

(2) **Immunity from Enforcement Action.** An authorized house counsel who has been duly registered under this rule shall not be subject to enforcement action for the unlicensed practice of law for acting as counsel to an organization prior to the effective date of this rule.

COMMENTARY: The changes to Sections 2-8, 2-10, 2-13, 2-13A, 2-15A, and 2-18 are made to implement the transition from a paper-based bar application process to an online application process, with an applicant portal and to update and to clarify those sections.

Sec. 2-18. —Filings To Become Foreign Legal Consultant

(a) An applicant for a license to practice as a foreign legal consultant shall file with the **[**administrative**]** director of the bar examining committee:

(1) a<u>n</u> **[**typewritten**]** application **[**in the form prescribed by the committee**]** <u>and payment of such fee as the bar examining committee shall from time to time determine</u>;

[(2) a certified check, cashier's check, or money order in the amount of $500 made payable to the bar examining committee;**]**

[(3)**]** <u>(2)</u> a certificate from the authority in the foreign country having final jurisdiction over professional discipline, certifying to the applicant's admission to practice (or the equivalent of such admission) and the date thereof and to the applicant's good standing as an attorney or counselor at law (or the equivalent of either), together with a duly authenticated English translation of such certificate if it is not in English; and

[(4)**]** <u>(3)</u> two **[**letters of**]** recommendation<u>s</u>, one from a member in good standing of the Connecticut bar and another from either a member in good standing of the bar of the country in which the applicant is licensed as an attorney, or from a judge of one of the courts of original jurisdiction of said country, together with a duly authenticated English translation of each letter if it is not in English.

(b) Upon a showing that strict compliance with the provisions of Section 2-17 (1) and subdivisions (2) or (3) **[**or (4)**]** of subsection (a) of this section is impossible or very difficult for reasons beyond the control of the applicant, or upon a showing of exceptional professional qualifications to practice as a foreign legal consultant, the court may, in its discretion, waive or vary the application of such provisions and permit the applicant to make such other showing as may be satisfactory to the court.

(c) The bar examining committee shall investigate the qualifications, moral character, and fitness of any applicant for a license to practice as a foreign legal consultant and may in any case require the applicant to submit any additional proof or information as the committee may deem appropriate. The committee may also require the applicant to submit a report from the National Conference of Bar Examiners, and to pay the prescribed fee therefor, with respect to the applicant's character and fitness.

COMMENTARY: The changes to Sections 2-8, 2-10, 2-13, 2-13A, 2-15A, and 2-18 are made to implement the transition from a paper-based bar application process to an online application process, with an applicant portal and to update and to clarify those sections.

Sec. 2-79. —Enforcement of Payment of Fee

(a) The client security fund committee shall send a notice to each attorney who has not paid the client security fund fee pursuant to Section 2-70 of these rules that the attorney's license to practice law in this state may be administratively suspended unless within sixty days from the date of such notice the client security fund committee

receives from such attorney proof that he or she has either paid the fee or is exempt from such payment. If the client security fund committee does not receive such proof within the time required, it shall cause a second notice to be sent to the attorney advising the attorney that he or she will be referred to the Superior Court for an administrative suspension of the attorney's license to practice law in this state unless within thirty days from the date of the notice proof of the payment of the fee or exemption is received. The client security fund committee shall submit to the clerk of the Superior Court for the Hartford Judicial District a list of attorneys who did not provide proof of payment or exemption, within thirty days after the date of the second notice. Upon order of the court, the attorneys so listed and referred to the clerk shall be deemed administratively suspended from the practice of law in this state until such time as payment of the fee and the reinstatement fee assessed pursuant to Section 2-70 is made, which suspension shall be effective upon publication of the list in the Connecticut Law Journal. An administrative suspension of an attorney for failure to pay the client security fund fee shall not be considered discipline, but an attorney who is placed on administrative suspension for such failure shall be ineligible to practice law as an attorney admitted to practice in this state, and shall not be considered in good standing pursuant to Section 2-65 of these rules until such time as the fee and reinstatement fee are paid. An attorney aggrieved by an order placing the attorney on administrative suspension for failing to pay the client security fund fee may make an application to the Superior Court to have the order vacated, by filing the application with the Superior Court for

the Hartford Judicial District within thirty days of the date that the order is published, and mailing a copy of the same by certified mail, return receipt requested, to the office of the client security fund committee. The application shall set forth the reasons why the application should be granted. The court shall schedule a hearing on the application, which shall be limited to whether good cause exists to vacate the suspension order.

(b) If a judge, judge trial referee, state referee, family support magistrate or administrative law judge has not paid the client security fund fee, the Office of the Chief Court Administrator shall send a notice to such person that he or she will be referred to the Judicial Review Council unless within sixty days from the date of such notice the Office of the Chief Court Administrator receives from such person proof that he or she has either paid the fee or is exempt from such payment. If the Office of the Chief Court Administrator does not receive such proof within the time required, it shall refer such person to the Judicial Review Council.

(c) Family support referees shall be subject to the provisions of subsection (a) herein until such time as they come within the jurisdiction of the Judicial Review Council, when they will be subject to the provisions of subsection (b).

(d) The notices required by this section shall be mailed **[**sent by certified mail, return receipt requested or with electronic delivery confirmation**]** to the last address registered by the attorney and sent by email to the last email address registered by the attorney pursuant to Section 2-26 and Section 2-27 (d), and mailed to the home address of

the judge, judge trial referee, state referee, family support magistrate, family support referee or administrative law judge.

COMMENTARY: The changes to this section remove the requirement that the notices required shall be sent by certified mail, return receipt requested or with electronic delivery confirmation and in place thereof, allow those notices to be mailed and sent by email to the registered attorney, and mailed to the home address of the judge or other judicial authority or administrative law judge.

Sec. 7-11. —Judgments on the Merits—Stripping and Retention

(a) With the exception of actions which affect the title to land and actions which have been disposed of pursuant to Section 7-10, the files in civil, family and juvenile actions in which judgment has been rendered may be stripped and destroyed pursuant to the schedule set forth in subsection (d), except that requests relating to discovery, responses and objections thereto may be stripped after the expiration of the appeal period.

(b) When a file is to be stripped, all papers in the file shall be destroyed except:

(1) The complaint, including any amendment thereto, substituted complaint or amended complaint;

(2) All orders of notice, appearances and officers' returns;

(3) All military or other affidavits;

(4) Any cross complaint, third-party complaint, or amendment thereto;

(5) All responsive pleadings;

(6) Any memorandum of decision;

(7) The judgment file or notation of the entry of judgment, and all modifications of judgment;

(8) All executions issued and returned.

(c) Upon the expiration of the stripping date, or at any time if facilities are not available for local retention, the file in any action set forth in subsection (d) may be transferred to the records center or other proper designated storage area, where it shall be retained for the balance of the retention period. Files in actions concerning dissolution of marriage or civil union, legal separation, or annulment may, upon agreement with officials of the state library, be transferred to the state library at the expiration of their retention period.

(d) The following is a schedule which sets forth when a file may be stripped and the length of time the file shall be retained. The time periods indicated herein shall run from the date judgment is rendered, except receivership actions or actions for injunctive relief, which shall run from the date of the termination of the receivership or injunction.

Type of Case	*Stripping Retention*	*Date*
(1) Administrative appeals		3 years
(2) Contracts (where money damages are not awarded)	1 year	20 years
(3) Eminent domain (except as provided in Section 7-12)		10 years
(4) Family		
-Dissolution of marriage or civil union, legal separation, annulment and change of name	5 years	75 years
-Delinquency		Until subject is 25 years of age
-Family with service needs		Until subject is 25 years of age

-Termination of parental rights		Permanent
-Neglect and uncared for		75 years
-Emancipation of minor		5 years
-Orders in relief from physical abuse (General Statutes § 46b-15)		5 years
-Other		75 years
(5) Family support magistrate matters		75 years
-Uniform Reciprocal Enforcement of Support		75 years
-Uniform Interstate Family Support Act		75 years
(6) Landlord/Tenant		
-Summary process		3 years
-Housing code enforcement (General Statutes § 47a-14h)		5 years
-Contracts/Leases (where money damages are not awarded)	1 year	20 years
-Money damages (except where a satisfaction of judgment has been filed)	1 year	26 years
(7) Miscellaneous		
-Bar discipline		50 years
-Civil Protection Order (General Statutes § 46b-16a)		5 years
-Money damages (except where a satisfaction of judgment has been filed)	1 year	26 years
-Mandamus, habeas corpus, arbitration, petition for new trial, action for an accounting, interpleader		10 years
-Injunctive relief (where no other relief is requested)		5 years
(8) Property (except as provided in Section 7-12)	5 years	26 years
(9) Receivership		10 years
(10) Small claims		15 years

(11) Torts (except as noted below)	1 year	26 years
-Money damages if the judgment was rendered in an action to recover damages for personal injury caused by sexual assault where the party at fault was convicted under General Statutes § 53a-70 or § 53a-70a (except where a satisfaction of judgment has been filed)		Permanent
(12) Wills and estates		10 years
(13) Asset forfeiture (General Statutes § 54-36h)		10 years
(14) Alcohol and drug commitment (General Statutes § 17a-685)		10 years
(15) All other civil actions (except as provided in Section 7-12)		75 years

COMMENTARY: The change to this section provides that the retention period for civil protection orders under General Statutes § 46b-16a shall be five years.

Sec. 7-19. Issuing Subpoenas for Witnesses on Behalf of Self-Represented Litigants

(a) Self-represented litigants seeking to compel the attendance of necessary witnesses in connection with the hearing of any matter shall file an application to have the clerk of the court issue subpoenas for that purpose. The application shall include a summary of the expected testimony of each proposed witness so that the court may determine the relevance of the testimony. The clerk, after verifying the scheduling

of the matter, shall present the application to the judge before whom the matter is scheduled for hearing, or the administrative judge or any judge designated by the administrative judge if the matter has not been scheduled before a specific judge, which judge shall **[**conduct an ex parte**]** review **[**of**]** the application. **[**and may direct or deny the issuance of subpoenas as such judge deems warranted under the circumstances, keeping in mind the nature of the scheduled hearing and future opportunities for examination of witnesses, as may be appropriate. If an application is denied in whole or in part, the applicant may request a hearing which shall be scheduled by the court.**]**

(b) The reviewing judge may act on the application ex parte and may direct or deny the issuance of subpoenas as such judge deems warranted under the circumstances, keeping in mind the nature of the scheduled hearing and future opportunities for examination of witnesses, as may be appropriate. If an application is granted ex parte, in whole or in part, any party may file a motion for protective order or motion to quash, as appropriate. If an application is denied ex parte, in whole or in part, the applicant may request a hearing which shall be scheduled by the court. The reviewing judge may order that an application acted upon ex parte be placed in the official court file, whether or not a hearing is requested.

(c) If the reviewing judge does not act on the application ex parte, such judge shall direct that the application be placed in the official court file to allow any party to file an objection, which objection will be filed by a date to be set by the reviewing judge. Having provided an opportunity for any party to object, the reviewing judge may direct

or deny the issuance of subpoenas as such judge deems warranted under the circumstances, keeping in mind the nature of the scheduled hearing and future opportunities for examination of witnesses, as may be appropriate.

(d) Any party or nonparty to whom a subpoena is directed pursuant to this rule may file a motion to quash or a motion for protective order as appropriate.

COMMENTARY: The changes to this section make clear that the judge may conduct an ex parte review of the application for issuance of subpoenas and may direct or deny the issuance of subpoenas as such judge deems warranted under the circumstances. If an application is granted ex parte, any party may file a motion for protective order or a motion to quash. If an application is denied ex parte, the applicant may request a hearing which shall be scheduled by the court. The reviewing judge may order that an application acted on ex parte be placed in the official court file whether or not a hearing is requested.

If the application is not acted on by the reviewing judge ex parte, the judge shall direct that the application be placed in the official court file to allow any party to file an objection by a date set by the judge. Thereafter, the reviewing judge may direct or deny the issuance of subpoenas as such judge deems warranted under the circumstances.

Any party or nonparty to whom a subpoena is directed may file a motion to quash or a motion for protective order as appropriate.

PROPOSED AMENDMENTS TO THE CIVIL RULES

Sec. 13-30. —Deposition Procedure

(a) Examination and cross-examination of deponents may proceed as permitted at trial. The officer before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under the officer's direction, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means authorized in accordance with Section 13-27 (f). If the testimony is taken stenographically, it shall be transcribed at the request of one of the parties.

(b) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under subsection (c) of this section. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the

party shall transmit the questions to the officer, who shall propound them to the witness and record the answers verbatim.

(c) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending may order the officer conducting the examination forthwith to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 13-5. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending.

(d) If requested by the deponent or any party, when the testimony is fully transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent certifying that the deposition is a true record of the deponent's testimony, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty days after its submission to the deponent, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless, on a motion to suppress

under Section 13-31 (c) (4), the judicial authority holds that the reasons given for the refusal or failure to sign require rejection of the deposition in whole or in part.

(e) The person recording the testimony shall certify on the deposition that the witness was duly sworn by the person, that the deposition is a true record of the testimony given by the deponent, whether each adverse party or his agent was present, and whether each adverse party or his agent was notified, and such person shall also certify the reason for taking the deposition. The person shall then **[**securely seal the deposition in an envelope endorsed with the title of the action, the address of the court where it is to be used and marked ''Deposition of (*here insert the name of the deponent*),''**]** cause a watermark or other indicia of origin to be added to the deposition and shall then promptly deliver it to the party at whose request it was taken and give to all other parties a notice that the deposition has been transcribed and so delivered. The party at whose request the deposition was taken shall file the **[**sealed**]** deposition with the court at the time of trial.

(f) Documents and things produced for inspection during the examination of the deponent, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (1) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (2) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them

to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition to the court, pending final disposition of the case.

(g) The parties may stipulate in writing and file with the court, or the court may upon motion order, that a deposition be taken by telephone, videoconference, or other remote electronic means. For the purposes of Sections 13-26 through 13-29 and this section, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this subsection, the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. The following additional rules, unless otherwise agreed in writing by the parties or ordered by the court, shall apply to depositions taken by remote electronic means:

(1) The deponent shall be in the presence of the officer administering the oath and recording the deposition.

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties prior to the deposition.

(3) Nothing in subsection (g) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposi-

tion for the transmission from the location of the deponent and one site for participation of counsel located in the judicial district where the case is pending together with the cost of the stenographic, video or other electronic record. The cost of participation in a remote electronic means deposition from any other location shall be paid by the party or parties participating from such other location.

(h) Notwithstanding this section, a deposition may be attended by any party by remote electronic means even if the party noticing the deposition does not elect to use remote electronic means if (1) a party desiring to attend by remote electronic means provides written notice of such intention to all parties in either the notice of deposition or a notice served in the same manner as a notice of deposition and (2) if the party electing to participate by remote electronic means is not the party noticing the deposition, such party pays all costs associated with implementing such remote electronic participation by that party.

(i) Nothing contained in any provision providing for the use of remote electronic means depositions shall prohibit any party from securing a representative to be present at the location where the deponent is located to report on the record any events which occur in that location which might not otherwise be transmitted and/or recorded by the electronic means utilized.

(j) The party on whose behalf a deposition is taken shall bear the cost of the original transcript, and any permanent electronic record including audio or videotape. Any party or the deponent may obtain a copy of the deposition transcript and permanent electronic record including audio or videotape at its own expense.

COMMENTARY: The change to this section removes the requirement in subsection (e) that the person recording the testimony securely seal the deposition in an envelope and, in lieu thereof, requires that the person cause a watermark or other indicia of origin to be added to the deposition.

(NEW) Sec. 21-25. Applicability of Rules

Sections 21-1 through 21-24 shall apply to receivers except as otherwise provided by law, including the Uniform Commercial Real Estate Receivership Act pursuant to Chapter 930 of the General Statutes, and Section 21-19.

COMMENTARY: This new section is intended to clarify the application of the rules for receivers as set forth in Chapter 21 of the Practice Book due to the adoption of the Uniform Commercial Real Estate Receivership Act (Chapter 930 of the General Statutes), with an effective date of July 1, 2023. If adopted, the recommended effective date of this section will be from promulgation, which is upon publication in the Connecticut Law Journal, until one year following such date, unless further extended, after which additional rules relating to the UCRERA are expected to be in place.

PROPOSED AMENDMENTS TO THE JUVENILE RULES

(NEW) 35a-24. Motions for Posttermination Visitation

(a) Whenever any party seeks an order for posttermination visitation in the context of the termination of parental rights proceeding, the movant shall file a motion in accordance with Section 34a-1.

(b) The judicial authority shall hold an evidentiary hearing to determine whether such an order is necessary or appropriate to secure the welfare, protection, proper care and suitable support of a child.

(c) Upon motion of any party or upon its own motion, the judicial authority may consolidate the hearing on the motion for posttermination visitation with the termination of parental rights trial.

(d) The moving party shall have the burden of proving that posttermination visits are necessary or appropriate to secure the welfare, protection, proper care and suitable support of a child.

(e) In deciding whether to order posttermination visitation, the judicial authority may consider: the wishes of the child; the expressed interests of the birth parent; the frequency and quality of visitation between the child and birth parent prior to the termination of the parent's parental rights; the strength of the emotional bond between the child and the birth parent; any interference with present custodial arrangements; any impact on the adoption prospects for the child; and any other factors the judicial authority finds relevant and material.

COMMENTARY: The proposed rule adopts the procedure applicable to motions for posttermination visitation filed in the context of the termination of parental rights proceeding filed pursuant to General Statutes § 46b-121 (b) (1). These requirements have been established by our Supreme Court in *In re Ava W.,* 336 Conn. 545, 248 A.3d 675 (2020), and *In re Annessa J.,* 343 Conn. 642, 284 A.3d 562 (2022). In *In re Annessa J.,* the Court clarified that the applicable legal standard pursuant to § 46b-121 (b) (1) is not the traditional best interest of the child but, rather, that the granting of posttermination visitation must

be necessary or appropriate to secure the welfare, protection, proper care and suitable support of the child. The Court further concluded that the "necessary or appropriate standard is purposefully more stringent than the best interest of the child standard, as the trial court must find that posttermination visitation is necessary or appropriate—meaning proper—to secure the child's welfare." (Internal quotation marks omitted.) Id.*,* 674. With regard to the substitution of the term "appropriate" to the term "proper," the Court explained that it was warranted because "[t]he term necessary, when used in this context, has one fixed meaning: Impossible to be otherwise . . . indispensable; requisite; [or] essential . . . [and] given the fact that the preceding word in the standard is necessary, we choose to adopt a definition of appropriate that aligns with the more exacting term, necessary . . . [i.e.,] proper." (Citations omitted; internal quotation marks omitted.) Id., 673–74.

PROPOSED AMENDMENTS TO THE CRIMINAL RULES

Sec. 38-3. —Release by Bail Commissioner or Intake, Assessment, and Referral Specialist

(a) Upon notification by a law enforcement officer that an arrested person has not posted bail, a bail commissioner or an intake, assessment, and referral specialist shall promptly conduct an interview and investigation and, based upon release criteria established by the court support services division, shall, except as provided in subsection (c) of this section, promptly order the release of the arrested person upon

the first of the following conditions of release found sufficient to ensure his or her appearance in court:

(1) The arrested person's execution of a written promise to appear without special conditions;

(2) The arrested person's execution of a written promise to appear with any of the nonfinancial conditions specified in subsection (b) of this section;

(3) The arrested person's execution of a bond without surety in no greater amount than necessary;

(4) The arrested person's execution of a bond with surety in no greater amount than necessary.

If the arrested person is unable to meet the conditions of release ordered, the bail commissioner or intake, assessment, and referral specialist shall inform the court in a report prepared pursuant to subsection (d) of this section.

(b) In addition to or in conjunction with any of the conditions enumerated in subsection (a) of this section, the bail commissioner or intake, assessment, and referral specialist may impose nonfinancial conditions of release, which may require that the arrested person do any of the following:

(1) Remain under the supervision of a designated person or organization;

(2) Comply with specified restrictions on his or her travel, association, or place of abode;

(3) Not engage in specified activities, including the use or possession of a dangerous weapon, <u>or the unlawful use or possession of</u> an intoxicant or a controlled substance;

(4) Not use classes of intoxicants or controlled substances, if the bail commissioner or intake, assessment and referral specialist makes a finding that use of such classes of intoxicants or controlled substances would pose a danger to the arrested person or to the public and includes individualized reasons supporting such finding, provided that such finding shall not consider any prior arrests or convictions for use or possession of cannabis;

[(4)**]** (5) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense; or

[(5)**]** (6) Satisfy any other condition that is reasonably necessary to ensure his or her appearance in court.

Any of the conditions imposed under subsection (a) of this section and this subsection shall be effective until the appearance of such person in court.

(c) No person shall be released upon the execution of a written promise to appear or the posting of a bond without surety if the person is charged with a family violence crime and, in the commission of such crime, the person used or threatened the use of a firearm.

(d) The bail commissioner shall prepare for review by the judicial authority an interview record and a written report for each person interviewed. The written report shall contain the information obtained during the interview and verification process, the arrested person's prior criminal record, if possible, the determination or recommendation of the bail commissioner concerning terms and conditions of release, and, where applicable, a statement that the arrested person was unable to meet the conditions of release ordered by the bail commissioner or the intake, assessment, and referral specialist.

COMMENTARY: The revisions to this rule make the rule consistent with the correlating statute, General Statutes § 54-63d, as amended by Public Acts, Spec. Sess., June, 2021, No. 21-1 § 17, regarding limitations on a bail commissioner's authority to impose a condition of release prohibiting a defendant from using or possessing controlled substances or intoxicants.

Sec. 38-4. —Release by Judicial Authority

(a) Except as provided in subsection (c) of this section, when any defendant is presented before a judicial authority, such authority shall, in bailable offenses, promptly order the release of such defendant upon the first of the following conditions of release found sufficient to reasonably ensure the defendant's appearance in court:

(1) The defendant's execution of a written promise to appear without special conditions;

(2) The defendant's execution of a written promise to appear with nonfinancial conditions;

(3) The defendant's execution of a bond without surety in no greater amount than necessary;

(4) The defendant's deposit with the clerk of the court of an amount of cash equal to **[**10**]** 7 percent of the amount of the surety bond set, pursuant to Section 38-8;

(5) The defendant's execution of a bond with surety in no greater amount than necessary.

In no event shall the judicial authority prohibit a bond from being posted by surety.

(b) The judicial authority may, in determining what conditions of release will reasonably ensure the appearance of the defendant in

court pursuant to subsection (a) of this section, consider the following factors:

(1) The nature and circumstances of the offense;

(2) The defendant's record of previous convictions;

(3) The defendant's past record of appearance in court;

(4) The defendant's family ties;

(5) The defendant's employment record;

(6) The defendant's financial resources, character, and mental condition;

(7) The defendant's community ties**[.]**; and

(8) In the case of a violation of General Statutes § 53a-222a when the condition of release was issued for a family violence crime, as defined in General Statutes § 46b-38a, the heightened risk posed to victims of family violence by violations of conditions of release.

(c) When any defendant charged with a serious felony enumerated in General Statutes § 54-64a (b) (1) or a family violence crime, as defined in General Statues § 46b-38a, is presented before a judicial authority, such authority shall, in bailable offenses, promptly order the release of such defendant upon the first of the following conditions of release found sufficient to reasonably ensure the defendant's appearance in court and that the safety of any other person will not be endangered:

(1) The defendant's execution of a written promise to appear without special conditions;

(2) The defendant's execution of a written promise to appear with nonfinancial conditions;

(3) The defendant's execution of a bond without surety in no greater amount than necessary;

(4) The defendant's deposit with the clerk of the court of an amount of cash equal to **[10]** 7 percent of the amount of the surety bond set, pursuant to Section 38-8;

(5) The defendant's execution of a bond with surety in no greater amount than necessary.

In no event shall the judicial authority prohibit a bond from being posted by surety.

(d) The judicial authority may, in determining what conditions of release will reasonably ensure the appearance of the defendant in court and that the safety of any other person will not be endangered pursuant to subsection (c) of this section, consider the following factors:

(1) The nature and circumstances of the offense;

(2) The defendant's record of previous convictions;

(3) The defendant's past record of appearance in court after being admitted to bail;

(4) The defendant's family ties;

(5) The defendant's employment record;

(6) The defendant's financial resources, character, and mental condition;

(7) The defendant's community ties;

(8) The number and seriousness of the charges pending against the defendant;

(9) The weight of evidence against the defendant;

(10) The defendant's history of violence;

(11) Whether the defendant has previously been convicted of similar offenses while released on bond; **[and]**

(12) The likelihood based upon the expressed intention of the defendant that he or she will commit another crime while released**[.]**; and

(13) the heightened risk posed to victims of family violence by violations of conditions of release and court orders of protection.

When imposing conditions of release under subsection (c) of this section, the court shall state for the record any factors under subsection (d) of this section that it considered and the findings that it made as to the danger, if any, that the defendant might pose to the safety of any other person upon the defendant's release that caused the court to impose the specific conditions of release that it imposed.

(e) If the defendant is charged with no offense other than a misdemeanor, the court shall not impose financial conditions of release on such person unless:

(1) The defendant is charged with a family violence crime;

(2) The defendant requests such financial conditions; or

(3) The judicial authority makes a finding on the record that there is a likely

risk that:

(A) The defendant will fail to appear in court, as required;

(B) The defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

(C) The defendant will engage in conduct that threatens the safety of himself or herself or another person.

In making such finding, the judicial authority may consider past criminal history, including any prior record of failing to appear as required in court that resulted in any conviction for failure to appear in the first degree, in violation of General Statutes § 53a-172, or any conviction during the previous ten years for Failure to Appear in the Second Degree, in violation of General Statutes § 53a-173, and any other pending criminal cases.

(f) In addition to or in conjunction with any of the conditions enumerated in subsection (a) or (c) of this section, the judicial authority may, when it has reason to believe that the defendant is drug-dependent and where necessary, reasonable, and appropriate, order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such defendant.

(g) If the judicial authority determines that a nonfinancial condition of release should be imposed in addition to or in conjunction with any of the conditions enumerated in subsection (a) or (c) of this section, the judicial authority shall order the pretrial release of the defendant subject to the least restrictive condition or combination of conditions that the judicial authority determines will reasonably ensure the appearance of the defendant in court and, when the defendant is charged with a felony enumerated in General Statutes § 54-64a (b) (1) or a family violence crime, that the safety of any person will not be endan-

gered, which conditions may include an order that he or she do one or more of the following:

(1) Remain under the supervision of a designated person or organization;

(2) Comply with specified restrictions on his or her travel, association, or place of abode;

(3) Not engage in specified activities, including the use or possession of a dangerous weapon, an intoxicant, or a controlled substance;

(4) Provide sureties of the peace pursuant to General Statutes § 54-56f under supervision of a designated bail commissioner or intake, assessment and referral specialist;

(5) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(6) Maintain employment or, if unemployed, actively seek employment;

(7) Maintain or commence an educational program;

(8) Be subject to electronic monitoring; or

(9) Satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant in court and that the safety of any other person will not be endangered.

The judicial authority shall state on the record its reasons for imposing any such nonfinancial condition.

(h) The judicial authority may require that the defendant subject to electronic monitoring pursuant to subsection (g) of this section pay directly to the electronic monitoring service provider a fee for the cost of such electronic monitoring services. If the judicial authority finds

that the defendant subject to electronic monitoring is indigent and unable to pay the costs of electronic monitoring services, it shall waive such costs.

(i) If any defendant is not released, the judicial authority shall order the defendant committed to the custody of the Commissioner of Correction until he or she is released or discharged in due course of law.

COMMENTARY: The revisions to this rule make the rule consistent with the correlating statute, General Statutes § 54-64a, as amended by Public Acts 2021, No. 21-78, § 16, regarding the authority for the court, when determining appropriate conditions of release, to consider the risk a defendant poses to victims of family violence via violations of conditions of release.

Sec. 38-8. [Ten] Seven Percent Cash Bail

Unless otherwise ordered by the judicial authority, **[10]** 7 percent cash bail shall be automatically available for surety bonds not exceeding **[**$20,000**]** $50,000. For surety bond amounts exceeding **[**$20,000**]** $50,000, **[10]** 7 percent cash bail may be granted pursuant to an order of the judicial authority. This **[10]** 7 percent cash bail option applies to bonds set by the court as well as bonds set at the police department.

When **[10]** 7 percent cash bail is authorized either automatically or pursuant to court order, upon the depositing in cash, by the defendant or any other person in his or her behalf other than a paid surety, of **[10]** 7 percent of the surety bond set, the defendant shall thereupon be admitted to bail in the same manner as a defendant who has executed a bond for the full amount. If such bond is forfeited, the

defendant shall be liable for the full amount of the bond. Upon discharge of the bond, the **[**10**]** 7 percent cash deposit made with the clerk shall be returned to the person depositing the same, less any fee that may be required by statute.

COMMENTARY: The changes to this section reduce from 10 percent to 7 percent the amount of cash bail required under the circumstances set out in this rule.

Sec. 43-21. Reduction of [Definite] Sentence or Discharge of Defendant by Sentencing Court

(a) Except as provided in subsection (b) of this section, [A]at any time during **[**the period of a definite sentence of three years or less,**]** an executed period of incarceration, the judicial authority may, after a hearing and for good cause shown, reduce the sentence or order the defendant discharged or released on probation or on a conditional discharge for a period not to exceed that to which the defendant could have been sentenced originally.

(b) On and after October 1, 2021, at any time during the period of a sentence in which a defendant has been sentenced prior to, on, or after October 1, 2021, to an executed period of incarceration of more than seven years as a result of a plea agreement, including an agreement in which there is an agreed upon range of sentence, upon agreement of the defendant and the state's attorney to seek review of the sentence, the judicial authority may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional dis-

charge for a period not to exceed that to which the defendant could have been originally sentenced.

(c) If, after a hearing pursuant to this section, the judicial authority denies a motion to reduce a defendant's sentence or discharge the defendant, the defendant may not file a subsequent motion for relief under this section until five years have elapsed from the date of the most recent decision denying such defendant relief pursuant to this section.

(d) The provisions of this section shall not apply to any portion of a sentence imposed that is a mandatory minimum sentence for an offense which may not be suspended or reduced by the court.

(e) At a hearing held by the judicial authority under this section, such judicial authority shall permit any victim of the crime to appear before the court or judge for the purpose of making a statement for the record concerning whether or not the sentence of the defendant should be reduced, the defendant should be discharged or the defendant should be discharged on probation or conditional discharge pursuant to subsection (a) or (b) of this section. In lieu of such appearance, the victim may submit a written statement to the judicial authority, and the judicial authority shall make such statement a part of the record at the hearing. For the purposes of this subsection, "victim" means the victim, the legal representative of the victim or a member of the deceased victim's immediate family.

COMMENTARY: The revisions to this rule make the rule consistent with the correlating statute, General Statutes § 53a-39, as amended by Public Acts 2021, No. 21-102, § 25, and Public Acts 2022, No. 22-

36 § 1, particularly to include the expanded eligibility for defendants to apply for sentence reduction, the limitations on such eligibility when a defendant's sentence is for more than seven years to serve as the result of a plea agreement, the five-year waiting period to reapply after a denial, the prohibition on sentence reduction applying to mandatory minimum sentences, and the victim's right to be heard regarding any application.

Public Hearing on Practice Book Revisions to the Rules of Appellate Procedure Being Considered by the Justices of the Supreme Court and Judges of the Appellate Court

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Including Commentaries to Proposals

April 25, 2023

NOTICE

Public Hearing on Practice Book Revisions to the Rules of Appellate Procedure Being Considered by the Justices of the Supreme Court and Judges of the Appellate Court

On May 16, 2023, at 2 p.m., a public hearing will be conducted pursuant to General Statutes § 51-14 (c) in the Supreme Court courtroom, 231 Capitol Avenue, Hartford, for the purpose of receiving comments concerning revisions to the Rules of Appellate Procedure which are being considered by the Justices and Judges, as well as any proposed new rule or any change to an existing rule that any member of the public deems desirable. The revisions proposed by the Advisory Committee on Appellate Rules follow this notice and are posted on the Judicial Branch website at http://www.jud.ct.gov/pb.htm.

Each speaker will be allowed a maximum of five minutes to offer their remarks. Anyone who believes that they may need to exceed the five minute limit or who does not wish to speak at the public hearing but wishes to offer comments on the proposed revisions may submit their comments to the co-chairs of the Advisory Committee on Appellate Rules by email to Attorney Jill Begemann at Jill.Begemann@connapp.jud.ct.gov or by forwarding their comments to the co-chairs at the following address:

Co-Chairs of the Advisory Committee on Appellate Rules
Attn: Attorney Jill Begemann
Connecticut Appellate Court
75 Elm Street
Hartford, CT 06106

All comments should be received by May 10, 2023.

Wheelchair access is located in the rear of the Supreme Court building, and may be reached from the staff parking lot between Lafayette and Oak Streets. There are a limited number of handicap accessible parking spaces in the gated staff lot, which may be entered from Oak Street. Use the intercom at the gate to speak to security about the availability of parking. Once at the accessible door, use the intercom to request entry from security. If you would like to attend the meeting and need an accommodation under the Americans with Disabilities Act, please email ADA.Contact@connapp.jud.ct.gov or call (860) 757-2200, ext. 3141 before May 10, 2023.

Hon. Gregory T. D'Auria
Hon. Eliot D. Prescott
Co-Chairs, Advisory Committee on Appellate Rules

INTRODUCTION

The following are amendments to the Rules of Appellate Procedure that are being considered by the Justices of the Supreme Court and Judges of the Appellate Court. These amendments are indicated by brackets for deletions and underlined text for added language. The designation ''NEW'' is printed with the title of each new rule. This material should be used as a supplement to the Connecticut Practice Book until the 2024 edition of the Practice Book becomes available.

CHAPTER AND SECTION HEADINGS OF THE RULES

RULES OF APPELLATE PROCEDURE

CHAPTER 60
GENERAL PROVISIONS RELATING TO APPELLATE RULES AND APPELLATE REVIEW

Sec.
60-4. Definitions
60-7. Electronic Filing; Payment of Fees

CHAPTER 61
REMEDY BY APPEAL

61-15. Stay of Execution in Death Penalty Case

CHAPTER 62
CHIEF JUDGE, APPELLATE CLERK AND DOCKET: GENERAL ADMINISTRATIVE MATTERS

62-6. Signature on Documents
62-8. Names of Counsel; Appearance

CHAPTER 63
FILING THE APPEAL; WITHDRAWALS

63-4. Additional Papers To Be Filed by Appellant and Appellee Subsequent to the Filing of the Appeal
63-8. Ordering and Filing of **[**Paper**]** Transcripts
63-8A. Electronic Copies of Transcripts

CHAPTER 66
MOTIONS AND OTHER PROCEDURES

66-2. Motions**[**, Petitions and Applications; Supporting Memoranda**]**
66-3. Motion Procedures and Filing
66-6. Motion for Review; In General
66-9. Disqualification of Appellate Jurists (NEW)

CHAPTER 67
BRIEFS

67-2. Format of Paper Briefs and Appendices for Filers Excluded or Exempt from Electronic Filing Pursuant to Section 60-8; Copies
67-2A. Format of Electronic Briefs and Party Appendices; Copies
67-3A. Word Limitations; Time for Filing Electronic Briefs and Party Appendices
67-5A. The Reply Brief
67-7A. The Amicus Curiae Electronic Brief

CHAPTER 74
DECISIONS OF JUDICIAL REVIEW COUNCIL

74-3A. Initiation of Action by Supreme Court

CHAPTER 76
APPEALS IN WORKERS' COMPENSATION CASES

76-3. Preparation of Case File; Exhibits

CHAPTER 77
PROCEDURES CONCERNING COURT CLOSURE AND SEALING ORDERS OR ORDERS LIMITING THE DISCLOSURE OF FILES, AFFIDAVITS, DOCUMENTS OR OTHER MATERIAL

77-1. Petition for Review Seeking Expedited Review of an Order concerning Court Closure, or an Order That Seals or Limits the Disclosure of Files, Affidavits, Documents or Other Material

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CHAPTER 78
REVIEW OF GRAND JURY RECORD OR FINDING ORDER

78-1. Review of an Order concerning Disclosure of Grand Jury Record or Finding

---

CHAPTER 78a
REVIEW OF ORDERS CONCERNING RELEASE ON BAIL

78a-1. Petition for Review of Order concerning Release on Bail

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CHAPTER 78b
REVIEW OF ORDERS DENYING APPLICATION FOR WAIVER OF FEES TO COMMENCE A CIVIL ACTION OR A WRIT OF HABEAS CORPUS

78b-1. Petition for Review of Order Denying Application for Waiver of Fees to Commence a Civil Action or a Writ of Habeas Corpus

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CHAPTER 81
APPEALS TO APPELLATE COURT BY CERTIFICATION FOR REVIEW IN ACCORDANCE WITH GENERAL STATUTES CHAPTERS 124 AND 440

81-2. Form of Petition
81-3. Statement in Opposition to Petition

CHAPTER 83
CERTIFICATION PURSUANT TO GENERAL STATUTES § 52-265a IN CASES OF SUBSTANTIAL PUBLIC INTEREST

83-1. Application; In General

CHAPTER 84
APPEALS TO SUPREME COURT BY CERTIFICATION FOR REVIEW

84-5. Form of Petition
84-6. Statement in Opposition to Petition

AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

CHAPTER 60
GENERAL PROVISIONS RELATING TO APPELLATE RULES AND APPELLATE REVIEW

Sec. 60-4. Definitions

"Administrative appeal" shall mean an appeal from a judgment of the Superior Court concerning the appeal to that court from a decision of any officer, board, commission or agency of the state or of any political subdivision of the state.

"Appellant" shall mean the party, or parties if an appeal is jointly filed, taking the appeal.

"Appellee" shall mean all other parties in the trial court at the time of judgment, unless after judgment the matter was withdrawn as to them or unless a motion for permission not to participate in the appeal has been granted by the court.

"Certificate of interested entities or individuals" is a certificate filed in any civil appellate matter, excluding habeas corpus matters, by counsel of record for a party that is an entity as defined in this rule. The certificate shall list for that party: (1) any parent entities and (2) all entities or individuals owning or controlling an interest of 10 percent or more of that party. If there are no other interested entities or individuals, a certificate indicating that information is required. The certificate shall also state whether the party knows of any direct or indirect ownership, controlling or legal interest for that party that counsel of record thinks could reasonably require a judge to disqualify himself or herself under Rule 2.11 of the Code of Judicial Conduct.

"Counsel of record" shall include all attorneys and self-represented parties appearing in the trial court at the time of the initial appellate filing, unless an exception pursuant to Section 62-8 applies, all attorneys and self-represented parties who filed the appellate matter, and all attorneys and self-represented parties who file an appearance in the appellate matter.

"Entity" means any corporation, limited liability company, partnership, limited liability partnership, firm or any association that is not a governmental entity or its agencies.

"Filed" shall mean the receipt by the appellate clerk of a paper or document by electronic submission pursuant to Section 60-7. If an exemption to electronic filing has been granted or if the electronic filing requirements do not apply, filed shall mean receipt of the paper or document by hand delivery, by first class mail or by express mail delivered by the United States Postal Service or an equivalent commercial service. If a document must be filed by a certain date under these rules or under any statutory provision, the document must be received by the appellate clerk by the close of business on that date; it is not sufficient that a document be mailed by that date to the appellate clerk unless a rule or statutory provision expressly so computes the time.

"Issues" shall include claims of error, certified questions and questions reserved.

"Motion" shall include applications and petitions, other than petitions for certification. A preappeal motion is one that is filed prior to or independent of an appeal.

"Paper" and "Document" shall include an electronic submission that complies with the procedures and standards established by the chief clerk of the appellate system under the direction of the administrative judge of the appellate system and a paper or document created in or converted to a digital format by the Judicial Branch.

"Petition" does not include petitions for certification unless the context clearly requires.

"Record" shall include the case file, any decisions, documents, transcripts, recordings and exhibits from the proceedings below, and,

in appeals from administrative agencies, the record returned to the trial court by the administrative agency.

"Requests" shall include correspondence and notices as permitted by these rules.

["Signature" shall be made upon entry of an attorney's individual juris number or a self-represented party's user identification number during the filing transaction, unless an exemption from the requirements of Section 60-7 (d) has been granted or applies.**]**

"Submission" shall mean a "paper" or a "document" and shall include an electronic submission that complies with the procedures and standards established by the chief clerk of the appellate system under the direction of the administrative judge of the appellate system.

(For additional definitions, see Secs. 62-2 and 76-6.)

COMMENTARY: The purpose of this amendment is to eliminate any conflict between this section and Section 62-6 by deleting the definition of "[s]ignature."

Sec. 60-7. Electronic Filing; Payment of Fees

(a) Counsel of record must file all appellate papers electronically unless the court grants a request for exemption. Papers may be filed, signed, or verified by electronic means that comply with procedures and standards established by the chief clerk of the appellate system under the direction of the administrative judge of the appellate system. A paper filed by electronic means in compliance with such procedures and standards constitutes a written paper for the purpose of applying these rules.

(b) At the time of filing, the appellant must (1) pay all required fees; or (2) upload a signed application for waiver of fees and the order of the trial court granting the fee waiver; or (3) certify that no fees are required. Any document that requires payment of a fee as a condition of filing may be returned or rejected for noncompliance with the Rules of Appellate Procedure.

(c) All self-represented parties must have an account with E-Services unless exempt from electronic filing pursuant to Section 60-8. All non-exempt self-represented parties in family matters, child protection matters, matters involving protected information and in all other matters in which the self-represented party's E-Services user identification [number] has not already been provided must submit an appellate electronic access form (JD-AC-015). This form must be filed within ten days of the filing of the appeal. Failure to comply with this rule may result in the dismissal of the appeal or the imposition of sanctions pursuant to Section 85-1.

(d) The requirements of this section do not apply to documents filed by incarcerated self-represented parties, the clerk of the trial court, the official court reporter, or the clerk of the court for any other state, federal or tribal court. This section also does not apply to any state board or commission filing documents with the appellate clerk pursuant to Section 68-1, 74-2A, 74-3A, 75-4, 76-3 or 76-5.

COMMENTARY: The purpose of this amendment is to make the rules consistently refer to a self-represented party's "E-Services user identification."

CHAPTER 61
REMEDY BY APPEAL

Sec. 61-15. Stay of Execution in Death Penalty Case

[Repealed as of Jan. 1, 2024.]

HISTORY—2024: Prior to 2024, this section read: "If the defendant is sentenced to death, the sentence shall be stayed for the period within which to file an appeal. If the defendant has taken an appeal to the Supreme or Appellate Court of this state or to the United States Supreme Court or brought a writ of error, writ of certiorari, writ of habeas corpus, application for a pardon or petition for a new trial, the taking of the appeal, the making of the application for a writ of certiorari or for a pardon, or the return into court of the writ of error, writ of habeas corpus, or petition for a new trial shall, unless, upon application by the state's attorney and after hearing, the Supreme Court otherwise orders, stay the execution of the death penalty until the clerk of the court where the trial was had has received notification of the termination of any such proceeding by decision or otherwise, and for thirty days thereafter. Upon motion by the defendant, filed with the appellate clerk, the Supreme Court may grant a stay of execution to prepare a writ of error, a writ of certiorari, writ of habeas corpus, application for a pardon or petition for a new trial. Upon motion by the defendant and after hearing, the Supreme Court may extend a stay of execution beyond the time limits stated within this rule for good cause shown. No appellate procedure shall be deemed to have terminated until the end of the period allowed by law for the filing of a motion for reconsideration, or, if such motion is filed, until the proceedings consequent thereon are finally determined. When execution is stayed under the provisions of this section, the clerk of the court shall forthwith give notice thereof to the warden of the institution in which such defendant is in custody. If the original judgment of conviction has been affirmed or remains in full force at the time when the clerk has received the notification of the termination of any proceedings by appeal, writ of certiorari, writ of error, writ of habeas corpus, application for a pardon or petition for a new trial, and the day designated for the infliction of the death penalty has then passed or will pass within thirty days thereafter, the defendant shall, within said period of thirty days, upon an order of the court in which the judgment was rendered at a regular or special criminal session thereof, be presented before said court by the warden of the institution in which the defendant is in custody or his deputy, and the court, with the judge assigned to hold the session presiding, shall thereupon designate a day for the infliction of the death penalty and the clerk of the court shall issue a warrant of execution, reciting therein the original judgment, the fact of the stay of execution and the final order of the court, which warrant shall be forthwith served upon the warden or his deputy. (For stays of execution in other criminal cases, see Section 61-13.)

"(Adopted July 21, 1999, to take effect Jan. 1, 2000; amended Sept, 16, 2015, to take effect Jan. 1, 2016.)"

COMMENTARY: Public Acts 2012, No. 12-5 (P.A. 12-5) repealed the death penalty for all crimes committed on or after April 25, 2012, and *State* v. *Santiago*, 318 Conn. 1, 122 A.3d 1 (2015), held that the state constitution no longer permits the execution of individuals for crimes committed prior to the enactment of P.A. 12-5; therefore, this section is obsolete.

CHAPTER 62
CHIEF JUDGE, APPELLATE CLERK AND DOCKET: GENERAL ADMINISTRATIVE MATTERS

Sec. 62-6. Signature on Documents

(a) All documents shall be signed by counsel of record. Attorneys shall sign electronically filed documents and electronically submitted

briefs by entering their individual juris number during the filing transaction. Self-represented parties shall sign electronically filed documents and electronically submitted briefs by entering their **[**self-represented party**]** E-Services user identification **[**number**]** during the filing transaction. **[**See Section 60-4.**]** If a document or brief is electronically filed by more than one self-represented party, it must include the E-Services user identification or written signature of each self-represented party filing the document.

[Paper briefs and appendices and documents filed by counsel of record who are exempt from electronic filing requirements shall be signed and shall set forth the signer's telephone number, mailing address, and e-mail address below the signature.**]**

(b) All documents, except Judicial Branch forms, must include a signature block at the end of the document or brief, but before the appendix, if any. The signature block shall include the name, phone number, address, and, unless filed by counsel of record that are excluded from electronic filing, e-mail address for counsel of record filing the document.

(c) An attorney may assist a client in preparing a document or brief to be signed and filed by the client. In such cases, the attorney shall insert the notation "prepared with assistance of counsel" on any document or brief prepared by the attorney. The attorney is not required to sign the document or brief, and the filing of such a document or brief shall not constitute an appearance by the attorney.

COMMENTARY: The purpose of the amendments to subsections (a) and (b) of this section is to address filings by self-represented

parties and to eliminate any conflict between this section and Section 60-4, in which the definition of ''[s]ignature'' has been deleted. The purpose of the new subsection (c) is to allow an attorney to assist a client in the preparation of appellate filings without having to file an appearance.

Sec. 62-8. Names of Counsel; Appearance

Counsel of record for all parties appearing in the trial court at the time of the appellate filing shall be deemed to have appeared in the appeal unless permission to withdraw has been granted pursuant to Section 62-9 or unless an in place of appearance pursuant to Section 3-8 has been filed by other counsel or unless the other provisions of Section 3-9 apply. Counsel of record who filed the appeal or filed an appearance in the Appellate Court after the appeal was filed shall be deemed to have appeared in the trial court for the limited purpose of prosecuting or defending the appeal. Unless otherwise provided by statute or rule, counsel who have so appeared shall be entitled to review all trial court docket sheets and files, including sealed files, and shall be entitled to participate in proceedings in the trial court on motions filed in the trial court pursuant to Section 66-1 and motions filed in the Appellate Court but referred to the trial court for decision.

[An appearance filed after the case is ready pursuant to Section 69-2 requires permission of the court.**]**

This rule shall not be deemed to permit appellate counsel to review records that were sealed as to trial counsel but retained in the trial court file for appellate review.

This rule shall not be deemed to excuse trial counsel with respect to preserving a defendant's right to appeal pursuant to Section 63-7; nor shall this rule prevent trial counsel from moving for a withdrawal of appearance pursuant to Section 62-9.

COMMENTARY: The purpose of this amendment is to eliminate the requirement that counsel file a motion for permission to file an appearance after the case is ready, as any such appearance will simply be forwarded to the court by the appellate clerk for recusal screening purposes.

CHAPTER 63
FILING THE APPEAL; WITHDRAWALS

Sec. 63-4. Additional Papers To Be Filed by Appellant and Appellee Subsequent to the Filing of the Appeal

(a) Within ten days of filing an appeal, the appellant shall also file with the appellate clerk the following:

(1) A preliminary statement of the issues (JD-SC-038) intended for presentation on appeal. If any appellee wishes to: (A) present for review alternative grounds upon which the judgment may be affirmed; (B) present for review adverse rulings or decisions of the court which should be considered on appeal in the event the appellant is awarded a new trial; or (C) claim that a new trial rather than a directed judgment should be ordered if the appellant is successful on the appeal, that appellee shall file a preliminary statement of issues within twenty days from the filing of the appellant's preliminary statement of the issues.

Whenever the failure to identify an issue in a preliminary statement of issues prejudices an opposing party, the court may refuse to consider such issue.

(2) A designation of the proposed contents of the clerk appendix (JD-SC-039) that is to be prepared by the appellate clerk under Section 68-2A listing the specific documents docketed in the case file that the appellant deems are necessary to include in the clerk appendix for purposes of presenting the issues on appeal, including their dates of filing in the proceedings below, and, if applicable, their number as listed on the docket sheet. The appellant shall limit the designation to the documents referenced in Section 68-3A for inclusion in the clerk appendix. If any other party disagrees with the inclusion of any documents designated by the appellant, or deems it necessary to include other documents docketed in the case file in the clerk appendix, that party may, within seven days from the filing of the appellant's designation of the proposed contents of the clerk appendix, file its own designation of the proposed contents of the clerk appendix.

(3) A certificate stating that no transcript is deemed necessary (JD-SC-040) or a transcript order confirmation from the official court reporter pursuant to Section 63-8. If the appellant is to rely on any transcript delivered prior to the filing of the appeal, the transcript order confirmation shall indicate that an electronic version of a previously delivered transcript has been ordered.

If any other party deems any other parts of the transcript necessary that were not ordered by the appellant, that party shall, within twenty days of the filing of the appellant's transcript papers, file a transcript

order confirmation for an order placed in compliance with Section 63-8. If the order is for any transcript delivered prior to the filing of the appeal, the transcript order confirmation shall indicate that an electronic version of a previously delivered transcript has been ordered.

(4) A docketing statement containing the following information to the extent known or reasonably ascertainable by the appellant: (A) the names and addresses of all parties to the appeal, and the names, addresses, and e-mail addresses of trial and appellate counsel of record; (B) the case names and docket numbers of all pending cases, including appeals to the Supreme Court or Appellate Court, that **[**which**]** arise from substantially the same controversy as the cause on appeal**[**,**]** or involve issues closely related to those presented by the appeal; (C) **[**whether**]** the case name and docket number with respect to any active criminal protective order, civil protective order, or civil restraining order that governs any of the parties to the appeal as well as the case name and docket number with respect to any such order that has expired or previously was requested but not issued **[**or issued during any of the underlying proceedings**]**; and (D) in criminal and habeas cases, the defendant's or petitioner's conviction(s) and sentence(s) that are the subject of the direct criminal or habeas appeal and whether the defendant or petitioner is incarcerated. If additional information is or becomes known to, or is reasonably ascertainable by the appellee, the appellee shall file a docketing statement supplementing the information required to be provided by the appellant.

When an appellant or an appellee is aware that one or more appellees have no interest in participating in the appeal, the appellant and

any other appellees may be relieved of the requirement of certifying copies of filings to those appellees by designating the nonparticipating appellee(s) in a section of the docketing statement named ''Nonparticipating Appellee(s).'' This designation shall indicate that if no docketing statement in disagreement is filed, subsequent filings will not be certified to those appellees.

If an appellee disagrees with the nonparticipating designation, that appellee shall file a docketing statement indicating such disagreement within twenty days of the filing of that designation. All documents filed on or before the expiration of the time for an appellee to file a docketing statement in disagreement as stated above shall be delivered pursuant to Section 62-7 (b) to all counsel of record. If no docketing statement in disagreement is filed, subsequent filings need not be certified to nonparticipating appellees.

(5) In all noncriminal matters, except for matters exempt from a preargument conference pursuant to Section 63-10, a preargument conference statement (JD-SC-028).

(6) A constitutionality notice, in all noncriminal cases where the constitutionality of a statute has been challenged. Said notice shall identify the statute, the name and address of the party challenging it, and whether the statute's constitutionality was upheld by the trial court. The appellate clerk shall deliver a copy of such notice to the attorney general. This section does not apply to habeas corpus matters based on criminal convictions, or to any case in which the attorney general is a party, has appeared on behalf of a party, or has filed an amicus brief in proceedings prior to the appeal.

(7) In matters in which documents are under seal, conditionally or otherwise, or limited as to disclosure, a notice identifying the time, date, scope and duration of the sealing order with a copy of the order. (See Section 77-2.)

(8) If an entity as defined in Section 60-4 is an appellant, counsel of record for that entity shall file a certificate of interested entities or individuals as defined in Section 60-4 in any civil appeal to assist the appellate jurists in making an informed decision regarding possible disqualification from the appeal. If an entity in a civil appeal is an appellee, counsel of record for the entity shall file a certificate of interested entities or individuals within twenty days of the filing of the appellant's preliminary statement of the issues. Counsel of record has a continuing duty to amend the certificate of interested entities or individuals during the pendency of the appeal if any changes occur.

(b) Except as otherwise provided, a party may as of right file amendments to the preliminary statement of issues at any time until that party's brief is filed. Amendments to the docketing statement may be filed at any time. Amendments to the transcript statement may be made only with leave of the court. **[**If leave to file such an amendment is granted, the adverse party shall have the right to move for permission to file a supplemental brief and for an extension of time.**]** Amendments to the preargument conference statement shall not be presented in writing but may be presented orally at the preargument conference, if one is held.

(c) Failure to comply with this rule shall be deemed as sufficient reason to schedule a case for sanctions under Section 85-3 or for dismissal under Section 85-1.

(d) The use of the forms indicated in subdivisions (1), (2) and (3) of subsection (a) is optional. The party may instead draft documents in compliance with the rules.

COMMENTARY: These amendments update this section to correspond to new optional forms for the preliminary statement of the issues, designation of the proposed contents of the clerk appendix and certificate of transcript. Note that the preargument conference statement (JD-SC-028) in subsection (a) (5) is not optional. In addition, the purpose of the amendments to subsection (a) (4) (C) of this section is to assist the appellate clerk with its obligations under the Violence Against Women Act Reauthorization Act of 2022, as more specific information is requested to assist in the screening of appeals in civil matters for preargument conferences.

Sec. 63-8. Ordering and Filing of [Paper] Transcripts

(a) **[**Prior to the deadline for compliance with Section 63-4 (a) (3),**]** Within ten days of filing an appeal, the appellant shall, subject to Section 63-6 or Section 63-7 if applicable, order from an official court reporter an electronic version of the transcript of the parts of the proceedings not already on file **[**which**]** that the appellant deems necessary for the proper presentation of the appeal. Such order shall specify the case name, docket number, judge's name(s), and hearing date(s), and include a brief, detailed statement describing the parts of the proceedings of which a transcript has been ordered. If any other party deems other parts of the transcript necessary that were not ordered

by the appellant, that party shall, within twenty days from the filing of the appellant's **[**transcript papers,**]** certificate that no transcript is deemed necessary or transcript order confirmation, similarly order those parts from an official court reporter. Upon submission of a transcript order, the ordering party will be provided with an order confirmation that includes the information required above.

(b) A party shall promptly make satisfactory arrangements for payment of the costs of the transcript, pursuant to guidelines established by the chief court administrator. After those arrangements have been made, an official court reporter shall provide to the ordering party an acknowledgment of the order, with an estimated date of delivery and estimated number of pages in the transcript order. The ordering party shall file the acknowledgment with the appellate clerk with certification pursuant to Section 62-7. If the final portion of the transcript cannot be delivered on or before the estimated delivery date on the acknowledgment, the official court reporter will, not later than the next business day, provide to the ordering party an amended transcript order acknowledgment with a revised estimated delivery date. The ordering party shall file the amended acknowledgment form immediately with the appellate clerk with certification pursuant to Section 62-7.

(c) **[**An official court reporter shall cause each court recording monitor involved in the production of the transcript to prepare a certificate of delivery stating the number of pages in the transcript and the date of its delivery to the party who ordered it. If delivery is by mail, the transcript shall be mailed first class certified, return receipt requested. The date of mailing is the date of delivery. If delivery is by hand, the court recording monitor shall obtain a receipt acknowledging delivery.

The date of the receipt is the date of delivery. Each court recording monitor shall forward the certificates of delivery to the official court reporter. Upon receipt of all the certificates of delivery, the official court reporter shall deliver to the ordering party a certificate of completion stating the total number of pages in the entire transcript order and the date of final delivery of the transcript order.**]** Whenever an electronic transcript is ordered in accordance with this section, Court Transcript Services shall have an electronic version of the transcript produced and deliver it to the ordering party and the official court reporter. Upon receipt of all electronic versions of the transcript ordered, the official court reporter shall deliver to the ordering party a certificate of completion stating the total number of pages in the entire transcript order and the date of final delivery of the transcript order. The official court reporter shall then deliver the electronic transcripts to the appellate clerk, with a certification that the electronic version of the transcript is accurate and a copy of the certificate of completion.

(d) Upon receipt of the certificate of completion from the official court reporter, the ordering party shall file with the appellate clerk the certificate of completion along with a certification that a copy of the certificate of completion has been delivered to all counsel of record in accordance with Section 62-7.

[(e) (1) The appellant is required, either before or simultaneously with the filing of the appellant's brief, to file with the appellate clerk one unmarked, nonreturnable copy of the transcript, including a copy of the official court reporter's certification page, ordered pursuant to subsection (a).

(2) All other parties are likewise required, either before or simultaneously with the filing of their briefs, to file those additional portions

ordered pursuant to subsection (a) but shall not include the portions already filed by the appellant.

(3) The party filing the transcript shall provide the appellate clerk and all opposing counsel with a list of the number, and inclusive dates, of the volumes being filed. Form JD-CL-62, or one similar to it, should be used to satisfy this subsection.**]**

COMMENTARY: The purpose of these amendments is to eliminate the requirement that parties file paper copies of transcripts with the appellate clerk, as several subsections concerning delivery and filing of paper transcripts are obsolete.

Sec. 63-8A. Electronic Copies of Transcripts

[Repealed as of Jan. 1, 2024.]

HISTORY—2024: Prior to 2024, this section read: ''In addition to the requirements of Section 63-8:

''(a) Any party ordering a transcript of evidence as part of an appeal, a writ of error, or a motion for review shall, at the same time, order from a court recording monitor an electronic version of the transcript. If the party received the paper transcript prior to the filing of the appeal, the party shall order an electronic version of the transcript within the period specified by these rules for the ordering of a transcript.

''(b) Whenever an electronic transcript is ordered in accordance with this section, the court recording monitor shall produce an electronic version of the transcript and deliver it to the ordering party and the official court reporter. Upon receipt of all electronic versions of the transcript ordered, the official court reporter shall deliver them to the appellate clerk, with a certification that the electronic version of the transcript is accurate and a copy of the certificate of completion.''

COMMENTARY: Due to the proposed amendments to Section 63-8 that eliminate the requirement that parties file paper copies of transcripts with the appellate clerk, this section is obsolete.

CHAPTER 66
MOTIONS AND OTHER PROCEDURES

Sec. 66-2. Motions[, Petitions and Applications; Supporting Memoranda]

(a) Motions**[**, petitions and applications**]** shall be specific <u>and shall not request multiple forms of relief</u>. **[**No motion, petition or application will be considered unless it clearly sets**]** <u>The motion shall set</u> forth in

separate paragraphs appropriately captioned: (1) a brief history of the case; (2) the specific facts upon which the moving party relies; and (3) the legal grounds upon which the moving party relies. **[**A separate memorandum of law may but need not be filed. If the moving party intends to file a memorandum of law in support of the motion, petition or application, however, such memorandum shall be filed either as an appendix to or as a part of the motion, petition or application.**]**

[A party intending to oppose**]** Any opposition to a motion shall be filed within ten days after the filing of the motion and shall**[**, petition or application shall file a brief statement**]** clearly set**[**ting**]** forth in separate paragraphs appropriately captioned: (1) the specific facts upon which the opposing party relies, and (2) the legal grounds upon which the opposing party relies. **[**the factual and legal grounds for opposition within ten days after the filing of the motion, petition or application. If an opposing party chooses to file a memorandum of law in opposition to a motion, petition or application, that party shall do so within ten days after the filing of the motion, petition or application.**]** An opposition shall not include any request for relief that should be filed as a separate motion **[**by the opposing party to the motion, petition or application**]**. Responses to oppositions are not permitted. **[**Except as provided in subsection (e) below, no proposed order is required.**]**

(b) Except **[**with special permission of the appellate clerk,**]** as otherwise ordered, **[**the**]** motions and oppositions**[**, petition or application and memorandum of law filed together**]** shall not exceed 3500 words **[**ten pages, and the memorandum of law in opposition thereto shall

not exceed ten pages**]**. The word count is exclusive of the case caption, signature block of counsel of record, certifications, and appendix, if any.

(c) Where counsel for the moving party **[**certifies**]** attests that all other parties to the appeal have consented to the granting of the motion**[**, petition or application**]**, the motion**[**, petition or application**]** may be submitted to the court immediately upon filing and may be acted upon without awaiting expiration of the time for filing an opposition **[**papers**]**. Notice of such consent **[**certification**]** shall be indicated on the first page of the **[**document**]** motion.

(d) Motions which are not dispositive of the appeal may be ruled upon by one or more members of the court subject to review by a full panel upon a motion for reconsideration pursuant to Section 71-5.

(e) Motions that are directed to the trial court, such as motions to terminate stay pursuant to Section 61-11 or motions for rectification or articulation pursuant to Section 66-5, shall: (1) include both the trial court and the Appellate Court docket numbers in the caption of the case; (2) state in the first paragraph the name of the trial judge, or panel of judges, **[**who issued the order or orders to be reviewed**]** to whom the motion is directed; **[**(3) include a proper order for the trial court if required by Section 11-1;**]** and (**[**4**]** 3) comply with the requirements of Section 66-3. Such motions will be forwarded to the trial court by the appellate clerk.

(f) When the appellate clerk issues an order on a motion**[**, petition or application**]**, the official notice date shall be the date indicated on the order for notice to the clerk of the trial court and all counsel

of record. The official notice date is not the date that such order is received.

COMMENTARY: These amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

Sec. 66-3. Motion Procedures and Filing

All motions[, petitions, applications, memoranda of law, stipulations,] and oppositions shall be filed with the appellate clerk in accordance with the provisions of Sections 60-7 and 60-8 and docketed upon filing. The submission may be returned [or rejected] for noncompliance with the Rules of Appellate Procedure. All papers shall contain a certification that a copy has been delivered to each other counsel of record in accordance with the provisions of Section 62-7.

No [paper mentioned above] motion or opposition directed to the Supreme or Appellate Court shall be filed after expiration of the time for its filing unless the filer demonstrates good cause for its untimeliness in a separate section captioned "good cause for late filing." No motion directed to the trial court that is required to be filed with the appellate clerk shall be filed after expiration of the time for its filing without permission of the court.[, except on separate written] A motion to file a late trial court motion must be accompanied by the proposed trial court motion [and by consent of the Supreme or Appellate Court]. No amendment to [any of the above mentioned papers] a motion or opposition shall be filed [except on written motion and by consent] without permission of the court.

[Motions shall be typewritten and fully double spaced, and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two fonts, of 12 point or larger size, are approved for use in motions: Arial and Univers. Each page of a motion, petition, application, memorandum of law, stipulation and opposition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch.**]** Motions and oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes, and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

Any preappeal motion**[**, petition, application**]** or opposition to a preappeal motion filed by an entity as defined in Section 60-4 in a civil matter shall be accompanied by a certificate of interested entities or individuals filed by counsel of record.

COMMENTARY: These amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

Sec. 66-6. Motion for Review; In General

(a) The court may, on written motion for review stating the grounds for the relief sought, modify or vacate (1) any order made by the trial court under Section 66-1 (a); (2) any action by the appellate clerk

under Section 66-1 (c); (3) any order made by the trial court, or by the administrative law judge in cases arising under General Statutes § 31-290a (b), relating to the perfecting of the record for an appeal or the procedure of prosecuting or defending against an appeal; (4) any order made by the trial court concerning a stay of execution in a case on appeal; (5) any order made by the trial court concerning the waiver of fees, costs and security under Section 63-6 or Section 63-7; or (6) any order concerning the withdrawal of appointed appellate counsel pursuant to Section 62-9 (d). Motions for review of the clerk's taxation of costs under judgments of the court having appellate jurisdiction shall be governed by Section 71-3.

(b) Motions for review shall be filed within ten days **[**from the issuance**]** of notice of the order sought to be reviewed. **[**Motions for review of the clerk's taxation of costs under judgments of the court having appellate jurisdiction shall be governed by Section 71-3.**]** If the order is issued in connection with a motion that was filed with the appellate clerk, the motion for review shall be filed within ten days from the issuance of notice by the appellate clerk of the order from the trial court sought to be reviewed. Otherwise, if notice of the order sought to be reviewed is given by the trial court in open court with the party seeking review present, the time for filing the motion for review shall begin on that day; if notice is given to the party seeking review only by mail or electronic delivery, the time for filing the motion for review shall begin on the day that notice was sent to counsel of record by the clerk of the trial court.

(c) If a motion for review of a decision depends on a transcript of evidence or proceedings taken by an official court reporter or court recording monitor, the moving party shall file with the motion either a transcript or a copy of the transcript order confirmation. The opposing party may, within one week after the transcript or the copy of the order confirmation is filed by the moving party, file either a transcript of additional evidence or a copy of the order confirmation for additional transcript. Parties filing or ordering a transcript shall order an electronic version of the transcript in accordance with Section 63-8A.

COMMENTARY: The purpose of these amendments is to address ambiguity in the rule as to when the ten days for filing a motion for review begins when an order is issued in connection with a motion that is filed in the Superior Court.

(NEW) Sec. 66-9. Disqualification of Appellate Jurists

(a) A justice of the Supreme Court or a judge of the Appellate Court shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such justice or judge is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct.

(b) A justice of the Supreme Court or a judge of the Appellate Court is not automatically disqualified from acting in a matter merely because: (1) the justice or judge previously practiced law with the law firm or attorney who filed an amicus brief in the matter; or (2) the justice's or judge's spouse, domestic partner, parent, or child, or any other member of the justice's or judge's family residing in his or her household is practicing or has practiced law with the law firm or attorney who filed an amicus brief in the matter; or (3) an attorney or party to the matter

has filed a lawsuit against the justice or judge or filed a complaint against the justice or judge with the Judicial Review Council or an administrative agency.

(c) When an attorney or party who has filed a lawsuit or a complaint against a justice or judge is involved in a matter before the court on which the justice or judge sits, such attorney or party shall so advise the court and other attorneys and parties to the matter, and, thereafter, the justice or judge who is the subject of the disqualification issue shall decide whether to disqualify himself or herself from acting in the matter.

COMMENTARY: The purpose of this new section is to create an appellate rule governing the disqualification of appellate jurists.

CHAPTER 67
BRIEFS

Sec. 67-2. Format of Paper Briefs and Appendices for Filers Excluded or Exempt from Electronic Filing Pursuant to Section 60-8; Copies

(a) Briefs and party appendices, if any, shall be typewritten or clearly photocopied from a typewritten original on white 8 1/2 by 11 inch paper. Unless ordered otherwise, briefs shall be copied on one side of the page only. Party appendices may be copied on both sides of the page. The page number for briefs and party appendices shall be centered on the bottom of each page. The brief shall be fully double spaced and shall not exceed three lines to the vertical inch or twenty-seven lines to the page; footnotes and block quotations may, however,

be single spaced. Only the following two fonts, of 12 point or larger size, are approved for use in briefs: Arial and Univers. Each page of a brief or party appendix shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inches; right, 1/2 inch; and bottom, 1 inch. Briefs and party appendices shall be firmly bound 1/4 inch from the left side, at points approximately 1/4, 1/2 and 3/4 of the length of the page, so as to make an easily opened volume.

(b) The brief and the party appendix, if any, may be bound together. When, however, binding the brief and party appendix together would affect the integrity of the binding, the party appendix shall be bound separately from the brief.

(c) The brief and party appendix, if any, shall include a single pagination scheme that starts on the cover page of the brief and continues throughout the entire document, on every page, including the cover and table of contents for the party appendix through to the last page of the party appendix. The page numbers shall be centered on the bottom of each page and shall be written as "Page X of XX" (e.g., Page 1 of 55 . . . Page 32 of 55 . . . Page 55 of 55). A party appendix shall have an index of the names of witnesses whose testimony is cited within it. If any part of the testimony of a witness is omitted, this shall be indicated by asterisks. After giving the name of a witness, the party who called that witness shall be designated, and it shall be stated whether the testimony quoted was given on direct, cross or other examination.

(d) If constitutional provisions, statutes, ordinances, regulations, or portions of the transcript are contained in a party appendix, they may

be reproduced in their original form so long as the document is not reduced to less than 75 percent of its original form.

(e) Briefs and separately bound party appendices, if any, shall have a suitable front cover of white heavy paper. A back cover is not necessary; however, if one is used, it must be white.

(f) Briefs and separately bound party appendices, if any, must bear on the cover, in the following order, from the top of the page: (1) the name of the court; (2) the appellate docket number; (3) the appellate case name; (4) the nature of the brief (e.g., brief of the defendant-appellant; brief of the plaintiff-appellee on the appeal and of the plaintiff-cross appellant on the cross appeal); and (5) the name, address, telephone number and e-mail address of individual counsel who is to argue the appeal and, if different, the name, address, telephone number and e-mail address of the party's counsel of record. The foregoing shall be displayed in Arial or Univers font of 12 point or larger size.

(g) **[**If the appeal is in the Supreme Court, twelve**]** Two legible photocopies of each brief and party appendix, if any, shall be filed with the appellate clerk. **[**If the appeal is in the Appellate Court, eight legible photocopies of each brief and party appendix, if any, shall be filed with the appellate clerk.**]**

(h) All copies of the brief filed with the Supreme Court or the Appellate Court must be accompanied by a: (1) certification that a copy of the brief and party appendix, if any, has been sent to each counsel of record in compliance with Section 62-7; (2) certification that the brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from

disclosure by rule, statute, court order or case law, except for briefs filed pursuant to Section 79a-6; and (3) certification that the brief complies with all provisions of this rule. The certification that a copy of the brief and party appendix has been sent to each counsel of record in compliance with Section 62-7 may be signed by counsel of record or the printing service, if any. All other certifications pursuant to this subsection shall be signed by counsel of record only.

(i) Any request for deviation from the above requirements, including requests to deviate from the requirement to redact or omit personal identifying information or information that is prohibited from disclosure by rule, statute, court order or case law, shall be filed with the appellate clerk.

COMMENTARY: The purpose of this amendment is to make the number of physical copies of briefs and appendices that are required to be filed by filers under this section match the number of physical copies that are required to be filed by other filers.

Sec. 67-2A. Format of Electronic Briefs and Party Appendices; Copies

(a) Briefs filed under this rule shall include the words ''Filed Under the Electronic Briefing Rules'' at the top center of the cover of the brief. Briefs and party appendices, if any, shall be uploaded together as a text searchable single document. Bookmarks are required and must link to sections of the brief and to items included in the party appendix. Briefs shall include internal hyperlinks for citations to items included in the party appendix. Internal hyperlinks must be clearly distinguishable from other text in the brief (e.g., underlined blue text

or highlighted text). External hyperlinks are not permitted. Any external hyperlink included in a brief will be viewed as text only. Visual aids that comply with the guidelines published on the Judicial Branch website are permitted to be included in the brief. Additional formatting information and recommendations can be found in the guidelines published on the Judicial Branch website.

(b) Briefs shall be typed in a 12 point [Century Schoolbook or New Century Schoolbook] serif font, including footnotes but excluding headings. Headings must be in a 14 point [Georgia or New Baskerville Book] serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing [is] can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes, and block quotes. Bold face or italic emphasis tools shall be used in place of underlining. Sections shall be marked sequentially using numbers or letters (e.g., 1. Introduction, 2. Statement of the facts . . . 6. Conclusion; or A. Introduction, B. Statement of the facts . . . F. Conclusion).

(c) The brief and party appendix, if any, shall include a single pagination scheme that starts on the cover page of the brief and continues throughout the entire document, on every page, including the cover and table of contents for the party appendix through to the last page of the party appendix. The page numbers shall be centered on the bottom of each page and shall be written as ''Page X of XX'' (e.g., Page 1 of 55 . . . Page 32 of 55 . . . Page 55 of 55). The party appendix shall have an index of the names of witnesses whose testi-

mony is cited within it. Any part of the testimony of a witness that is omitted shall be indicated by asterisks. After giving the name of a witness, the party who called that witness shall be designated, and it shall be stated whether the testimony quoted was given on direct, cross or other examination.

(d) Two legible photocopies of each brief and party appendix, if any, shall be filed with the appellate clerk. The party appendix may be printed on both sides of a page. The brief and party appendix may be bound together or separately. No specific type or style of binding is required as long as the documents are securely bound. The covers for all types of briefs shall be white.

(e) Briefs and separately bound party appendices, if any, must bear on the cover, in the following order, from the top of the page: (1) the name of the court; (2) the appellate docket number; (3) the appellate case name; (4) the nature of the brief (e.g., brief of the defendant-appellant; brief of the plaintiff-appellee on the appeal and of the plaintiff-cross appellant on the cross appeal); and (5) the name, address, telephone number and e-mail address of individual counsel who is to argue the appeal and, if different, the name, address, telephone number and e-mail address of the party's counsel of record. The foregoing shall be displayed in **[**Century Schoolbook or New Century Schoolbook**]** a serif font of 12 point size.

(f) Counsel of record filing a brief shall submit the electronic version of the brief and party appendix, if any, in accordance with guidelines established by the court and published on the Judicial Branch website. The electronic version shall be submitted prior to the timely filing of

the party's paper copies of the brief and party appendix pursuant to subsection (d) of this section.

(g) All electronic and paper copies of the brief submitted and filed with the Supreme Court or the Appellate Court must be accompanied by a: (1) certification that a copy of the brief and party appendix, if any, has been sent electronically to each counsel of record in compliance with Section 62-7, except for counsel of record exempt from electronic filing pursuant to Section 60-8, to whom a paper copy of the brief and party appendix, if any, must be sent; (2) certification that the brief and party appendix being filed with the appellate clerk are true copies of the brief and party appendix that were submitted electronically pursuant to subsection (f) of this section; (3) certification that the brief and party appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law, unless the brief is filed pursuant to Section 79a-6; (4) certification of the word count in the brief; (5) certification that the brief complies with all provisions of this rule; and (6) certification listing the approved deviations from this rule or that no deviations were requested/approved. The certification that a copy of the brief and party appendix has been sent to each counsel of record in compliance with Section 62-7 may be signed by counsel of record or the printing service, if any; and if copies are sent by a printing service, that certification is not required to be included in the electronic version of the brief and party appendix. All other certifications pursuant to this subsection shall be signed by counsel of record only.

[(h) A copy of the electronic confirmation receipt indicating that the brief and party appendix, if any, were submitted electronically in compliance with subsection (f) of this section shall be filed with the paper briefs and party appendices.**]**

(**[**i**]** h) Any request for deviation from the above requirements, including requests to deviate from the requirement to redact or omit personal identifying information or information that is prohibited from disclosure by rule, statute, court order or case law, shall be filed with the appellate clerk.

COMMENTARY: The purpose of these amendments is to modify some of the formatting requirements of electronic briefs while still maintaining consistency in appearance and readability.

Sec. 67-3A. Word Limitations; Time for Filing Electronic Briefs and Party Appendices

Except as otherwise ordered, the brief of the appellant shall not exceed 13,500 words. The brief shall be filed with the party appendix, if any, either within forty-five days after the delivery date of the transcript ordered by the appellant or forty- five days after the clerk appendix is sent to the parties, whichever is later. In cases where no transcript is required or the transcript has been received by the appellant prior to the filing of the appeal, the appellant's brief and party appendix, if any, shall be filed either within forty-five days of the filing of the appeal or forty-five days after the clerk appendix is sent to the parties, whichever is later.

[The delivery date of the paper—not electronic—transcript shall be used, where applicable, in determining the filing date of briefs.**]**

Any party whose interest in the judgment will not be affected by the appeal and who intends not to file a brief shall inform the appellate clerk of this intent prior to the deadline for the filing of the appellee's brief. In the case of multiple appellees, an appellee who supports the position of the appellant shall meet the appellant's time schedule for filing a brief.

Except as otherwise ordered, the brief of the appellee shall not exceed 13,500 words, and shall be filed with any party appendix within thirty days after the filing of the appellant's brief or the delivery date of the portions of the transcript ordered only by that appellee, whichever is later.

The appellant may file a reply brief in accordance with Section 67-5A.

Where there is a cross appeal, the brief and party appendix, if any, of the cross appellant shall be combined with the brief and party appendix, if any, of the appellee. The brief shall not exceed 18,000 words and shall be filed with any party appendix at the time the appellee's brief is due. The brief and party appendix, if any, of the cross appellee shall be combined with the appellant's reply brief, if any. This brief shall not exceed 16,000 words and shall be filed within thirty days after the filing of the original appellee's brief. The cross appellant may file a cross appellant's reply brief in accordance with Section 67-5A.

Where cases are consolidated or a joint appeal has been filed, the brief of the appellants and that of the appellees shall not exceed the word limitations specified above.

All word limitations shall be exclusive of party appendices, if any, the cover page, the table of contents, the table of authorities, the

statement of issues, the signature block of counsel of record, certifications and, in the case of an amicus brief, the statement of the interest of the amicus curiae required by Section 67-7A.

Briefs shall not exceed the word limitations set forth herein except by permission of the chief justice or chief judge. Requests for permission to exceed the word limitations shall be filed with the appellate clerk, stating both the compelling reason for the request and the number of additional words sought.

Where a claim relies on the state constitution as an independent ground for relief, the clerk shall, upon request, grant an additional 2000 words for the appellant and appellee briefs, which words are to be used for the state constitutional argument only.

COMMENTARY: The purpose of this amendment is to address inconsistencies in the appellate rules.

Sec. 67-5A. The Reply Brief

The appellant may file a reply brief, which should respond directly and succinctly to the arguments in the appellee's brief. The format of a reply brief shall be in accordance with Section 67-2 or 67-2A.

The reply brief shall be filed within twenty days of the appellee's brief. If there are multiple appellees and they file separate briefs, then the time to file a reply brief shall run from the filing date of the last appellee's brief.

Except as otherwise ordered, the reply brief shall not exceed **[**fifteen pages or**]** 6500 words for electronic filers, or fifteen pages for filers that are excluded or exempt from electronic filing pursuant to Section 60-8. Word counts and page limitations are exclusive of the cover page, the table of contents, the table of authorities, the signature block of counsel of record, certifications and any appendix. Requests for

permission to exceed 6500 words or fifteen pages [or 6500 words] shall be filed in accordance with Section 67-3 or 67-3A.

If there is a cross appeal, the cross appellant may file a reply brief as to the cross appeal in accordance with the requirements of this rule.

Where a claim relies on the state constitution as an independent ground for relief, the clerk shall, upon request, grant an additional two pages or 800 words for the reply brief, which pages or words are to be used for the state constitutional argument only.

COMMENTARY: The purpose of these amendments is to address inconsistencies in the appellate rules.

Sec. 67-7A. The Amicus Curiae Electronic Brief

(a) A brief of an amicus curiae in cases before the court on the merits may be filed only with the permission of the court unless Section 67-7A (f) applies. An application for permission to appear as amicus curiae and to file a brief shall be filed within twenty days after the filing of the brief of the party, if any, whom the applicant intends to support, and if there is no such party, then the application shall be filed no later than twenty days after the filing of the appellee's brief.

(b) The application shall state concisely the nature of the applicant's interest and the reasons why a brief of an amicus curiae should be allowed. If the applicant in a civil appeal is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be attached to the application. A party to the appellate matter in which the application is filed may, within ten days after the filing of the application, file an objection.

Applications and objections, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif

font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes, and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

Applications and objections shall not exceed 3500 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications, and appendix, if any.

[The length of the**]** An amicus curiae brief shall not exceed 4000 words and shall conform with the requirements set forth in Chapter 67. **[**unless a specific request is made for a brief of more than that length. The application shall conform to the requirements set forth in Sections 66-2 and 66-3. The amicus application should specifically**]** The applicant may request to file a brief in excess of 4000 words by including a request in the application that sets forth reasons to justify the **[**filing of a brief in excess of 4000**]** additional words. **[**A party in receipt of an application may, within ten days after the filing of the application, file an objection concisely stating the reasons therefor.**]**

(c) All briefs filed under this section shall comply with the applicable provisions of this chapter, and shall set forth the interest of the amicus curiae. If the appeal is in a civil matter and the amicus curiae is an entity as defined in Section 60- 4, a certificate of interested entities or individuals shall be included in the brief.

(d) An amicus curiae may argue orally only when a specific request for such permission is granted by the court in which the appeal is pending.

(e) With the exception of briefs filed by the attorney general as provided by this rule, all briefs shall indicate whether counsel for a party wrote the brief in whole or in part and whether such counsel or a party contributed to the cost of the preparation or submission of the brief and shall identify those persons, other than the amicus curiae, its members or its counsel, who made such monetary contribution. The disclosure shall be made in the first footnote on the first page of text.

(f) Except for habeas corpus matters based on criminal convictions, if an appeal in a noncriminal matter involves an attack on the constitutionality of a state statute, the attorney general may appear and file a brief amicus curiae as of right. Any such appearance by the attorney general shall be filed no later than the date on which the brief of the party that the attorney general supports is filed, and the attorney general's brief will be due twenty days after the filing of the brief of the party that the attorney general supports.

COMMENTARY: These amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

CHAPTER 74

DECISIONS OF JUDICIAL REVIEW COUNCIL

Sec. 74-3A. Initiation of Action by Supreme Court

In the event that the Supreme Court, on its own motion, wishes to initiate proceedings against a judge, it **[**shall**]** <u>may</u> refer the matter to the Judicial Review Council or, if the judge to be investigated is a member of that council, to a committee of three state referees for investigation and hearing.

The council or the committee shall render a decision pursuant to Section 74-4 and forward a copy of its decision to the respondent judge and to the appellate clerk.

The decision may be appealed by the respondent judge pursuant to the provisions of this chapter. If the respondent judge fails to appeal within the time provided, the decision shall be final, unless it was rendered by a committee or contains a recommendation for suspension or removal of the judge, in which case, at the expiration of the time to appeal, the council or committee shall file pertinent parts of the record and transcript with the appellate clerk pursuant to Section 74-1 (d) and the Supreme Court shall render a decision thereon.

COMMENTARY: This amendment changes the use of ''shall'' to ''may'' when matters are referred for investigation and hearing.

CHAPTER 76

APPEALS IN WORKERS' COMPENSATION CASES

Sec. 76-3. Preparation of Case File; Exhibits

Within ten days of the issuance of notice of the filing of an appeal, the board or the administrative law judge, as appropriate, shall deliver to the appellate clerk an electronic copy of the file**[**, if possible, or one complete copy of the case file**]**. No omissions may be made from the case file except upon the authorization of the appellate clerk. Each document of the case file must be numbered, and the file must include a table of contents listing each item entered in the file according to its number.

All exhibits before the board or the administrative law judge are deemed exhibits on appeal. The appellate clerk shall notify the board

or the administrative law judge of the exhibits required by the court. It shall be the responsibility of the board or the administrative law judge to transmit those exhibits promptly to the appellate clerk.

Nothing in this section relieves the appellant and the appellee of their duty to comply with the appendix requirements of Section 67-8.

COMMENTARY: Files in workers' compensation matters are transmitted to the appellate clerk electronically; therefore, the language being deleted is obsolete.

CHAPTER 77

PROCEDURES CONCERNING COURT CLOSURE AND SEALING ORDERS OR ORDERS LIMITING THE DISCLOSURE OF FILES, AFFIDAVITS, DOCUMENTS OR OTHER MATERIAL

Sec. 77-1. Petition for Review Seeking Expedited Review of an Order concerning Court Closure, or an Order That Seals or Limits the Disclosure of Files, Affidavits, Documents or Other Material

(a) Except as provided in subsection (**[**b**]** d), any person affected by a court order which prohibits the public or any person from attending any session of court, or any order that seals or limits the disclosure of files, affidavits, documents or other material on file with the court or filed in connection with a court proceeding, may seek review of such order by filing a petition for review with the Appellate Court within seventy-two hours after the issuance of the order. **[**The petition shall fully comply with Sections 66-2 and 66-3.**]**

(b) The petition shall set forth in separate paragraphs appropriately captioned: (1) a brief history of the case, (2) the specific facts upon

which the petitioning party relies and (3) the legal grounds upon which the petitioning party relies. [The petition shall not exceed ten pages in length, exclusive of the appendix, except with special permission of the Appellate Court.] An appendix containing the information or complaint, the answer, all motions pertaining to the matter, the opinion or orders of the trial court sought to be reviewed, a list of all parties with the names, addresses, telephone numbers, e-mail addresses, and, if applicable, the juris number of their counsel, the names of all judges who participated in the case, and an expedited transcript order confirmation, shall be filed with the petition for review. Any opposition to the petition shall be filed within ten days after the filing of the petition and shall set forth in separate paragraphs appropriately captioned: (1) the specific facts upon which the opposing party relies, and (2) the legal grounds upon which the opposing party relies. Except as otherwise ordered, petitions and oppositions shall not exceed 3500 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications, and appendix, if any.

Petitions and oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

(c) Any person filing a petition for review pursuant to this rule shall deliver a copy of the petition and appendix to (1) all parties to the case and (2) any nonparty who sought the closure order or order sealing or limiting disclosure in compliance with the provisions of Section 62-7 on the same day as the petition is filed. Any party or nonparty who sought such order may file a response to the petition for review within ninety-six hours after the filing of the petition for review. Failure to file a response shall not preclude the party or nonparty who sought the order under review from participating in the hearing on the petition. Within one business day of the receipt of the transcript and the certificate of completion provided for by Section 63-8 (c), the person filing the petition for review shall file the transcript and the certificate of completion with the Appellate Court.

The filing of any petition for review of a court order which prohibits the public or any person from attending any session of court shall stay the order until the final determination of the review. The filing of any petition for review of an order that seals or limits the disclosure of files, affidavits, documents or other material on file with the court shall not stay the order during the review.

After the receipt of the transcript and the response to the petition, if any, the Appellate Court shall hold an expedited hearing on any petition for review. The appellate clerk will notify the petitioner, the parties and any nonparties who sought the closure order or order sealing or limiting disclosure of files, affidavits, documents or other material on file with the court or filed in connection with a court proceeding of the date and time of the hearing. After such hearing the Appellate Court may affirm, modify or vacate the order reviewed.

([b] d) This section shall not apply to court orders concerning any session of court conducted pursuant to General Statutes § 46b-11, § 46b-49, § 46b-122, § 54-76h or any other provision of the General Statutes under which the court is authorized to close proceedings. This section also shall not apply to any order issued pursuant to General Statutes § 46b-11 or § 54- 33c or any other provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents or materials and any order issued pursuant to a court rule that seals or limits the disclosure of any affidavit in support of an arrest warrant.

COMMENTARY: These amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

CHAPTER 78

REVIEW OF GRAND JURY RECORD OR FINDING ORDER

Sec. 78-1. Review of an Order concerning Disclosure of Grand Jury Record or Finding

(a) Any person aggrieved by an order of a panel or an investigatory grand jury pursuant to General Statutes § 54-47g may seek review of such order by filing a petition for review with the Appellate Court within seventy-two hours after the issuance of the order. The filing of any such petition for review shall stay the order until the final determination of the petition. The Appellate Court shall hold an expedited hearing on such petition. After such hearing, the Appellate Court may affirm, modify or vacate the order reviewed.

(b) The petition shall set forth in separate paragraphs appropriately captioned: (1) a brief history of the case, (2) the specific facts upon

which the petitioning party relies and (3) the legal grounds upon which the petitioning party relies. Any opposition to the petition shall be filed within ten days after the filing of the petition and shall set forth in separate paragraphs appropriately captioned: (1) the specific facts upon which the opposing party relies, and (2) the legal grounds upon which the opposing party relies. Except as otherwise ordered, petitions and oppositions shall not exceed 3500 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications, and appendix, if any.

Petitions and oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

COMMENTARY: These amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

CHAPTER 78a

REVIEW OF ORDERS CONCERNING RELEASE ON BAIL

Sec. 78a-1. Petition for Review of Order concerning Release on Bail

(a) Any accused person or the state, aggrieved by an order of the Superior Court concerning release, may petition the Appellate Court

for review of such order. Any such petition shall have precedence over any other matter before the Appellate Court and any hearing ordered by the court shall be held expeditiously with reasonable notice.

Petitions for review of bail must conform to the requirements for motions for review set forth in Section 66-6 and are subject to transfer to the Supreme Court pursuant to Section 65-3.

(b) The petition shall set forth in separate paragraphs appropriately captioned: (1) a brief history of the case, (2) the specific facts upon which the petitioning party relies and (3) the legal grounds upon which the petitioning party relies. Any opposition to the petition shall be filed within ten days after the filing of the petition and shall set forth in separate paragraphs appropriately captioned: (1) the specific facts upon which the opposing party relies, and (2) the legal grounds upon which the opposing party relies. Except as otherwise ordered, petitions and oppositions shall not exceed 3500 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications, and appendix, if any.

Petitions and oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

COMMENTARY: These amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

CHAPTER 78b

REVIEW OF ORDERS DENYING APPLICATION FOR WAIVER OF FEES TO COMMENCE A CIVIL ACTION OR A WRIT OF HABEAS CORPUS

Sec. 78b-1. Petition for Review of Order Denying Application for Waiver of Fees to Commence a Civil Action or a Writ of Habeas Corpus

(a) Any person aggrieved by an order of the Superior Court denying an application for waiver of the payment of a fee for filing an action or the cost of service of process to commence a civil action or a writ of habeas corpus in the Superior Court may petition the Appellate Court for review of such an order after a hearing pursuant to the provisions of Section 8-2 (d) and a decision thereon.

Petitions for review of the denial of an application for waiver of the payment of a fee for filing an action or the cost of service of process to commence a civil action or writ of habeas corpus are subject to transfer to the Supreme Court pursuant to Section 65-3, and must conform to the requirements for motions for review set forth in Section 66-6, except that the moving party shall not be required to provide a transcript or transcript order confirmation [and are subject to transfer to the Supreme Court pursuant to Section 65-3].

(b) The petition shall set forth in separate paragraphs appropriately captioned: (1) a brief history of the case, (2) the specific facts upon which the petitioning party relies and (3) the legal grounds upon which the petitioning party relies. Any opposition to the petition shall be filed within ten days after the filing of the petition and shall set forth in separate paragraphs appropriately captioned: (1) the specific facts upon which the opposing party relies, and (2) the legal grounds upon which the opposing party relies. Except as otherwise ordered, petitions and oppositions shall not exceed 3500 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications, and appendix, if any.

Petitions and oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

COMMENTARY: The purpose of these amendments is to eliminate the requirement that the moving party provide either a transcript or a transcript order confirmation when filing a petition for review under this section. In addition, these amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

CHAPTER 81
APPEALS TO APPELLATE COURT BY CERTIFICATION FOR REVIEW IN ACCORDANCE WITH GENERAL STATUTES CHAPTERS 124 AND 440

Sec. 81-2. Form of Petition

(a) A petition for certification shall contain the following sections in the order indicated here:

(1) A statement of the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail.

(2) A statement of the basis for certification identifying the specific reasons why the Appellate Court should allow the extraordinary relief of certification. These reasons may include but are not limited to the following:

(A) The court below has decided a question of substance not theretofore determined by the Supreme Court or the Appellate Court or has decided it in a way probably not in accord with applicable decisions of the Supreme Court or the Appellate Court.

(B) The decision under review is in conflict with other decisions of the court below.

(C) The court below has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by any other court, as to call for an exercise of the Appellate Court's supervision.

(D) A question of great public importance is involved.

(3) A summary of the case containing the facts material to the consideration of the questions presented, reciting the disposition of the matter in the trial court, and describing specifically how the trial court decided the questions presented for review in the petition.

(4) A concise argument amplifying the reasons relied upon to support the petition. No separate memorandum of law in support of the petition will be accepted by the appellate clerk.

(5) An appendix containing a table of contents, the operative complaint, all briefs filed by all parties, the opinion or order of the trial court sought to be reviewed, a copy of the order on any motion, other than a motion for extension of time, which would stay or extend the time period for filing the petition, and a list of all parties to the appeal in the trial court with the names, addresses, telephone numbers, e-mail addresses, and, if applicable, the juris numbers of their counsel. If a petitioner in a civil matter is an entity as defined in Section 60-4, counsel of record must also provide a certificate of interested entities or individuals in the appendix. The appendix shall be paginated separately from the petition with consecutively numbered pages preceded by the letter "A."

(b) **[**The petition shall not exceed ten pages in length, exclusive of the appendix, except with special permission of the appellate clerk. The petition shall be typewritten and fully double spaced, and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two fonts, of 12 point or larger size, are approved for use in petitions: Arial and Univers. Each page of a petition shall have

as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch.**]** Except as otherwise ordered, petitions shall not exceed 4000 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications and appendix. Petitions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

COMMENTARY: These amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

Sec. 81-3. Statement in Opposition to Petition

(a) Within ten days of the filing of the petition, any party may file a statement in opposition with the appellate clerk stating the reasons why certification should not be granted. The statement shall be presented in a manner which is responsive, in form and content, to the petition it opposes. **[**The statement in opposition shall not exceed ten pages in length, except with special permission of the appellate clerk. The statement in opposition shall be typewritten and fully double spaced and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single

spaced. Only the following two fonts, of 12 point or larger size, are approved for use in the statement in opposition: Arial and Univers. Each page of a statement in opposition to a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch.**]** Except as otherwise ordered, oppositions shall not exceed 4000 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications and appendix, if any. Oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

No separate memorandum of law in support of the statement in opposition will be accepted by the appellate clerk.

(b) The statement in opposition shall be delivered in the manner set forth in Section 62-7.

(c) No motion to dismiss a petition for certification will be accepted by the appellate clerk. Any objection to the jurisdiction of the court to entertain the petition shall be included in the statement in opposition.

(d) If the party in a civil matter filing the opposition is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be attached to the opposition.

COMMENTARY: These amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

CHAPTER 83

CERTIFICATION PURSUANT TO GENERAL STATUTES § 52-265a IN CASES OF SUBSTANTIAL PUBLIC INTEREST

Sec. 83-1. Application; In General

Within two weeks of the issuance of an order or decision of the Superior Court involving a matter of substantial public interest pursuant to General Statutes § 52-265a, any party may file an application for certification by the chief justice. The application for certification shall contain: (1) the question of law on which the appeal is to be based; (2) a description of the substantial public interest that is alleged to be involved; (3) an explanation as to why delay may work a substantial injustice; and (4) an appendix with: (A) the decision or order of the Superior Court sought to be appealed and (B) a list of all parties to the case in the Superior Court with the names, addresses, telephone numbers, e-mail addresses and, if applicable, the juris numbers of their counsel. If the party in a civil matter is an entity as defined in Section 60-4, counsel of record must also provide a certificate of interested entities or individuals in the appendix.

Using an expeditious delivery method such as overnight mail or facsimile or other electronic medium, in addition to the certification requirements of Section 62-7, the party submitting the application shall also notify the trial judge and the clerk of the trial court that rendered the decision sought to be appealed.

A party response to the application must be filed within five days from the filing of the application.

COMMENTARY: The purpose of this amendment is to require that any response to an application for certification be filed within five days, as the chief justice must act on such applications within seven days pursuant to statute.

CHAPTER 84

APPEALS TO SUPREME COURT BY CERTIFICATION FOR REVIEW

Sec. 84-5. Form of Petition

(a) A petition for certification shall contain the following sections in the order indicated here:

(1) A brief introduction providing context for the statement of the questions presented for review.

(2) A statement of the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The Supreme Court will ordinarily consider only those questions squarely raised, subject to any limitation in the order granting certification.

(3) A brief history of the case containing the facts material to the consideration of the questions presented, including the disposition of the matter in the Appellate Court, and if applicable, a specific description of how the Appellate Court decided the questions presented for review in the petition.

(4) A concise argument expanding on the bases for certification, as presented in Section 84-2, and explaining why the Supreme Court should allow the extraordinary relief of certification. No separate mem-

orandum of law in support of the petition will be accepted by the appellate clerk.

(5) An appendix, which shall be paginated separately from the petition with consecutively numbered pages preceded by the letter "A," containing:

(A) a table of contents,

(B) the opinion, preferably as published in the Connecticut Law Journal, or order of the Appellate Court sought to be reviewed,

(C) if the opinion or order of the Appellate Court was per curiam or a summary affirmance or dismissal, a copy of the trial court's memorandum of decision that was entered in connection with the claim raised by the petitioner before the Appellate Court, or, if no memorandum was filed, a copy of the trial court's ruling on the matter,

(D) a copy of the order on any motion, other than a motion for extension of time, which would stay or extend the time period for filing the petition,

(E) a list of all parties to the appeal in the Appellate Court with the names, addresses, telephone numbers, e-mail addresses, and, if applicable, the juris numbers of their trial and appellate counsel. If one of the parties in a civil action is an entity as defined in Section 60-4, counsel of record must also provide a certificate of interested entities or individuals.

(b) **[**The petition shall not exceed ten pages in length, exclusive of the appendix, except with special permission of the appellate clerk. The petition shall be typewritten and fully double spaced, and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only

the following two fonts, of 12 point or larger size, are approved for use in petitions: Arial and Univers. Each page of a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inches; right, 1/2 inch; and bottom, 1 inch.**]** Except as otherwise ordered, petitions shall not exceed 4000 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications and appendix. Petitions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

COMMENTARY: These amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

Sec. 84-6. Statement in Opposition to Petition

(a) Within ten days of the filing of the petition, any party may file a statement in opposition to the petition with the appellate clerk. The statement in opposition shall disclose any reasons why certification should not be granted by the Supreme Court and shall be presented in a manner which is responsive, in form and content, to the petition it opposes. **[**The statement in opposition shall not exceed ten pages in length except with special permission of the appellate clerk.**]** Except as otherwise ordered, oppositions shall not exceed 4000 words. The

word count is exclusive of the case caption, signature block of counsel of record, certifications and appendix, if any.

[The statement in opposition shall be typewritten and fully double spaced and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two fonts, of 12 point or larger size, are approved for use in the statement in opposition: Arial and Univers. Each page of a statement in opposition to a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch.**]** Oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

No separate memorandum of law in support of the statement in opposition will be accepted by the appellate clerk.

(b) The statement in opposition shall be delivered in the manner set forth in Section 62-7.

(c) No motion to dismiss a petition for certification will be accepted by the appellate clerk. Any objection to the jurisdiction of the court to entertain the petition shall be included in the statement in opposition.

(d) If the party filing the opposition in a civil action is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be attached to the opposition.

COMMENTARY: These amendments are made for efficiency purposes, specifically, to minimize the number of rules to which a party must refer to determine what is required to file an appellate document.

NOTICES

Notice of Suspension of Attorney

Pursuant to Practice Book Section § 2-54, notice is hereby given that on March 31, 2023, in Docket Number HHD-CV-22-6156785-S, Alisha Mathers, Juris No. 427808 of New Britain, CT is placed is placed on interim suspension from the practice of law and the court orders appropriate discipline as follows:

As to count one, the court imposes an interim suspension until the Picone Grievance is concluded or upon further order of this court.

As to the Charette Grievance (#21-0103), the respondent is suspended from the practice of law for a period of nine months, effective immediately.

The respondent shall pay full restitution in the amount of $7000 to Mr. Charette prior to the conclusion of the nine-month suspension period.

As to the Figueroa Grievance (#21-0258), the respondent is suspended for a period of three months, to run concurrently to the Charette grievance.

The respondent will attend in person, at her own expense, the following education courses, a minimum of three hours each: (1) IOLTA account management, (2) office management, and (3) client relationships. Certifications of completion shall be provided to the OCDC and all CLE classes shall be completed prior to the nine months' suspension period.

The respondent shall not deposit to, disburse any fund from, withdraw any funds from or transfer any funds from any clients' funds, IOLTA or fiduciary accounts.

During the suspension period, the respondent shall comply with Practice Book § 2-47B (Restrictions on the Activities of Deactivated Attorneys).

The respondent shall cooperate with the OCDC and the SGC as to this matter and any future grievances that may be filed.

Pursuant to Practice Book § 2-64, the OCDC shall recommend, as soon as practical, the name of the attorney who will act as Trustee. The respondent will cooperate with the court appointed Trustee in all respects.

The OCDC shall immediately notify the chief clerks of all judicial districts and Probate Court administration of the respondent's suspension.

The respondent's failure to comply with this order shall be considered misconduct and may subject the respondent to additional discipline.

So ordered

Susan Quinn Cobb
Presiding Judge

Notice of Resignation of Attorney

Pursuant to Practice Book § 2-54, notice is hereby given that on 3/21/2023 in docket number FBT CV22 6120080s, Thomas Vetter, juris number 304187, has resigned from the practice of law.

The Court (Stevens, J.)