2019 Appellate Advocacy Institute

May 9, 2019
8:30 a.m. – 5:30 p.m.

May 10, 2019
8:30 a.m. – 2:30 p.m.

CBA Law Center

New Britain, CT

CT Bar Institute Inc.

CT: 12.25 CLE Credits (General)
NY: 11.0 CLE Credits (6.0 Skills; 5.0 AOP)

Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging I acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

Table of Contents

APPELLATE ADVOCACY INSTITUTE
CBA HEADQUARTERS
MAY 9-10, 2019

Thursday, May 9, 2019

9:00 Welcome and Opening Remarks
The Honorable **Gregory D'Auria**, Connecticut Supreme Court, Hartford
Jonathan M. Shapiro, President CBA
Kenneth J. Bartschi and **Brendon P. Levesque**, Program Chairs, Horton Dowd Bartschi & Levesque PC, Hartford

9:15 Lecture on Preparing and Filing an Appeal
Carolyn Ziogas, Chief Clerk, Connecticut Supreme and Appellate Courts
Charles D. Ray, McCarter & English, Hartford

10:15 Lecture on Motions Practice
The Honorable **Steven D. Ecker**, Connecticut Supreme Court, Hartford
The Honorable **Alexandra Davis DiPentima**, Connecticut Appellate Court, Hartford

11:15 Break

11:30 Select a Lecture:

Lecture on Special Aspects of Appellate Procedure
Daniel J. Krisch, Halloran Sage, Hartford
Michael S. Taylor, Horton Dowd Bartschi & Levesque PC, Hartford

Lecture on Special Appellate Aspects of Child Protection and Family Law
James P. Sexton, Sexton & Company, Hartford
Samuel V. Schoonmaker, IV, Schoonmaker Legal Group LLC, Stamford

Lecture on The Road to Appellate Review: How and When Your Case Can Get a Second (or Third) Look
Finality for Appeal - Jeffrey R. Babbin, Wiggin and Dana LLP, New Haven
Petitions for Certification - Linda L. Morkan and **Denis J. O'Malley**, Robinson+Cole, Hartford

12:30 Luncheon with Featured Speaker The Honorable Jeffrey S. Sutton, United States Court of Appeals for the Sixth Circuit

2:00 Lecture on Oral Argument
The Honorable **Gregory T. D'Auria**, Connecticut Supreme Court, Hartford
The Honorable **William H. Bright, Jr.**, Connecticut Appellate Court, Hartford

3:00 Break

3:15 Mooting Sessions
Participants will practice their oral argument before a panel of lawyers. The mooting sessions will be videotaped and participants will receive feedback to help prepare for Friday's oral argument before the judges.

5:30 Recess for the day

Friday, May 10, 2019

9:00 Lecture on Brief Writing
The Honorable **Maria Araujo Kahn**, Connecticut Supreme Court, Hartford
The Honorable **Douglas S. Lavine**, Connecticut Appellate Court, Hartford

10:00 Break

10:15 Oral Arguments before Connecticut Supreme Court Justices and Appellate Court Judges and individual, private sessions with Faculty members

The Honorable **Richard A. Robinson**
The Honorable **Gregory T. D'Auria**
The Honorable **Steven D. Ecker**
The Honorable **Maria Araujo Kahn**
The Honorable **Andrew J. McDonald**
The Honorable **Raheem L. Mullins**
The Honorable **Richard N. Palmer**
The Honorable **Alexandra Davis DiPentima**
The Honorable **Thomas A. Bishop**
The Honorable **William H. Bright, Jr.**
The Honorable **Christine E. Keller**
The Honorable **Douglas S. Lavine**
The Honorable **Ingrid L. Moll**
The Honorable **Eliot D. Prescott**
The Honorable **Tejas Bhatt**
The Honorable **Jon C. Blue**
The Honorable **Dennis G. Eveleigh**
The Honorable **John B. Farley**
The Honorable **Daniel J. Klau**
The Honorable **Hope C. Seeley**

1:00 Luncheon with Guest Panelists
Karen L. Dowd, Horton Dowd Bartschi & Levesque PC
Ann H. Rubin, Carmody Torrance Sandak & Hennessey LLP, Waterbury
Bruce L. Elstein, Goldman Gurder & Woods LLC, Trumbull

2:15 Award of Certificates

2:30 Conclusion

JEFFREY S. SUTTON has served on the United States Court of Appeals for the Sixth Circuit since 2003. Before that, he was the State Solicitor of Ohio and a partner at Jones Day in Columbus. He has argued twelve cases in the United States Supreme Court and numerous cases in the state supreme courts and federal courts of appeal. Judge Sutton served as a law clerk to Justices Lewis F. Powell, Jr. (Ret.) and Antonin Scalia, as well as Judge Thomas Meskill of the United States Court of Appeals for the Second Circuit. Judge Sutton received his B.A. from Williams College and his J.D. from The Ohio State University College of Law.

Judge Sutton served as Chair of the Federal Judicial Conference Committee on Rules of Practice and Procedure from 2012 to 2016. He was appointed to that committee by Chief Justice Roberts. He has also served on the Advisory Committee on Appellate Rules. He was appointed to that committee by Chief Justice Rehnquist in 2005, and Chief Justice Roberts appointed him to be Chair of that committee in 2009.

Since 1993, Judge Sutton has been an adjunct professor at The Ohio State University College of Law, where he teaches seminars on State Constitutional Law, the United States Supreme Court, and Appellate Advocacy. He also teaches a class on State Constitutional Law at Harvard Law School. Among other publications, he is the author of *51 Imperfect Solutions: States and the Making of American Constitutional Law*, and the co-author of a casebook, *State Constitutional Law: The Modern Experience*, as well as *The Law of Judicial Precedent*.

In 2006, Judge Sutton was elected to the American Law Institute (ALI) and in 2017 he was elected to its Council.

Hon. Richard A. Robinson

The Honorable Richard A. Robinson was born December 10, 1957 in Stamford, Connecticut. He graduated with a Bachelor of Arts Degree from the University of Connecticut in 1979 and a Juris Doctor degree from West Virginia University School of Law in 1984. He was admitted to the West Virginia Bar and the Connecticut Bar, and is a member of the U.S. District Court, Northern District of West Virginia and the U.S. District Court, Connecticut.

From 1985 - 1988, Justice Robinson was Staff Counsel for the City of Stamford Law Department. In 1988, he became Assistant Corporation Counsel in Stamford where he remained until his appointment as a Judge of the Superior Court in 2000. He remained a Superior Court Judge for the next seven years during which time he served as Presiding Judge (Civil) for the New Britain Judicial District (May 2003 - September 2006); Presiding Judge (Civil) and Assistant Administrative Judge for the Ansonia/Milford Judicial District (September 2006 - September 2007); and Presiding Judge (Civil) for the Stamford Judicial District (September 2007 - December 2007). He was appointed as a Judge of the Connecticut Appellate Court on December 10, 2007, a Justice of the Supreme Court on December 19, 2013, and the Chief Justice of the Supreme Court on May 3, 2018.

Justice Robinson’s career is complimented by an array of public and judicial service. He served as President of the Stamford Branch of the NAACP (1988-1990); General Counsel for the Connecticut Conference of the NAACP (1988 - 2000); President of the Assistant Corporation Counsel’s Union (AFSCME) (1989 - 2000); Commissioner of the Connecticut Commission on Human Rights and Opportunities (1997 - 2000); Chair of the Connecticut Commission on Human Rights and Opportunities (1999 - 2000); New Haven Inn of Court member (2002 - present); Judicial Education Curriculum Committee member (2002 - 2014); Judicial Education Committee member (2003 - 2014); Faculty at several Judicial Institutes as well as spring and fall lectures (2003 - present); Civil Commission member (2005 - 2014); Court Annexed Mediator (2005 - 2014); Lawyers Assistance Advisory Board member (2007 - present); Bench-Bar Foreclosure Committee (2007 - 2014); Legal Internship Committee (2013 - 2017); Chairperson of the Advisory Committee on Cultural Competency (2009-present); Chairperson of the Rules Committee (2017- present); Connecticut Bar Association Young Lawyers Section Diversity Award (2010); Connecticut Bar Association's Henry J. Naruk Judiciary Award for Integrity (2017); NAACP 100 Most Influential Blacks in Connecticut; Connecticut Bar Foundation James W. Cooper Fellows, Life Fellow.

Hon. Gregory T. D'Auria

Justice Gregory T. D'Auria is a Connecticut native. Born on June 24, 1963, Justice D'Auria was sworn in as an Associate Justice on March 8, 2017. Prior to his appointment to the Supreme Court, he had worked in the Office of the Attorney General for over twenty-three years in a variety of roles. Justice D'Auria argued dozens of appeals in state and federal appellate courts during his years of service with the Office of the Attorney General, and until just before his appointment to the Court had served as Connecticut's first Solicitor General, appointed to that position by Attorney General George Jepsen in 2011. Prior to that, he headed the Special Litigation and Charities Unit (2010-11), and also served as Associate Attorney General for Litigation (2000-09) and as an Assistant Attorney General (1993-2000). Justice D'Auria was an associate at Shipman & Goodwin from 1989 to 1993, and also served as a law clerk to Chief Justice Ellen A. Peters from 1988 to 1989.

In 2009, he was nominated and inducted as a fellow into the American Academy of Appellate Lawyers, a distinguished national organization that works to advance the administration of justice and promote the highest standards of professionalism and advocacy in appellate courts. Justice D'Auria has also served as a UCONN Moot Court instructor and was a founding director of the Connecticut Supreme Court Historical Society, serving most recently as Secretary of the Society's Board of Directors.

Justice D'Auria graduated from the University of Connecticut, Magna Cum Laude, in 1985, with a Bachelor of Arts degree, Phi Beta Kappa, in Political Science. He received his Juris Doctor from the University of Connecticut School of Law, with high honors, in 1988, where he also served as editor-in-chief of the Connecticut Journal of International Law.

Hon. Steven D. Ecker

Justice Steven D. Ecker was born April 19, 1961, in Chicago, Illinois, and grew up in the Midwest. He received his B.A. degree from Yale University, magna cum laude, in 1984, and his J.D. from Harvard Law School, magna cum laude, in 1987. At law school, Justice Ecker was an editor of the Harvard Law Review from 1985 to 1987, and a member of the winning team in the Ames Moot Court Competition in 1987. Justice Ecker served as a law clerk to Judge Jon O. Newman of the United States Court of Appeals for the Second Circuit from 1987 to 1988.

Justice Ecker began practicing law with the New Haven firm Jacobs, Grudberg, Belt & Dow, P.C., where he worked from 1988 to 1994. Between 1994 and 2014, he practiced in Hartford with Cowdery, Ecker & Murphy, L.L.C. Justice Ecker's private practice consisted primarily of civil litigation in trial and appellate courts, both state and federal. His cases covered a broad range of subject areas, including personal injury and business torts, constitutional law, professional ethics and discipline, family law, commercial law, and employment law. Clients included individuals, business entities, municipalities, public officials, and lawyers and law firms.

Justice Ecker was appointed to the Superior Court bench by Governor Dannel P. Malloy in 2014. He was sworn in as an Associate Justice of the Supreme Court on May 3, 2018.

Hon. Maria Araujo Kahn

Justice Maria Araujo Kahn was born in Angola, Africa. She emigrated to the United States at ten years of age and is fluent in Portuguese and Spanish. She graduated from New York University cum laude with a B.A. in politics in 1986 and earned her Juris Doctor from Fordham University School of Law in 1989. Justice Kahn was the first recipient of the Noreen E. McNamara Scholarship at Fordham University School of Law. Following law school, she served as law clerk to the Honorable Peter C. Dorsey, U.S. District Court Judge for the District of Connecticut. She is a member of the United States Supreme Court, United States Federal District Court for the District of Connecticut, United States Court of Appeals Second Circuit, and the Connecticut and New York State Bars.

Governor Dannel P. Malloy nominated Justice Kahn to the Supreme Court on October 4, 2017 and she was sworn in on November 1, 2017. Prior to this appointment, Justice Kahn served as a judge of the Appellate Court and as a judge of the Superior Court, where she primarily heard criminal matters.

Before becoming a judge, Justice Kahn was an Assistant U.S. Attorney in New Haven. As a federal prosecutor, Justice Kahn was responsible for complex white collar investigations and prosecutions, both civil and criminal, in the areas of health care fraud, bank fraud, bankruptcy fraud and trade secrets.

Justice Kahn has been honored on several occasions with awards including: the Department of Justice Special Achievement Awards in 1998 to 2006, and the Department of Health and Human Services, OIG, Integrity Awards. On November 3, 2017, the Portuguese Bar Association presented Justice Kahn with the “Americo Ventura Lifetime Achievement Award.”

Justice Kahn is co-chair of the Judicial Branch’s Access to Justice Commission and the Limited English Proficiency Committee. She was also a member of the Judges’ Education Committee and has taught several courses at the Connecticut Judges’ Institute. Justice Kahn is a James W. Cooper Fellow with the Connecticut Bar Foundation.

Hon. Andrew J. McDonald

Justice Andrew J. McDonald is a Connecticut native. Born in Stamford on March 11, 1966, he attended Stamford public schools before entering college. After graduating from Cornell University with a Bachelor of Arts degree in 1988, he earned a Juris Doctor degree, with honors, from the University of Connecticut School of Law in 1991, where he served as the Managing Editor of the *Connecticut Journal of International Law*. Justice McDonald also holds an honorary Doctor of Laws degree from Western New England University School of Law.

In January of 2013, Governor Dannel P. Malloy nominated Justice McDonald to be an associate justice of the Connecticut Supreme Court, and he was confirmed by the Connecticut General Assembly later that month. He was sworn into office on January 24, 2013 by Governor Malloy. In addition to his service as an associate justice, Justice McDonald also serves as the Chairman of the Connecticut Criminal Justice Commission, Chairman of the Rules Committee of the Superior Court, and as a member of the Connecticut State Library Board.

Prior to his appointment to the Supreme Court, Justice McDonald served as the General Counsel to the Office of the Governor for the State of Connecticut from 2011 to 2013. In this role, he served as chief legal advisor to the Governor, the Lieutenant Governor and senior staff of the Executive Branch of government. His responsibilities included providing legal counsel and analysis on all aspects of Executive Branch functions and operations, including its interactions with the federal government and the Judicial and Legislative branches of state government.

From 1991 to 2011, Justice McDonald was engaged in the private practice of law, first as an associate and then as a partner, with the firm of Pullman & Comley, LLC. He was a commercial litigator and handled all stages of litigation in federal and state courts at both the trial and appellate levels.

From January of 1999 to July of 2002, Justice McDonald additionally served as the Director of Legal Affairs and Corporation Counsel for the City of Stamford. In this capacity, he served in the Mayor’s Cabinet and oversaw the administration, supervision and performance of all legal, human resource and labor relations functions of the city, and its boards, commissions and agencies.

Justice McDonald was a State Senator from 2003 to 2011. He served as the Senate Chairman of the Judiciary Committee for all eight years he was in the General Assembly. During periods of his legislative career he also served as the Senate Vice Chairman of the Energy and Technology Committee and as a member of the Finance, Revenue and Bonding Committee, the Transportation Committee, the Education Committee and the Regulations Review Committee. From 2005 to 2011, he served as Deputy Majority Leader of the Senate.

Earlier in his career, Justice McDonald served on the Stamford Board of Finance from 1995 to 1999, including serving as the board's Chairman from 1997 to 1999, and as Co-Chair of the Audit Committee from 1995 to 1997. He began his public service career in 1993 as a member of the Stamford Board of Representatives, where he served until 1995.

Justice McDonald and his husband, Charles, live in Stamford.

Hon. Raheem L. Mullins

Justice Raheem L. Mullins was nominated to the Supreme Court on October 4, 2017 by Governor Dannel P. Malloy, and was sworn in on November 1, 2017. He is the youngest person to be nominated to the Supreme Court. Prior to this appointment, Justice Mullins served as a judge of the Appellate Court and as a judge of the Superior Court.

Justice Mullins received his Bachelor of Arts degree in Sociology from Clark University in Worcester, Massachusetts in 2001 and his Juris Doctor from Northeastern University School of Law in 2004. Justice Mullins is admitted to the Bar of the United States Supreme Court as well as the Connecticut Bar.

Prior to his appointment to the bench, Justice Mullins was an Assistant State's Attorney for the Appellate Bureau, Division of Criminal Justice, in Rocky Hill, and an Assistant Attorney General in the Child Protection Division in Hartford. He worked as a law clerk for the Honorable Frederick L. Brown of the Massachusetts Appeals Court from 2004 to 2005.

Justice Mullins is a member of the Oliver Ellsworth Inn of Court and the George W. Crawford Black Bar Association. He serves as Chair to the Code of Evidence Oversight Committee, 2018 to present. He also served as a member of the Young Lawyers Section of the Connecticut Bar Association, the Board of Directors for the Fund for Greater Hartford and, in 2007, as an Executive Committee Member of the Government Division of the Connecticut Bar Association.

Hon. Richard N. Palmer

Justice Richard N. Palmer was born May 27, 1950 in Hartford, Connecticut. He graduated from Wethersfield High School in 1968. Justice Palmer received his Bachelor of Arts degree, Phi Beta Kappa, from Trinity College in Hartford, Connecticut in 1972, where he captained the tennis and squash teams and was named a first-team All-American in squash. He received his Juris Doctor from the University of Connecticut School of Law, with high honors, in 1977, and was a member of the Connecticut Law Review.

Upon graduation from law school, Justice Palmer served as law clerk to Judge Jon O. Newman of the United States Court of Appeals for the Second Circuit (then of the United States District Court) from 1977 to 1978. Justice Palmer was an associate with the Hartford law firm of Shipman & Goodwin from 1978 to 1980. Thereafter, he served as an Assistant United States Attorney for Connecticut from 1980 to 1982 and again from 1987 to 1990, and held several supervisory positions in that office, including Chief of the Criminal Division and Deputy United States Attorney. From 1984 to 1986, he practiced privately with the firm of Chatigny and Palmer. In 1991, Justice Palmer was appointed to the position of United State's Attorney for Connecticut and from 1991 to 1993, he was the Chief State's Attorney for Connecticut. On March 17, 1993, he was sworn in as an Associate Justice of the Supreme Court.

Justice Palmer currently serves as the Administrative Justice for the Appellate Division. His current professional affiliations include his service as Co-Chair of the Appellate Rules Committee; Co-Chair of the Federal-State Council; Vice-Chair of the Board of Directors for the Justice Education Center, Inc.; a member of the Board of Directors for the Hartford Foundation for Public Giving; a member of the Board of Directors for Lawyers Concerned for Lawyers Connecticut, Inc.; Life Fellow of the Connecticut Bar Foundation; and Special Trustee of the Anna Fuller Fund.

Justice Palmer also was Chair of the Criminal Justice Commission from 2006 to 2017; a member of the Executive Committee of the Superior Court from 2000 to 2012; Chair of the Client Security Fund Committee from 2000 to 2006; Chair of the Judicial Branch Public Access Task Force; and a member of the Adjunct Faculty at Quinnipiac University School of Law (1998 to 2008) and Yale Law School (2006 to 2008), where he taught seminars on Ethics and the Criminal Law and Ethics in Litigation. He is a former member and past president of the Board of Directors of The Fund for Greater Hartford (formerly The Hartford Courant Foundation).

Justice Palmer has received a number of honors and awards, including the 2015 Judicial Recognition Award of the Connecticut Criminal Defense Lawyers Association; the 2006 Connecticut Law Review Award; the 2006 Judicial Branch Article Fifth Award; the 1997 Distinguished Graduate Award of the University of Connecticut Law School Alumni Association, Inc.; and an honorary Doctor of Laws degree from Quinnipiac University School of Law, 1999.

Hon. Alexandra Davis DiPentima

Judge Alexandra Davis DiPentima was born in Sharon, Connecticut in 1953 and raised in Kent, Connecticut. She was graduated from Princeton University, receiving an A.B. in intellectual history in 1975. From 1976 to 1979, she attended the University of Connecticut School of Law and was graduated in 1979.

From 1979 to 1981, she worked as a staff attorney for Connecticut Legal Services, Inc. in Willimantic, Connecticut, representing low income persons in domestic disputes (especially spousal abuse and custody issues) and housing disputes. In 1981, she joined the Hartford law firm of Moller, Horton & Fineberg, P.C., and in 1985, she became a principal in the firm. While associated with the firm from 1981 through 1993, she litigated products liability and other personal injury actions at the trial court level and enjoyed an active appellate advocacy practice. In November of 1993, Governor Lowell Weicker appointed her to the trial bench as a Superior Court judge. On May 13, 2003, Judge DiPentima was sworn in as a judge of the Appellate Court. On March 29, 2010, Judge DiPentima was sworn in as Chief Judge of the Appellate Court by Chief Justice Chase Rogers.

During her years of practice, Judge DiPentima was an active member of the Connecticut Bar Association, serving as president of the Young Lawyers Section from 1989 to 1990, and as a member of the Hartford County Bar Association, where she served as treasurer from 1993 to 1994 and as a director from 1990 to 1993. Each year since the late 1980s, she has written one or two chapters of annotations for the Connecticut Superior Court Civil Rules Annotated (Thomson Reuters).

Since her appointment to the bench, Judge DiPentima's assignments have included presiding judge of the Hartford and New Britain Housing Divisions, presiding judge in Meriden and, from 1998 to 2003, Administrative Judge of the Judicial District of Litchfield. She has served on the Rules Committee of the Superior Court and the Judicial Education Committee, and is currently co-chair of the Advisory Committee on Appellate Rules. From 2001 to 2002, she served as president of the Connecticut Judges Association. In 2010, Judge DiPentima received the Connecticut Bar Association’s Henry J. Naruk Judiciary Award. In 2011, she received the Distinguished Service Award from the University of Connecticut School of Law Alumni Association. In January of 2012, Judge DiPentima became an Adjunct Professor at the University of Connecticut School of Law.

In June of 2007, Chief Justice Rogers appointed her to serve as chair of the newly-formed Public Service and Trust Commission, which created a five-year strategic plan for the Judicial Branch. She continues to oversee the implementation of the Judicial Branch's strategic plan. From 2012 to 2016, Judge DiPentima served on the Executive Committee for the national organization Council of Chief Judges of the State Courts of Appeal, and continues to be active in that organization.

Hon. Thomas A. Bishop

Honorable Thomas A Bishop was born in New Rochelle, N.Y. in 1941. He graduated from the University of Notre Dame with a B.A. in history in 1963. Following two years active duty as an Army Intelligence Officer, Judge Bishop attended Georgetown Law School from which he received a Juris Doctor in 1969.

From 1969 until 1994, Judge Bishop was in the private practice of law with the New London law firm of Suisman Shapiro, serving as its managing director from 1987 until his appointment to the bench in 1994.

Judge Bishop was an adjunct professor at UCONN law school from 1987 through 2007, teaching courses in dispute resolution and a seminar on judicial independence.

Judge Bishop was appointed to the Superior Court in 1994 and was assigned in that capacity to hear civil, criminal, family, habeas corpus matters, and to a complex litigation docket. Also, from 2000 until 2018, Judge Bishop was a member of the Evidence Oversight Committee of the Supreme Court, serving as its Chair from 2006 until he stepped down in 2018.

In 2001 Judge Bishop was appointed to the Appellate Court where he served from 2001 until 2011. Since retirement, Judge Bishop has continued to serve the Appellate Court on a part-time basis.

From 2001 until 2011, Judge Bishop was a member of the Criminal Justice Commission, the constitutional body responsible for the appointment of beginning prosecutors and for the appointment and reappointment of State's Attorneys and the Chief State's Attorney.

Judge Bishop has authored many articles on legal topics. Most notably, he is the co-author of "Judicial Independence at a Crossroads" 77 Conn. Bar Journal 1 Feb 2003), and the author of two law review articles: "The Death and Reincarnation of Plain Meaning in Connecticut: A Case Study" 41 Conn. Law Review 825 (Feb 2009) and "Evidence Rulemaking: Balancing the Separation of Powers: 43 Conn. Law Review 265 (Nov. 2010).

Hon. William H. Bright, Jr.

Governor Dannel P. Malloy nominated Judge William H. Bright, Jr. to the Appellate Court on October 4, 2017, and he was sworn in on November 1, 2017.

Prior to this appointment, Judge Bright served as a judge of the Superior Court, having been nominated by Governor M. Jodi Rell in January 2008. While a Superior Court Judge, Judge Bright served as the Chief Administrative Judge for the Civil Division and as the Administrative and Presiding Judge for the Tolland/Rockville Judicial District, where he heard civil, criminal and habeas corpus matters.

Judge Bright has served on a number of Judicial Branch committees, including the Civil Commission, the Clients Security Fund Committee, the Civil Jury Instruction Committee, the Rules Committee, the Access to Justice Commission, and the Pro Bono Committee, which he chaired. He is also a member of the Board of Directors of the Connecticut Bar Foundation.

Prior to his appointment to the bench, Judge Bright had a distinguished career as a trial lawyer. The Columbia resident was the managing partner of McCarter & English's Hartford law office and co-chair of the firm's Business Litigation practice group. He also was a shareholder in Cummings & Lockwood, a member of the firm's Board of Directors, and chair of the firm's Litigation practice group. Judge Bright was selected as one of the Best Lawyers in the United States by Chambers USA, and was twice named one of the top 50 lawyers in the State by Connecticut Magazine. His practice focused on complex commercial litigation matters, including business torts, fraud, intellectual property, franchise disputes and environmental law.

Judge Bright is a graduate of Dickinson College in Carlisle, Pennsylvania, and received his Juris Doctor from the University of Chicago Law School in 1987.

Hon. Christine E. Keller

Judge Christine E. Keller, of Hartford, is an honors graduate of Smith College (1974) and an honors graduate of the University of Connecticut School of Law (1977).

On January 24, 2013, Judge Keller was nominated by Governor Dannel P. Malloy to be a judge of the Appellate Court; the General Assembly approved her nomination on March 6, 2013. Prior to her appointment to the Appellate Court, Judge Keller was a Superior Court Judge, having been appointed by Governor Lowell P. Weicker in 1993, and a Family Support Magistrate, having been appointed by Governor William A. O'Neill in 1989.

Since her appointment as a Connecticut Superior Court Judge, Judge Keller has served as Presiding Judge in both the Hartford and Plainville juvenile courts, and has also served terms in Waterbury criminal court, New Britain civil and family courts, the Middletown Regional Child Protection Session, and Hartford criminal and civil courts. From 1997 to 2002, she served as the statewide Chief Administrative Judge for Juvenile Matters.

In 2005, she was appointed Administrative Judge for the Judicial District of Hartford, a position she held until 2007, when she was reappointed a second time as Chief Administrative Judge for Juvenile Matters, a position she held until 2012. In 2008, the Connecticut Bar Association awarded Judge Keller the Henry J. Naruk Judiciary Award, presented annually to a Connecticut judge for judicial excellence.

Judge Keller has served on a number of task forces and committees affecting juvenile issues including the Juvenile Justice Advisory Committee and the Child Advocate Advisory Board. She has also served on the Court Improvement Project Advisory Board and the Governor's Task Force on Judicial Reform, which addressed openness in the Judicial Branch. Judge Keller also served as the chair of the Committee on Judicial Ethics. From 1997 to 2005, Judge Keller was a member of the Superior Court Rules Committee. She also served as chair of a task force to recommend revisions to the juvenile rules of practice and a member of a subcommittee proposing revisions to the Code of Judicial Conduct.

Prior to her appointment as a Family Support Magistrate and after graduation from law school, Judge Keller practiced family, personal injury and real estate law at Neighborhood Legal Services in Hartford and subsequently worked at the Office of the Corporation Counsel for the City of Hartford and the law firm of Ritter and Keller.

Judge Keller is a member of the Connecticut and Hartford County Bar Associations and the Connecticut Judges Association, where she has held the offices of secretary and vice-president. She was a member of the Judicial Review Council, the state disciplinary body for judges, from 2006 to 2008.

Judge Keller has served as a faculty member of the Connecticut Judges' Institute, conducting three seminars on judicial ethics and juvenile law for other Connecticut judges. She has lectured on juvenile topics in numerous attorney training programs. She is also a James Cooper Fellow of the Connecticut Bar Foundation and former president of the Hartford chapter of the Inns of Court, a networking and training group for newly admitted attorneys.

Hon. Douglas S. Lavine

Judge Douglas S. Lavine is a native of White Plains, NY, where he attended public schools. He is a 1972 graduate of Colgate University, where he majored in history. After graduating from Colgate, he attended the Columbia University Graduate School of Journalism, earning a masters degree in journalism. He earned his law degree from the University of Connecticut School of Law in 1977 and an LL.M. from Columbia Law School in 1981.

He was a reporter and editor for various newspapers before entering into his legal career. He worked in the Litigation Department of the Hartford law firm of Shipman & Goodwin from 1981 to 1986 and served as an Assistant United States Attorney from 1986 to 1993. In 1993, Governor Lowell P. Weicker appointed him to be a Superior Court judge. He was reappointed by Governor John G. Rowland in 2001. In February of 2006, he was nominated by Governor M. Jodi Rell to a position on the Appellate Court where, following approval by the Legislature, he now sits. He has taught as an adjunct professor at the University of Connecticut and Quinnipiac University Schools of Law. A resident of West Hartford, Judge Lavine is the author of two books on advocacy. His wife, Lucretia, is a social worker and his daughter, Julia, also a graduate of the University of Connecticut School of Law, is a practicing lawyer in Hartford.

Hon. Ingrid L. Moll

Judge Ingrid L. Moll graduated in 1995 from Wheaton College with bachelor of arts degrees in Political Science and French, and earned her juris doctor in 1999 from the University of Connecticut School of Law, where she served as the Editor-in-Chief of the *Connecticut Law Review*. After graduating from law school, Judge Moll worked as a law clerk for the late Connecticut Supreme Court Justice David M. Borden.

Nominated by Governor Dannel P. Malloy, Judge Moll was appointed as a judge of the Appellate Court on May 3, 2018, after serving as a Superior Court judge since 2014. As a Superior Court judge, Judge Moll's assignments included the criminal divisions in the Waterbury and New Britain Judicial Districts, as well as the civil division in the Hartford Judicial District. Most recently, she presided over one of the Complex Litigation Dockets, as well as a consolidated products liability docket, which comprised over 2,300 individual products liability cases.

Judge Moll currently serves on the Judicial Branch's Judicial-Media Committee, the Client Security Fund Committee, and the Social Media Committee. In August 2016, former Chief Justice Chase T. Rogers appointed Judge Moll to serve as co- chair of the Access to Justice Commission, whose charge is to promote access to justice for all people. Judge Moll recently completed nine years of service on the board of the Connecticut Bar Foundation, the organization that distributes IOLTA and other funding to legal services organizations representing Connecticut's poor and that puts on programs that promote the rule of law. She also served as a Judicial Branch appointee on the Task Force to Improve Access to Legal Counsel in Civil Matters. In addition, Judge Moll is a past-president of the University of Connecticut School of Law Alumni Association and a past-president of the Oliver Ellsworth Inn of Court.

Prior to Judge Moll's appointment to the bench, she worked as an attorney at Motley Rice LLC, McCarter & English, LLP, and Cummings & Lockwood LLC. Her practice principally focused on commercial litigation at the trial and appellate levels in state and federal courts across the country. In 2009, she was named the Super Lawyers' "New England Rising Star" in environmental litigation. In 2005, she was named one of the Hartford Business Journal's "Forty Under 40" and was given the Connecticut Law Tribune's New Leaders of the Law "Impact Award."

Hon. Eliot D. Prescott

Judge Eliot D. Prescott was born January 21, 1965 in New Bedford, Massachusetts. He attended St. George's School in Newport, Rhode Island, and received his Bachelor of Arts degree from the University of Massachusetts at Amherst in 1988. He graduated with high honors from the University of Connecticut School of Law in 1992.

Following law school, Judge Prescott served as the law clerk to the Honorable David M. Borden on the Connecticut Supreme Court. He also worked as an associate in the Washington, D.C. office of the law firm Fulbright & Jaworski, LLP.

In 1994, Judge Prescott returned to Connecticut where he served as an Assistant Attorney General in the Office of the Attorney General. In 2001, he became the Department Head of the Special Litigation Department within the Office of the Attorney General, where he supervised lawyers, accountants, paralegals and other support staff. During his tenure as an Assistant Attorney General, he represented the State of Connecticut in complex litigation matters in state and federal court, and argued more than 25 appeals in the Connecticut Supreme Court, Appellate Court and the United States Court of Appeals for the Second Circuit. In 2002, he received the "New Leaders of the Law" award from the Connecticut Law Tribune for outstanding government service.

Judge Prescott was appointed to the Superior Court by Governor John G. Rowland in 2004. During his time as a trial judge, Judge Prescott presided over Part A and Part B criminal trials and civil matters in various locations around the State. He also served as the Presiding Judge of the Administrative Appeals and Tax Session of the Superior Court. He served as a member of the Rules Committee of the Superior Court and the Advisory Committee on the Appellate Rules. On numerous occasions, he has served on the faculty of the annual Connecticut Judges' Institute.

From 1998 to 2015, Judge Prescott was an Adjunct Professor of Law at the University of Connecticut School of Law, where he taught administrative law. He is the author of two legal treatises: Connecticut Appellate Practice and Procedure (ALM), and Tait's Handbook of Connecticut Evidence (Wolters Kluwer).

Judge Prescott was appointed to the Appellate Court in 2014 by Governor Dannel P. Malloy.

Hon. Tejas Bhatt

Tejas Bhatt is a judge of the Superior Court, currently assigned to the Tolland Judicial District where he presides over juvenile delinquency, child protection, and habeas corpus matters. He currently authors the Annual Survey of Criminal Law cases for the Connecticut Bar Association's Connecticut Bar Journal and is a member of the Diversity and Inclusion Committee of the Bar Association. Prior to his appointment to the bench, he was an Assistant Public Defender in the New Haven and Hartford Judicial District courts where he defended individuals charged with the most serious crimes in trial courts, represented individuals in post-conviction proceedings and on appeal to the Appellate and Supreme Courts. He trained other public defenders and testified before various legislative committees on criminal justice legislation. In addition, he was on the executive board of the CT Criminal Defense Lawyers' Association and chaired the Racial Justice Litigation Committee of the National Association of Public Defense.

Honorable Jon C. Blue

Judge Blue graduated from Carleton College, with a Bachelor of Arts, and received his Juris Doctor from Stanford Law School. He also holds an LL.M. from the University of Virginia Law School. Judge Blue was admitted to the Connecticut Bar in 1974.

He was appointed a Superior Court Judge in 1989 and currently serves in the New Haven Judicial District, where he hears civil, criminal, juvenile, and tax cases. Twice, he sat by designation on the Connecticut Supreme Court.

Judge Blue's publications include *The Case of the Piglet's Paternity: Trials from the New Haven Colony*, published in 2015; *A Well-Tuned Cymbal? – Extrajudicial Political Activity*, published in 2004; and several others. He has chaired the Negligence subcommittee of the Civil Jury Instruction Committee and written numerous instructions used by judges throughout the State of Connecticut.

Judge Blue is a regular member of the faculty of the Connecticut Judicial Institute and gives annual reviews of the decisions of the Supreme Court of the United States. He is also a past adjunct professor of constitutional law at Quinnipiac University.

Prior to his appointment, Judge Blue practiced law in New Haven and Hartford, specializing in appellate law.

Retired Associate Justice Dennis G. Eveleigh

Justice Dennis G. Eveleigh received his Bachelor of Arts degree in Political Science from Wittenberg University in 1969. In 1972, Justice Eveleigh received his Juris Doctor, cum laude, from the University of Connecticut Law School. At the University of Connecticut, Judge Eveleigh was a member of the Law Review and received the American Jurisprudence Awards for Excellence in Torts, Contracts and Advanced Property.

Upon graduation from law school, Justice Eveleigh served on active duty in the U.S. Army as a first lieutenant. He was honorably discharged as a captain in 1980.

Judge Eveleigh was appointed in 1998 and presided over criminal, housing, civil, and juvenile cases. He also served on the Complex Litigation Docket in Waterbury for five years. In 2009, he was appointed the Chief Administrative Judge of the Civil Division. He was sworn in as an Associate Justice of the Supreme Court on June 1, 2010. He also served as the Administrative Judge for the Appellate system in 2017 prior to his retirement. Justice Eveleigh became a Judge Trial Referee in 2017, and currently sits on the Appellate Court.

Justice Eveleigh has served on a number of Judicial Branch committees and served as the chairman of the Public Service and Trust Commission's Complex Litigation Committee. He has also served as a member of the Judicial Branch's Strategic Plan Implementation Committee, the Teleconferencing Committee, External Affairs Advisory Board, Judges' Advisory Committee on E-Filing and the Civil Commission. Justice Eveleigh served as the chairperson of the Rules Committee on the Superior Court for over six years. In 2011, he gave the commencement address at Quinnipiac University's graduation ceremony, during which he received an honorary Doctor of Laws. In 2016, Judge Eveleigh received the University of Connecticut Law School Law Review Award.

Judge John B. Farley

Judge John Farley was appointed to the Connecticut Superior Court in 2015 by Governor Dannell Malloy. He is currently assigned to the Tolland Judicial District hearing civil matters.

Prior to his appointment, Judge Farley was a partner at the law firm of Halloran and Sage where he served as Chairman of Halloran and Sage's Appellate Practice Group and the Business Litigation Group.

Judge Farley is a Fellow of the American Academy of Appellate Lawyers and a member of the Oliver Ellsworth Inn of Court. He is a former member of the Board of Directors of the Connecticut Supreme Court Historical Society.

Judge Farley graduated from Georgetown University with an A.B. in Philosophy, from the University of Connecticut with a Master's Degree in Political Science and received his J.D. from the University of Connecticut School of Law with honors. He was admitted to the Connecticut Bar in 1987.

Honorable Daniel J. Klau

Judge Klau graduated from the University of California, San Diego, with a Bachelor of Arts in Political Science, and received his Juris Doctor from Boston University School of Law.

He was appointed a Superior Court Judge in 2018 and currently serves in the New Haven Judicial District, where he hears family matters.

Judge Klau is an adjunct professor at the University of Connecticut School of Law, where he teaches privacy law. From 2009 through his appontment, he was a supervising attorney for the Yale Law School Media Freedom and Information Access Clinic. He also served as the previous president of the Connecticut Council on Freedom of Information, and the Connecticut Foundation for Open Government. Prior to his appointment, Judge Klau was an attorney with McElroy, Deutsch, Mulvaney and Carpenter, LLP in Hartford, where he focused on appellate and First Amendment litigation.

Hon. Hope C. Seeley

Judge Hope C. Seeley graduated from the University of Connecticut with a Bachelor of Arts, *Magna Cum Laude* in May 1986 and earned her *Juris Doctor* with honors from the University of Connecticut School of Law in 1989.

Judge Seeley was nominated to be a Judge of the Superior Court by Governor Dannel P. Malloy on January 24, 2013, and the General Assembly approved her nomination on March 6, 2013. She currently is the Assistant Administrative Judge for the Judicial District of Tolland and is assigned to the criminal jury docket. She serves on the Executive Committee, Education Committee, the Judicial-Media Committee and the Criminal Jury Instructions Committee for the Judicial Branch.

Judge Seeley was the recipient of the Maxwell Heiman Award in 1998 from the Hartford County Bar Association, the Distinguished Graduate Award in 2006 from the University of Connecticut School of Law and the Equal Justice Advocate Award in 2007. She also was inducted as a Fellow of the American College of Trial Lawyers in 2011.

Prior to Judge Seeley's appointment, she was a principal in the Hartford law firm of Santos & Seeley, P.C. She practiced in both the state and federal courts and was involved in a broad variety of criminal and civil cases, both at the trial and appellate levels.

From 1990 until her appointment, Judge Seeley was an instructor at the University of Connecticut School of Law and she lectured annually at CTLA's Criminal Litigation Seminar, presenting the Annual Review of Significant Criminal Law Decisions.

Prior to her appointment to the bench, she had been listed in the criminal defense section of the *Best Lawyers in America*, and had been named as one of the top 50 lawyers and top 25 female lawyers in Connecticut by *Super Lawyers*.

Judge Seeley also has volunteered as Mock Trial Coach/Attorney Advisor for King Philip Middle School, West Hartford, and for Hall High School in West Hartford. During her coaching tenure, both schools won state championships. In addition, she has served as a member of the Greater Hartford Legal Aid Foundation and as a board member, officer and chair of Community Partners in Action. She currently serves on the Board for Civics First, a non-profit organization that promotes law-related education programs in schools.

Hon. Anne C. Dranginis (Ret.), Pullman & Comley LLC

Hon. Anne C. Dranginis, Connecticut Appellate Court Judge (Ret.), focuses on litigation matters involving matrimonial law, corporate compliance and governance, trial strategy, arbitration and mediation, with a particular focus in appellate mediation. She is a member of the firm's Family Law Practice. Judge Dranginis retired in January 2006 as an Associate Judge of the Connecticut Appellate Court after serving for more than 21 years on the Superior and Appellate Court bench to become a principal at a Hartford law firm.

Judge Dranginis served in all capacities as a trial judge, including serving as Presiding Criminal Judge in Waterbury and Litchfield. From 1990-1994, she was the Administrative Judge in Litchfield where she heard and decided the declaratory judgment action testing the constitutionality of the assault weapon ban, and the challenge to the state's "hunter harassment" statute. She was specially assigned to preside over Connecticut's so-called "Right to Die" case, *McConnell v. Beverly Enterprises-Connecticut*. In 1994, she was appointed the Chief Administrative Judge for Family Matters for the Connecticut Superior Court, and led the changes in family practice that provided for automatic orders upon the filing of dissolution or custody complaints and allowed the family dockets statewide to adhere to the American Bar Association guidelines. During her tenure on the Appellate Court, she sat by designation on the Connecticut Superior Court, including the death penalty phase of *State v. Michael Ross*.

Throughout her career, Judge Dranginis has lectured and provided training sessions to professional associations and community organizations on a host of topics including domestic violence, complex issues in law and medicine, legal services for Connecticut's poor, forensic science, and family law and the rights of children and youth. She is recognized as a leader in the legal community, and has earned numerous professional awards for her accomplishments, most recently receiving a Professional Excellence Lifetime Achievement Award from the *Connecticut Law Tribune.* She serves in leadership positions of many prestigious organizations and in 2016 was elected to serve as the president of the Hartford County Bar Association.

Jeffrey R. Babbin

PARTNER

jbabbin@wiggin.com
New Haven: +1 203 498 4366

Jeff is an accomplished appellate lawyer whose vast experience representing clients in complex appeals has taken him from the state level to the U.S. Supreme Court. His efforts have helped shape the law and produced notable successes on behalf of the firm's clients.

Jeff is a Partner in the Appellate Practice Group within the firm's Litigation Department. He handles both complex civil appeals and legal motions in the trial courts. His appeals have involved constitutional issues, insurance, product liability, securities, medical and other professional malpractice, breach of contract, fraud, other business and personal torts, and labor relations. Insurers have retained Jeff to pursue appeals in some of the largest medical malpractice verdicts ever in Connecticut.

Jeff routinely assists trial counsel within Wiggin and Dana and at other firms on complex legal motions both before and after trial and on tasks for preserving issues for appeal. Jeff is often retained to pursue or defend appeals in cases tried by other law firms. He also has an active administrative appeals practice, representing regulated companies in the judicial review of federal and state agency action for health care, telecommunications, and energy clients. He has authored both party and amicus briefs in the U.S. Supreme Court as well as prepared advocates for oral argument before that Court.

Benchmark Litigation has named Jeff a "Litigation Star," *Best Lawyers in America* gave him "Lawyer of the Year" honors for his appellate work, and he is consistently listed as a Connecticut Super Lawyer. Jeff is a Fellow of the American Academy of Appellate Lawyers, and he co-chaired the Connecticut Bar Association's Appellate Advocacy Section. By appointment of Connecticut's Chief Justice, he serves on the State's Advisory Committee on Appellate Rules. Jeff has authored numerous articles for the *Connecticut Law Tribune* and frequently lectures at seminars on appellate law and procedure.

Before joining Wiggin and Dana, Jeff practiced law in Washington, D.C., working on complex civil litigation in courts and administrative agencies.

He received his J.D. from Stanford University and his B.S. *magna cum laude* in economics from the Wharton School at the University of Pennsylvania.

KENNETH J. BARTSCHI

Kenneth Bartschi is a principal with the Hartford firm of Horton, Dowd, Bartschi & Levesque, P.C., where his practice includes appellate litigation in civil, family, constitutional, and criminal matters. He has argued numerous cases in the Connecticut Supreme Court and Appellate Court that have had significant impacts on the law, including *Millbrook Owners Association v. Hamilton Standard*, 257 Conn. 1 (2001), and *Ramin v. Ramin*, 281 Conn. 324 (2007) (en banc). He served as cooperating counsel with Gay & Lesbian Advocates & Defenders in the landmark marriage-equality case, *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135 (2008) (en banc). He began working at Horton, Dowd, Bartschi & Levesque, P.C., as a law clerk in 1995 and joined the firm as an associate in the fall of 1996, becoming a partner in 2000. He is a member of the bars of the State of Connecticut, the State of New York, the United States District Court for the District of Connecticut, the Second Circuit Court of Appeals, and the United States Supreme Court.

Attorney Bartschi serves as co-author of West's *Connecticut Rules of Appellate Procedure (Annotated)* with Wesley Horton and has done so since the 2004 Edition. Along with Attorney Horton, Attorney Bartschi has co-authored the annual Appellate Review for the Connecticut Bar Journal since the 2000 Review. He is also one of the co-authors of the Connecticut Practice Book Annotated (4th Ed.), published by West and *MCLE New England, A Practical Guide to Divorce in Connecticut*.

Attorney Bartschi is a fellow of the American Academy of Appellate Lawyers. In 2006, he was a co-recipient of the Judge Maxwell Heiman Award from the Hartford County Bar Association. He serves on the executive committees of the Appellate Advocacy and LGBT sections of the Connecticut Bar Association and is a member of the Human Rights and Responsibilities section. He previously served as co-chair of the HRR Section and as a member of the Board of Directors for the Connecticut Women's Education and Legal Fund. He has appeared on seminar panels, speaking on appellate issues, and is frequently asked to judge moot court competitions and classes at the UConn School of Law. Attorney Bartschi earned a Bachelor of Music in music education from Potsdam College in 1987 and holds a Masters of Music degree in performance from Arizona State University, which he earned in 1989. He graduated with honors from the UConn Law School in 1996.

Kathryn A. Calibey

Honors & Certifications:

RisCassi & Davis
131 Oak Street
Hartford, CT 06106
Email: Cindy Blackham (Attorney Calibey's Assistant)
(p) 860-522-1196 (f) 860-246-5847

Since 1982, Kathryn Calibey has developed a focus in appellate advocacy. She has been involved in many cases before the state Appellate and Supreme Courts. Her strong analytical and writing skills have contributed to her numerous appellate successes since her precedent-setting first case before the Connecticut Supreme Court in 1986, O'Connor v. O'Connor. Her legal scholarship has been influential in a wide range of appellate issues ranging from interpretation of contracts and statutes to evidentiary issues involving standards of proof applied to a variety of personal injury situations.

Kathy is also involved with many of the firm's complex cases where she participates not only in addressing intricate legal motions and issues but in trial preparation.

She is admitted to practice before the Connecticut Bar, the Federal District Court for the District of Connecticut, the United States Court of Appeals for the Second Circuit and the United States Supreme Court.

➤ Education:

- Western New England University School of Law, cum laude
- University of Connecticut B.A.

Thomas Donlon, Robinson+Cole

Thomas Donlon's practice focuses on appellate and complex trial matters. He is a member of Robinson and Cole's Appellate Team within the Business Litigation Group.

Tom has successfully prepared briefs and presented arguments in various federal Courts of Appeals as well as state appellate courts in both Connecticut and New York. These appeals have involved multimillion-dollar cases covering diverse topics, including health care fraud, securities, anti-trust, bankruptcy, employment, insurance, contract and construction disputes, condemnation, land use, and environmental regulation. Tom appears regularly before the Second Circuit, where he won a precedent-setting case limiting state immunity in bankruptcy cases. He also has handled cases before the Third, Ninth and Federal Circuits.

Tom is also involved in all aspects of complex litigation in trial courts, with a concentration on motion practice, particularly complex dispositive motions requiring the briefing of challenging legal issues. Working with other members of the firm's litigation group, his cases have run the gamut of civil litigation, including the representation of one of America's largest corporations in an international contract dispute, the defense of insurance companies against bad faith claims, the enforcement of arbitration agreements against class action attack, defense of Native American corporations, disputes over major government construction contracts, and enforcement of penalties and attorney's fees in bankruptcy.

Tom was an attorney on active duty with the U.S. Coast Guard for over 20 years before coming to the firm. He served as the senior government appellate counsel, responsible for all Coast Guard appeals nationwide, and represented the Coast Guard in the first military case directly appealed to the U.S. Supreme Court. He also served an assignment with the U.S. Department of Justice, Civil Division, litigating Coast Guard cases in federal district courts and Courts of Appeal. In his last Coast Guard assignment, Tom served as a legal advisor to the U.S. Ambassador to the United Nations.

Tadhg Dooley

PARTNER

tdooley@wiggin.com
New Haven: +1 203 498 4549

Tadhg is a Partner in the firm's Litigation Department, where his practice focuses on appellate and complex civil litigation. He has extensive experience handling appeals in state and federal courts throughout the country and has obtained favorable results for a diverse range of clients, from federal prisoners to foreign presidents, big companies to small towns. Among other recent successes, Tadhg helped a municipality overturn a $6.8 million verdict in the Connecticut Supreme Court, and helped a dental practice overturn a $3.7 million verdict in the Georgia Supreme Court. Tadhg has also been called on to craft amicus curiae briefs advancing the positions of clients in the U.S. and Connecticut Supreme Courts.

At the trial level, Tadhg has represented clients confronting a variety of legal challenges, including defamation and libel suits, consumer class actions, alleged Title IX violations, and lawsuits concerning institutional responses to child sexual abuse. Among other favorable outcomes, he recently secured the dismissal of a defamation suit in one of the first cases to test Connecticut's "anti-SLAPP" statute and persuaded a trial court to dismiss a sexual-abuse lawsuit brought by 19 plaintiffs against a national youth services organization. In 2016, Tadhg successfully defended a Connecticut municipality in a bench trial relating to the validity of its mayoral election.

Tadhg has devoted significant time to pro bono matters at the trial and appellate levels. Along with Wiggin and Dana attorney Ben Daniels, he runs the Appellate Litigation Project at Yale Law School, supervising students representing indigent clients in the U.S. Courts of Appeals for the Second and Third Circuits. He has been honored by Connecticut Legal Services for his pro bono work on behalf of a single mother facing a defamation lawsuit and received Wiggin and Dana's Pro Bono Achievement Award in connection with his successful appeal of an Espionage Act sentence in the Second Circuit.

Tadhg joined Wiggin and Dana following a clerkship with Judge José A. Cabranes of the U.S. Court of Appeals for the Second Circuit. He previously clerked for Judge Robert N. Chatigny of the U.S. District Court for the District of Connecticut. Between his clerkships, Tadhg worked as an associate at Ellis & Winters LLP in Raleigh, North Carolina, where his practice focused primarily on the needs of university clients. He earned his J.D. from Duke University School of Law, where he was Executive Editor of the *Journal of Law & Contemporary Problems* and the winner of the Dean's Cup Moot Court Competition, and received his B.A. from Boston University.

KAREN L. DOWD

Attorney Dowd is a principal at Horton, Dowd, Bartschi & Levesque, P.C. in Hartford, Connecticut. She is admitted to practice in Connecticut state courts as well as in the United States District Court for the District of Connecticut, the United States Court of Appeals for the Second Circuit, and the United States Supreme Court. Her practice includes trial and appellate litigation in Connecticut state and federal courts, and the representation of attorneys in professional responsibility matters. She consults with trial counsel on presenting legal issues and in preparing cases for appeal.

Attorney Dowd co-authors the annual Connecticut Practice Book Annotated, Vol. 1, annotated by current and former members of the firm. Attorney Dowd provides author's comments to chapters on pleadings and motions. She also co-authored Connecticut Insurance Law.

Attorney Dowd served as Chair of the Connecticut Bar Association Litigation Section from 2005 to 2007 after serving as an officer for the prior four years. She continues to serve on the Litigation Section Executive Committee as an Honorary Member. Attorney Dowd taught written and oral advocacy in the Moot Court interterm at the University of Connecticut School of Law.

GG&W | Goldman Gruder & Woods, LLC

Attorney Bruce L. Elstein is a Member of the firm whose practice focuses exclusively upon representing individuals and businesses in disputes requiring litigation.

Attorney Elstein graduated from Hofstra University School of Law, where he was also a member of the Moot Court Competition Team. Elstein earned his undergraduate degree from Skidmore College with a Bachelor of Science, concentrating in accounting.

Bruce concentrates on significant personal injury cases and complex civil and commercial litigation. His personal injury practice concentrates in the areas of automobile collisions, property hazards, and malpractice while his civil and commercial practice focuses on business, real estate and construction related disputes.

Attorney Elstein's accounting and business educational background assists him in understanding, analyzing and presenting complex financial matters in his cases. Bruce has effectively tried and settled countless cases for his clients and has successfully argued many appellate matters.

Mr. Elstein is active in civic affairs and has been active as president and board member of his resident lake community. While in college, Bruce actively participated in the emergency corps as a driver, attendant, and dispatcher. He also headed its first major successful fundraising effort as his senior study project, a venture that won him public accolades and an award for his dedication to the Saratoga Springs community.

Bruce and his wife, Carol Porrata Elstein, have two children and reside in Trumbull, Connecticut.

WESLEY W. HORTON, PARTNER

Horton Dowd Bartschi & Levesque

Attorney Horton's appellate practice covers a wide variety of legal issues, from constitutional matters, to domestic relations, insurance, personal injury, and land use. He began his law career as the law clerk to Justice Charles House of the Connecticut Supreme Court (1970 to 1971). Building on that experience, he has become one of the premier appellate lawyers in the state of Connecticut. The list of cases on which he appears as counsel, either at argument or on the brief, spans 35 years and numbers in the hundreds. He has argued over 125 cases to the Connecticut Supreme Court; he argued and prevailed in the notable condemnation case, *Kelo v. New London*, 545 U.S. 469 (2005), before the U.S. Supreme Court.

Attorney Horton has participated in some of the most notable cases in the state, representing individuals and corporations. Attorney Horton handled the breakout school finance case, *Horton v. Meskill*, 172 Conn. 615 (1977), and continues to work for the betterment of the Connecticut school systems through *Sheff v. O'Neill*, 238 Conn. 1 (1996). He also successfully sustained the validity of a pre-nuptial agreement in a multi-million dollar divorce in *Friezo v. Friezo*, 281 Conn. 166 (2007). Attorney Horton won the reversal of a $32 million verdict in *Glazer v. Dress Barn*, 274 Conn. 33 (2005).

Attorney Horton consults with counsel at the trial level to assist with complicated legal matters or in preparation for possible appellate issues. Such cases include representation of insurers and plaintiffs, contract questions, coverage issues and divorce litigation involving multi-million dollar estates.

Attorney Horton has been a Fellow of the American Academy of Appellate Lawyers since 1991. Membership in the Academy is by invitation only. Attorney Horton served as President of the American Counsel Association, 2008-2009, of which he has been a member since 1991.

Dana M. Hrelic is a partner at Horton, Dowd, Bartschi & Levesque, P.C. in Hartford, Connecticut. She is admitted to practice in Connecticut and New York state courts, as well as in the United States District Court for the District of Connecticut, the United States Courts of Appeals for the Second Circuit, the Third Circuit, the Eleventh Circuit, and the Federal Circuit, and the Supreme Court of the United States. She is presently admitted to practice *pro hac vice* in the Supreme Court of the U.S. Virgin Islands. Attorney Hrelic joined Horton, Dowd, Bartschi & Levesque in August of 2009 after serving as a law clerk for the Honorable Christine S. Vertefeuille of the Connecticut Supreme Court.

Attorney Hrelic represents clients in civil, family, juvenile and criminal appeals before the Connecticut appellate courts as well as the Supreme Court of the U.S. Virgin Islands, the Third Circuit Court of Appeals, the Second Circuit Court of Appeals, the Federal Circuit Court of Appeals, and the Supreme Court of the United States. She has experience working on appellate matters in the Eleventh Circuit. Attorney Hrelic regularly consults with clients and attorneys on civil, family and complex litigation matters and provides assistance at all stages of litigation—including both pre- and post-judgment. She was selected as a Connecticut and a New England Super Lawyers Rising Star in Appellate Practice each year from 2013 to 2018. In 2017, she was selected as one of three Finalists for Connecticut Attorney of the Year by the *Connecticut Law Tribune*.

Attorney Hrelic earned a Juris Doctor from the University of Connecticut School of Law in 2008 and a Bachelor of Arts with distinction from the University of North Carolina at Chapel Hill in 2005. At the University of Connecticut School of Law, she was the Managing Editor of the Connecticut Law Review. Attorney Hrelic is active in the American Bar Association, where she serves in the House of Delegates and is the Immediate Past Chair of the ABA Young Lawyers Division. She is also a former Chair of the Connecticut Bar Association Young Lawyers Section. Attorney Hrelic served as a Trustee on the University of Connecticut School of Law Board of Trustees and is currently both a Fellow with the American Bar Foundation and a Fellow with the Connecticut Bar Foundation.

Associate

Hugh D. Hughes

hdh@sdvlaw.com
Download vCard
Print Version

Northeast

203.287.2124

PROFESSIONAL BIOGRAPHY

Hugh D. Hughes brings to SDV a wealth of experience in complex litigation including a successful appellate practice, having argued a wide variety of issues before the Connecticut Appellate and Supreme Courts. In the last five years alone, Hugh has had nearly 30 reported appellate decisions in Connecticut, earning him a Super Lawyers' designation in appellate work each year since 2015.

Hugh's concentration in insurance law makes him an outstanding addition to our team. His representation of clients includes coverage issues involving exclusions for assault and battery, workers' compensation and employment and intentional torts, as well as UM/UIM and CUTPA claims. Hugh is on the Executive Committee of, and is a Legislative Liaison for, the Insurance Law Section of the Connecticut Bar Association, a role which allows him to stay abreast of legislation concerning insurance law in the state.

Hugh was a member of Law Review while in law school and upon graduation, he spent a year as a Law Clerk to Justice Francis McDonald, former Chief Justice of the Connecticut Supreme Court. He and his family currently reside in Trumbull, Connecticut.

Daniel Krisch, Halloran Sage

Daniel Krisch, Chair of Halloran Sage's Appellate Practice Group, partners with a wide variety of corporate, institutional and individual clients to resolve complex legal issues during all stages of litigation. Dan has argued more than ninety appeals: They have involved multi-million dollar tort verdicts, commercial and contract litigation, complex divorce cases, zoning and land use matters, serious criminal convictions, election disputes, and issues of constitutional law and fundamental rights. In 2008, while at his prior firm, Dan won a reversal of a $41 million judgment against Sordoni/Skanska Construction Co., the largest tort judgment reversed on appeal in Connecticut history.

Dan's two decades of experience have taught him that appeals begin long before they're filed and that sometimes the best appeal is the one that's never filed. Dan advises clients about appellate issues and helps clients anticipate and prepare for appeals, all while bearing in mind that the ultimate goal is the path that takes clients where they want to go. Dan frequently assists trial lawyers and insurers with raising, arguing and properly preserving potential appellate issues during trial, and regularly represents companies, insurers and individuals in civil litigation in state and federal court. Dan also counsels and represents municipalities, candidates and interested individuals in election disputes and in proceedings before the State Elections Enforcement Commission.

Dan is co-author of *The Encyclopedia of Connecticut Causes of Action*, is an elected member of the American Law Institute, and has taught moot court and appellate advocacy at the University of Connecticut School of Law. Dan began his career in 1999 as law clerk to Ellen Peters, former Chief Justice of the Connecticut Supreme Court. From 2004-2011, he co-authored the *Connecticut Superior Court Civil Rules, Annotated*, and the *Connecticut Superior Court Juvenile Rules, Annotated*. Dan is AV-rated by the peer-reviewed legal directory *Martindale-Hubbell*. He has been recognized since 2011 by *The Best Lawyers in America®* in the categories of Appellate and Insurance Law, and since 2008 by *Super Lawyers®* in the areas of Appellate; Civil Litigation: Defense; and Criminal Defense.

Dan spent six years as Chair of Halloran Sage's Wellness Committee and is a member of its Diversity Committee. He spent three years as Vice-Chair and six years as a Board member of Community Partners in Action, a non-profit organization dedicated to building a better community by providing services that promote accountability, dignity, and restoration for people affected by the criminal justice system. Dan has served as Co-Chair of the Connecticut Bar Association's Appellate Advocacy Section, the CBA Assistant Secretary-Treasurer, Chair of the CBA Young Lawyers Section, and a member of the CBA House of Delegates.

Brendon P. Levesque, Horton Dowd Bartschi & Levesque PC

Brendon P. Levesque is the managing partner at Horton Dowd Bartschi & Levesque PC in Hartford, Connecticut. He is admitted to practice in Connecticut state courts as well as in the United States District Court for the District of Connecticut, the United States Courts of Appeals for the Second, Third, and Federal Circuits. In addition, he is admitted to practice before the United States Patent & Trade Office. Attorney Levesque joined Horton Dowd Bartschi & Levesque in August 2004 after serving as a law clerk for now Chief Judge DiPentima of the Connecticut Appellate Court. Attorney Levesque was made a principal of the firm on January 1, 2009.

Attorney Levesque represents clients in civil, family, and criminal appeals before the Connecticut appellate courts and the Second Circuit Court of Appeals. He also represents attorneys before grievance panels, in public hearings before the Statewide Grievance Committee and in presentments and appeals and candidates for bar admission before the Bar Examining Committee. Attorney Levesque presents seminars on risk management and ethics to law firms. Attorney Levesque is a member of the Association of Professional Responsibility Lawyers. Attorney Levesque is co-author of *The Wheeler Court* with Attorney Wesley Horton for the Quinnipiac University Law Review, an article focusing on the Connecticut Supreme Court from 1910 through 1930. With Attorney Horton, he co-authored *The Maltbie Court* for the University of Connecticut Law Review (Vol. 39, No. 5, July, 2007). Attorney Levesque authored *Preparing for your first Appellate Argument* which was published in the Connecticut Lawyer, Vol. 18, No. 12 and co-authored two chapters of Attorney Horton's book, The History of the Connecticut Supreme Court, Thomson/West, 2008.

Attorney Levesque co-authors the Connecticut Practice Book Annotated providing authors comments to the chapters on the Code of Judicial Conduct, the Rules of Professional Conduct, motions, and pleadings. He co-authors Connecticut Juvenile Law published by Thomson/West with Attorney Dana Hrelic. He also co-authored *Connecticut Insurance Law*, a publication of the Connecticut Law Tribune with Attorney Karen Dowd and Attorney Michael Taylor. Since 2009, he has co-authored the annual *Professional Responsibility Review* in the Bar Journal with the Honorable Kimberly A. Knox.

Susan C. Marks

Susan C. Marks is a graduate of the West Virginia University College of Law. She was a law clerk for the Hon. James M. Sprouse of the U.S. Court of Appeals for the Fourth Circuit. Following a brief period in private practice, she joined the Appellate Bureau of the Office of the Chief State's Attorney in 1984. She served as Bureau supervisor from 1995 to retirement in February, 2019. Attorney Marks has taught various facets of appellate advocacy for the Connecticut Bar Association, the Division of Criminal Justice and the National Advocacy Center.

Linda Morkan is the head of Robinson+Cole's Appellate Practice Team and has dedicated her practice to appellate advocacy for more than 30 years. She has been involved in more than 200 appeals before the state appellate courts in Connecticut, Massachusetts, Rhode Island and New York, as well as the Court of Appeals for the First, Second, Fifth, Sixth, Eleventh and D.C. Circuits. She has only had one outing in the U.S. Supreme Court, but happily emerged victorious.

In 2008, Linda was the first woman in Connecticut inducted into the American Academy of Appellate Lawyers, an honor open only to those who have practiced as an appellate advocate for at least 15 years and possess a reputation of recognized distinction. (Academy membership is limited to 500 members in the United States and is by invitation only.)

For many years, her name has appeared in *Best Lawyers in America*, *Benchmark Litigation* and *Benchmark Appellate*, and was three times included in the special publication "*Top 250 Women Litigators in the United States*." Linda is AV Rated Preeminent in Martindale-Hubbell in the area of Appellate Practice, and is currently listed in *SuperLawyers*' Top 100 Lawyers in New England / Top 50 Women Lawyers in New England / Top 50 Lawyers in Connecticut.

Serving in local, regional and national appellate advocacy groups, Linda served as Co-Chair of the CBA's Appellate Advocacy Section and is on the Executive Committee of the Litigation Section. of the Connecticut Bar Association. She is also currently a Vice Chair of the Torts and Insurance Practice Section of the ABA, and regularly publishes in state and national publications on topics related to appellate practice and persuasive techniques.

When Linda is not researching, writing, or appearing in court, she can frequently be found at a Bruce Springsteen concert. As of the last tour, she has attended almost as many Springsteen shows as she has argued appeals.

Denis J. O'Malley is a member of Robinson+Cole's Insurance + Reinsurance Group and Appellate Practice Team. He represents commercial insurers in a broad range of coverage matters and disputes.

Prior to joining the firm, Denis served as law clerk to the Honorable Justice Richard N. Palmer of the Connecticut Supreme Court. He was also a summer associate at Robinson+Cole. While attending law school, he was a legal extern for the Honorable Joan G. Margolis (Ret.), United States Magistrate Judge, District of Connecticut, and later worked as a law clerk for an appellate litigation firm in Hartford, where he conducted research, drafted legal memoranda, and edited briefs to be filed with state and federal appellate courts.

During law school, Denis served as the Managing Editor of the Connecticut Law Review and was a member of the Connecticut Moot Court Board. Denis received the Best Oralist award in the 2015 William H. Hastie Moot Court Competition, the 2015 William F. Starr First Year Award for Outstanding Scholarship, and CALI Excellence awards in five of his courses.

Denis worked as a student attorney for the appellate section of the University of Connecticut School of Law Criminal Clinic. In that role, he co-authored the petitioner's successful brief in *Gaskin v. Commissioner of Correction* (AC 39462), in which the Connecticut Appellate Court granted a petition for a writ of habeas corpus and vacated the petitioner's underlying criminal convictions based on due process violations that occurred at trial.

Prior to entering law school, Denis spent several years as a journalist, primarily covering police, emergency services, and courts for daily newspapers in Scranton, PA; Bridgeport, CT; and Danbury, CT.

James Ralls Biography

James Ralls graduated from Georgetown Law, and has been working in the Appellate Bureau of the CT Chief State's Attorney Office for over 30 years doing criminal and habeas corpus appeals.

Charles D. Ray, a partner at McCarter & English, has nearly 30 years of experience representing clients in both trial and appellate litigation. He appears regularly in the Supreme and Appellate Courts of the State of Connecticut and has participated in numerous appeals before the United States Courts of Appeals for the First, Second, Third, Ninth and Federal Circuits. Over the course of his career, Charlie has argued or assisted in more than one hundred appellate cases covering a broad spectrum of subject matter, from commercial business litigation to criminal and high-end matrimonial cases.

Charlie's practice also extends to trial litigation in both state and federal court. He has first-chaired a number of trials, including a successful breach of contract claim on behalf of a national retailer, trials concerning the valuation of property for purposes of local taxation, defending a number of land use appeals on behalf of a national retailer, as well as several tax related actions challenging decisions made by the Connecticut Department of Revenue Services.

Charlie is also active in the pro bono community, having served on the firm's Pro Bono Committee for a number of years and acting as coordinator of pro bono activities for the firm's Hartford office. In this capacity, Charlie has represented a number of individuals and charitable organizations in a wide variety of matters.

Norman A. Roberts II

Norman A. Roberts, II is a co-founding partner of GraberRoberts, LLC. Previously a partner at Marvin, Ferro, Barndollar & Roberts and Roberts Family Law, Norm co-founded GraberRoberts, LLC in 2018 so that he could continue to protect and represent clients with the highest level of care.

Practical, sharp, and creative, clients say that Norm was born to be a lawyer. His business-savvy, understanding of complex components, especially relating to accounting, and his creative approaches to resolution helps him to consistently deliver practical and beneficial outcomes for his clients.

Norm understands that negotiating and settling disputes is often the best option for clients. To that end, he will work tirelessly to reach the best and most beneficial resolutions for his clients. However, when negotiations do not work and court becomes the best option, Norm advocates for his client's skillfully and tenaciously. An avid litigator, Norm is right at home in the courtroom.

Norm has a vast experience handling divorce and family law disputes, such as child support, alimony, property division, child custody, post judgment modifications and enforcements, and premarital agreements. In addition, Norm has a strong portfolio of appellate work and has argued dozens of appeals.

Norm speaks frequently on a number of family law topics, including as a panelist at legal education seminars presented by the Connecticut Bar Association and the Fairfield County Bar Association. He has also published a number of articles in the Connecticut Law Tribune and scholarly publications. Norm also acts as a Special Master in the Stamford Superior Court.

Norm has been selected as a Rising Star from 2008 – 2010 and as a Super Lawyer from 2011 – 2018 by Super Lawyer Magazine.* He was rated as one of the Top 50 attorneys in Connecticut and as one of the Top 100 attorneys in New England by Super Lawyers Magazine.*

Norm attended Quinnipiac University School of Law where he graduated with honors in 1996.

CARMODY
TORRANCE | SANDAK | HENNESSEY LLP

Ann H. Rubin

Partner
Office: Waterbury, CT
Phone: 203.578.4201
Fax: 203.575.2600
Email: arubin@carmodylaw.com

Service Areas

- Alternative Dispute Resolution
- Commercial Litigation
- Litigation
- Professional Liability
- Education

Education

- University of Connecticut School of Law, J.D., 1983
- Cornell University, B.A., 1979

Admissions

Bar Admissions

- Connecticut; 1983
- U.S. Court of Appeals for the Second Circuit; 1983
- U.S. District Court, District of Connecticut; 2001

Ann Rubin is a trial lawyer who represents clients in a wide variety of business, commercial, and professional disputes, in state and federal court and in arbitration. Ann has represented international chemical and watch companies, the region's major electric utility, national insurance agents and brokers, national and regional financial institutions, major law firms and professional service providers, State agencies, physician groups, partnerships, business owners, franchisors, insurers, and reinsurers. Ann's clients note her practical and aggressive representation, and her focus on accomplishing their business and legal goals. Ann has been named in Connecticut "Super Lawyer" by Connecticut Magazine and a "Top Attorney in Business Litigation" by the Business Edition of Super Lawyers.

COHEN and WOLF

Barbara M. Schellenberg *Principal*

p 203-974-6451 f 203-337-5526
bschellenberg@cohenandwolf.com

Practice Areas
Appellate
Land Use & Zoning
Litigation
Municipal
Employment & Labor

Bar Admissions
Connecticut
U.S. District Court
District of Connecticut
U.S. Court of Appeals
2nd Circuit
U.S. Court of Appeals
3rd Circuit

Education
University of Pennsylvania Law School, 1986, J.D.
Honors: Journal of Comparative Business and Capital Market Law, Senior Editor

Cornell University, 1981, B.S.

Office Location
Orange, CT

BARBARA M. SCHELLENBERG is a principal and chair of the firm's Appellate Practice Group. She is also a member of the firm's Land Use & Zoning, Municipal, Employment & Labor and Litigation Groups. Resident in the firm's Orange office, Ms. Schellenberg has a wide range of experience handling appeals in the Connecticut Appellate and Supreme Courts, as well as experience in the Second Circuit Court of Appeals and the Third Circuit Court of Appeals. She is admitted to practice in Connecticut; the U.S. District Court, District of Connecticut, the U.S. Court of Appeals for the Second Circuit and the U.S. Court of Appeals for the Third Circuit. Ms. Schellenberg is a member of the Connecticut and Greater Bridgeport Bar Associations. She is also a member of the Connecticut Bar Association's Appellate Advocacy, Planning & Zoning and Municipal sections. In 2012, Ms. Schellenberg was a faculty member at the Connecticut Bar Association's Appellate Advocacy Institute. In 2013, she began serving as a board member of the Connecticut Supreme Court Historical Society and in 2016, Ms. Schellenberg was appointed Editor-In-Chief of the Society's journal.

Active in the community as well, Ms. Schellenberg served on the Board of Congregation Beth El in Fairfield for ten years, where she also served as an Executive Board member, Co-Chair of the 2011-2012 Rabbi Search Committee, and Co-Chair of the Social Action Committee for five years. She also worked for several years on the Strategy Team of Congregations Organized for a New Connecticut, a diverse interfaith community organization comprised of trained leaders from religious institutions in Fairfield and New Haven counties who have joined forces to address a variety of local community concerns. Ms. Schellenberg was a member of the Board of Directors of the Jewish Family Service of Greater Bridgeport for seven years and a Fresh Air Fund Host from 1993-2001.

Ms. Schellenberg is recognized by Connecticut Super

Lawyers (2012-2018) for her Appellate work.

Ms. Schellenberg received her B.S. in 1981 from Cornell University and her J.D. in 1986 from the University of Pennsylvania Law School, where she was senior editor of the *Journal of Comparative Business and Capital Market Law.*

SAMUEL V. SCHOONMAKER, IV
Schoonmaker Legal Group, LLC
84 West Park Place; Stamford, CT 06901
Phone: (203) 487-0291; Email: svs@schoonlegal.com

Sam Schoonmaker practices appellate and family law in Stamford with the Schoonmaker Legal Group, LLC. He graduated from Yale College (B.A.), Cambridge University (M.Phil.) and Columbia Law School (J.D.). He is a member of the adjunct faculty at the University of Connecticut.

He is a past chair of the CBA Family Law Section and a member of the Appellate Advocacy Section. He served as CLE co-chair for the ABA Family Law Section and as its financial officer. He has served on the board of editors of the *Family Law Quarterly* since 2008, and since 2013 as one of the two ABA appointees to the Uniform Law Commission's Joint Editorial Board on Uniform Family Laws. He developed *Case Flash* and *Appellate Preview*.

Attorney Schoonmaker has practiced law in Connecticut since 1994. Previously, he worked a litigator at Day, Berry & Howard, and later as a partner at Schoonmaker, George & Colin.

Jay Sexton is a partner who handles special litigation matters, concentrating in appeals that involve civil, criminal, family and child protection issues. He appears regularly before Connecticut's Appellate Court and Supreme Court, where he represents both domestic and international clients in appeals ranging from marital dissolutions that involve complex offshore asset disputes to constitutional claims concerning the state's authority to compel a seventeen-year-old woman to undergo chemotherapy against her will. Attorney Sexton also handles special education and disability matters that involve claims under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, among other laws. In addition to litigating special education and disability claims on appeal, he also advocates for students with disabilities in the public education system and provides counsel to private businesses regarding disability compliance issues.

Prior to co-founding this firm, Attorney Sexton worked on appeals involving professional liability matters at a mid-size insurance defense firm. He began his appellate career as a law clerk to the Hon. Richard A. Robinson at the Connecticut Appellate Court, and has been recognized as a "Rising Star" or a "Super Lawyer" in appellate practice by Thomson Reuter's *Super Lawyers* rating service each year since 2015. Attorney Sexton is admitted to practice in Connecticut, as well as before the United States Court of Appeals for the Second Circuit and the Supreme Court of the United States.

An active member of the Connecticut Bar Association, Attorney Sexton currently serves as Co-Chair of the Appellate Advocacy Section; he has served as a member of that Section's Executive Committee since 2015. In 2017, Connecticut Chief Justice Chase T. Rogers appointed Attorney Sexton to the Judicial Branch's Access to Justice Commission, where he is working with other bar leaders to increase representation opportunities for low-income litigants on appeal. Attorney Sexton is also a member of the American Bar Association, where he sits on the Council of Appellate Lawyers, and is a member of the Connecticut Supreme Court Historical Society. As a younger attorney, he was Co-Chair of the Young Lawyers Section's Appellate Practice Committee and was a Barrister in the Oliver Ellsworth Inn of Court.

Attorney Sexton regularly lectures in the area of appellate law. In addition to serving frequently as faculty for continuing legal education classes sponsored by the Connecticut Bar Association and the Office of the Chief Public Defender in Connecticut, he has also presented seminars at national conferences sponsored by the American Bar Association.

Attorney Sexton received his J.D. in 2007 from Western New England School of Law and his B.A. in 1999 from University of Maine. While in law school, he won the Daniel Webster Award for Best Overall Advocate in his law school's intramural moot court competition and was a quarter-finalist in the National First Amendment Moot Court Competition.

Jonathan M. Shapiro

Jonathan M. Shapiro joined Shapiro Law Offices as a partner in 2010. His practice concentrates on corporate transactions, employment matters, and complex commercial and general litigation, as well as in arbitrations and mediations. He represents individuals and businesses in a wide variety of matters including breach of contract actions, non-compete claims, unfair trade practice claims, trade secret misappropriation claims, commercial lease disputes, employment and insurance coverage disputes, breach of fiduciary duty claims and product liability claims. Jonathan also regularly serves as "local counsel" for non-Connecticut-based firms that are admitted to practice pro hac vice. Jonathan also counsels clients in a number of other areas including employment law, contract negotiations, commercial transactions, and business formation.

Jonathan is admitted to practice in Connecticut and New York, as well as before the United States District Courts for the Southern and Eastern Districts of New York and the District of Connecticut. He was recognized as a Connecticut Super Lawyer “Rising Star” in 2010, 2011, 2012 and 2013, and was honored by the Fairfield County Business Journal at the 2011 40-Under-40 Awards Dinner. In November 2012, Jonathan was named as a “New Leader in the Law” by the Connecticut Law Tribune. In 2014, 2015 and 2016, Jonathan was recognized as a Connecticut Super Lawyer.

Jonathan speaks regularly at seminars on a broad range of topics and has authored several articles, including

- Moderator, The Battle Behind the Scenes: Handling Difficult Clients, Hostile Judges and Unethical Attorneys During Litigation, American Bar Association, Litigation Section Annual Conference (New Orleans 2015);
- Co-Author, “Hold It! Avoiding Electronic Discovery Disasters with Effective Litigation Holds” (Elizabeth S. Fenton & Diana Rabeh,Reed Smith) and moderator on corresponding program at American Bar Association, Litigation Section Annual Conference.
- Author, “Extra-Territorial Application of Unfair Trade Practice Claims,” American Bar Association business Torts Journal;
- Moderator, Going Commando: Lessons from the Field on Starting Your Own Practice, Connecticut Bar Association Young Lawyers Section;
- Panelist, Career Transitions, University of Connecticut School of Law Alumni Association;
- Panelist, CAPABA Lunar New Year/Networking, Connecticut Asian Pacific Bar Association;
- Panelist, Contract Negotiations, Meeting Planners International-Connecticut River Valley Chapter;

Jonathan is active in the following organizations:

- Connecticut Bar Association, President (Past Vice-President, Past Chair Membership Committee, and Past Chair Young Lawyers Section; Assistant Treasurer-Secretary 2013-2014)
- March of Dimes Connecticut Chapter State Board (Volunteer Development Committee Chair; Past Chair State Board, 2013-2014)
- Membership Chair, American Bar Association Business Torts Committee
- Member, Middlesex County Bar Association
- Corporator and Philanthropy Counsel Member, Middlesex Hospital
- Vice President, Congregation Adath Israel

Prior to joining the firm, Jonathan was a senior associate at Day Pitney, LLP in its Stamford, Connecticut office. He earned his B.A. in History from Boston College in 1998 and his J.D. degree from the University of Connecticut School of Law in 2001.

Jonathan lives in Middletown with his wife and children. In his spare time he enjoys running, biking, reading, and spending time with his family.

Jack G. Steigelfest, Partner

Howard Kohn Sprague & Fitzgerald LLP

Jack Steigelfest graduated with High Honors from the University of Connecticut School of Law, where he served on the editorial board of the law review. He then had the privilege of clerking for Justice David Shea at the Connecticut Supreme Court. Attorney Steigelfest is admitted to practice before the State and Federal Courts in Connecticut, as well as the Second Circuit Court of Appeals.

Jack practices in the field of civil litigation, at both the appellate and trial level, and more specifically handles complex disputes involving insurance, serious injury, death and property damage, as well as more general litigation in the fields of personal injury and insurance defense. Jack has served as Editor in Chief of the Connecticut Bar Journal and as President of the Connecticut Defense Lawyers Association. He has been appointed a judicial arbitrator/fact finder by the Connecticut Judicial Branch and was appointed by the Chief Justice to sit on Connecticut's Code of Evidence Oversight Committee. Jack holds the highest rating (AV) from Martindale-Hubbell*, has been recognized by Connecticut and New England Super Lawyers* (civil litigation defense), and is listed in Best Lawyers in America* (appellate law).

**For information on how these rating services develop and award their designations, see:*

- http://www.martindale.com/Products_and_Services/Peer_Review_Ratings.aspx
- http://superlawyers.com/about/selection_process.html
- http://www.bestlawyers.com/aboutus/selectionprocess.aspx

Michael S. Taylor is of counsel at Horton Dowd Bartschi & Levesque PC in Hartford, Connecticut. He is admitted to practice in Connecticut state court as well as in the United States District Court for the District of Connecticut, the United States Court of Appeals for the Second Circuit and Supreme Court of the United States.

Attorney Taylor represents clients at trial, on appeal and in professional responsibility matters. His appellate litigation has encompassed a wide range of issues including constitutional law, contract law, land use, and eminent domain, insurance coverage, criminal law, products liability and torts, dissolution of marriage, child custody and parental rights. Attorney Taylor also counsels clients and attorneys in attorney ethics matters and at the trial stage regarding the identification and preservation of issues for appeal.

Attorney Taylor co-authors Connecticut Insurance Law with Attorneys Karen Dowd and Brendon Levesque. He also co-authors The Encyclopedia of Connecticut Causes of Action. Attorney Taylor writes and lectures on appellate, insurance coverage and professional responsibility topics and was an adjunct professor at The University of Connecticut School of Law, teaching moot court.

Matthew A. Weiner

Matthew A. Weiner is Assistant State's Attorney in the Appellate Bureau of the Office of the Chief State's Attorney. ASA Weiner clerked for Justice Richard N. Palmer during the Supreme Court's 2006–2007 term and litigates appellate matters on behalf of the State.

Harry Weller

University of Connecticut School of Law

harry.weller@uconn.edu

Harry Weller is a 1976 graduate of Syracuse University with a degree in Political Science and Television Production. He is also a 1979 graduate of the University of Connecticut School of Law.

Now retired, for over 30 years, he has worked as an appellate prosecutor in the award winning Appellate Bureau of the Chief State's Attorney's Office handling many high-profile appeals for the state. He has been either lead attorney or consultant on every capital case prosecuted in Connecticut since 1994.

In 2014, he was honored with the Public Service Award by the University of Connecticut Law School Alumni Association. In 2005, he was named Connecticut Prosecutor of the year. He also was awarded the Regional Appellate Attorney Award by the Association of Government Attorneys in Capital Litigation, and was a member of the team that received the same award in 2005.

Along with training prosecutors locally and nationally, he speaks often to civic groups and students. He teaches an appellate clinic at the School of Law. Previously he taught legal research and writing at UConn Law School and, for two years, taught the Prosecutor's Criminal Appellate Clinic at Quinnipiac University School of Law. Recently he authored one chapter of the 2016 edition of Connecticut Criminal Procedure.

Robinson+Cole

Jeffrey J. White

Partner

Jeffrey J. White

PARTNER

jwhite@rc.com

Hartford Office
280 Trumbull Street
Hartford, CT 06103
860.275.8252
860.275.8299

New York Office
Chrysler East Building
666 Third Avenue, 20th Floor
New York, NY 10017
212.451.2924
212.451.2999

Download vcard

Practice Areas

Health and Safety

Appellate

Product Liability

Class Action Defense

International

Distributorship and Franchise Law

Business Litigation and Dispute Resolution

Litigation

Industries

Manufacturing Law

Food + Beverage

Biography

Jeff White provides counseling and dispute resolution advice for manufacturers and distributors. He is chair of the firm's Manufacturing Industry Team and regularly represents clients throughout the United States and globally. Jeff is significantly involved with industry issues through his participation with groups such as the National Association of Manufacturers (NAM) and the American Bar Association's International Expansion and Cross-Border Transactions Subcommittee. In 2013, he created and launched the widely read ***Manufacturing Law Blog***, which was one of the first blogs in the country to address legal issues facing manufacturers and distributors.

Business to Business Dispute Resolution / Litigation

Jeff has represented several Fortune 50 manufacturers that sell products globally, including in the aerospace, chemicals, and consumer product markets to name just a few. He has experience in a wide variety of matters, including product-related class actions, product liability prevention and litigation, supply chain disputes (including with long-term agreements (LTAs) that range from hundreds of thousands of dollars to several billion dollars), intellectual property disputes, and environmental matters. He routinely uses his litigation and business experience to counsel companies that wish to assess and/or resolve business to business disputes with suppliers, vendors and other business partners without resorting to litigation.

Corporate Compliance / Outside General Counsel

In addition to representing large global companies, Jeff also serves as "outside general counsel" for several mid-sized, privately-held companies, including several manufacturers and distributors that have business operations throughout the world. For instance, he is currently advising European manufacturers and distributors on the business, legal, and regulatory issues that arise from operating a U.S. subsidiary or otherwise doing business in the United States. As part of these efforts, Jeff has worked with economic development agencies that support direct foreign investment into the United States. This includes guidance for manufacturers who wish to set up successful operations, a topic he shared insight on during an episode of **CERCONOMY**. His experience is wide ranging as he has provided business advice on issues such as product development, product recall, workplace safety/OSHA, contracting/terms and conditions, supply chain issues, and conflict minerals' compliance.

Appellate

Jeff is past chair of the firm's Appellate Practice Group, which was honored in 2014 as Connecticut's premiere appellate group by the *Connecticut Law Tribune*. He has been involved in over 50 appeals and

EDUCATION

University of Connecticut School of Law
J.D.
with honors

College of the Holy Cross
B.A., Political Science

ADMISSIONS

- State of Connecticut
- State of New York
- U.S. Supreme Court
- U.S. Court of Appeals, 2nd Circuit
- U.S. Court of Appeals, 5th Circuit
- U.S. District Court, District of Connecticut
- U.S. District Court, Southern District of New York
- U.S. District Court, Western District of New York

has argued before the United States Court of Appeals for the Second Circuit and the state appellate courts in Connecticut, New York and Maryland. Most notably, Jeff successfully argued before the Connecticut Supreme Court in an antitrust case arising out of a proposed $1 billion waterfront project.

Prior to joining Robinson+Cole, Jeff clerked for the Honorable Ellen Ash Peters, retired Connecticut Supreme Court chief justice.

Laura Zaino is a partner at Halloran Sage in Hartford. She is a litigator who focuses primarily on appellate advocacy and her experience spans a broad range of practice areas. She represents individual and corporate clients in both state and federal court throughout all stages of the litigation process.

As a member of Halloran Sage's appellate practice group, Laura has handled a wide variety of appeals, including million-dollar contract disputes, property boundary disputes, municipal liability and taxation issues, professional malpractice claims, foreclosure, dram shop claims and personal injury matters. Laura also works closely with and assists trial counsel with preserving issues and perfecting the record for appeal.

Laura is also committed to the firm's pro-bono initiative and, in that regard, serves as appointed counsel for children in child protection cases through Lawyers for Children America.

Laura has served as an adjunct professor at the University of Connecticut School of Law in its Moot Court Program. She is also an active member of the CBA. She currently serves on the executive committee of its Appellate Advocacy Section, has lectured at its annual meeting and has served, and will again be serving, as a faculty member for its Appellate Advocacy Institute. Laura is also the incoming chair of the Connecticut Supreme Court Historical Society's membership committee.

Ms. Zaino received her BA, *magna cum laude* from Wheaton College and her JD from the University of Connecticut School of Law. Ms. Zaino began her association with Halloran Sage as a law clerk while she was in law school.

Carolyn Ziogas, Chief Clerk, Connecticut Supreme and Appellate Courts

Attorney Ziogas graduated from the University of New Hampshire, Magna Cum Laude, in 1980, with a Bachelor of Arts degree, Phi Betta Kappa, in Economics and a minor in Spanish. She received her Juris Doctorate degree from Western New England College School of Law in 1983.

Attorney Ziogas has been employed by the Connecticut Judicial Branch in the Office of the Appellate Clerk for 37 years. She held the position of Deputy Chief Clerk before becoming the Chief Clerk for both the Supreme Court and the Appellate Court in 2017. She serves on the Human Capitol Workgroup, the Appellate E-filing Steering Committee, the E-briefs Transition and Development Committee and the Advisory Committee on Appellate Rules She is also a member of the National Conference of Appellate Court Clerks.

She is a founding member and former advisory board member of the Women and Girls' Fund of the Main Street Community Foundation and an active advisor for the Immediate Response Fund. She is also a current member and the Executive Director of the Bristol Sports Reunion Committee.

☒ APPEAL ☐ JOINT APPEAL ☐ CROSS APPEAL ☐ AMENDED APPEAL ☐ CORRECTED FORM

JD-SC-33 Rev. 7-16
P.B. Sections 3-8, 60-7, 60-8, 62-7, 62-8, 63-3, 63-4, 63-10
C.G.S. Sections 31-301b, 51-197f, 52-470

All appeals must be filed electronically unless an exemption from the requirements of electronic filing has been granted or you are an incarcerated self-represented party. For further information about e-filing or this form, see the Appeal Instructions, form JD-SC-34.

☐ To Supreme Court ☒ To Appellate Court

Name of case *(State full name of case)*
DECHELLIS,AMBER v. DECHELLIS,ANTHONY

Type of appellate matter
Appeal

Trial Court History

Tried to	Trial court location
Court	**123 HOYT STREET Stamford CT 06905**

Trial court judges being appealed	List all trial court docket numbers, including location prefixes
HON. ERIKA M. TINDILL	**FST-FA-06-4010042-S**
All other trial court judges who were involved with the case	Judgment for *(Where there are multiple parties, specify those for whom judgment was rendered)*
HON. MARYLOUISE S. SCHOFIELD Continued	**AMBER DECHELLIS**
Date of judgment(s) or decision(s) being appealed	Date of issuance of notice on any order on any motion that would render judgment ineffective / Date for filing appeal extended to
01/23/2017 Continued	
Case type	For Juvenile Cases
Family	☐ Termination of Parental Rights ☐ Order of Temporary Custody
For Civil/Family Case Types, Major/Minor code:	☐ Other
F00	

Appeal

Appeal filed by *(Party name(s))*
ANTHONY DECHELLIS

From *(the action that constitutes the appealable judgment or decision)*
Trial Court's 1/23/17 judgment granting plaintiff's application to confirm arbitration award and Trial C Continued

If this appeal is taken by the State of Connecticut, provide the name of the judge who granted permission to appeal and the date of the order

Statutory Basis for Appeal to Supreme Court

By *(Signature of counsel of record)*	Telephone number	Fax number	Juris number *(If applicable)*
▶ **429347**	**203-222-4949**	**203-227-0766**	**429347**

Appearance

Type name and address of counsel of record filing this appellate matter
(This is your appearance; see Practice Book Section 62-8)
BRODER & ORLAND LLC 55 GREENS FARMS ROAD WESTPORT CT 06880

E-mail address
ebroder@broderorland.com

"X" one if applicable
☐ Counsel or self-represented party who files this appeal will be deemed to have appeared **in addition to** counsel of record who appeared in the trial court.
☐ Counsel or self-represented party who files this appeal is appearing **in place of:**

Name of counsel of record	Juris number *(If applicable)*

Certification

I certify that a copy of the appeal form I am filing will immediately be delivered to each other counsel of record and I have included their names, addresses, e-mail addresses and telephone and facsimile numbers; the appeal form has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and the appeal form complies with all applicable rules of appellate procedure in accordance with Practice Book Sections 62-7 and 63-3.

Date to be delivered **02/10/2017**

If you have an exemption from e-filing under Practice Book Section 60-8, attach a list with the name, address, e-mail address, telephone number, and facsimile number of each counsel of record and the address where the copy was delivered.

If this appeal is a criminal or habeas corpus matter, I certify that a copy of this appeal form will immediately be delivered to the Office of the Chief State's Attorney Appellate Bureau. Date to be delivered _____

Signed *(Counsel of record)*	Date signed
▶ **429347**	**02/10/2017**

Required Documents

To be filed with the Appellate Clerk within ten days of the filing of the appeal, if applicable. See Practice Book Section 63-4.

1. Preliminary Statement of the Issues
2. Court Reporter's Acknowledgment or Certificate that no transcript is necessary
3. Docketing Statement
4. Statement for Preargument Conference (form JD-SC-28A)
5. Constitutionality Notice
6. Sealing Order form, if any

☒ Entry Fee Paid ☐ No Fees Required ☐ Fees, Costs, and Security waived by Judge (*enter Judge's name below*)

Court Use Only
Date and time filed

Judge	Date waived

Print Form Reset Form

Appeal Form (continued)

CASE NAME:
DECHELLIS,AMBER v. DECHELLIS,ANTHONY

OTHER TRIAL COURT JUDGES

HON. MARYLOUISE S. SCHOFIELD
HON. DENNIS F. HARRIGAN
HON. KEVIN TIERNEY
HON. MICHAEL E. SHAY
HON. LYNDA B. MUNRO
HON. HARRY E CALMAR
HON. JANE B. EMONS
HON. STANLEY NOVACK
HON. ROBERT J MALONE
HON. DONNA N. HELLER
HON SYBIL V RICHARDS
HON. DENNIS JACOBS
HON KENNETH B POVODATOR

JUDGMENT DATES

01/23/2017
01/27/2017

Parties & Appearances

PARTY/PARTIES INITIATING THE APPEAL

ANTHONY DECHELLIS
Juris: 424014 BRODER & ORLAND LLC
55 GREENS FARMS ROAD
WESTPORT, CT 06880
Phone: (203) 222-4949 Fax: (203) 227-0766
Email: ebroder@broderorland.com

Juris: 437636 PHV SILVERSTEIN GLEN 4/7/16
LEADER & BERKON
630 THIRD AVENUE
NEW YORK, NY 10017
Phone: Fax:
Email:

ALL OTHER PARTIES AND APPEARANCES

AMBER DECHELLIS - Judgment For
Juris: 010008 COHEN & PYETRANKER LAW OFFICES OF PC
1100 SUMMER STREET
THIRD FLOOR
STAMFORD, CT 06905
Phone: (203) 622-8787 Fax: (203) 622-8798
Email: taisha@giclaw.com

DAVID J. ISRAEL GAL
Juris: 010032 COHEN & WOLF PC
PO BOX 1821
BRIDGEPORT, CT 06601
Phone: (203) 368-0211 Fax: (203) 394-9901
Email: smolden@cohenandwolf.com

Appeal Form (continued)

ATTORNEY FOR THE MINOR CHILD

Juris: 018679 CONN LEG SER STAMFORD
20 SUMMER STREET
STAMFORD, CT 06901
Phone: (203) 348-9216 Fax: (203) 348-2589
Email: stamford@connlegalservices.org

SUBPOENAED PARTY

Juris: 060675 JOHN SPONHEIMER
277 WAKELEE AVENUE
P.O. BOX 151
ANSONIA, CT 06401
Phone: (203) 735-9556 Fax: (203) 732-3101
Email: lawyers@hoylespon.com

JOSPHINE MITRA(DEPONENT)

Juris: 037700 MEYERS BREINER & KENT LLP
2150 POST ROAD
FAIRFIELD, CT 06824
Phone: (203) 255-9410 Fax: (203) 254-1388
Email: lschrager@mbnllp.com

NON-PARTY DEPONENT TODD GIVENS

Juris: 101805 MAGER & MAGER
87 RIVER STREET
PO BOX 583
MILFORD, CT 06460
Phone: (203) 874-6724 Fax: (203) 878-3993
Email: JohnMager@Magerlaw.net

Juris: 410686 URY & MOSKOW LLC
883 BLACK ROCK TURNPIKE
FAIRFIELD, CT 06825
Phone: (203) 610-6393 Fax: (203) 610-6399
Email: cherie@urymoskow.com

WITNESS UNDER SUBPOENA RHONDA LUCINEO FAMILY RELATIONS COUNSELOR II

Juris: 419780 ADAM PAUL MAURIELLO
100 WASHINGTON STREET
HARTFORD, CT 06106
Phone: (860) 706-5120 Fax: (860) 566-3449
Email: adam.mauriello@jud.ct.gov

WITNESS UNDER SUBPOENA GAL MARISSA L BIGELLI,ESQ

Juris: 433193 BILLINGS AND BARRETT LLC
941 GRAND AVENUE
2ND FLOOR
NEW HAVEN, CT 06511
Phone: (203) 562-0900 Fax: (203) 562-0902
Email: filing@billingsandbarrett.com

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED NON-PARTY WITNESS

Juris: 027045 MORGAN LEWIS & BOCKIUS LLP
ONE STATE STREET
HARTFORD, CT 06103
Phone: (860) 240-2700 Fax: (860) 240-2800
Email: bocalendardepartment@morganlewis.com

Appeal Form (continued)

The action that constitutes the appealable judgment(s) or decision(s):

Trial Court's 1/23/17 judgment granting plaintiff's application to confirm arbitration award and Trial Court's 1/27/17 judgment denying defendant's application to vacate the same arbitration award.

STATE OF CONNECTICUT

SUPREME COURT
APPELLATE COURT

CAROLYN C. ZIOGAS
ACTING CHIEF CLERK

231 CAPITOL AVENUE
HARTFORD, CT 06106

TEL. (860) 757-2200
FAX (860) 757-2217

February 14, 2017

Dear Counsel of Record:

The attached appeal filed February 10, 2017, has been assigned docket number A.C. 40108 Amber Dechellis v. Anthony Dechellis.

The clerk assigned to this appeal is Attorney Alan M. Gannuscio. He may be reached at (860) 757-2242. Please note that clerks are not permitted to give legal advice.

The appellate clerk's office is currently open from 9:00 a.m. until 5:00 p.m. on weekdays, with the exception of legal holidays and closures for exigent circumstances, such as inclement weather. **Effective January 1, 2017**, the appellate clerk's office will be open from 8:30 a.m. until 5 p.m. on weekdays, with the exception of legal holidays and closures for exigent circumstances, such as inclement weather. The window at the appellate clerk's office will be open from 8:30 a.m. until 4:30 p.m. From 4:30 p.m. until 5 p.m., paper briefs, transcripts filed pursuant to Practice Book § 63-8 (e) (1), and paper documents filed by counsel of record who have received an exemption from the electronic filing requirements, pursuant to Practice Book § 60-8, will be placed in the lobby of the appellate clerk's office. All submissions placed in the lobby will be considered filed as of that date. Upon review, the appellate clerk may return any noncompliant submission pursuant to Practice Book § 62-7 (a).

Pursuant to Practice Book § 63-2, if a party is unable to electronically file a document because the court's electronic filing system is nonoperational on the day on which the electronic filing is attempted, and such day is the last day for filing the documents, the document shall be deemed to be timely filed if received by the appellate clerk's office on the next business day the electronic filing system is operational. When the last day of any limitation of time for filing any paper under these rules or an order of the court falls on a day when the office of the clerk of the trial court or the appellate clerk is closed, the paper may be filed on the next day when such office is open.

Carl D. Cicchetti	Jennifer L. Cioffi	L. Jeanne Dullea	Alan M. Gannuscio	Susan C. Reeve	Rene L. Robertson
Assistant Clerk	Assistant Clerk	Assistant Clerk	Assistant Clerk	Assistant Clerk	Assistant Clerk
860-757-2223	860-757-2149	860-757-2144	860-757-2242	860-757-2224	860-757-2229

Pursuant to Practice Book § 62-7 (b), all papers filed with the appellate clerk, with the exception of transcripts and regulations filed pursuant to Practice Book § 81-6, shall contain specific certifications including a certification that the document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law.

Most civil and family cases will be assigned for a pre-argument conference (See Practice Book § 63-10). If your case is eligible, you will be notified by letter of the date and location of the conference. Attendance at the PAC conference is mandatory and information regarding the pre-argument conference program including a video and the "Pre-Argument Conference Handbook" is available at www.jud.ct.gov/Publications/videos/PAC.htm.

For holiday and inclement weather questions, self-help publications and videos, and forms related to the appellate process, please consult the Judicial Branch website at www.jud.ct.gov.

Very truly yours,

/s/
Paul S. Hartan
Chief Clerk

Encl.

A.C. NO. 40108

AMBER DECHELLIS	)	APPELLATE COURT
	)	
	)	
Plaintiff-Appellee	)	
v.	)	OF THE STATE OF CONNECTICUT
	)	
ANTHONY DECHELLIS	)	
	)	
Defendant-Appellant	)	FEBRUARY 21, 2017

APPEARANCE

Please enter the appearance of McCarter & English, LLP, CityPlace I, 185 Asylum Street, Hartford, CT 06103, telephone number (860) 275-6700, Juris No. 419091, as counsel for the Defendant-Appellant, Anthony DeChellis., in the above-captioned appeal. This appearance is in addition to counsel of record for the Defendant-appellant.

Dated at Hartford, Connecticut, this 21st day of February, 2017.

THE DEFENDANT-APPELLANT,
ANTHONY DECHELLIS

By 

Charles D. Ray
Brittany A. Killian
McCarter & English, LLP
CityPlace I
Hartford, CT 06103
Juris No. 419091
860-275-6700
860-724-3397 (facsimile)

His Attorneys

A.C. No.: 40108

AMBER DECHELLIS	)	APPELLATE COURT
	)	
v.	)	OF THE STATE OF CONNECTICUT
	)	
ANTHONY DECHELLIS	)	FEBRUARY 21, 2017

PRELIMINARY STATEMENT OF ISSUES

Pursuant to Practice Book § 63-4(a)(1), the defendant-appellant, Anthony DeChellis, states that he intends to raise the following issues in this appeal:

1. Whether the trial court properly denied the defendant-appellant's application to vacate arbitration award (#595.00 & 595.01)?

2. Whether the trial court properly granted the plaintiff-appellee's application to confirm arbitration award (#593.00 & 593.01)?

3. Any other issue that becomes apparent upon a full review of the record of the underlying proceedings.

DEFENDANT-APPELLANT,
ANTHONY DECHELLIS

By: */s/Charles D. Ray*
Charles D. Ray
Brittany A. Killian
McCarter & English, LLP
185 Asylum Street
CityPlace I
Hartford, CT 06103
(860) 275-6700
Juris # 419091

Its Attorneys

A.C. No.: 40108

AMBER DECHELLIS	)	APPELLATE COURT
	)	
v.	)	OF THE STATE OF CONNECTICUT
	)	
ANTHONY DECHELLIS	)	FEBRUARY 21, 2017

STATEMENT REGARDING TRANSCRIPT

Pursuant to Practice Book § 63-4(a)(2), the defendant-appellant, Anthony DeChellis, states that he intends to rely on transcript of oral argument before the trial court (Tindill, J.) on November 7, 2016. A copy of Mr. DeChellis' transcript order form is attached.

DEFENDANT-APPELLANT,
ANTHONY DECHELLIS

By: */s/Charles D. Ray*

Charles D. Ray
Brittany A. Killian
McCarter & English, LLP
185 Asylum Street
CityPlace I
Hartford, CT 06103
(860) 275-6700
Juris # 419091

Its Attorneys

NOTICE OF APPEAL TRANSCRIPT ORDER

JD-ES-38 Rev. 2-17
P B §§ 63-4, 63-8, 63-8A

CONNECTICUT JUDICIAL BRANCH

www.jud.ct.gov

The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at *www.jud.ct.gov/ADA*.

INSTRUCTIONS TO PERSON ORDERING A TRANSCRIPT FOR AN APPEAL:

1. *Fill out section 1 only and give this form to the Official Court Reporter.*
2. *Give the Official Court Reporter the name and address of all counsel and self-represented parties of record.*
3. *After the Official Court Reporter fills out section 3 and returns the form to you, fill out section 4.*

Appeal docket number: **40108**

Section 1.

Name of case: **DECHELLIS, AMBER v. DECHELLIS, ANTHONY**

Trial court docket number: **FST-FA-06-4010042-S**

Hearing dates of transcript being ordered: **11/7/2016**

Trial court location: **123 Hoyt Street, Stamford, CT 06905**

Judicial district of: **Stamford**

Name(s) of Judge(s): **Hon. Erika M. Tindill**

Case type ("X" one): ☐ Criminal ☒ Family ☐ Juvenile ☐ Civil

Case tried to ("X" one): ☐ Jury ☒ Court

Appeal to ("X" one): ☐ Supreme Court ☒ Appellate Court

Appeal *("X" one)*

- ☐ 1. From judgment in juvenile matters:
  - ☐ (a) concerning Termination of Parental Rights
  - ☐ (b) other than Termination of Parental Rights
- ☐ 2. From a criminal judgment where defendant is:
  - ☐ (a) incarcerated
  - ☐ (b) not incarcerated
- ☐ 3. From court closure order
- ☐ 4. Involving the public interest
- ☐ 5. From judgment involving custody of minor children
- ☐ 6. From all other judgments

An electronic version of a previously delivered transcript is being ordered: Yes ☒ No

Describe in detail, including specific dates, the parts of the proceedings for which a transcript is being ordered. If you are ordering an electronic version of a previously delivered transcript, indicate that the paper transcript already was delivered. Attach a sheet of plain paper if needed.

Transcript of the complete proceedings held before the Honorable Erika M. Tindill on 11/7/2016

From

Name of person ordering transcript: **Charles D. Ray**

E-mail address: **cray@mccarter.com**

Mailing address: **CityPlace I, 185 Asylum Street, Hartford, CT 06103**

Telephone number: **860-275-6700**

Relationship (*Attorney for Plaintiff, Defense, etc.*): **Attorney for Defendant-Appellant**

Signature of person ordering transcript:

Date signed: **02/21/2017**

Do not write below this line when ordering the transcript.

Section 2. Official Court Reporter's Appeal Transcript Order Acknowledgment *(Completed by Official Court Reporter after satisfactory financial arrangements have been made pursuant to Section 63-8 of the Connecticut Practice Book.)*

Name(s) of reporter(s)/monitor(s)	Name(s) of transcribing reporter(s)/monitor(s) (if different)	Estimated number of pages	Only electronic version of previously delivered transcript? Yes	No	Number of pages previously delivered	Estimated delivery date
			☐	☐		
			☐	☐		
			☐	☐		

☐ *JD-ES-038C attached for additional names of reporter(s)/monitor(s)*

Total estimated pages | Total delivered pages | Final Estimated delivery date

Name of Official Court Reporter | Signature of Official Court Reporter | Date signed

Order Acknowledgment

Section 3. Official Court Reporter's Certificate Of Completion *(Completed by Official Court Reporter upon delivery of the entire transcript ordered above.)*

Actual number of pages in entire Appeal Transcript: | Date of final delivery (Practice Book Section 63-8(c))

This certificate is filed as required by Practice Book Section 63-8 | Signature of Official Court Reporter | Date signed

Section 4. Certification Of Service By Ordering Party *(Ordering party to send completed certificate to Chief Clerk, 231 Capitol Avenue, Hartford, CT 06106)*

I certify that a copy of the above Certificate of Completion was served on all counsel and self-represented parties of record

Signature of ordering party | Date signed

A.C. No.: 40108

AMBER DECHELLIS	)	APPELLATE COURT
	)	
v.	)	OF THE STATE OF CONNECTICUT
	)	
ANTHONY DECHELLIS	)	FEBRUARY 21, 2017

DOCKETING STATEMENT

Pursuant to Practice Book § 63-4(a)(3), the defendant-appellant, Anthony DeChellis, submits the following:

A. Parties To the Appeal And Their Counsel

1. Defendant-Appellant:

Anthony DeChellis
79 Rowayton Avenue
Rowayton, CT 06853

Trial Counsel

Eric J. Broder
Sarah E. Murray
Broder & Orland LLC
55 Greens Farm Road
Westport, CT 06880
203-222-4949
203-227-0766 (facsimile)
ebroder@broderorland.com
smurray@broderorland.com

Glen Silverstein (admitted pro hac vice)
Leader & Berkon LLP
630 Third Avenue
New York, NY 10017
212-486-2400
212-486-3099 (facsimile)
gsilverstein@leaderberkon.com

Appellate Counsel

Eric J. Broder & Sarah E. Murray (see above)

Charles D. Ray
Brittany A. Killian
McCarter & English, LLP
CityPlace I
Hartford, CT 06103
860-275-6700
860-724-3397 (facsimile)
cray@mccarter.com
bkillian@mccarter.com

2. Plaintiff-Appellee

Amber DeChellis
143 Gerdes Road
New Canaan, CT 06840

Trial and Appellate Counsel

Gary I. Cohen
Cohen & Pyetranker, PC
1100 Summer Street, Suite 300
Stamford, CT 06905
203-622-8787
203-622-8798
gary@giclaw.com

3. Guardian Ad Litem

David J. Israel
225 Main Street
Westport, CT 06880

Trial Counsel
Rachel Pencu
Cohen & Wolf PC (Appearance for Family Superior Court only)
P.O. Box 1821
Bridgeport, CT 06601
203-368-0211
203-394-9901 (facsimile)
rpencu@cohenandwolf.com

4. Attorney For The Minor Child

Jill Plancher
Connecticut Legal Services
20 Summer Street, 4th Floor
Stamford, CT 06901
203-348-9216
203-348-2589 (facsimile)
JPlancher@connlegalservices.org

The undersigned is not aware of any other person having a legal interest in the cause on appeal sufficient to raise a substantial question whether a judge should be disqualified from participating in the decision on the case by virtue of that judge's personal or financial interest in any such persons.

B. Cases Arising From Substantially The Same Controversy

The undersigned is not aware of any pending appeals to the Supreme Court or Appellate Court that arise from substantially the same controversy as the cause on appeal, or involve issues closely related to those presented by the appeal.

C. Exhibits

There were no exhibits filed in the trial court.

DEFENDANT-APPELLANT,
ANTHONY DECHELLIS

By: */s/Charles D. Ray*
Charles D. Ray
Brittany A. Killian
McCarter & English, LLP
185 Asylum Street
CityPlace I
Hartford, CT 06103
(860) 275-6700
Juris # 419091

Its Attorneys

PREARGUMENT CONFERENCE STATEMENT
JD-SC-28A Rev. 4-16
P.B. Sections 62-7, 63-4, 63-10, 85-2

ADA NOTICE
The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at *www.jud.ct.gov/ADA.*

CONNECTICUT JUDICIAL BRANCH
APPELLATE CLERK
231 Capitol Avenue
Hartford, CT 06106

Instructions for E-filers
1. *Fill out this form and e-mail a copy to all counsel and self-represented parties (See Practice Book Section 62-7).*
2. *E-file this form by uploading it under "Preliminary Papers/ Appeal Documents."*

Instructions for Self-Represented Parties and Non-E-filers
1. *Fill out this form and hand deliver or mail a copy to all counsel and self-represented parties (see Practice Book Section 62-7).*
2. *File this form by hand delivering it or mailing it to the Appellate Clerk at 231 Capitol Avenue, Hartford, CT 06106.*

Name of case(s)
Amber DeChellis v. Anthony DeChellis

For Court use only *(Docket Numbers)*

Case type
Dissolution of marriage

Briefly describe the final judgment/ruling appealed
Trial court's denial of motion to vacate arbitration award and approval of motion to confirm that award.

Party or parties appealing
Anthony DeChellis

E-mail address
cray@mccarter.com

Attorney or self-represented party filing preargument conference statement
Charles D. Ray

Telephone number
860-275-6774

Address *(Number, street, city/town, state and ZIP)*
McCarter & English, LLP, CityPlace I, Hartford, CT 06103

Filing status *(Check all that apply)*
☒ Attorney ☐ Self-represented party ☐ Appellant ☐ Cross appellant

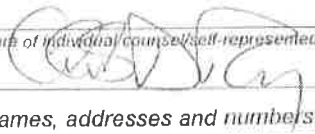
1. If this appeal was filed in the Appellate Court, should it be transferred to the Supreme Court? ☐ Yes *(Explain below)* ☒ No

2. Would you be willing to waive oral argument in this case? ☐ Yes ☒ No

Notice

It is the duty of counsel and self-represented parties to communicate with each other to assure attendance at the conference. If you do not file this form, or do not attend a scheduled preargument conference, sanctions under Practice Book Section 85-2 may be imposed (See Practice Book Section 63-10).

I certify that a copy of the document(s) that I am filing has been delivered to each other counsel and self-represented party of record and I have included their names, addresses, e-mail addresses, and telephone and facsimile numbers, and that the document(s) has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law, and complies with all applicable rules of appellate procedure.

Signature of individual counsel/self-represented party
▶ 

Name of person signing at left
Charles D. Ray

Date signed
02/21/2017

☒ *Names, addresses and numbers included on separate page.*

A.C. No.: 38812

NOLEN-HOEKSEMA, et al.	)	APPELLATE COURT
	)	
v.	)	OF THE STATE OF CONNECTICUT
	)	
MAQUET CARDIOPULMONARY AG et al.	)	JANUARY 29, 2016

STATEMENT REGARDING DOCUMENTS FILED UNDER SEAL

Pursuant to Practice Book § 63-4(a)(6), the defendant-appellant, Maquet Cardiopulmonary AG, states that several documents have been conditionally filed under seal in the trial court (Dkt. #312.00 and #348.00). The trial court has not yet ruled on the pending motions.

DEFENDANT-APPELLANT,
MAQUET CARDIOPULMONARY AG

By: /s/Charles D. Ray

Charles D. Ray
Brittany A. Killian
McCarter & English, LLP
185 Asylum Street
CityPlace I
Hartford, CT 06103
(860) 275-6700
Juris # 419091

Its Attorneys

CERTIFICATION

This is to certify that: 1) a true copy of foregoing has been uploaded and electronically filed with the Supreme Court, this ___ day of _____, 20__; 2) a copy of the foregoing has been delivered electronically to each other counsel of record and self-represented party, this ___ day of _____, 20__, as set forth below; 3) the foregoing has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and 4) the foregoing complies with all applicable rules of appellate procedure.

Counsel of Record

/s/Charles D. Ray
Charles D. Ray

HANDBOOK OF

CONNECTICUT

APPELLATE PROCEDURE

PREFACE

This is only a handbook. Although it contains information on appellate procedure and tips for both the novice and the seasoned appellate practitioner, it is not intended to be a comprehensive treatise or a substitute for the Connecticut Practice Book. The material in this handbook should be supplemented by your own careful study of the rules of appellate practice, as well as case law and statutes. The rules change frequently, and, therefore, you should make sure you are consulting the most recent version of the rules.

This handbook is based on the rules effective as of September 1, 2018.

TABLE OF CONTENTS

INTRODUCTION

THE ROLE OF THE OFFICE OF THE APPELLATE CLERK

The Office of the Appellate Clerk is staffed by attorneys and paralegals who review, process and monitor all filings submitted to the Supreme Court and the Appellate Court for consideration or ruling.

The Office of the Appellate Clerk is the liaison between the public, the trial courts, the bar, self-represented parties, the Supreme Court justices, the Appellate Court judges, and court staff.

The Office of the Appellate Clerk serves as a resource for information but does not give legal advice. Anyone conducting business before either the Supreme Court or the Appellate Court is expected to have consulted the rules of appellate procedure that are contained in the Connecticut Practice Book prior to contacting the Office of the Appellate Clerk. The Practice Book is available on the Judicial Branch website (www.jud.ct.gov/Publications/PracticeBook/PB.pdf) and in law libraries throughout the state.

Each appellate matter is managed by a clerk/case manager. Appellate matters are reviewed and monitored for procedural and jurisdictional compliance under guidelines established by the courts, statutes, case law, and the rules of practice.

Questions may be directed to the case manager assigned to a particular appellate matter.

SECTION 1

KNOWING WHAT IS APPEALABLE AND WHEN TO APPEAL

Your failure to file a timely appeal from an appealable judgment or order can result in the loss of your right to appellate review of that ruling. Carefully study the rules, statutes, and case law to determine whether a judgment or an order is appealable, whether you have a right to appeal from it, and when your appeal must be filed.

Is the Judgment Appealable and Are You Entitled To Appeal from It?

Generally, only judgments and orders issued by a judge of the Superior Court can be appealed to the Appellate Court or the Supreme Court. Decisions issued by state agencies and by the Probate Court should instead be challenged by taking an appeal to the Superior Court. In workers' compensation cases, on the other hand, appeals from the decisions of the Compensation Review Board are taken to the Appellate Court. See Connecticut General Statutes (C.G.S.) § 31-301b. An appeal from a decision of the workers' compensation commissioner on a complaint that alleges discriminatory discharge in violation of C.G.S. § 31-290a should also be taken directly to the Appellate Court.

Not every order or decision issued by a Superior Court judge is appealable, and not every person has the right to appeal and challenge a decision that they disagree with. The "appeal statute," C.G.S. § 52-263, provides that you can appeal only if (1) you were a party to the Superior Court action, (2) you are aggrieved by the Superior Court's decision, and (3) the Superior Court's decision is a final judgment. You should therefore consider the following questions in deciding whether the Superior Court's judgment or order *can* be appealed and, if so, whether you are a person who has a right to appeal from it:

1. **Were you a party in the Superior Court case?** If you were not a plaintiff or a defendant in the Superior Court case and you were never made a party to the Superior Court case, you cannot appeal from an order or judgment rendered in that case. Note, however, that a nonparty who is aggrieved by a Superior Court judgment or order that binds the nonparty can seek appellate review by filing a writ of error. See Practice Book (P.B.) § 72-1.

2. **Are you aggrieved by the decision?** Only someone who is aggrieved by the Superior Court decision can appeal or bring a writ of error to challenge it. A person is aggrieved by a decision if that person has some specific, personal, and legal interest that will be harmed by the decision. Generally, the party that "lost" the Superior Court case is aggrieved and entitled to appeal. But you also can be aggrieved by a judgment that is seemingly in your favor if the judgment awards you less than you asked for in the case.

3. **Is the decision a final judgment?** An appeal or writ of error can be taken only from a "final judgment" of the Superior Court. Usually, the final judgment is the ruling made at the end of the case that decides who won and resolves all the parties' claims. But even an interlocutory ruling—that is, a ruling that is made during the course of the ongoing litigation before the Superior Court that does not conclude the case—can be an appealable final judgment. You should consult *State* v. *Curcio*, 191 Conn. 27 (1983), for guidance in determining whether an interlocutory ruling is a final judgment that can be immediately appealed.

   Finally, there are statutes and Practice Book provisions that permit immediate appeals from some orders or decisions that are not final judgments in that they do not necessarily end the case. These orders include, but are not limited to:

   a. decisions concerning mechanic's liens, prejudgment remedies, and lis pendens. See C.G.S. §§ 49-35c, 52-278*l* and 52-325c.
   b. temporary injunctions involving labor disputes. See C.G.S. § 31-118.
   c. orders or decisions certified by the Chief Justice as being of substantial public interest and in which delay may work a substantial injustice. See C.G.S. § 52-265a.
   d. orders concerning court closure and sealing or limiting disclosure of court documents, affidavits, or files. See C.G.S. § 51-164x.
   e. decisions of the Compensation Review Board. See C.G.S. § 31-301b.
   f. certain partial judgments that do not dispose of the entire case. See P.B. §§ 61-2 through 61-4.
   g. most Superior Court decisions remanding the case to a state agency for further proceedings under the Uniform Administrative Procedure Act. See C.G.S. § 4-183 (j).

4. **Do you need permission to appeal?** Generally, the answer is "no," but permission *is* required in order to appeal from some rulings. Those rulings include:

   a. Superior Court decisions on appeals from local zoning and inland wetlands agencies, which require the granting of a petition for certification by the Appellate Court. See C.G.S. §§ 8-8 (o) and 22a-43 (e); P.B. § 81-1.
   b. Habeas corpus decisions, from which either the petitioner or the respondent may appeal only with the permission of the judge who tried the habeas corpus case. See C.G.S. § 52-470 (g); P.B. § 80-1.
   c. Denials of petitions for new trials in criminal cases, which are appealable upon the granting of certification by the trial court. See C.G.S. § 54-95.
   d. Rulings that dispose of at least one cause of action while not disposing of either (1) an entire complaint, counterclaim, or cross complaint, or (2) all causes of action brought by or against a party. These rulings are immediately appealable only if the trial court makes a written determination that an immediate appeal is justified and the Chief

Justice or Chief Judge concurs with that determination. See P.B. § 61-4.

If you are denied permission, or certification, to appeal from the rulings listed in paragraphs (b) or (c) above, you can still file an appeal, but you must argue in your appellate brief that the trial court abused its discretion in denying you permission to appeal.

Should the Appellate Matter Be Filed in the Appellate Court or the Supreme Court?

Most appellate matters should be filed in the Appellate Court. See C.G.S. § 51-197a. The appellate matters that should be filed directly in the Supreme Court are listed in C.G.S. § 51-199 (b). A writ of error should be filed in the Supreme Court. See C.G.S. § 51-199 (b) (10); P.B. § 72-1. If an appellate matter is filed in the wrong court, the appellate clerk has the authority to transfer it to the proper court. See P.B. § 65-4. The Supreme Court also may transfer an appeal that was properly filed in the Appellate Court to itself or transfer an appeal or writ of error that was properly filed in the Supreme Court to the Appellate Court. See C.G.S. § 51-199 (c); P.B. § 65-1.

How Long Do You Have To File an Appeal?

You should consult P.B. § 63-1 and the statutes to determine how long you have to file an appeal. In most (but not all) cases, you must file the appeal within 20 days of the date notice of the judgment or decision is issued by the trial judge or clerk. If notice of the judgment or decision is given orally by the trial judge in open court, the 20 day appeal period begins on that day. If notice is given only by mail or by electronic delivery, the appeal period begins on the day that notice of the decision was sent to counsel of record by the trial court clerk. See P.B. § 63-1 (b). In a civil jury case, the acceptance of the verdict constitutes the judgment if no timely motion under P.B. §§ 16-35, 16-37 or 17-2A is filed; otherwise, the date of issuance of notice of the last ruling on any such motion or motions begins the 20 day appeal period. Finally, note that the filing of *some* motions in the trial court during the appeal period that request that the judgment be opened or reconsidered can operate to create a new appeal period. See P.B. § 63-1 (c).

When there is more than one plaintiff or defendant, and the court renders a judgment that ends the case as to one plaintiff or defendant, the judgment is a final judgment, and a party aggrieved by the judgment can file an immediate appeal—even though the case is not over as to the other parties. See P.B. § 61-3. If a party aggrieved by a P.B. § 61-3 final judgment wishes to wait until the end of the case to file an appeal, the party must file a notice of intent to defer the appeal in order to preserve the right to challenge the judgment later. See P.B. § 61-5. The notice of intent to appeal defers the taking of an appeal until the trial court renders a judgment that finally disposes of the case for all purposes and as to all parties. If, however, another party files a timely objection to the notice of intent to defer the appeal, the party who filed the notice of

intent to defer the appeal cannot wait to appeal and must instead file an appeal within 20 days of the filing of the objection to the notice of intent to defer the appeal.

A judgment that disposes of an entire complaint, counterclaim, or cross complaint is a final judgment even if the trial court has not yet ruled on—or disposed of—another complaint, counterclaim, or cross complaint in the case. See P.B. § 61-2. A party aggrieved by a judgment that disposes of an entire complaint, counterclaim, or cross complaint should therefore appeal within 20 days of notice of the judgment.

The trial judge can grant a timely motion for extension of the time to take an appeal and allow up to an additional 20 days, unless a shorter period has been prescribed by rule or by statute. See P.B. § 66-1 (a). If a motion for extension of time to file an appeal is filed at least 10 days before expiration of the time limit sought to be extended, you will have no less than 10 days from the issuance of notice of the denial of the motion to file an appeal. If your motion is filed outside of the initial 10 day period and is denied by the trial court, you run the risk that your appeal may be deemed untimely.

Not every case has a 20 day appeal period, and the law sets shorter time periods for taking an appeal or seeking certification to appeal in some matters. These shorter time periods include:

1. **72 hour period** to seek review of orders prohibiting attendance at court sessions and orders sealing or limiting access to documents on file with the court under C.G.S. § 51-164x. See P.B. § 77-1.

2. **5 day period** to appeal from summary process judgments under C.G.S. § 47a-35 (Sundays and legal holidays are excluded in calculating the 5 day appeal period).

3. **7 day period** to appeal from orders concerning mechanic's liens, prejudgment remedies, and lis pendens under C.G.S. §§ 49-35c, 52-278*l* and 52-325c, respectively.

4. **10 day period** to seek certification to appeal from habeas corpus decisions under C.G.S. § 52-470 (g).

5. **14 day period** to seek permission from the Chief Justice to appeal under C.G.S. § 52-265a from orders that involve matters of substantial public interest.

6. **14 day period** to appeal from orders regarding temporary injunctions in labor disputes under C.G.S. § 31-118.

Is the Superior Court Judgment Stayed While the Appeal Is Pending?

In most cases, the Superior Court's judgment is automatically stayed and cannot be enforced until the time to file an appeal from the judgment has expired. See P.B. §

61-11 (civil cases); P.B. § 61-13 (criminal cases). If an appeal is timely filed, the stay of execution ordinarily continues in effect until the final determination of the appeal.

Not all judgments, however, are automatically stayed during the appeal period or during the time that the appeal is pending before the Appellate Court or the Supreme Court. P.B. § 61-11 (b) and (c) list the civil matters in which the judgment is not automatically stayed during the appeal period or while an appeal is pending. For example, the automatic stay of execution does not apply to some orders issued in family cases, such as those concerning periodic alimony, child support and visitation, or to judgments rendered in juvenile cases. Note that P.B. § 61-11 (g) and (h) set forth different stay rules for appeals taken from judgments of strict foreclosure and foreclosure by sale. Finally, there are statutes that require some judgments to be automatically stayed to allow time to appeal. For example, C.G.S. § 47a-35 provides that a summary process judgment is automatically stayed for 5 days from the date the judgment is rendered.

If an automatic stay of execution of the judgment is in effect, a party can file a motion asking the trial judge to terminate the automatic stay. See P.B. § 61-11 (c), (d) and (e) (civil cases); P.B. § 61-13 (d) (criminal cases). If no stay of execution is in effect, a party can file a motion asking the trial judge to impose a stay. See P.B. § 61-12 (civil cases); P.B. § 61-13 (d) (criminal cases). A party unhappy with a trial court order that terminates or imposes a stay of execution of a judgment on appeal can seek appellate review of the order by filing a motion for review under P.B. §§ 61-14 and 66-6.

Writ of Error

Consult P.B. chapter 72 for the proper procedures for the signing, returning and filing of writs of error and to determine the application, if any, of an automatic stay.

SECTION 2

THE MECHANICS OF FILING AN APPEAL, CROSS APPEAL, OR JOINT APPEAL

Distinction between Appeals, Cross Appeals, and Joint Appeals

An appeal may be brought only by a party who is legally harmed or "aggrieved" by the decision of the trial court. See Connecticut General Statutes (C.G.S.) § 52-263; Practice Book (P.B.) § 61-1. The party who files the appeal is called the appellant, whereas all other parties who have not joined in the appeal are called appellees. Within 10 days of the filing of the appeal by the appellant, an appellee who is also aggrieved by the trial court's decision may wish to challenge the decision by filing a "cross appeal." The procedure for filing a cross appeal is the same as for the filing of an appeal, except as noted below. See P.B. § 61-8. In the case of a joint appeal, any additional appellants to the appellant's filing the appeal shall file a joint appeal consent form (JD-SC-035). See P.B. § 61-7 (a) (3).

Appeal Form

All appeals must be e-filed unless an exemption from e-filing has been granted. When you e-file an appeal, an appeal form is automatically generated by the computer and filed with the Office of the Appellate Clerk. In cases in which an exemption has been granted, the appeal form (JD-SC-033), which is available on the Judicial Branch website (www.jud.ct.gov/webforms/), shall be filed with the Office of the Appellate Clerk in accordance with P.B. § 60-8. The appeal form must be filed with (1) a receipt showing that all required fees have been paid, or (2) a signed application for a waiver of fees and the order of the trial court granting the fee waiver for the appeal, or (3) certification that no fee is required. Failure to file one of these items with the appeal form will result in the rejection of your appeal. You may visit the Judicial Branch website (www.jud.ct.gov) for additional information, including the appellate e-filing instruction manual.

Fees

Fees in e-filed cases shall be paid at the time of e-filing as specified by E-Services. No fee is required for a cross appeal. In the case of a joint appeal, only one entry fee is required, which is paid by the appellant filing the appeal. When an exemption from electronic filing has been granted, all fees are paid to the trial court in accordance with P.B. § 60-8. An indigent party may apply for a waiver of appellate fees and an order that necessary expenses of bringing the appeal be paid by the state. See P.B. § 63-6 (civil); P.B. § 63-7 (criminal). The application should be filed with the trial court within the deadline for taking the appeal.

Other Documents

All self-represented parties must have an account with E-Services and submit an appellate access form (JD-AC-015), unless exempt from electronic filing pursuant to P.B. § 60-8. In addition, the following appellate documents must be e-filed unless an exemption has been granted. Within 10 days of filing the appeal, you must file the following papers pursuant to P.B. § 63-4 (a):

1. **A preliminary statement of the issues** intended for presentation on appeal.

2. **A transcript order form** (JD-ES-038) properly completed by the court reporter with an estimated delivery date or **a certificate stating that no transcript is necessary** or a list of the specific date(s) of transcripts delivered prior to the filing of the appeal. You also must order an electronic version of the portions of the transcript deemed necessary for presentation of the appeal. See P.B. § 63-8 (a).

3. **A docketing statement** in accordance with P.B. § 63-4 (a) (3).

4. **A preargument conference statement** in most noncriminal cases. See P.B. § 63-10.

5. **A constitutionality notice.** This document is required only in any noncriminal cases in which you are challenging the constitutionality of a state statute. The document should state (a) the statute being challenged, (b) the name and address of the party bringing the challenge, and (c) whether the trial court upheld the constitutionality of the statute.

6. **A sealing order notice** identifying the date, time, scope, and duration of the sealing order and including a copy of the order. This notice is required in matters in which there is protected information, documents are under seal, or disclosure has been limited.

The appellee has 20 days to respond to these papers pursuant to P.B. § 63-4.

Amendments to any of these documents, except the certificate regarding transcript, may be made without the court's permission until that party's brief is filed. See P.B. § 63-4 (b).

Case Manager

After you have filed the appeal, you will receive a letter from the Office of the Appellate Clerk with additional information, including the name of the case manager for the appeal. Case managers, as officers of the court, must remain neutral and therefore cannot provide legal advice for any case on appeal.

SECTION 3

THE RECORD ON APPEAL

It is the appellant's responsibility (or, in the case of a cross appeal, the cross appellant's responsibility) to ensure that the record is adequate to permit appellate review of the appellant's claims on appeal. See Practice Book (P.B.) § 61-10. The record includes the case file, any decisions, documents, transcripts, recordings and exhibits from the prior proceedings, and, in appeals from administrative agencies, the record returned to the trial court by the administrative agency. See P.B. § 60-4. The failure to provide an adequate record for review could result in the court's declining to review an issue or claim on appeal. See P.B. §§ 60-5 and 61-10. Perfecting the record for appeal involves a number of activities both before and after the filing of the appeal:

1. **Transcript.** On or before the date of the filing of the appeal, the appellant must order (using Form JD-ES-038), and make satisfactory arrangements for the payment of, a transcript of the parts of the proceedings not already transcribed that are necessary for proper presentation and review of the appeal. See P.B. §§ 63-8, 63-8A and 63-4 (a) (2). The appellant is required to order both the paper copy of the transcript as well as an electronic version. Upon receipt of the certificate of completion from the official reporter, counsel or self-represented parties who ordered the transcript must file a certification that a copy of the certificate of completion has been sent to all counsel and self-represented parties in accordance with P.B. §§ 62-7 and 63-8. Also, before or at the time of the filing of the appellant's brief, the appellant must file with the Office of the Appellate Clerk one unmarked, nonreturnable copy of the paper version of the transcript, including the reporter's certification page. See P.B. § 63-8 (e). The reporter files an electronic version of the transcript with the Office of the Appellate Clerk and delivers a copy to the ordering party. See P.B. § 63-8A. The failure to file a transcript could preclude review of any claim dependent on the transcript. The transcript is not served on other parties, who must either review the transcript on file with the Office of the Appellate Clerk or order their own copy from the court reporter. In a criminal case, the court reporter will provide the state with a copy of all transcripts ordered and received by the defendant-appellant if the appeal is being handled by a private attorney or the defendant is self-represented. If the criminal appeal is being handled by assigned counsel, the defendant, through counsel, must provide the state with a copy of all transcripts ordered and received.

2. **Motion for Rectification.** The appellant should seek to correct any errors or omissions in the trial record by filing a motion for rectification. See P.B. §§ 66-5 and 66-2. Unless the filing period is extended for good cause shown, a motion for rectification must be filed within 35 days after (a) delivery of the last portion of the transcripts, (b) if no transcripts were ordered, the filing of the appeal, or (c) if no memorandum of decision was filed before the appeal was filed, the filing of the memorandum of decision. If the court, on its own motion, sets a different deadline for the filing of the appellant's brief, such as an extension pending assignment for a preargument conference, a motion for rectification must be filed within 10 days of

the deadline for filing the appellant's brief. See P.B. § 66-5. Except for good cause shown, no motion for rectification can be filed after the appellant's brief is filed. The filing of a motion for rectification does *not* delay the time for filing the appellant's brief, and, thus, a motion for extension of time may be necessary. See P.B. § 66-1. The Office of the Appellate Clerk will forward the motion for rectification to the trial judge who decided, or presided over, the subject matter of the rectification. The trial judge will file the decision on the motion with the Office of the Appellate Clerk. The trial court may hold a hearing to receive evidence, approve a stipulation of counsel, or hear arguments regarding a requested correction. Any party aggrieved by a trial court's ruling on a motion for rectification may file a motion for review pursuant to P.B. § 66-7, which is discussed in subsection 5 below.

3. **Memorandum of Decision or Transcript of Oral Decision.** It is also the appellant's responsibility to ensure either (a) that the trial court files a written memorandum of decision, or (b) if the trial court's decision was oral, that a transcript of the portion of the proceedings in which the court stated its oral decision is signed by the trial judge and filed in the trial court clerk's office. See P.B. § 64-1. Filing a transcript of a decision that is not signed by the trial judge may not be sufficient to permit appellate review. If the trial judge fails to file a memorandum of decision or to sign a transcript of an oral decision, the appellant should file with the Office of the Appellate Clerk under P.B. § 64-1 (b) a notice that the decision has not been filed, specifying the trial judge involved and the date of the decision in question. The Office of the Appellate Clerk will forward the notice to the trial judge. If the judge does not respond in a reasonable time, the appellant also may seek an order under P.B. § 60-2 (1) directing the trial court to file a written decision or to sign the transcript.

4. **Motion for Articulation.** Whenever the trial court's decision fails to address an issue that was raised in the trial court and will be raised on appeal, or is unclear or incomplete in setting forth the factual or legal basis of its decision, it is the appellant's responsibility to file a motion for articulation pursuant to P.B. § 66-5. The motion for articulation (which seeks further explanation regarding the basis for an existing decision) should not be confused with the notice, discussed above, that is filed pursuant to P.B. § 64-1 (b) when the trial court has failed to file any memorandum of decision or to sign a transcript of the court's ruling. The time periods for filing a motion for articulation are the same as those governing motions for rectification. Filing a motion for articulation does *not* delay the deadline for filing the appellant's brief, and, thus, a motion for extension of time to file a brief may be necessary. See P.B. § 66-1. The Office of the Appellate Clerk will forward the motion for articulation to the trial judge. Within 20 days of a judge's articulation, any party may move for further articulation. See P.B. § 66-5.

5. **Motion for Review.** If any party is aggrieved by the action of the trial judge on a motion for articulation or rectification, that party should seek appellate review of that decision by filing with the Office of the Appellate Clerk a motion for review pursuant to P.B. § 66-7 within 10 days of notice of the trial judge's action. See P.B. § 66-6. The failure to file a motion for review may result in an appellate court's declining to

review an issue or claim on appeal, even if a motion for articulation or rectification was filed. If the motion for review depends on a transcript, the party filing the motion should order and file the transcript that supports the motion for review. If the transcript has not been delivered to that party prior to the filing of the motion for review, the transcript order form should be filed with the motion. The failure to file the transcript when the motion for review depends on the transcript could result in the denial of review of the motion.

6. **Filing Local Land Use Regulations.** In appeals certified by the Appellate Court pursuant to P.B. § 81-1 et seq., one complete copy of the local land use regulations in effect at the time of the hearing that gave rise to the agency action or ruling in dispute must be filed with the Office of the Appellate Clerk when the appellant's brief is filed. The copy filed must be certified by the local zoning official as having been in effect at the time of the hearing. See P.B. § 81-6.

SECTION 4

PREARGUMENT CONFERENCES

Preargument conferences are held pursuant to Practice Book (P.B.) § 63-10 and are convened primarily to explore the possibility that the case can be settled, and this mediation process has resulted in the settlement and withdrawal of many appeals. The deadline for the appellant's brief will usually be extended until *after* the preargument conference so that the parties can discuss settlement before they have incurred the expense of preparing and filing their appellate briefs. The judge assigned to conduct the preargument conference may point out to the attendees, parties, and attorneys, in joint conference and in private discussions, the strengths and weaknesses of each side. The judge also may wish to discuss the possibility of reducing the number of issues presented on appeal or a timetable for the filing of the appellate briefs. Finally, the preargument conference judge may recommend that the case be transferred from the Appellate Court to the Supreme Court.

In all noncriminal cases, except for those noncriminal cases that are expressly exempt from a preargument conference under P.B. § 63-10, the appellant must file a preargument conference statement within 10 days of filing the appeal. A party in an exempt case nonetheless may request a preargument conference by filing a request for a conference with the Office of the Appellate Clerk, certified to all parties, explaining why the case should not be exempt.

Once you have been informed that a preargument conference judge has been assigned to your case, any questions or requests regarding the preargument conference should be addressed to that judge.

Parties are required to attend the preargument conference unless they are excused from attendance by the preargument conference judge. If a party against whom a claim is made is insured, the insurer must be available by telephone or cell phone, although the judge may require the adjuster to be present at the conference. If a party or an attorney who has not been excused from attending the preargument conference fails to attend, sanctions may be imposed under P.B. § 85-2 (7).

The preargument conference proceedings are confidential, and nothing discussed in the proceedings should be brought to the attention of the Supreme Court or the Appellate Court, or mentioned or included by any party in his or her appellate brief or appendix.

SECTION 5

MOTION PRACTICE

Unless you are exempt from electronic filing pursuant to Practice Book (P.B.) § 60-8, all motions and oppositions to motions must be electronically filed pursuant to P.B. § 60-7 and shall comply with the requirements of P.B. §§ 66-2, 66-3 and 62-7. Thus, motions must be:

- typewritten and fully double spaced
- 12 point or larger size in Arial or Univers typeface
- no more than 3 lines to the vertical inch or 27 lines to the page
- in compliance with the margin and footnote requirements of P.B. § 66-3

If you received an exemption from electronic filing pursuant to P.B. § 60-8, you need to file only an original paper motion or opposition.

All motions and oppositions, whether filed electronically or by paper, must contain a certification that a copy has been delivered to each other counsel of record, including names, addresses, e-mail addresses, and telephone numbers. For paper filings, the certification also shall include a statement that the document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law, and that the document complies with all applicable rules of appellate procedure. For electronically filed documents, the certification requirements for redaction and personal identifying information can be completed as part of the electronic filing transaction. See P.B. § 62-7 (b).

In accordance with P.B. § 66-2, every motion, including motions for extension of time, *must* contain in separate, appropriately captioned paragraphs:

- a brief history of the case
- specific facts relied on by the party filing the motion
- legal grounds relied on by the party filing the motion

There is a 10 page limit for all motions or oppositions, including any memoranda in support of or in opposition to a motion. See P.B. § 66-2 (b). Attachments to the motion or opposition, such as transcripts or documents, are not included in the 10 page limit. Whenever a motion is filed with the Office of the Appellate Clerk, it is initially examined for compliance with P.B. §§ 66-2 and 66-3. Noncomplying motions may be returned. See P.B. § 62-7 (a). Although the returned document remains in the electronic filings for that appeal, it will not be considered by the court, and a return notice will be issued by the Office of the Appellate Clerk. Any papers correcting a noncomplying filing should be resubmitted to the Office of the Appellate Clerk within 15 days. If the initial paper was timely filed but was returned and refiled within 15 days, the correcting paper will be deemed timely filed under the provisions of P.B. § 62-7 (a). P.B. § 62-7 applies

unless otherwise ordered by the court having appellate jurisdiction. The time to file an opposition will not start to run until the correcting paper is filed.

Some motions may lead to the disposition of an appeal or writ of error. Generally, the appellee must file a motion to dismiss based on a nonjurisdictional defect within 10 days after the filing of the appeal or within 10 days after the alleged defect arose. A motion to dismiss a writ of error based on nonjurisdictional grounds generally must be filed within 10 days after the electronic filing of the writ or, if the plaintiff in error is exempt from the electronic filing requirements, within 10 days after the return day. A motion to dismiss based on lack of jurisdiction, however, may be filed at any time. See P.B. § 66-8. Examples of jurisdictional problems that can result in dismissal of an appeal include lack of aggrievement, mootness, and lack of a final judgment. Examples of nonjurisdictional grounds for dismissal of an appeal include the failure to timely file required documents or to file a timely appeal. Motions for sanctions may be filed at any time. See P.B. § 85-3. No motion or opposition shall be filed after the expiration of the time for its filing unless there is good cause for the late filing and the motion or opposition contains a separate section captioned "good cause for late filing," explaining the reasons for the delay. No amendment can be made to any filing unless a written motion seeking to amend the filing is granted by the court having appellate jurisdiction. See P.B. § 66-3.

A motion for review pursuant to P.B. § 66-6 allows the Appellate Court or the Supreme Court to review actions of the trial court during the pendency of the appeal involving questions that may arise in connection with the preparation of the appeal. A motion for review is appropriate when a party seeks to modify or vacate any order of the trial court relating to the perfecting of the record for appeal or the procedure for prosecuting or defending the appeal. A motion for review is also appropriate to seek review of the action of the appellate clerk or the trial court on a motion to extend time. See P.B. § 66-1. In addition, a party may move for review of an adverse ruling on either a motion for stay of execution or a motion to terminate an automatic stay. See P.B. §§ 61-11, 61-12 and 66-6. A party has 10 days from the date of issuance of notice of any order to file a motion for review. See P.B. § 66-6.

Pursuant to P.B. § 60-2, any trial court order relating to the prosecution of an appeal may be modified or vacated. This rule also permits the filing of a motion to strike improper matter from a brief or an appendix, and a motion to stay any proceedings ancillary to a case on appeal. The Supreme Court or the Appellate Court may order that a party, for good cause shown, may file a late appeal, petition for certification, brief or other document, unless the court lacks jurisdiction to allow a late filing. The court having appellate jurisdiction also may order that a hearing be held to determine whether that court has jurisdiction over a pending matter, order an appellate matter to be dismissed unless the appellant complies with specific orders of the trial court or the court having appellate jurisdiction, or remand any pending matter to the trial court for resolution of factual issues if necessary.

An opposition can be filed to any motion, other than a motion for extension of time, within 10 days of the filing of the motion. An opposition shall not include any

request for relief other than the denial of the motion. A request for other relief should be presented in a separate motion, for example, a motion to file a late appeal or a motion for sanctions. Responses to oppositions are not permitted and will be returned by the Office of the Appellate Clerk. See P.B. § 66-2 (a).

Some motions that are directed to the trial court, such as a motion to terminate an automatic stay pursuant to P.B. § 61-11, or a motion for rectification or articulation pursuant to P.B. § 66-5, are filed with the Office of the Appellate Clerk. These trial court motions must comply with the requirements of P.B. § 66-2 (e).

If you wish to file a late motion that is directed to the trial court, you must first file with the court having appellate jurisdiction a written motion for permission to file the late motion and include a copy of the proposed trial court motion. If the court having appellate jurisdiction grants permission to file the late motion, the motion can be filed and forwarded to the trial court for consideration. P.B. § 66-3.

Motions filed with the Office of the Appellate Clerk that are directed to the trial court and any oppositions will be forwarded to the trial court by the Office of the Appellate Clerk. When the trial court has decided these motions, the Office of the Appellate Clerk shall issue notice of the decision. A motion for review can be filed within 10 days of issuance of notice of the decision. See P.B. §§ 66-2 (f) and 66-7.

SECTION 6

MOTIONS FOR EXTENSION OF TIME

Motions for extension of time to file a brief or other document are governed by Practice Book (P.B.) § 66-1. Like all other motions, they must be electronically filed pursuant to P.B. § 60-7 and comply with P.B. §§ 62-7, 66-2 and 66-3. Pursuant to P.B. § 66-1, motions for extension of time must also include:

- the reason for the requested extension
- certification to counsel, self-represented parties, *and* the movant's client
- a statement indicating whether other parties consent or object
- the current status of the brief
- the estimated date of completion of the brief
- whether the client is incarcerated (criminal cases only)
- a claim of *good cause*. See P.B. § 66-1 (c).

Only an original of the motion must be filed if you received an exemption from electronic filing. See P.B. § 60-8. Unlike other motions, an objection to a motion for extension of time must be filed within 5 days. See P.B. § 66-1 (d).

The Good Cause Requirement

Good cause must be shown for a motion for extension of time to be granted. The appellate clerk is authorized to grant motions for extension of time pursuant to P.B § 66-1 (c). If the reason for the requested extension is that counsel is working on other appeals, be specific, listing the dates when briefs are due in other cases. Whether your reason relates to the inherent nature of the appeal, such as a lengthy transcript, complex issues or pending settlement negotiations, or relates to other matters, be forthright. Other pending motions, unrelated to the filing of a brief, do not automatically delay the time to file the brief, although such other pending motions may furnish a basis for granting an extension of time to file the brief.

When To File

A motion for extension of time must be filed no later than 10 days *before* the brief or document is due, unless the reason for the request for an extension arose during that 10 day period. If the motion for extension is filed *after* the due date, the appellate clerk is required to deny the motion. See P.B. § 66-1 (e). If the due date has passed or a motion for extension has been denied, a motion for permission to file late may be filed. Extensions cannot be granted over the telephone.

Final Extension

If there is a specific court order or a final extension order for the filing of a brief or other document, you must comply with the order. The Office of the Appellate Clerk cannot accept a late brief or other document unless the court grants a motion for permission to amend or set aside the court order.

Notice of Decision on Motions for Extension of Time

The official notice for orders on motions for extension of time issued by the Supreme Court and the Appellate Court is the electronic posting of the order to the appellate file through the appellate e-filing system. Paper notice will issue in all appeals when the litigant is exempt from electronic filing. Counsel of record and the public can view the disposition of the motion for extension and the date of the extension in the Case Activity section of the electronic file available on the Judicial Branch website (www.jud.ct.gov). In the event an order on a motion for extension of time contains additional text that cannot be seen in the Case Activity section, or case information is not electronically available, paper notice will issue.

Extensions of Time in Which To File an Appeal

Pursuant to P.B. § 66-1, a motion for extension of time to file an appeal must be filed in the trial court where the case was heard. A motion for extension of time to file an appeal should be filed at least 10 days before expiration of the time limit sought to be extended so that, if the motion is denied, the party seeking to appeal will have no less than 10 days from the issuance of notice of the denial to appeal. See P.B. §§ 63-1 (a) and 66-1 (a).

SECTION 7

NOTICE AND E-MAIL UPDATES

When the Office of the Appellate Clerk issues an order on a motion, petition, or application, the official notice date is the date indicated on the order for notice to the trial court and all counsel of record. The official notice date is not the date that such order is received. See Practice Book (P.B.) § 66-2 (f).

Notices in appellate matters are currently sent to attorneys, law firms, and self-represented parties on paper via United States mail unless otherwise provided. In addition, notices in Supreme and Appellate Court matters are now provided electronically in the E-services in-box to attorneys, law firms, and self-represented parties that have an E-services account and have filed an appellate electronic access form (JD-AC-015). Paper notice may be discontinued in the future.

You may subscribe to receive e-mail updates for Supreme Court and Appellate Court cases by using the Appellate/Supreme Court Case Look-up function on the Judicial Branch website (http://appellateinquiry.jud.ct.gov/). Search for the case on which you would like to receive updates by case name, docket number, party name, attorney name, juris number, or trial court docket number. Once you are on the Case Detail web page for the case on which you would like to receive updates, click on the link, "To receive an e-mail when there is activity on this case, click here," to create a subscription. After entering your e-mail address and verifying certain information, you will receive a subscription request confirmation e-mail notification at the e-mail address you provided. You must click on a link in that e-mail notification to activate your subscription. Once you have activated your subscription, you will receive e-mail updates for any activity that has occurred in connection with the particular case once per day, after the close of business that day. You will not receive an e-mail update if there is no activity. Please note that you will stop receiving updates if the case becomes sealed or protected pursuant to a court order or statute. *These e-mail updates are intended for your convenience and do not constitute official notice*.

SECTION 8

BRIEFS AND APPENDICES

The timing, format, and content of briefs and appendices are governed by chapter 67 of the Practice Book (P.B.). Briefs and appendices that do not substantially comply with the rules may be returned or rejected by the Office of the Appellate Clerk. See P.B. § 62-7. Moreover, the court may decline to review issues that are not properly briefed. Different rules apply to the filing of briefs and appendices in child protection matters. See P.B. §§ 79a-1 through 79a-15.

Timing

1. **The Appellant's Brief.** The appellant's brief and appendix must be filed within 45 days of the delivery date of any transcript ordered by the appellant. See P.B. §§ 67-3 and 63-8 (c). The "delivery date" of the transcript is the date on which the final portion of the transcript ordered by the appellant is sent to the appellant by the court reporter. See P.B. § 63-8 (c). If the appellant has not ordered any transcript, or if the transcript on which the appellant intends to rely was obtained prior to the filing of the appeal, the appellant's brief and appendix must be filed within 45 days of the filing of the appeal. See P.B. § 67-3.

2. **The Appellee's Brief.** The appellee's brief and any appendix must be filed within 30 days after the filing of the appellant's brief. See P.B. § 67-3. If the appellee has ordered any transcript in addition to that ordered by the appellant; see P.B. § 63-4 (a) (2); the appellee's brief and any appendix must be filed within 30 days after the delivery date of the transcript ordered by the appellee. See P.B. § 67-3.

3. **The Reply Brief.** The reply brief, if any, must be filed by the appellant within 20 days after the filing of the appellee's brief. See P.B. § 67-3. In the reply brief, the appellant may respond only to the appellee's argument and may not raise new claims or issues.

4. **Cross Appeals.** When a cross appeal has been filed, the appellee's brief and appendix is combined with the brief and appendix as cross appellant and is filed within the time provided for the filing of the appellee's brief. The reply brief, if any, of the appellant is combined with the brief and appendix as cross appellee and must be filed within 30 days after the filing of the brief of the appellee/cross appellant. The reply brief, if any, of the cross appellant must be filed within 20 days after the filing of the brief of the cross appellee. See P.B. § 67-3.

Format

The Practice Book contains precise requirements concerning margins, spacing, fonts, page numbers, binding and covers. See P.B. § 67-2. Strict compliance with these requirements is essential.

Supreme Court cases require 15 copies of the brief and appendix to be filed. Appellate Court cases require 10 copies. P.B. § 67-2 (h). Unless otherwise ordered, the brief shall be copied on one side of the page only. Appendices may be copied on both sides of the page. P.B. § 67-2 (a).

The page limitations for briefs may be found in P.B. § 67-3. For purposes of the page limitations, you must count everything other than the (1) appendices, (2) preliminary statement of issues, (3) table of contents, (4) table of authorities, (5) statement of the interest of the amicus curiae in an amicus curiae brief, and (6) last page of the brief, but *only* if it contains nothing more than the signature of counsel or the signature of the self-represented party. The Chief Justice or the Chief Judge may grant permission to exceed the page limitations. Requests to exceed the page limitations, which should be made sparingly, should be made by letter filed with Office of the Appellate Clerk. The request should include both a compelling reason and the number of additional pages sought. It is helpful if you include your preliminary statement of issues. If you are briefing a claim based on the state constitution as an independent ground for relief, the appellate clerk will, upon request, grant an additional 5 pages for briefs, plus an additional 2 pages for the appellant's reply brief. These additional pages are to be used *only* for the state constitutional argument.

Content

The brief should be as concise and as readable as possible. Use plain English in your brief. The appellant and the appellee should be referred to as either the "plaintiff" or the "defendant," as appropriate, or by name. See P.B. § 67-1. The appellant must describe what happened in the trial court and why the judgment should be reversed. The appellee should try to persuade the reviewing court either that the trial court did nothing wrong or that any errors that might have occurred do not merit reversing the judgment, or both.

Electronic Briefing Requirements

In addition to the requirement that you file paper briefs, you are required to submit electronic versions of briefs and appendices, unless you are exempt from the electronic filing requirements. Even when the paper copies of the brief and appendix are bound together, the brief and appendix must be submitted as separate documents electronically. P.B. § 67-2 (g). A copy of the electronic confirmation receipt indicating that the brief and appendix were submitted electronically must be filed with the original paper brief and appendix. See P.B. § 67-2 (j).

The Appellant's Brief

The appellant's brief must contain a statement of the issues involved in the appeal, a table of authorities, a statement of the nature of the proceedings and the facts of the case, and an argument section. See P.B. § 67-4 (a) through (d). The text of pertinent portions of any constitutional provisions, statutes, ordinances or regulations on which the appellant relies must be included either in the brief or in the appendix. See P.B. § 67-4 (f). Also include the text of any rules of practice that are at issue. The appellant's brief should be organized in the following order:

1. **Table of Contents.** The table of contents should outline the various sections of the brief (including the major headings from the argument section), along with a page number for each section or heading.

2. **Statement of Issues.** The statement of issues must be included in the appellant's brief. See P.B. § 67-4 (a). The issues stated must be concise and must be set forth in separately numbered paragraphs, without detail or discussion. The statement should include references to the pages of the brief on which each issue is discussed. See P.B. § 67-4 (a). The statement of issues should not exceed 1 page and should be on a page by itself. See P.B. § 67-1. The statement of issues will be deemed to replace and supersede the appellant's preliminary statement of issues. See P.B. § 67-4 (a).

3. **Table of Authorities.** The table of authorities should include all authorities cited in the brief, as well as the page numbers of the brief on which those citations appear. See P.B. § 67-4 (b). The rules provide for different citation protocols for judicial decisions, depending on whether the citation to the decision is located in the brief or in the table of authorities. See P.B. § 67-11.

4. **Statement Regarding Land Use Regulations.** In zoning and wetland appeals filed pursuant to P.B. § 81-4, you must include a statement identifying the version of the land use regulations filed with the Office of the Appellate Clerk. See P.B. § 67-4 (g).

5. **Statement of the Nature of the Proceedings and of the Facts.** The rules provide that the statement of the nature of the proceedings and of the facts should have some "bearing on the issues raised." P.B. § 67-4 (c). For example, it is not necessary to set forth every procedural event or every piece of evidence presented at trial, if the issue on appeal is whether the trial court should have stricken the complaint because it failed to state a cause of action. On the other hand, if the issue on appeal is whether the verdict was contrary to the evidence, then the statement of the facts would necessarily require a detailed description of the evidence presented at trial. The statement of the facts shall be in narrative form, shall not be "unnecessarily detailed or voluminous," and shall include citations to the transcript pages or documents on which you rely. P.B. § 67-4 (c).

6. **Argument.** The argument section should be divided into appropriate sections (with headings), corresponding to the issues and subissues presented in the appeal. See

P.B. § 67-4 (d).

At or near the beginning of the argument for each issue, you must include a separate, brief statement of the standard of review that you believe the reviewing court should apply. See P.B. § 67-4 (d). The statement of the standard of review is an opportunity to inform the justices or judges considering the appeal how you believe they should review the actions of the court below. For example, if the trial court decided an issue as a matter of law (e.g., construed a statute or granted a motion for summary judgment), such decisions are generally reviewed anew on appeal ("de novo" or "plenary" standard of review). On the other hand, issues related to the management of a trial (e.g., scheduling, evidentiary rulings, etc.) are generally reviewed on appeal only to the extent necessary to determine whether the trial court abused the wide discretion allocated to it in such matters ("abuse of discretion" standard of review). Factual findings made by the trial court are generally reviewed to determine whether there is evidence in the record to support those findings ("clearly erroneous" standard of review). Note that these three examples do not purport to cover the field of "standards of review." It is very important that you understand the nature of the review to which you are entitled on appeal and that you inform the court what you believe that standard should be.

The appellant also must demonstrate to the reviewing court that the issues presented on appeal were properly raised in the trial court. Depending on the issue raised on appeal, the appellant is required to include certain, pertinent information in either the brief or the appendix. See P.B. § 67-4 (d) (1) through (5). If the appellant does not comply with these requirements, the court may decline to review the issues raised on appeal.

7. **Conclusion and Statement of Relief Requested.** A short conclusion should be included in the appellant's brief, identifying exactly what action you believe should be taken in the event the court resolves the appeal in your favor. See P.B. § 67-4 (e).

8. **Signature and Certification of Delivery.** The brief must be signed by counsel of record, which includes self-represented parties. It should include the signer's telephone number, mailing address, and, if applicable, the signer's juris number or self-represented party's user identification number. See P.B. § 62-6. In your certification that a copy has been delivered to each other counsel of record, include the names, addresses, and telephone numbers of all counsel and self-represented parties. See P.B. § 62-7 (b) (1).

9. **Certification Requirements for Electronically Submitted Briefs.** Counsel and self-represented parties must certify that electronically submitted briefs and appendices (1) have been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided, and (2) 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. See P.B. § 67-2 (g).

10. **Certification Requirements for Copies of Briefs**. The copies of the brief filed must be accompanied by (1) certification that a copy of the brief and appendix has been sent to each counsel or self-represented party of record, in compliance with P.B. § 62-7, (2) certification by counsel of record that the brief and appendix being filed with the Office of the Appellate Clerk are true copies of the brief and appendix that were submitted electronically pursuant to P.B. § 67-2 (g), (3) 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, and (4) certification that the brief complies with all provisions of P.B. § 67-2.

11. **Electronic Confirmation Receipt**. Counsel and self-represented parties must file a copy of the electronic confirmation receipt indicating that the brief and appendix were submitted electronically with the original brief. See P.B. § 62-7 (j).

The Appellant's Appendix

The appellant must file an appendix with the appellant's brief. Extensive requirements are stated in P.B. § 67-8. The appendix is to be divided into two parts. Part one is mandatory and must include (1) a table of contents, (2) the docket sheets, a case detail or court action entries in the proceedings below, (3) relevant motions, findings and opinions of the court below, (4) the signed judgment file, if applicable, (5) the appeal form, (6) the docketing statement, (7) any relevant appellate motions or orders completing or perfecting the record, and (8) other documents listed in P.B. § 67-8 (b). A list of suggested documents for inclusion in part one is provided in the appendix to this handbook. In criminal appeals filed by incarcerated, self-represented parties, part one of the appendix shall be prepared by the opposing party. See P.B. § 68-1.

Part two may include other portions of the record that the appellant deems necessary for the presentation of the appeal. It may include excerpts of lengthy exhibits or quotations from transcripts, or items to comply with other provisions of the Practice Book that require inclusion of materials in the appendix. Decisions cited by a party that are not officially published must be included in part two of the appendix. See P.B. § 67-8 (b) (2). The entire trial court file will be available to the Supreme Court and the Appellate Court.

The Appellee's Brief

In general, the appellee's brief mirrors that of the appellant as to content and organization. The appellee's brief must respond to the points made and the issues raised in the appellant's brief. The rules allow the appellee to dispense with certain items that are required in the appellant's brief as appropriate. For example, the appellee's counter statement of issues need only address those issues raised by the appellant with which the appellee disagrees, along with any issues properly raised by

the appellee under P.B. § 63-4 (i.e., alternative grounds on which the judgment may be affirmed or adverse rulings that should be considered if a new trial is ordered). See P.B. § 67-5 (a).

Similarly, the appellee is not required to submit a statement of the nature of the proceedings and is required to include a counter statement only as to those facts as to which the appellee disagrees. See P.B. § 67-5 (c). The counter statement of facts must be supported with references to the transcript or relevant documents. Any facts on which the appellee intends to rely must be set forth in either the appellant's brief or appendix, or in the appellee's brief or appendix. See P.B. § 67-5 (c).

To the extent that you disagree with the appellant's interpretation of the trial court's rulings, express your disagreement in the argument section of the appellee's brief. See P.B. § 67-5 (d). The appellee's brief also must include a brief statement of the standard of review that the appellee believes should be applied by the court. See P.B. § 67-5 (d). If you agree with the appellant's statement of the standard of review, you may so indicate. The appellee's argument section should also address any claims raised under P.B. § 63-4.

When the appellee is also the cross appellant, the issues raised in the cross appeal should be briefed by the cross appellant in accordance with the rules governing the appellant's brief. See P.B. § 67-5 (j).

The appellee must comply with the same certification requirements specified in P.B. § 67-2 as the appellant.

The Appellee's Appendix

The appellee's appendix should not include items already included in the appellant's appendix. If the appellee determines that necessary items were not included in part one of the appellant's appendix, the appellee shall include those items. The appellee shall include copies of decisions that are not officially published and may include any portions of the proceedings below that the appellee deems necessary for the proper presentation of the appeal. See P.B. § 67-8 (c).

The Reply Brief

Although the filing of a reply brief by the appellant is not required by the rules of practice, if the appellee has raised any issues pursuant to P.B. § 63-4 (a) (1), a reply brief is the only way for the appellant to respond in writing to such issues. Do not raise new issues for the first time in the reply brief.

Format of Appendices

When possible, parts one and two of the appendix should be bound together, and may be bound together with the brief unless the integrity of the binding is affected or either part exceeds 150 pages, in which case the appendices shall be separately bound. See P.B. § 67-2 (b). The appendix should be paginated separately from the brief. The appendix should contain an index of the names of witnesses whose testimony is included and the pages of the transcript on which the testimony appears. You should review P.B. § 67-2 (c) through (j) for other requirements, such as covers of appendices, number of copies to be filed, and the need for electronic versions to be filed by counsel and self-represented parties.

BRIEFS IN BRIEF (P.B. § 67-1 et seq.)

General Requirements

FONT (text and footnotes)	Arial or Univers, at least 12 point
MARGINS	1" top and bottom, 1.25" left, .5" right
PAGE NUMBERS	center bottom
BINDING	3 staples on left or otherwise firmly bound
HOW MANY TO FILE	AC: 10 copies SC: 15 copies
SPACING	• fully double spaced text • single spaced footnotes and block quotes
FRONT COVER	Arial or Univers, at least 12 point: • court (Supreme Court or Appellate Court) • docket number (SC _____ or AC _____) • case name (as found in trial court's judgment file, if applicable) • whose brief (e.g., brief of the defendant-appellant) • name, address, telephone number, and e-mail address of counsel of record (including counsel of record who will argue the appeal)
BACK COVER	optional, but white, if used
APPENDIX	Parts one and two should be bound together when possible and may be bound together with the brief unless the integrity of the binding is affected or either part exceeds 150 pages, in which case they shall be separately bound. May be copied on both sides of the page.
CERTIFICATIONS	• certification requirements for electronically submitted briefs and paper briefs are found in P.B. § 67-2 • copy of electronic confirmation receipt required
TRANSCRIPT	due at time of filing brief: 1 unmarked, nonreturnable copy, with form (JD-CL-062) indicating filing party, number of volumes and dates of hearings transcribed
ZONING REGULATIONS	due at time of filing brief, if applicable: 1 complete copy of local land use regulations certified by local zoning official

Specific Requirements for Parties' Briefs

BRIEF	NO. OF PAGES	COVER COLOR	WHEN DUE
APPELLANT	35	light blue	45 days after transcript is delivered or, if no transcript, 45 days after appeal is filed
APPELLEE	35	pink	30 days after transcript ordered by appellee is delivered, or, if no such transcript, 30 days after appellant's brief is filed
APPELLEE/CROSS APPELLANT	50	pink	30 days after appellant's brief is filed
REPLY	15	white	20 days after appellee's brief is filed
CROSS APPELLEE WITH APPELLANT REPLY	40	white	30 days after appellee's brief is filed
CROSS APPELLANT REPLY	15	white	20 days after cross appellee's brief is filed
AMICUS	10	light green	set by court

SECTION 9

ASSIGNMENT OF CASES

Cases are listed on the Docket when all briefs and appendices, including reply briefs, have been filed, or the time for filing reply briefs has expired. See Practice Book (P.B.) §§ 69-1 and 69-2. The cases listed on the Docket are considered ready for assignment during the upcoming court term. The Docket contains the anticipated assignment dates.

Assignment of cases is ordinarily made in order of readiness. Counsel of record are required to inform the Office of the Appellate Clerk of any requests for variation from this order, including requests to argue cases together, requests to waive argument, or of any scheduling conflicts, including the date and reasons therefor. See P.B. § 69-3. Such requests must include certification to counsel of record and to each of counsel's clients who are parties to the appeal, and must be received by the Office of the Appellate Clerk by the date shown on the Docket. *In making such a request, counsel of record should be aware that assignments in the Supreme Court and the Appellate Court take precedence over all other Judicial Branch assignments*. See P.B. §§ 1-2 and 69-3.

The Assignment for Days is a calendar that shows the dates on which cases are assigned during a particular term of the court. See P.B. § 69-3. The Office of the Appellate Clerk must be notified immediately if an assigned case is settled or withdrawn for any reason. See P.B. § 69-2.

Dockets and Assignments for Days are no longer printed and mailed. Docket and case assignment information is available on the Judicial Branch website (http://appellateinquiry.jud.ct.gov/). Incarcerated, self-represented parties and other counsel of record in those appellate matters receive notice by mail. Counsel of record in cases the Appellate Court decides to consider on its own motion calendar also receive notice by mail.

SECTION 10

ORAL ARGUMENT

In the Supreme Court, both the appellant and the appellee are ordinarily allowed no more than 30 minutes of argument time respectively. See Practice Book (P.B.) § 70-4. The practice of the Appellate Court is to allow both the appellant and the appellee no more than 20 minutes of argument time respectively. The appellant may reserve rebuttal time out of the allotted time. The appellant opens and generally closes the argument. See P.B. § 70-3.

If either party fails to appear at oral argument, the court may decide the appellate matter on the basis of the briefs, the record and the oral argument of the appearing party. If neither party appears for oral argument, the court may decide the appellate matter on the basis of the briefs and record, without oral argument. See P.B. § 70-3. The court may impose sanctions on a nonappearing party in accordance with P.B. § 85-3, including dismissal of the appellate matter.

Only one person may argue for any one party unless special permission is obtained from the court prior to the date of oral argument. See P.B. § 70-4. Different parties on the same side of a case may apportion the argument time allotted to that side between themselves without special permission of the court. It is a courtesy to the court, however, to file a letter with the Office of the Appellate Clerk prior to oral argument indicating your intent to apportion the argument time and how you wish to do so. A party must have filed a brief or joined in the brief of another party in order to argue. An amicus curiae may not argue unless specifically granted permission to do so. See P.B. § 67-7. Such permission is rarely granted.

Sometimes, there is a change in counsel or designation of arguing counsel before the scheduled argument date. A change in counsel after a case is ready for assignment requires permission of the court. See P.B. § 62-8.

In cases involving incarcerated, self-represented parties, oral argument may, in the discretion of the court, be conducted by videoconference. See P.B. § 70-1 (c).

The Appellate Court may determine that certain cases are appropriate for disposition without oral argument. See P.B. § 70-1 (b). If a case is chosen for such disposition, counsel of record are notified that the case will be decided on the briefs and record only. If either party has an objection to disposition without oral argument, that party may file a request for argument within 7 days of the issuance of the court's notice. The court will either assign the case for oral argument or assign the case for disposition without oral argument, as it deems appropriate.

Counsel of record may, at any time, request the court's permission to submit a case for consideration without oral argument. See P.B. § 70-2.

Suggestions for Successful Oral Argument

The following is a short list of suggestions to keep in mind as you plan your oral argument.

1. **Oral argument and written briefs serve very different functions**. The brief is a detailed and formal explanation of your position that the judges study at length before and after oral argument. Oral argument, by contrast, is a short and often intense opportunity that is provided so that you can answer the judges' questions about the case and your position. Oral argument, therefore, should not be a speech or a spoken version of the brief. Instead, use the oral argument to focus the court on the key strengths of your case and weaknesses of your opponent's position and to answer the judges' questions.

2. **Effective oral argument requires detailed preparation and a mastery of the facts and law relevant to the case and position.** The judges assigned to hear the case will have read the parties' briefs before argument and will be familiar with the facts of the case, the proceedings below and the key cases cited. So should you. The judges expect you to know what has occurred in the case, even if you were not the lawyer who tried the case. Therefore, answers such as "I was not the lawyer who tried the case" are not received favorably. The judges expect you to be able to answer their questions.

3. **Do not read your argument from a prepared text or notebook**. Bring notes with you to the lectern but resist the temptation to read from them. Instead, maintain eye contact with the judges and engage them in a discussion of your position and the court's questions. A meaningful discussion of that kind will be possible only if you are thoroughly familiar with the facts of your case and the decisions cited in the parties' briefs. If you intend to rely at argument on a decision that was not cited in the briefs, advise the court and your opponent of the case in advance of argument pursuant to P.B. § 67-10.

4. **Do not begin your oral argument with a recitation of the facts or proceedings below.** Assume that the judges will be familiar with the facts and procedural history of your case. You will probably have only a brief opportunity to speak at the outset of the argument before the judges begin to ask questions. Instead of wasting that opportunity on matters that the judges already know about or that are not relevant to resolution of your appeal, use that brief time to get immediately to the crux of your case.

5. **Expect and welcome questions from the court.** The purpose of oral argument is to answer the judges' questions. Experienced advocates understand that questions are not interruptions but are opportunities to clarify positions, to clear up confusion and to persuade the judges that you should prevail. The best way to give a good answer is to anticipate the questions in advance. Careful preparation, therefore, requires you to consider the questions that the judges may have about your case

and to develop concise answers to anticipated questions. Many lawyers consider it useful to practice answers to anticipated questions before the argument.

6. **Listen carefully to the questions and think before answering a question**. Make sure you understand what the judge is asking *before* responding. Long answers to questions that were never asked are not helpful. Respond directly and immediately to the question with a "yes," "no," or "I do not know," and then explain your answer. As a practical matter, you will probably be limited to a one or two sentence explanation. If you quote from a portion of the record, inform the judges where they can find it.

7. **Never say, "I'll get to that later."** The judge wants to explore that issue when he or she asks the question, not when you get around to the page of your outline where you listed that issue.

8. **Be courteous and respectful to the court and opposing counsel.** Do not argue with a judge or pose questions to the court. It is their job to ask the questions, not yours, although you should clarify questions if needed. Judges also will not appreciate it if you denigrate or are discourteous to your opponent.

9. **Do not continue your argument or use your rebuttal time if you no longer have anything meaningful to say.** If the judges have no further questions, consider whether it is useful to continue your argument or to waive the balance of your allotted time.

10. **Above all, be honest and candid with the court.** If you do not know the answer to a question, say so. Also, if there is a decision that is harmful to your case, say so as well, but explain why you believe the court should not follow it. You do not help yourself by giving evasive or untruthful answers or by failing to acknowledge a fact that is harmful to your case. You have an ethical obligation of candor to the court.

SECTION 11

POSTDECISION MOTIONS AND PETITIONS

After the Supreme Court or the Appellate Court issues its decision in a case, the Reporter of Judicial Decisions sends a link to the electronic version of the decision and the rescript to the clerk of the trial court. Notice of the decision will be deemed to have been given, for all purposes, on the official release date that appears in the court's decision, not on the date on which the court's decision is posted on the Judicial Branch website as an advance release opinion. See Practice Book (P.B.) § 71-4.

Motions for Reconsideration or for Reconsideration En Banc

After the decision is officially released, a party may ask that the panel of judges that decided the case reconsider the decision. See P.B. § 71-5. A party also may request reconsideration en banc. Any motion for reconsideration or for reconsideration en banc must be filed, and any fees associated with the motion must be paid, within 10 days from the official release date of the decision being challenged. A fee shall not be required for such a motion when either (1) no fee was required to file the appeal, or (2) you were granted a waiver of fees to file the appeal. A motion for reconsideration or for reconsideration en banc must comply with the general motion requirements enumerated in P.B. §§ 66-2 and 66-3 and is generally limited to 10 pages. Motions for reconsideration or for reconsideration en banc should briefly state with specificity the grounds for requesting reconsideration.

Petitions for Certification

A party cannot obtain Supreme Court review of an Appellate Court judgment by filing an appeal in the Supreme Court that challenges the Appellate Court's judgment. Rather, a party who is aggrieved by the Appellate Court's final determination of an appeal may seek review of the Appellate Court's judgment by filing a petition for certification in the Supreme Court. See Connecticut General Statutes (C.G.S.) § 51-197f; P.B. § 84-1. Such review is entirely discretionary, and there is no right to review of the judgment unless the Supreme Court grants the petition for certification. Petitions for certification must be filed, and any fees associated with the petition must be paid, within 20 days of the date on which the Appellate Court's decision is officially released or within 20 days of the order on any timely filed motion for reconsideration filed with the Appellate Court. See P.B. § 84-4 (a). A fee shall not be required for a petition for certification when either (1) no fee was required to file the appeal, or (2) you were granted a waiver of fees to file the appeal. Cross petitions for certification may be filed by any other party who is aggrieved by the Appellate Court's judgment within 10 days of the filing of the original petition for certification. See P.B. § 84-4 (c).

Practice Book § 84-5 governs the form of the petition for certification, and it directs that the petition must include

- a statement of the question or questions presented for review
- a statement of the basis for the extraordinary relief of certification (see also P.B. § 84-2)
- a summary of the case
- a concise argument explaining the reasons relied on in support of the petition
- an appendix that contains the papers specified in P.B. § 84-5 (5).

Within 10 days of the filing of a petition for certification, a party may file a statement in opposition to the petition for certification with the Office of the Appellate Clerk. See P.B. § 84-6. When the Supreme Court rules on a petition for certification, the Office of the Appellate Clerk sends notice of the order granting or denying the petition to the trial court clerk and to all counsel of record. When the Supreme Court grants a petition for certification, the successful petitioner (i.e., appellant) must file the appeal and pay any fees required within 20 days from the issuance of notice that certification to appeal has been granted. See P.B. § 84-9.

Petitions for Writs of Certiorari and Motions for Stay

When a party wishes to obtain a stay of execution of a Connecticut Supreme Court judgment pending a decision on a petition for a writ of certiorari filed with the United States Supreme Court, the party should file a motion for stay directed to the Connecticut Supreme Court within 20 days of the official release date of the Connecticut Supreme Court's decision. See P.B. § 71-7. The timely filing of the motion will operate as a stay pending the Connecticut Supreme Court's decision on the motion for stay.

When the Connecticut Supreme Court has denied a petition for certification to appeal from an Appellate Court judgment, a party seeking a stay of execution pending a decision in the case by the United States Supreme Court—or seeking that a stay of execution already in existence at the time certification was denied be extended—should file a motion for stay directed to the Appellate Court within 20 days of the Connecticut Supreme Court's decision denying the petition for certification. The timely filing of the motion for stay will operate as a stay pending the Appellate Court's decision on the motion for stay.

Bills of Costs

A party that has prevailed before the Appellate Court or the Supreme Court is entitled to costs, and a prevailing party must file a bill of costs with the Office of the Appellate Clerk within 30 days after notice of the official release of the appellate decision or within 30 days of the denial of a motion for reconsideration or petition for certification, whichever is latest. See P.B. § 71-2. Any party may seek review of the appellate clerk's taxation of costs by filing a motion to reconsider costs. See P.B. § 71-3.

APPENDIX

Suggested Contents for Preparation of Part One of the Appendix (Practice Book § 67-8)

Part One of the Appendix shall include only those pleadings and decisions that are necessary for the proper presentation of the issues on appeal.

The Office of the Appellate Clerk has formulated the samples below as suggestions based on the rules of appellate procedure, and case type, to assist in the preparation of Part One of the Appendix.

- Documents included in the appendices *must* be redacted to ensure that no information that is protected by rule, statute, court order or case law is disclosed. See Practice Book (P.B.) § 4-7.

- Part One of the Appendix shall include a table of contents, a case detail or docket sheets, the appeal form, and a docketing statement, along with the relevant pleadings and decision or decisions. Case type determines whether a signed judgment file is required.

- Memoranda of law should *not* be included in Part One of the Appendix.

- Part Two of the Appendix may include other items deemed necessary for the proper presentation of the issues on appeal.

- Pages of the appendices shall be numbered consecutively beginning with the first page of Part One and ending with the last page of Part Two. The numbers shall be preceded by the letter A (e.g., A1, A2, A3).

See P.B. §§ 67-2, 67-8 and 67-8A.

Civil Matters (Nonjury)

1. Table of contents
2. Case detail
3. Operative complaint
4. Answer
5. Special defense(s)
6. Counterclaim
7. Reply
8. Pertinent motion(s) such as to strike, for default, in limine, for summary judgment, with the attached affidavit(s) but without memorandum of law
9. Opposition(s) to motion(s)
10. Trial court's decision

11. Motion for reconsideration and opposition
12. Judgment file (signed by court clerk or judge)
13. Appeal form
14. Docketing statement
15. Relevant postappeal motion(s) and order(s) granting articulation, rectification, and/or dismissing a portion of the appeal

Civil Matters (Jury)

1. Table of contents
2. Case detail
3. Operative complaint
4. Answer
5. Pertinent motion(s) such as to strike, for default, in limine, for summary judgment, with the attached affidavit(s) but without memorandum of law
6. Opposition(s) to motion(s)
7. Jury verdict and interrogatories
8. Motion to set aside the verdict, for new trial, and/or for judgment notwithstanding the verdict
9. Opposition(s) to motion(s)
10. Trial court's decision(s)
11. Judgment file (signed by court clerk or judge)
12. Appeal form
13. Docketing statement
14. Relevant postappeal motion(s) and order(s) granting articulation, rectification, and/or dismissing a portion of the appeal
15. See P.B. § 67-4 (d) regarding requests to charge and evidentiary rulings

Civil Foreclosure

1. Table of contents
2. Case detail
3. Operative complaint
4. Answer
5. Motion for default
6. Motion for summary judgment with the attached affidavit(s) but without the memorandum of law
7. Motion for judgment of strict foreclosure or for judgment of foreclosure by sale with affidavit of debt
8. Motion to open judgment of strict foreclosure or foreclosure by sale, motion to reargue or for reconsideration
9. Opposition(s) to motion(s)
10. Trial court's decision(s)

11. Motion to reargue or for reconsideration, opposition, and the trial court's decision(s)
12. Appeal form
13. Docketing statement
14. Relevant postappeal motion(s) and order(s) granting articulation, rectification, and/or dismissing a portion of the appeal

Criminal

1. Table of contents
2. Original information and court action entries
3. Substitute information(s) and Part B information(s)
4. Long form information (the final long form information unless an earlier long form information is relevant)
5. Bill of particulars
6. Pertinent motion(s) such as in limine, to suppress, to dismiss, for acquittal, for a new trial, to reargue, without the memorandum of law
7. Opposition(s) to motion(s)
8. Memorandum of decision or signed transcript of oral decision
9. Judgment file (signed by court clerk or judge)
10. Appeal form
11. Docketing statement
12. Relevant postappeal motion(s) and order(s) granting articulation, rectification, and/or dismissing a portion of the appeal
13. See P.B. § 67-4 (d) regarding requests to charge and evidentiary rulings

Habeas Corpus

1. Table of contents
2. Case detail
3. Petition or final amended petition
4. Return or amended return
5. Pertinent motion(s)
6. Opposition(s) to motion(s)
7. Trial court's decision(s)
8. Petition for certification to appeal and order
9. Judgment file (signed by court clerk or judge)
10. Appeal form
11. Docketing statement
12. Relevant postappeal motion(s) and order(s) granting articulation, rectification, and/or dismissing a portion of the appeal

Family (Dissolution)

1. Table of contents
2. Case detail
3. Complaint
4. Answer/cross claim
5. Reply
6. Pendente lite order(s), if relevant
7. Unsealed financial affidavit(s), if relevant, with unsealing order(s)
8. Memorandum of decision
9. Motion for reconsideration or to open, opposition, and the trial court's decision(s)
10. Judgment file (signed by court clerk or judge)
11. Appeal form
12. Docketing statement
13. Relevant postappeal motion(s) and order(s) granting articulation, rectification, and/or dismissing a portion of the appeal

Family (Postjudgment)

1. Table of contents
2. Case detail
3. Judgment file (signed by court clerk or judge)
4. Pertinent motion(s) for modification, contempt, to open
5. Opposition(s) to motion(s)
6. Unsealed financial affidavit(s), if relevant, with unsealing order(s)
7. Trial court's oral or written decision
8. Motion for reconsideration, opposition and the trial court's decision(s)
9. Appeal form
10. Docketing statement
11. Relevant postappeal motion(s) and order(s) granting articulation, rectification, and/or dismissing a portion of the appeal

Compensation Review Board

1. Table of contents
2. Certification of the record
3. Finding and award
4. Motion to correct
5. Objection to motion to correct
6. Petition for review
7. Reasons for appeal
8. Appeal from finding
9. Opinion
10. Appeal form

11. Docketing statement
12. Relevant postappeal motion(s) and order(s) granting articulation, rectification, and/or dismissing a portion of the appeal

Child Protection

1. Table of contents
2. Case information(s)
3. Motion/order of temporary custody/order to appear
4. Petition: neglected, abused or uncared for, dependent child/youth
5. Social worker affidavit(s)
6. Specific steps
7. Neglect judgment file (signed by court clerk or judge)
8. Petition for termination of parental rights
9. Summary of facts to substantiate petition for termination of parental rights
10. Motion to review permanency plan/revoke commitment/transfer guardianship
11. Objection to permanency plan
12. Memorandum of decision
13. Termination of parental rights judgment file (signed by court clerk or judge)
14. Appeal form
15. Docketing statement
16. Relevant postappeal motion(s) and order(s) granting articulation, rectification, and/or dismissing a portion of the appeal

Administrative Appeals

As above, a table of contents, case detail, all relevant pleadings and orders, signed judgment file, appeal form, docketing statement, plus the return of record listing the administrative agency papers that were returned to the trial court, the notice of the hearing and affidavit of publication, if at issue, any minutes or decision showing the action taken by the agency, the reasons assigned for that action, and any findings and conclusions of fact made by the agency. See P.B. § 67-8A.

Supreme Court Appeals upon the Granting of Certification

As above, a table of contents, case detail, all relevant pleadings and orders, signed judgment file, if applicable, appeal form, docketing statement plus the order granting certification and the opinion or order of the Appellate Court. See P.B. § 67-8 (b) (1).

RESOURCES ON CONNECTICUT APPELLATE PROCEDURE

Official Connecticut Practice Book: The Commission on Official Legal Publications (2018)[1]

Connecticut Practice Series: Connecticut Rules of Appellate Procedure, Horton & Bartschi (Thomson Reuters 2017–2018)[2]

Connecticut Appellate Practice and Procedure, Prescott (Connecticut Law Tribune, 5th Ed. 2016)[3]

---

[1]The official Practice Book, which is republished annually, may also be accessed at (www.jud.ct.gov/Publications/PracticeBook/PB.pdf). It should be noted that when new rules of practice are adopted or existing rules are amended, an official commentary, which often explains the reason for the rule change, appears after the rule in the official Practice Book. The official commentary generally appears only in the edition of the official Practice Book corresponding to the year in which the new rule or amendment first was published.

[2]This unofficial, annotated volume is updated and reissued annually, and it includes prior years' official commentaries.

[3]This volume is updated periodically.

Return Reasons (select all that apply)

☐	Appeal disposed
☐	No appeal on record with the caption/docket number listed on this filing
☐	No provision in the Practice Book for filing this item
☐	Requires permission of the court
☐	Directed to the wrong court (this is a trial court filing)
☐	Directed to the wrong court (this is a Supreme/Appellate court filing)
☐	No Signature (original or electronic, see Practice Book section 62-6)
☐	Exceeds the page limitations of Practice Book section 66-2 (b)
☐	Motion not in compliance with Practice Book section 66-2: Missing Brief History section
☐	Motion not in compliance with Practice Book section 66-2: Missing Specific Facts section
☐	Motion not in compliance with Practice Book section 66-2: Missing Legal Grounds section
☐	Motion is not in Arial 12 pt. font, including footnotes (Practice Book section 66-3)
☐	Motion is not fully double spaced as required by Practice Book section 66-3
☐	Missing certifications required by Practice Book section 62-7 (b)(1) – certification that a copy has been delivered to each other counsel of record, including names, addresses, e-mail addresses, and telephone numbers
☐	Missing certifications required by Practice Book section 62-7 (b)(2) – certification that the document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law
☐	Missing certifications required by Practice Book section 62-7 (b)(3) – certification that the document complies with all applicable rules of appellate procedure
☐	Compliance review fails to indicate payment of fees required by General Statutes section 52-259c/Practice Book sections 60-7 (a) or 71-5, or an upload of any order waiving applicable fee
☐	The motion is untimely (see Practice Book section 66-3)
☐	Motion not typed/no permission to handwrite motion (see Practice Book section 66-3)
☐	E-filed using an incorrect document/motion type
☐	Motion to withdraw appearance (Practice Book section 62-9 (c)) requires reasonable notice to the party represented (no receipt of delivery to the party)
☐	Brief is not yet due (extension filed before brief due date set)
☐	Motion for Extension e-filed incorrectly (extension filed for the wrong document)
☐	Motion filed in wrong case
☐	A motion for extension of time is not permitted due to a final order; must file a motion to set aside the final order
☐	A motion for extension of time is not permitted due to a Delinquency Order; must file a motion to set aside the final order
☐	Transcript is required for this motion
☐	Case caption does not include trial court docket number and/or appeal number (Practice Book section 66-2 (e))
☐	Names of trial judge or panel of trial judges not stated in first paragraph (Practice Book section 66-2 (e))
☐	An order page, if required by Practice Book section 11-1 is not included (Practice Book section 66-2 (e))
☐	Filing/motion/appearance not permitted. See Practice Book section 62-9A
☐	Incorrect or missing case caption (SC/AC docket number, case name, etc.)
☐	Other Reasons

☐ Brief Accepted

OFFICE OF THE APPELLATE CLERK
STATE OF CONNECTICUT
SUPREME AND APPELLATE COURT

☐ Brief Returned

Reviewed By: _____

Case Number: SC/AC _____ Date: _____

Case Name _____

Yes	No	
		Appellant Brief (Blue) w/ attached appendix ___
		Timely Filed (Previous Return Date _____)
		35 pages or less
		Additional ___ pages approved
		Appellee Brief (Pink) w/ attached appendix
		Timely Filed (Previous Return Date _____)
		35 pages or less or
		Additional ___ pages approved
		Appellee/Cross Appellant Brief (Pink)
		Timely Filed (Previous Return Date _____)
		50 pages or less
		Additional ___ pages approved

Brief Cover and Contents

		Case Caption
		Court Name/Docket Number
		Counsel Information (incl. phone # and e-mail)
		Table of Contents
		Table of Authorities
		Statement of Issues
		Statement of Proceedings/Facts
		Argument
		Conclusion Stating Precise Relief Sought
		Signature

Brief Format

		12 point Arial or Univers (body and footnotes)
		Brief pages single sided
		Brief text is double-spaced
		Footnotes 12 point font
		Brief securely fastened along left side
		Pages numbered (bottom, center of page)

Transcript

		Paper copy of transcript ordered by submitting party is enclosed or was previously filed

Appendix Part 2 (optional)

		Table of contents
		Pages numbered (bottom, center of page)

Yes	No	
		Cross Appellee/Appellant Reply (White)
		Timely Filed (Previous Return Date _____)
		40 pages or less
		Additional ___ pages approved
		Reply Brief (White)
		Timely Filed (Previous Return Date _____)
		15 pages or less
		Additional ___ pages approved
		Amicus Brief (Green)
		Timely Filed (Previous Return Date _____)
		10 pages or less
		Additional ___ pages
		Required footnote 1 (P.B. §67-7)
		Supplemental Brief (Same as Original)
		Timely Filed (Previous Return Date _____)
		Compliant number of pages (see order)
		Check for distribution

Copies of Briefs and Appendices

		Supreme Court Original plus 15 copies
		Appellate Court Original plus 10 copies

Electronic Filing

		Electronic confirmation receipt

Appendix Part 1 - Number of volumes ___
(Required for non-incarcerated Appellants)

		Table of Contents
		Trial Court docket entries
		Complaint, relevant pleadings/motions/orders
		Memo of decision/signed transcript
		Jury interrogatories/verdict form
		Judgment file signed by trial court
		Appeal form
		Appellate Court opinion (if cert granted)
		Order granting certification (SC only)
		Docketing Statement
		Pages numbered (bottom, center of page)

*If administrative appeal, see P.B. § 67-8A (a) for additional requirements.

Certifications

		The electronically submitted brief and appendix was delivered electronically to the last known e-mail address of each counsel of record from whom an e-mail address was provided; and
		The electronically submitted brief and appendix and the filed paper 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; and
		A copy of the brief and appendix was sent to each counsel of record in compliance with § 62-7 (incl. names & contact info); and
		The brief and appendix filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and
		The brief and appendix comply with all provisions of this rule (P.B § 67-2).

ANY BRIEF AND APPENDIX CORRECTING A NON-COMPLYING ITEM CHECKED ABOVE MUST BE UPLOADED AGAIN BY FILING COUNSEL. DO NOT TITLE THE REFILED ITEM "CORRECTED" OR "AMENDED". (Rev. 12/13/17)

MOTIONS ON APPEAL

PRESENTED BY:
HON. STEVEN D. ECKER, ASSOCIATE JUSTICE OF THE CONNECTICUT SUPREME COURT
HON. ALEXANDRA D. DIPENTIMA, CHIEF JUDGE OF THE CONNECTICUT APPELLATE COURT

GENERAL RULES

Practice Book Sections:

- § 66-1 Extension of Time
- § 66-2 Motions, Petitions and Applications; Supporting Memoranda
- § 66-3 Motion Procedures and Filing
- § 66-8 Motion to Dismiss

EXTENSION OF TIME

Practice Book § 66-1

(a) Motions to extend the time limit for filing an appeal shall be filed with the clerk of the trial court. Except as otherwise provided in these rules, the judge who tried the case may, for good cause shown, extend the time limit provided for filing the appeal, except that such extension shall be of no effect if the time within which the appeal must be filed is set by statute and is a time limit that the legislature intended as a limit on the subject matter jurisdiction of the court in which the appeal is filed. In no event shall the trial judge extend the time for filing the appeal to a date which is more than twenty days from the expiration date of the appeal period. Where a motion for extension of the period of time within which to appeal has been filed at least ten days before expiration of the time limit sought to be extended, the party seeking to appeal shall have no less than ten days from issuance of notice of denial of the motion to file the appeal.

(b) Motions to extend the time limit for filing any appellate document, other than the appeal, shall be filed with the appellate clerk. The motion shall set forth the reason for the requested extension and shall be accompanied by a certification that complies with Section 62-7. An attorney filing such a motion on a client's behalf shall also indicate that a copy of the motion has been delivered to each of his or her clients who are parties to the appeal. The moving party shall also include a statement as to whether the other parties consent or object to the motion. A motion for extension of time to file a brief must specify the current status of the brief or preparations therefor, indicate the estimated date of completion, and, in criminal cases, state whether the defendant is incarcerated as a result of the proceeding in which the appeal has been filed.

(c) The appellate clerk is authorized to grant or to deny motions for extension of time promptly upon their filing. Motions for extension of time to complete any step necessary to prosecute or to defend the appeal, to move for or to oppose a motion for reconsideration, or to petition for or to oppose a petition for certification will not be granted except for good cause. Claims of good cause shall be raised promptly after the cause arises.

(d) An opposing party who objects to a motion for extension of time filed pursuant to subsection (b) of this section shall file an objection with reasons in support thereof with the appellate clerk within five days from the filing of the motion.

(e) A motion for extension of time shall be filed at least ten days before the expiration of the time limit sought to be extended or, if the cause for such extension arises during the ten day period, as soon as reasonably possible after such cause has arisen. No motion under this rule shall be granted unless it is filed before the time limit sought to be extended by such motion has expired.

(f) Any action by the trial judge pursuant to subsection (a) of this section or the appellate clerk pursuant to subsection (c) of this section is reviewable pursuant to Section 66-6.

MOTIONS, PETITIONS AND APPLICATIONS; SUPPORTING MEMORANDA

Practice Book § 66-2

(a) Motions, petitions and applications shall be specific. No motion, petition or application will be considered unless it clearly sets 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 a motion, petition or application shall file a brief statement clearly setting forth in separate paragraphs appropriately captioned 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, the motion, petition or application and memorandum of law filed together shall not exceed ten pages, and the memorandum of law in opposition thereto shall not exceed ten pages.

(c) Where counsel for the moving party certifies 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 opposition papers. Notice of such consent certification shall be indicated on the first page of the document.

(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; (3) include a proper order for the trial court if required by Section 11-1; and (4) 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.

Motion Procedures and Filing

Practice Book § 66-3

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 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, except on separate written motion 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 shall be filed except on written motion and by consent 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 typefaces, 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.

MOTION TO DISMISS

Practice Book § 66-8

Any claim that an appeal or writ of error should be dismissed, whether based on lack of jurisdiction, failure to file papers within the time allowed or other defect, shall be made by a motion to dismiss the appeal or writ. Any such motion must be filed in accordance with Sections 66-2 and 66-3. A motion to dismiss an appeal or writ of error that claims a lack of jurisdiction may be filed at any time. A motion for sanctions filed pursuant to Sections 85-1, 85-2 or 85-3 may be filed at any time.

A motion to dismiss an appeal that claims any defect other than a lack of jurisdiction must be filed within ten days after the filing of the appeal.

A motion to dismiss a writ of error that claims any defect other than a lack of jurisdiction must be filed within ten days after the filing of an electronically filed writ of error or, if the plaintiff in error is exempt from the electronic filing requirements, within ten days after the return day. If a defendant in error was not a party to any action underlying the writ of error, and such defendant in error claims a defect in the writ other than lack of jurisdiction, a motion to dismiss must be filed within thirty days after the return day.

If the ground alleged for dismissal of an appeal or writ of error, other than a lack of jurisdiction, subsequently arises, a motion to dismiss must be filed within ten days after such ground for dismissal arises.

The court may on its own motion order that an appeal or writ of error be dismissed for lack of jurisdiction or other defect.

STAY OF EXECUTION

Practice Book Sections:

- § 61-11 Stay of Execution in Noncriminal Cases
- § 61-12 Discretionary Stays
- § 61-13 Stay of Execution in Criminal Case
- § 61-14 Review of Order Concerning Stay
- § 66-6 Motion for Review
- § 67-12 Stay of Briefing Obligations upon Filing of Certain Motions after Appeal is Filed

STAY OF EXECUTION IN NONCRIMINAL CASES

Practice Book § 61-11 (Pt. 1)

(a) Automatic Stay of Execution. Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to file an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause. If the case goes to judgment on appeal, any stay thereafter shall be in accordance with Section 71-6 (motions for reconsideration), Section 84-3 (petitions for certification by the Connecticut Supreme Court), and Section 71-7(petitions for certiorari by the United States Supreme Court).

(b) Matters in which No Automatic Stay is Available under this Rule. Under this section, there shall be no automatic stay in actions concerning attorneys pursuant to chapter 2 of these rules, in juvenile matters brought pursuant to chapters 26 through 35a, or in any administrative appeal except as otherwise provided in this subsection.

Unless a court shall otherwise order, any stay that was in effect during the pendency of any administrative appeal in the trial court shall continue until the filing of an appeal or the expiration of the appeal period, or any new appeal period, as provided in Section 63-1. If an appeal is filed, any further stay shall be sought pursuant to Section 61-12.

For purposes of this rule, "administrative appeal" means an appeal filed from a final judgment of the trial court or the Compensation Review Board rendered in an appeal from a decision of any officer, board, commission, or agency of the state or of any political subdivision thereof. In addition to appeals filed pursuant to the Uniform Administrative Procedure Act, "administrative appeal" includes, among other matters, zoning appeals, teacher tenure appeals, tax appeals and unemployment compensation appeals.

(c) Stays in Family Matters and Appeals from Decisions of the Superior Court in Family Support Magistrate Matters. Unless otherwise ordered, no automatic stay shall apply to orders of relief from physical abuse pursuant to General Statutes § 46b-15, to orders for exclusive possession of a residence pursuant to General Statutes §§ 46b-81 or 46b-83 or to orders of periodic alimony, support, custody or visitation in family matters brought pursuant to chapter 25, or to any decision of the Superior Court in an appeal of a final determination of a support order by a family support magistrate brought pursuant to chapter 25a, or to any later modification of such orders. The automatic orders set forth in Section 25-5(b)(1), (2), (3), (5) and (7) shall remain in effect during any appeal period and, if an appeal is filed, until the final determination of the cause unless terminated, modified or amended further by order of a judicial authority upon motion of either party.

Any party may file a motion to terminate or impose a stay in matters covered by this subsection, either before or after judgment is rendered, based upon the existence or expectation of an appeal. Such a motion shall be filed in accordance with the procedures in subsection (e) of this rule or Section 61-12. The judge hearing such motion may terminate or impose a stay of any order, pending appeal, as appropriate, after considering (1) the needs and interests of the parties, their children and any other persons affected by such order; (2) the potential prejudice that may be caused to the parties, their children and any other persons affected, if a stay is entered, not entered or is terminated; (3) if the appeal is from a judgment of dissolution, the need to preserve, pending appeal, the mosaic of orders established in the judgment; (4) the need to preserve the rights of the party taking the appeal to obtain effective relief if the appeal is successful; (5) the effect, if any, of the automatic orders under Section 25-5 on any of the foregoing considerations; and (6) any other factors affecting the equities of the parties.

The judge who entered the order in a family matter from which an appeal lies may terminate any stay in that matter upon motion of a party as provided in this subsection or sua sponte, after considering the factors set forth in this subsection or if the judge is of the opinion that an extension of time to appeal is sought or the appeal is filed only for delay. Whether acting on a motion of a party or sua sponte, the judge shall hold a hearing prior to terminating the stay.

STAY OF EXECUTION IN NONCRIMINAL CASES

Practice Book § 61-11 (Pt. 2)

(d) Termination of Stay. In all cases not governed by subsection (c), termination of a stay may be sought in accordance with subsection (e) of this rule. If the judge who tried the case is of the opinion that (1) an extension to appeal is sought, or the appeal is filed, only for delay or (2) the due administration of justice so requires, the judge may at any time, upon motion or sua sponte, order that the stay be terminated. Whether acting on a motion of a party or sua sponte, the judge shall hold a hearing prior to terminating the stay.

(e) Motions to Terminate Stay. A motion to terminate a stay of execution filed before judgment is entered shall be filed with the trial court, and the judge who tried or presided over the matter may rule upon the motion when judgment is entered. If such a motion is filed after judgment but before an appeal is filed, the motion shall be filed with the clerk of the trial court and may be ruled upon by the trial judge thereafter. After an appeal is filed, such a motion shall be filed with the appellate clerk and shall be forwarded by the appellate clerk to the trial judge for a decision. If the judge who tried or presided over the case is unavailable, the motion shall be forwarded to the clerk of the trial court in which the case was tried, who shall assign the motion for a hearing and decision to any judge of the Superior Court.

Upon hearing and consideration of the motion, the trial court shall file with the clerk of the trial court its written or oral memorandum of decision that shall include the factual and legal basis therefor. If oral, the decision shall be transcribed by the court reporter and signed by the trial court. If an appeal has not been filed, the clerk shall enter the decision on the trial court docket and shall send notice of the decision to counsel of record. If an appeal has been filed, the clerk of the trial court shall enter the decision on the trial court docket and send notice of the decision to the appellate clerk, and the appellate clerk shall issue notice of the decision to all counsel of record.

(f) Motions to Request Stay. Requests for a stay pending appeal where there is no automatic stay shall be governed by Section 61-12.

(For stays of execution in criminal cases, see Section 61-13; for stays in death penalty cases, see Section 61-15.)

(g) Strict Foreclosure–Motion Rendering Ineffective a Judgment of Strict Foreclosure. In any action for foreclosure in which the owner of the equity has filed, and the court has denied, at least two prior motions to open or other similar motion, no automatic stay shall arise upon the court's denial of any subsequent contested motion by that party, unless the party certifies under oath, in an affidavit accompanying the motion, that the motion was filed for good cause arising after the court's ruling on the party's most recent motion. Such affidavit shall recite the specific facts relied on in support of the moving party's claim of good cause. If, notwithstanding the submission of such an affidavit of good cause, the plaintiff contends that there is no good cause to stay the court's judgment of strict foreclosure pending resolution of the appeal, the plaintiff may seek termination of the automatic stay by filing a motion requesting such relief accompanied by an affidavit stating the basis for the plaintiff's claim. In the event such a motion to terminate stay is filed, it shall be set down for argument and the taking of evidence, if necessary, on the second short calendar next following the filing of the motion. There shall be no automatic appellate stay in the event that the court grants the motion to terminate the stay and, if necessary, sets new law dates. There shall be no automatic stay pending a motion for review of an order terminating a stay under this subsection.

(h) Foreclosure by Sale–Motion Rendering Ineffective a Judgment of Foreclosure by Sale. In any action for foreclosure in which the owner of the equity has filed a motion to open or other similar motion, which motion was denied fewer than twenty days prior to the scheduled auction date, the auction shall proceed as scheduled notwithstanding the court's denial of the motion, but no motion for approval of the sale shall be filed until the expiration of the appeal period following the denial of the motion without an appeal having been filed. The trial court shall not vacate the automatic stay following its denial of the motion during such appeal period.

DISCRETIONARY STAYS

Practice Book § 61-12

In noncriminal matters in which the automatic stay provisions of Section 61-11 are not applicable and in which there are no statutory stay provisions, any motion for a stay of the judgment or order of the Superior Court pending appeal shall be filed in the trial court. If the judge who tried the case is unavailable, the motion may be decided by any judge of the Superior Court. Such a motion may also be filed before judgment and may be ruled upon at the time judgment is rendered unless the court concludes that a further hearing or consideration of such motion is necessary. A temporary stay may be ordered sua sponte or on written or oral motion, ex parte or otherwise, pending the filing or consideration of a motion for stay pending appeal. The motion shall be considered on an expedited basis and the granting of a stay of an order for the payment of money may be conditional on the posting of suitable security.

In the absence of a motion filed under this section, the trial court may order, sua sponte, that proceedings to enforce or carry out the judgment or order be stayed until the time to file an appeal has expired or, if an appeal has been filed, until the final determination of the cause. A party may file a motion to terminate such a stay pursuant to Section 61-11.

In determining whether to impose a stay in a family matter, the court shall consider the factors set forth in Section 61-11 (c).

STAY OF EXECUTION IN CRIMINAL CASE

Practice Book § 61-13 (Pt. 1)

Except as otherwise provided in this rule, a judgment in a criminal case shall be stayed from the time of the judgment until the time to file an appeal has expired, and then, if an appeal is filed, until ten days after its final determination. The stay provisions apply to an appeal from a judgment, to an appeal from a judgment on a petition for a new trial and to a writ of error, where those matters arise from a criminal conviction or sentence. Unless otherwise provided in this rule, all stays are subject to termination under subsection (d).

(a) Appeal by Defendant Arising from a Sentence.

(1) *Sentence of Imprisonment*. A sentence of imprisonment shall be stayed automatically by an appeal, provided the defendant is released on bail.

(2) *Sentence of Probation or Conditional Discharge*. Upon motion by the defendant to the trial court, a sentence of probation or conditional discharge may be stayed if an appeal is filed. If the sentence is stayed, the court shall fix the terms of the stay. If the sentence on appeal is not stayed, the court shall specify when the term of probation shall commence. If the sentence is not stayed and a condition of the sentence is restitution or other payment of money, the court shall order that such payments be made to the clerk of the trial court to be held by said clerk until ten days after final determination of the appeal.

(3) *Sentence of a Fine*. A sentence to pay a fine shall be stayed automatically by an appeal, and the stay shall not be subject to termination.

(4) *Sentencing Sanctions of Restitution and Forfeiture*. The execution of a sanction of restitution or forfeiture of property, which was imposed as part of a sentence, shall be stayed automatically by an appeal. Upon motion by the state or upon its own motion, the trial court may issue orders reasonably necessary to ensure compliance with the sanction upon final disposition of the appeal.

(5) *Other Sentencing Sanctions*. Upon motion by the defendant, other sanctions imposed as part of a sentence, including those imposed under General Statutes §§ 53a-40c, 53a-40e, 54-102b, 54-102g, and 54-260, may be stayed by an appeal. If the sanction is stayed, the trial court may issue orders reasonably necessary to ensure compliance with the sanction upon final disposition of the appeal.

STAY OF EXECUTION IN CRIMINAL CASE

Practice Book § 61-13 (Pt. 2)

(b) Appeal by Defendant from Presentence Order. In an appeal from a presentence order where the defendant claims that an existing right, such as a right not to be tried, will be irreparably lost if the order is not reviewed immediately, the appeal shall stay automatically further proceedings in the trial court.

(c) Appeal by the State from a Judgment. In an appeal by the state, the appeal shall stay automatically further proceedings in the trial court until ten days after the final determination of the appeal. The defendant shall be released pending determination of an appeal by the state from any judgment not resulting in a sentence, the effect of which is to terminate the entire prosecution.

(d) Motion for Stay or to Terminate a Stay. A motion for stay or a motion to terminate a stay filed before an appeal is filed shall be filed with the trial court. After an appeal is filed, such motions shall be filed with the appellate clerk and shall be forwarded by the appellate clerk to the trial judge for a decision. If the judge who tried or presided over the case is unavailable, the motion shall be forwarded to the clerk of the court in which the case was tried and shall be assigned for a hearing and decision to any judge of the Superior Court. Upon hearing and consideration of the motion, the trial court shall file with the clerk of the trial court a written or oral memorandum of decision that shall include the factual and legal basis therefor. If oral, the decision shall be transcribed by the court reporter and signed by the trial court. The trial court shall send notice of the decision to the appellate clerk who shall issue notice of the decision to all counsel of record. If an appeal has not been filed, the clerk of the trial court shall enter the decision on the trial court docket and shall send notice of the decision to counsel of record. Pending the filing or consideration of a motion for stay, a temporary stay may be ordered sua sponte or on written or oral motion.

In appeals by the defendant from a presentence order and appeals by the state from a judgment, the judge who tried the case may terminate any stay, upon motion and hearing, if the judge is of the opinion that (1) an extension to appeal is sought, or the appeal is filed only for delay, or (2) the due administration of justice so requires.

Review of Order Concerning Stay

Practice Book § 61-14

The sole remedy of any party desiring the court to review an order concerning a stay of execution shall be by motion for review under Section 66-6. Execution of an order of the court terminating a stay of execution shall be stayed for ten days from the issuance of notice of the order, and if a motion for review is filed within that period, the order shall be stayed pending decision of the motion, unless the court having appellate jurisdiction rules otherwise.

A motion for extension of time to file a motion for review of a ruling concerning a stay of execution must be filed in the trial court but shall not automatically stay the execution after the ten days has expired, except that the trial judge may order a stay pending a ruling on the motion for extension of time.

A ruling concerning a stay is a judgment in a trial to the court for purposes of Section 64-1, and the trial court making such a ruling shall state its decision, either orally or in writing, in accordance with the requirements of that section.

In any case in which there is no automatic stay of execution and in which the trial court denies, or refuses to rule on, a motion for stay, an aggrieved party may file a motion requesting a stay of execution of the judgment from the court having appellate jurisdiction pending the filing of and ruling upon a motion for review. The motion must be filed with the appellate clerk.

Motion for Review; In General

Practice Book § 66-6

The court may, on written motion for review stating the grounds for the relief sought, modify or vacate any order made by the trial court under Section 66-1(a); any action by the appellate clerk under Section 66-1(c); any order made by the trial court, or by the workers' compensation commissioner 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; any order made by the trial court concerning a stay of execution in a case on appeal; any order made by the trial court concerning the waiver of fees, costs and security under Section 63-6 or 63-7; or any order concerning the withdrawal of appointed appellate counsel pursuant to Section 62-9(d). 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 a motion for review of a decision depends on a transcript of evidence or proceedings taken by a court reporter, the moving party shall file with the motion either a transcript or a copy of the transcript order form (JD-ES-38). The opposing party may, within one week after the transcript or the copy of the order form is filed by the moving party, file either a transcript of additional evidence or a copy of the order form. Parties filing or ordering a transcript shall order an electronic version of the transcript in accordance with Section 63-8A.

Stay of Briefing Obligations upon Filing of Certain Motions after Appeal is Filed

Practice Book § 67-12

As provided in Section 63-1, if, after an appeal has been filed but before the appeal period has expired, a motion is filed that would render the judgment, decision or acceptance of the verdict ineffective, any party may move to stay the briefing obligations of the parties. The appellate clerk may grant such motions for up to sixty days. Any further request for stay must be made by motion to the Appellate Court having jurisdiction prior to the expiration of the stay granted by the appellate clerk. Such request must describe the status of the motion in the trial court and must demonstrate that a resolution of the motion is being actively pursued. After all such motions have been decided by the trial court, the appellant shall, within ten days of notice of the ruling on the last such outstanding motion, file a notice with the appellate clerk that such motions have been decided, together with a copy of the decisions on any such motions. The filing of such notice shall reinstate the appellate obligations of the parties, and the date of notice of the ruling on the last outstanding motion shall be treated as the date of the filing of the appeal for the purpose of briefing pursuant to Section 67-3.

MOTIONS FOR ARTICULATION & RECTIFICATION

Practice Book Sections:

- § 64-1 Statement of Decision by Trial Court
- § 66-5 Motion for Rectification; Motion for Articulation
- § 66-7 Motion for Review of Motion for Rectification of Appeal or Articulation

STATEMENT OF DECISION BY TRIAL COURT

Practice Book § 64-1

(a) The trial court shall state its decision either orally or in writing, in all of the following: (1) in rendering judgments in trials to the court in civil and criminal matters, including rulings regarding motions for stay of executions, (2) in ruling on aggravating and mitigating factors in capital penalty hearings conducted to the court, (3) in ruling on motions to dismiss under Section 41-8, (4) in ruling on motions to suppress under Section 41-12, (5) in granting a motion to set aside a verdict under Section 16-35, and (6) in making any other rulings that constitute a final judgment for purposes of appeal under Section 61-1, including those that do not terminate the proceedings. The court's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor. If oral, the decision shall be recorded by a court reporter, and, if there is an appeal, the trial court shall create a memorandum of decision for use in the appeal by ordering a transcript of the portion of the proceedings in which it stated its oral decision. The transcript of the decision shall be signed by the trial judge and filed with the clerk of the trial court. This section does not apply in small claims actions and to matters listed in Section 64-2.

(b) If the trial judge fails to file a memorandum of decision or sign a transcript of the oral decision in any case covered by subsection (a), the appellant may file with the appellate clerk a notice that the decision has not been filed in compliance with subsection (a). The notice shall specify the trial judge involved and the date of the ruling for which no memorandum of decision was filed. The appellate clerk shall promptly notify the trial judge of the filing of the appeal and the notice. The trial court shall thereafter comply with subsection (a).

MOTIONS FOR RECTIFICATION & ARTICULATION

Practice Book § 66-5

A motion seeking corrections in the transcript or the trial court record or seeking an articulation or further articulation of the decision of the trial court shall be called a motion for rectification or a motion for articulation, whichever is applicable. Any motion filed pursuant to this section shall state with particularity the relief sought and shall be filed with the appellate clerk. Any other party may oppose the motion by filing an opposition with the appellate clerk within ten days of the filing of the motion for rectification or articulation. The trial court may, in its discretion, require assistance from the parties in providing an articulation. Such assistance may include, but is not limited to, provision of copies of transcripts and exhibits.

The appellate clerk shall forward the motion for rectification or articulation and the opposition, if any, to the trial judge who decided, or presided over, the subject matter of the motion for rectification or articulation for a decision on the motion. If any party requests it and it is deemed necessary by the trial court, the trial court shall hold a hearing at which arguments may be heard, evidence taken or a stipulation of counsel received and approved. The trial court may make such corrections or additions as are necessary for the proper presentation of the issues. The clerk of the trial court shall list the decision on the trial court docket and shall send notice of the court's decision on the motion to the appellate clerk, and the appellate clerk shall issue notice of the decision to all counsel of record.

Nothing herein is intended to affect the existing practice with respect to opening and correcting judgments and the records on which they are based. The trial court shall file any such order changing the judgment or the record with the appellate clerk.

Corrections or articulations made before the appellant's brief and appendix are prepared shall be included in the appellant's appendix. Corrections or articulations made after the appellant's brief and appendix have been filed, but before the appellee's brief and appendix have been filed, shall be included in the appellee's appendix. When corrections or articulations are made after both parties' briefs and appendices have been filed, the appellant shall file the corrections or articulations as an addendum to its appendix. Any addendum shall be filed within ten days after issuance of notice of the trial court's order correcting the record or articulating the decision.

The sole remedy of any party desiring the court having appellate jurisdiction to review the trial court's decision on the motion filed pursuant to this section or any other correction or addition ordered by the trial court during the pendency of the appeal shall be by motion for review under Section 66-7.

Upon the filing of a timely motion pursuant to Section 66-1, the appellate clerk may extend the time for filing briefs until after the trial court has ruled on a motion made pursuant to this section or until a motion for review under Section 66-7 is decided.

Any motion for rectification or articulation shall be filed within thirty-five days after the delivery of the last portion of the transcripts or, if none, after the filing of the appeal, or, if no memorandum of decision was filed before the filing of the appeal, after the filing of the memorandum of decision. If the court, sua sponte, sets a different deadline from that provided in Section 67-3 for filing the appellant's brief, a motion for rectification or articulation shall be filed ten days prior to the deadline for filing the appellant's brief, unless otherwise ordered by the court. The filing deadline may be extended for good cause. No motion for rectification or articulation shall be filed after the filing of the appellant's brief except for good cause shown.

A motion for further articulation may be filed by any party within twenty days after issuance of notice of the filing of an articulation by the trial judge. A motion for extension of time to file a motion for articulation shall be filed in accordance with Section 66-1.

Motion for Review of Motion for Rectification of Appeal or Articulation

Practice Book § 66-7

Any party aggrieved by the action of the trial judge regarding rectification of the appeal or articulation under Section 66-5 may, within ten days of the issuance of notice by the appellate clerk of the decision from the trial court sought to be reviewed, file a motion for review with the appellate clerk, and the court may, upon such a motion, direct any action it deems proper. If the motion depends upon a transcript of evidence or proceedings taken by a court reporter, the procedure set forth in Section 66-6 shall be followed. Corrections or articulations which the trial court makes or orders made pursuant to this section shall be included in the appendices as indicated in Section 66-5.

OTHER RULES TO NOTE

Practice Book Sections:

- § 60-2 Supervision of Procedure
- § 60-3 Suspension of the Rules
- § 71-5 Motions for Reconsideration; Motions for Reconsideration En Banc
- § 77-1 Petition for Review Seeking Expedited Review of an Order Concerning Court Closure
- § 77-4 Motion to Seal; Lodging of Documents with Appellate Clerk
- § 78a-1 Petition for Review of Order Concerning Release on Bail
- § 85-2 Other Actions Subject to Sanctions
- § 85-3 Procedure on Sanctions

SUPERVISION OF PROCEDURE

Practice Book § 60-2

The supervision and control of the proceedings shall be in the court having appellate jurisdiction from the time the appellate matter is filed, or earlier, if appropriate, and, except as otherwise provided in these rules, any motion the purpose of which is to complete or perfect the record of the proceedings below for presentation on appeal shall be made to the court in which the appeal is pending. The court may, on its own motion or upon motion of any party, modify or vacate any order made by the trial court, or a judge thereof, in relation to the prosecution of an appeal. It may also, for example, on its own motion or upon motion of any party: (1) order a judge to take any action necessary to complete the trial court record for the proper presentation of the appeal; (2) consider any matter in the record of the proceedings below necessary for the review of the issues presented by any appeal, regardless of whether the matter has been included in the appendix of any party; (3) order improper matter stricken from a brief or appendix; (4) order a stay of any proceedings ancillary to a case on appeal; (5) order that a party for good cause shown may file a late appeal, petition for certification, brief or any other document unless the court lacks jurisdiction to allow the late filing; (6) order that a hearing be held to determine whether it has jurisdiction over a pending matter; (7) order an appeal to be dismissed unless the appellant complies with specific orders of the trial court, submits to the process of the trial court, or is purged of contempt of the trial court; (8) remand any pending matter to the trial court for the resolution of factual issues where necessary; or (9) correct technical or other minor mistakes in a published opinion which do not affect the rescript.

SUSPENSION OF THE RULES

Practice Book § 60-3

In the interest of expediting decision, or for other good cause shown, the court in which the appellate matter is pending may suspend the requirements or provisions of any of these rules on motion of a party or on its own motion and may order proceedings in accordance with its direction.

MOTIONS FOR RECONSIDERATION; MOTIONS FOR RECONSIDERATION EN BANC

Practice Book § 71-5

A motion for reconsideration will not be entertained unless filed with the appellate clerk within ten days from the date when the decision or any order being challenged is officially released. Any required fees shall be paid in accordance with the provisions of Sections 60-7 or 60-8. A fee shall not be required for a motion for reconsideration when either (1) no fee was required to file the appeal, or (2) the movant was granted a waiver of fees to file the appeal.

The motion for reconsideration shall state briefly the grounds for requesting reconsideration.

A party may also request reconsideration en banc by placing “en banc” in the caption of the motion and requesting such relief as an alternative to reconsideration by the panel.

Whenever reconsideration en banc is sought, the motion shall state briefly why reconsideration en banc is necessary (for example, to secure or maintain uniformity of decision or because of the importance of the decision) and shall also state the names of the decisions, if any, with which the decision conflicts. A motion for reconsideration shall be treated as a motion for reconsideration en banc when any member of the court which decided the matter will not be available, within a reasonable time, to act on the motion for reconsideration.

Petition for Review Seeking Expedited Review of an Order concerning Court Closure

Practice Book § 77-1

(a) Except as provided in subsection (b), 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. 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 a transcript order acknowledgment form (JD-ES-38), shall be filed with the petition for review.

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) 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, and any order issued pursuant to a rule that seals or limits the disclosure of any affidavit in support of an arrest warrant, or any other provision of the General Statutes under which the court is authorized to close proceedings.

MOTION TO SEAL; LODGING OF DOCUMENTS WITH APPELLATE CLERK

Practice Book § 77-4

(a) A motion to seal any document filed previously with the appellate clerk or to be filed with the appellate clerk shall be filed in accordance with the provisions of Sections 60-7 and 60-8 and delivered to all counsel of record in accordance with Section 62-7, but shall not disclose any information that the filing party is seeking to seal and shall indicate if documents are being lodged with the appellate clerk.

(b) If the motion to seal pertains to a document previously filed with the appellate clerk, the appellate clerk will, upon receipt of the motion, promptly remove the document in question from the Judicial Branch website on a temporary basis until the resolution of the motion. The motion to seal shall be accompanied by a memorandum explaining why the document should be sealed or its disclosure limited. The memorandum and any supporting documents shall be lodged with the appellate clerk on paper, but shall not be filed in accordance with the provisions of Section 60-7.

(c) If the motion to seal pertains to a document that has not yet been filed with the appellate clerk, the motion shall be accompanied by a memorandum explaining why the document or documents should be sealed. The memorandum, the document that the party is seeking to seal, and any supporting documents shall be lodged with the appellate clerk on paper, but shall not be filed in accordance with the provisions of Section 60-7.

(d) Any response to a motion to seal shall be filed in accordance with the provisions of Sections 60-7 and 60-8 and be delivered to all counsel of record in accordance with Section 62-7, shall not disclose any information that the movant is seeking to seal and shall indicate if documents are being lodged with the appellate clerk. Any memorandum or documents filed in support of the response shall be lodged with the appellate clerk on paper, but shall not be filed in accordance with the provisions of Section 60-7.

(e) Upon the filing of a motion to seal or to limit disclosure of any records, or upon the court's own motion, the court may issue any orders it deems necessary to aid in the court's jurisdiction. Before a motion to seal or to limit disclosure may be granted, notice to the public of the motion shall be given, and a hearing shall be held. Such notice shall be posted on the Judicial Branch website, listing the motion and the time and place of the hearing. In the order granting the motion, the court shall articulate the overriding interest being protected and set forth the more narrowly tailored method of protecting the overriding interest it considered inadequate or unavailable and the duration of the order. If any findings would reveal information entitled to remain confidential, those findings shall be set forth in a sealed portion of the record. The order shall be posted immediately on the Judicial Branch website.

(f) Following a decision on the motion to seal, any documents lodged with the appellate clerk will be retained under seal or returned to the filing party.

Petition for Review of Order Concerning Release on Bail

Practice Book § 78a-1

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.

OTHER ACTIONS SUBJECT TO SANCTIONS

Practice Book § 85-2

Actions which may result in the imposition of sanctions include, but are not limited to, the following:

(1) Failure to comply with rules and orders of the court.
(2) Filing of any papers which unduly delay the progress of an appeal.
(3) Presentation of unnecessary or unwarranted motions or opposition to motions.
(4) Presentation of unnecessary or unwarranted issues on appeal.
(5) Presentation of a frivolous appeal or frivolous issues on appeal.
(6) Presentation of a frivolous defense or defenses on appeal.
(7) Failure to attend preargument settlement conferences.
(8) Failure to appear at oral argument.
(9) Disregard of rules governing withdrawal of appeals.
(10) Repeated failures to meet deadlines.

Offenders will be subject, at the discretion of the court, to appropriate discipline, including the prohibition against appearing in the court or filing any papers in the court for a reasonable and definite period of time, the imposition of a fine pursuant to General Statutes § 51-84, and costs and payment of expenses, together with attorney's fees to the opposing party.

The sanction of prohibition against filing any papers in the court shall not prevent an offender from filing a motion for reconsideration of that sanction within seven days.

Offenders subject to such discipline include both counsel and self-represented parties and, if appropriate, parties represented by counsel.

PROCEDURE ON SANCTIONS

Practice Book § 85-3

Sanctions may be imposed by the court, on its own motion, or on motion by any party to the appeal. A motion for sanctions may be filed at any time, but a request for sanctions may not be included in an opposition to a motion, petition or application. Before the court imposes any sanction on its own motion, it shall provide notice to the parties and an opportunity to respond.

THE END

AC[redacted] : APPELLATE COURT
HOUSING COURT DN[redacted]

CHARLES[redacted] :

VS. : STATE OF CONNECTICUT

GEORGE [redacted] : OCTOBER 24, 2018

PLAINTIFF-APPELLEE'S MOTION FOR ARTICULATION

Pursuant to Practice Book 66-5 the Plaintiff-Appellees move for articulation of the trial court's decision, to include a ruling on the claim for CUTPA punitive damages.

I. History of the Case:

This Plaintiff brought this case against the Defendant in August of 2013 for his flagrant and improper retention of the Plaintiff's security deposit on a residential lease. The action was tried to an attorney trial referee, ATR J[redacted], Esq., who ruled in favor of the Plaintiff on his principal claim. ATR Report June 10, 2016. ATR DaSilva also found that "[b]ased on a totality of the facts, it is found that the defendant was recklessly indifferent to the plaintiff's right to an accounting and ingaged in wrongful conduct that offended public policy in violation of CUTPA." Id. at p.19. The ATR's recommended ruling was that "judgment enter upon plaintiff's claim for violation of the Connecticut Unfair Trade Practices Act Conn. Gen. Stat. §42-110a et seq. and the pursuant thereto the Court consider whether to exercise its discretion to award attorneys fees or punitive damages thereunder." Id. at p.22. On September 19, 2016, the Court overruled the Defendant's Objection to the ATR

report and entered judgment upon its initial recommendation of a judgment as set forth in the ATR report on p.22. The Defendant immediately appealed the Court's order, which was docketed as [redacted]

However, the Court had not yet ruled on the CUTPA punitive damages and attorney's fees claims. This fact was clearly recognized by both sides. Thereafter, the trial court issued an articulation which made crystal clear it had not yet ruled on the outstanding CUTPA punitive damages issue or the award of attorney fees. ***"The Court has taken no action on the issue of Connecticut Unfair Trade Practices Act as recommended by the Attorney Trial referee or the award of attorney fees since an appeal was taken prior to a hearing on either of these issues."*** Articulation dated August 24, 2017, p.1 (emphasis added).

Thereafter, the majority of AC[redacted] was dismissed on Plaintiff's motion for lack of a final judgment expressly because of the lack of a ruling on two issues, the CUTPA punitive damages and the award of attorney's fees. Appellate Court order of December 6, 2017 granting Plaintiff's motion to dismiss. Thereafter, on June 25, 2018 the trial court issued a ruling on a motion for attorney's fees, but issued no ruling whatsoever on the CUTPA punitive damages claim. Again, Defendant appealed this ruling, which has been docketed as the current appeal AC[redacted].

II. Argument:

The Plaintiff-Appellees are clearly entitled to a decision on the CUTPA punitive damages claim. The trial court's prior articulation and the Appellate Court's ruling on Plaintiff's motion to dismiss expressly acknowledged the claim for punitive damages under CUTPA had not been decided, which is why the Defendant's motion to dismiss the prior appeal was granted.

Defendant appears to be claiming that the trial court's unexplained failure to rule on the CUTPA punitive damages claim constituted a denial of the same. However, our Supreme Court has expressly rejected such an argument. City of Hartford v. McKeever, 314 Conn. 255, 278 n.22, 101 A.3d 229, 243 (2014) ("Moreover, the plaintiff has provided no authority for the proposition that the unexplained failure of the trial court to rule on a request for attorney's fees or interest constitutes a denial as a matter of law.").

In fact, given that the trial court has not yet ruled on the outstanding claim for statutory punitive damages under CUTPA, there is a serious question as to whether the Defendants have appealed from a final judgment.

> In the present case, although the jury has found the defendants to be liable under CUTPA, the trial court has yet to determine the plaintiff's punitive damages under General Statutes § 42-110g. Therefore, while the defendants are aggrieved by the judgment of the trial court; General Statutes § 52-263; their appeal does not satisfy the final judgment test established in *State v. Curcio*, 191 Conn. 27, 463 A.2d 566 (1983).

Perkins v. Colonial Cemeteries, Inc., 53 Conn. App. 646, 649, 734 A.2d 1010, 1011–12 (1999).

> Because the trial court has yet to exercise its discretion to award the plaintiff punitive damages under the CUTPA count of her complaint, the rights of the parties have not been "so conclud[ed] ... that further proceedings cannot affect them." *Id.*; see also *Pinnix v. LaMorte,* 182 Conn. 342, 343, 438 A.2d 102 (1980). In fact, because the courts generally award punitive damages in amounts equal to actual damages or multiples of the actual damages, the rights of the parties may be substantially affected by the further proceedings that remain in this case. We, therefore, conclude that the second prong of the *Curcio* test is not satisfied.

Id. The Supreme Court expressly recognized the continued validity of Perkins in Hylton v. Gunter, 313 Conn. 472, 487, n15, 97 A.3d 970 (2014) at footnote 15.

> We agree with the dissent with respect to the nature of the proof necessary to justify an award of common-law punitive damages in the first instance, and emphasize that our conclusion that a final judgment exists is limited to cases like this one, wherein common-law punitive damages have been awarded, and all that remains for the trial court to do is to find the amount of that award. We also note that statutory punitive damage awards, which in many cases may be awarded in addition to attorney's fees and costs; see authorities cited in footnote 12 of this opinion; present unique final judgment considerations not present in this case. See *Perkins v. Colonial Cemeteries, Inc.,* 53 Conn.App. 646, 649, 734 A.2d 1010 (1999) (no final judgment when jury has found liability under CUTPA, but before trial court has decided whether to award punitive damages, given that, under CUTPA, "courts generally award punitive damages in amounts equal to actual damages or multiples of the actual damages, the rights of the parties may be substantially affected by the further proceedings that remain in this case").

Hylton, supra, 313 Conn. at 487 n.15.

Therefore, the Plaintiff requests that the trial court issue a ruling on the Issue of Connecticut Unfair Trade Practices Act as recommended by the Attorney Trial referee, in the form of an order awarding treble damages of the compensatory judgment as CUTPA punitive damages.

The Plaintiff-Appellee,

BY /s/ [redacted]
[redacted] LLC
[redacted]
Juris No. [redacted]
Phone No. [redacted]
Fax No. [redacted]
[redacted]

This is to certify that the foregoing complies with Practice Book 66-2, 66-3, 66-5 and 62-7 and a copy of the foregoing was mailed, this date, to:

Hon. [redacted], Jr.
Superior Court – Housing Session
17 Belden Avenue
Norwalk, CT 06850

[redacted]
Telephone: [redacted]
Facsimile: [redacted]
Email : [redacted]

[redacted]
Tel. No. [redacted]
Fax No. [redacted]

[redacted]
Commissioner of the Superior Court

DN AC[redacted]	:	APPELLATE COURT
CHARLES[redacted]	:	
VS.	:	STATE OF CONNECTICUT
GEORGE[redacted]	:	NOVEMBER 15, 2018

APPELLEE'S MOTION FOR REVIEW

Pursuant to Practice Book §66-7, the Plaintiff-Appellee Charles[redacted] hereby move for review of the denial of an articulation by the trial court ([redacted].)'s decisions in order to ensure there is an adequate record regarding the issues raised on appeal.

History of the Case:

This Plaintiff brought this case against the Defendant in August of 2013 for his flagrant and improper retention of the Plaintiff's security deposit on a residential lease. The action was tried to an attorney trial referee, ATR [redacted], [redacted]., who ruled in favor of the Plaintiff on his principal claim. ATR Report June 10, 2016. ATR [redacted] also found that "[b]ased on a totality of the facts, it is found that the defendant was recklessly indifferent to the plaintiff's right to an accounting and ingaged in wrongful conduct that offended public policy in violation of CUTPA." Id. at p.19. The ATR's recommended ruling was that "judgment enter upon plaintiff's claim for violation of the Connecticut Unfair Trade Practices Act Conn. Gen. Stat. §42-110a et seq. and the pursuant thereto the Court consider whether to exercise its discretion to award attorneys fees or punitive damages thereunder." Id. at p.22. On September 19, 2016, the Court overruled the Defendant's Objection to the ATR

report and entered judgment upon its initial recommendation of a judgment as set forth in the ATR report on p.22. The Defendant immediately appealed the Court's order, which was docketed as AC39693.

However, the Court had not yet ruled on the CUTPA punitive damages and attorney's fees claims. This fact was clearly recognized by both sides. Thereafter, the trial court issued an articulation which made crystal clear it had not yet ruled on the outstanding CUTPA punitive damages issue or the award of attorney fees. ***"The Court has taken no action on the issue of Connecticut Unfair Trade Practices Act as recommended by the Attorney Trial referee or the award of attorney fees since an appeal was taken prior to a hearing on either of these issues."*** Articulation dated August 24, 2017, p.1 (emphasis added).

Thereafter, the majority of AC[redacted] was dismissed on Plaintiff's motion for lack of a final judgment expressly because of the lack of a ruling on two issues, the CUTPA punitive damages and the award of attorney's fees. Appellate Court order of December 6, 2017 granting Plaintiff's motion to dismiss. Thereafter, on June 25, 2018 the trial court issued a ruling on a motion for attorney's fees, but issued no ruling whatsoever on the CUTPA punitive damages claim. Again, Defendant appealed this ruling, which had been docketed as appeal AC[redacted], subsequently merged back into AC[redacted].

II. Specific Facts Upon Which the Moving Party Relies:

The articulation of the factual and legal basis for certain of the trial court's ruling is necessary for the complete consideration and decision of the appeal, as

well as Plaintiff's determination as to whether to cross appeal. At this point, we literally do not know if the trial court denied the CUTPA punitive damages claim or not, which has jurisdictional implications.

III. Legal Grounds Upon Which the Moving Party Relies:

Practice Book §66-5 authorizes a party to an appeal to seek an articulation or further articulation of a trial court decision. Practice Book §66-7 authorizes review of the same.

"When a party is dissatisfied with the trial court's response to a motion for articulation, he or she may, and indeed under appropriate circumstances he or she must, seek immediate appeal to this court via a motion for review." State v. One 1993 Black Kenworth Truck, 41 Conn. App. 779, 789 (1996)(internal quotation marks omitted). Failure to do so may be fatal to preserving an issue for appellate review. Id., Dime Savings Bank of Wallingford v. Cornaglia, 33 Conn. App. 549, 553-556, cert. granted 229 Conn. 907 (1994)(withdrawn 1994 before Connecticut Supreme Court decision).

The Plaintiff-Appellees are clearly entitled to a decision on the CUTPA punitive damages claim. The trial court's prior articulation and the Appellate Court's ruling on Plaintiff's motion to dismiss expressly acknowledged the claim for punitive damages under CUTPA had not been decided, which is why the Defendant's motion to dismiss the prior appeal was granted.

Defendant appears to be claiming that the trial court's unexplained failure to rule on the CUTPA punitive damages claim constituted a denial of the same. However,

our Supreme Court has expressly rejected such an argument. City of Hartford v. McKeever, 314 Conn. 255, 278 n.22, 101 A.3d 229, 243 (2014) ("Moreover, the plaintiff has provided no authority for the proposition that the unexplained failure of the trial court to rule on a request for attorney's fees or interest constitutes a denial as a matter of law.").

In fact, given that the trial court has not yet ruled on the outstanding claim for statutory punitive damages under CUTPA, there is a serious question as to whether the Defendants have appealed from a final judgment.

> In the present case, although the jury has found the defendants to be liable under CUTPA, the trial court has yet to determine the plaintiff's punitive damages under General Statutes § 42-110g. Therefore, while the defendants are aggrieved by the judgment of the trial court; General Statutes § 52-263; their appeal does not satisfy the final judgment test established in *State v. Curcio,* 191 Conn. 27, 463 A.2d 566 (1983).

Perkins v. Colonial Cemeteries, Inc., 53 Conn. App. 646, 649, 734 A.2d 1010, 1011–12 (1999).

> Because the trial court has yet to exercise its discretion to award the plaintiff punitive damages under the CUTPA count of her complaint, the rights of the parties have not been "so conclud[ed] ... that further proceedings cannot affect them." *Id.*; see also *Pinnix v. LaMorte,* 182 Conn. 342, 343, 438 A.2d 102 (1980). In fact, because the courts generally award punitive damages in amounts equal to actual damages or multiples of the actual damages, the rights of the parties may be substantially affected by the further proceedings that remain in this case. We, therefore, conclude that the second prong of the *Curcio* test is not satisfied.

Id. The Supreme Court expressly recognized the continued validity of Perkins in Hylton v. Gunter, 313 Conn. 472, 487, n15, 97 A.3d 970 (2014) at footnote 15.

> We agree with the dissent with respect to the nature of the proof necessary to justify an award of common-law punitive damages in the first instance, and

emphasize that our conclusion that a final judgment exists is limited to cases like this one, wherein common-law punitive damages have been awarded, and all that remains for the trial court to do is to find the amount of that award. We also note that statutory punitive damage awards, which in many cases may be awarded in addition to attorney's fees and costs; see authorities cited in footnote 12 of this opinion; present unique final judgment considerations not present in this case. See *Perkins v. Colonial Cemeteries, Inc.*, 53 Conn.App. 646, 649, 734 A.2d 1010 (1999) (no final judgment when jury has found liability under CUTPA, but before trial court has decided whether to award punitive damages, given that, under CUTPA, "courts generally award punitive damages in amounts equal to actual damages or multiples of the actual damages, the rights of the parties may be substantially affected by the further proceedings that remain in this case").

Hylton, supra, 313 Conn. at 487 n.15.

We currently don't know if the trial court has ruled on the issue CUTPA punitive damages as recommended by the Attorney Trial referee, and if so the reason for any such ruling.

IV. Relief Sought:

The Plaintiffs request the trial court be ordered to articulate upon the following issue:

1. Did the trial court rule on the CUTPA punitive damages issue, and if so what was the factual and legal basis for any such ruling?

The Plaintiff-Appellee,

BY /s/ [redacted]
[redacted]
Phone No. [redacted]
Fax No. [redacted]
[redacted]

This is to certify that the foregoing complies with Practice Book 66-2, 66-3, 66-5 and 62-7 and a copy of the foregoing was mailed, this date, to:

[redacted]
Telephone: [redacted]
Facsimile: [redacted]
Email : [redacted]

[redacted]
Tel. No. [redacted]
Fax No. [redacted]

/s/ [redacted]
Commissioner of the Superior Court

A.C. [redacted] CR [redacted]
STATE OF CONNECTICUT
V.
[redacted]

APPELLATE COURT
STATE OF CONNECTICUT
March 12, 2018

MOTION TO LATE FILE MOTION FOR RECTIFICATION

The defendant-appellant, [redacted]i (hereinafter sometimes referred to as [redacted]), pursuant to Practice Book §§ 60-2, 66-5, requests this Court permit him to late file the attached Motion for Rectification in order to provide a more accurate transcript of the evidence heard on November 9, 10, 2015, and to provide a transcription of Ex. 8 and Ex. B (the recording of [redacted]s interview with police) which can be more easily cited by the parties and reviewed by this Court. This is essentially the procedure followed under similar circumstances in *State v. Salmond*, AC 40237 (Motion for Technical Correction pending).

[redacted]i is incarcerated as a result of the charges in this case.

I. BRIEF HISTORY OF THE CASE

[redacted] was convicted by a jury [redacted]k, J.) of Manslaughter in the first degree, in violation of General Statutes § 53a-55(a)(1).He was sentenced to a total effective sentence of 10 years. This appeal followed.

The Appellant and the State have filed briefs, no reply brief was filed.

On or about December 19, 2017, the defendant, [redacted]li ([redacted]i) moved to replace appellate counsel. The trial court did so on or about March 2,

[1]The defendant's name is hyphenated in some documents, and not in others. This motion uses the case caption, which is hyphenated.

2018. The undersigned was assigned to this case on March 5, 2018 and has received electronic copies of the transcripts and some of the pleadings. The undersigned has been delayed in efforts to review the trial court file and meet with the client by recent weather-related closings.

II. SPECIFIC FACTS RELIED UPON

It is appellant's duty to prepare a record adequate for review. Upon review of the transcripts and briefs, the undersigned realized that there was no transcript of the portions of the defendant's audiotaped statement to police played for the jury (see T. 11/9/15 at 120; 11/10/15 at 11-12); or the entirely of the full exhibits[2] which the jury asked to listen to during deliberations. The briefs refer to the exhibits (see e.g. Br. 4), but there does not seem to be any transcription in the record.

Both issues raised by the undersigned's predecessor implicitly involve whether the defendant was harmed by the trial court's actions. In *State v. Dahlgrin*, 200 Conn. 586 (1986), the Court concluded that "no harmful prejudice" resulted to the appellant. Instructional error claims include a discussion of whether any error was harmless in light of the State's evidence. See e.g. *State v. Blaine*, 179 Conn. App. 499 (2018). Absent a transcription of the most important evidence against him, it would be hard for this Court to understand why the jury deadlocked and to resolve whether any error was harmless.

Under similar circumstances, in *State v. Salmond*, AC 40237, the appellant moved the trial court to rectify the record by (1) ordering the court reporter to amend the transcripts by including the portion of the exhibit played for the jury and (2) ordering the court report to

---

[2]It is unclear from the record whether Ex. 8 and Ex. B are copies of the same recording, or differ in some respects. If they are not the same, counsel would seek a transcript of what was played in court and the more complete of the two recordings.

prepare a transcription of the entire exhibit which was filed along with the transcripts.

State's Ex. 8 and Defense Ex. B were full exhibits. Portions of both were played for the jury during testimony. The jury asked for, and was given the entire recording to listen to during deliberations. (T. 11/19/15)

III. LEGAL GROUNDS RELIED UPON

Defendant relies upon Practice Book § 66-5, 61-10 (appellant's obligation to provide adequate record for review).

Respectfully submitted,
The defendant,
By his attorney,

_/s/_____
[redacted]

CERTIFICATION

Pursuant to P.B. §§ 66-3, 62-7, it is hereby certified that a copy of the foregoing was sent by electronic mail on this day to [redacted]r, Esq., Office of the Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, Osc.Apd@ct.gov; and by regular mail to J[redacted], MacDougall Correctional Inst., 1153 East Street South, Suffield, CT 06078. It is also certified that the defendant-appellant's motion complies with all the provisions of P.B. §§ 66-1, 66-2 and 66-3.

_/s/_____
Lisa J. Steele

A.C. [redacted] CR [redacted]
STATE OF CONNECTICUT
V.
[redacted]

APPELLATE COURT
STATE OF CONNECTICUT
March 12, 2018

MOTION FOR RECTIFICATION

The defendant-appellant, [redacted] (hereinafter sometimes referred to as [redacted]), pursuant to Practice Book §§ 60-2, 66-5, requests the trial court ([redacted], J.) order the Court reporter to provide a more accurate transcript of the evidence heard on November 9, 10, 2015, and to provide a transcript of Ex. 8 and Ex. B (the recording of [redacted] interview with police) which can be more easily cited by the parties and reviewed by this Court. This is essentially the procedure followed under similar circumstances in *State v. Salmond*, AC 40237 (Motion for Technical Correction pending).

[redacted] is incarcerated as a result of the charges in this case.

I. BRIEF HISTORY OF THE CASE

[redacted] was convicted by a jury [redacted], J.) of Manslaughter in the first degree, in violation of General Statutes § 53a-55(a)(1).He was sentenced to a total effective sentence of 10 years. This appeal followed. The Appellant and the State have filed briefs, no reply brief was filed.

On or about December 19, 2017, the defendant, [redacted] ([redacted]) moved to replace appellate counsel. The trial court did so on or about March 2, 2018. The undersigned was assigned to this case on March 5, 2018.

II. SPECIFIC FACTS RELIED UPON

It is appellant's duty to prepare a record adequate for review.

Upon review of the transcripts and briefs, the undersigned realized that there was no

transcript of the portions of the defendant's audiotaped statement to police played for the jury (see T. 11/9/15 at 120; 11/10/15 at 11-12); or the entirely of the full exhibit which the jury asked to listen to during deliberations. The briefs refer to the exhibits (see e.g. Br. 4; Sbr 1), but there does not seem to be any transcription in the record. Both issues raised by the undersigned's predecessor implicitly involve whether the defendant was harmed by the trial court's actions – absent a transcription of the most important evidence against him, it is difficult for either party to refer specifically to a portion of the exhibit, and it will be hard for this Court to refer to portions of the exhibit without listening to the entire recording, perhaps multiple times.

Under similar circumstances, in *State v. Salmond*, AC 40237, the appellant moved the trial court to rectify the record by (1) ordering the court reporter to amend the transcripts by including the portions of several audio and audio-visual recordings played for the jury and (2) ordering the court report to prepare a transcription of an entire exhibitwhich was filed along with the transcripts.

In this case State's Ex. 8 and Defense Ex. B were full exhibits. Portions of both were played for the jury during testimony. See T. 11/9/15 at 120; 11/10/15 at 11-12. The jury asked for, and was given the entire recording to listen to during deliberations. (T. 11/19/15). The recording of Mota-Royaceli's statement was the central evidence in this case, and the only evidence about key events. It is critical to this Court's review of this case.

Counsel requests this Court order the Court Reporter to (1) rectify the transcripts to include the portions of the exhibits played for the jury, and (2) provide a transcription of the

Exhibit 8 or Exhibit B (whichever is more complete).[3] In the event that there is any disagreement about the audio portion of the exhibit, the recording itself would be controlling.

III. LEGAL GROUNDS RELIED UPON

Defendant relies upon Practice Book § 66-5, 61-10 (appellant's obligation to provide adequate record for review).

Respectfully submitted,
The defendant,
By his attorney,

DRAFT /s/
[redacted]
Juris No. [redacted]

[3]The Court Reporter in *Salmond* prepared the transcripts from the audio recordings made in the courtroom. Critical portions of the exhibit were inaudible on that recording of a recording. Appellant asked that the court reporter be allowed to consult the audio exhibit to improve the accuracy of the transcript. The Court Reporter instead prepared a separate transcription of the audio portion of the exhibit. In this case, it appears that the entire recording was a full exhibit and available to the jury, but only portions were played at trial.

If the exhibits as recorded by the courtroom microphones are hard to understand, counsel has no objection to the Court Reporter referring to the exhibit(s) to make the transcript as complete and accurate as possible – there is no indication in the record that the jury could not hear what was played.

Counsel has no objection to a copy of the exhibits being made for the Court Reporter's use, or in the alternative, for the Court Reporter to be able to borrow the exhibits from the clerk's office upon such terms as the court deems appropriate in order to transcribe it. (See T. Tr. 11/13/15 at 71 (discussing having a copy made for transcription).

CERTIFICATION

Pursuant to P.B. §§ 66-3, 62-7, it is hereby certified that a copy of the foregoing was sent by electronic mail on this day to [redacted], Esq., Office of the Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, Osc.Apd@ct.gov; and by regular mail to [redacted] Inmate No. [redacted] MacDougall Correctional Inst., 1153 East Street South, Suffield, CT 06078. It is also certified that the defendant-appellant's motion complies with all the provisions of P.B. §§ 66-1, 66-2 and 66-3.

_/s/_____
[redacted]

DRAFT

A.C. [redacted] AC[redacted]

STATE OF CONNECTICUT	:	APPELLATE COURT
V.	:	STATE OF CONNECTICUT
[redacted]	:	MARCH 22, 2018

STATE OF CONNECTICUT'S OPPOSITION TO DEFENDANT'S MOTION FOR PERMISSION TO FILE LATE MOTION FOR RECTIFICATION

Pursuant to Practice Book §§ 66-2 and 66-5, and for the reasons set forth herein, the State of Connecticut-Appellee hereby opposes the defendant's Motion to File Late Motion for Rectification, filed on March 12, 2018.

I. BRIEF HISTORY OF THE CASE

The petitioner was convicted of manslaughter in the first degree, in violation of General Statutes § 53a-55(a)(1), and sentenced to ten year in prison, followed by five years of special parole. He appealed, transcript was completed, and his brief was filed on February 24, 2017. The state's brief was filed on October 17, 2017, and the case was scheduled for oral argument on January 10, 2018.

On December 27, 2017, the defendant filed a motion for removal or substitution of counsel. Oral argument was marked off. The defendant's motion was granted on March 1, 2018,[1] and [redacted]e was appointed as the defendant's new attorney. New counsel filed the present motion seeking permission to file a late motion for rectification on March 12, 2018.

[1] The undersigned did not receive notice of the hearing on the defendant's motion for removal or substitution, which was sent to trial counsel for the state. Upon information and belief, defense counsel on appeal did not receive such notice either, although the clerk represented at the hearing that it had been sent to him. Because appellate defense counsel failed to show up at the hearing, the defendant's motion was granted.

II. SPECIFIC FACTS AND LEGAL GROUNDS RELIED UPON

In his motion for permission and attached motion for rectification, the defendant notes that "[u]pon review of the transcripts and briefs, the undersigned [new counsel] realized that there was no transcript of the portions of the defendant's audiotaped statement to [the] police played for the jury . . . or the entire[t]y of the full exhibits[, exhibits 8 and B, that] the jury asked to listen to during deliberations." Def's. Mot. to File Late Rectification at 2 (footnote omitted). He argues that transcriptions of these exhibits are necessary because both issues raised in his brief – (1) whether the trial court improperly restricted the scope of defense counsel's examination of prospective jurors by precluding him from asking questions about the jurors' understanding of the finality of the jury's verdict and (2) whether the timing and circumstances of the trial court's Chip Smith instruction made it unduly coercive – "implicitly involve whether [he] was harmed by the trial court's actions." Id.

Aside from the fact that he has new counsel, the defendant has not given any good cause for the late filing of his motion. Under Practice Book § 66-5, "[n]o motion for rectification or articulation shall be filed after the filing of the appellant's brief except for good cause shown." The fact that the defendant, of his own volition, sought new counsel after the briefs were filed and the case scheduled for argument does not constitute good cause.

Moreover, the requested rectification is not necessary. As full exhibits, the recordings are part of the record, and both parties, as well as this Court, are able to listen to them should they deem necessary. This is not a case, then, like State v. Hannah, 104 Conn. App. 710, 715, 935 A.2d 645 (2007), where the cell phone recordings at issue were

not allowed into evidence and where the defendant failed to "request that a transcript be made of the recordings; he did not prepare a transcript of the recordings himself; he did not ask that the recordings be marked for identification; and he did not file a motion for rectification in order to correct the record," leaving no factual record of the contents of the recordings.

III. CONCLUSION

For the foregoing reasons, the defendant's Motion to File Late Motion for Rectification should be denied.

Respectfully submitted,

STATE OF CONNECTICUT-APPELLEE

By: /s/

[redacted]
Appellate Bureau
Office of the Chief State's Attorney
300 Corporate Place
Rocky Hill, CT 06067
Telephone: [redacted]
Facsimile: [redacted]
Juris No. [redacted]
[redacted]
DCJ.OCSA.Appellate@ct.gov

CERTIFICATION

Pursuant to Practice Book §§ 62-7 and 66-3, the undersigned attorney hereby certifies that this document does not contain any names or personal identifying information the disclosure of which is prohibited, that it complies with all applicable rules or appellate procedure, and that a copy hereof was sent electronically to: [redacted] Esq, [redacted] Associates, [redacted] (telephone), consents to receiving the same by electronic mail at [redacted] this 22nd day of March, 2018.

/s/
DENISE B. SMOKER
Senior Assistant State's Attorney

A.C. [redacted]	:	APPELLATE COURT
[redacted]	:	STATE OF CONNECTICUT
v.	:	
[redacted]	:	DECEMBER 27, 2017

MOTION FOR SANCTIONS

Pursuant to Practice Book Section 85-2(5) and (7), the plaintiff appellee, [redacted]o, administrator of the estate of [redacted], hereby moves for sanctions against the defendant appellant, [redacted], for her failure to attend the preargument settlement conference on December 13, 2017 and for her presentation of a frivolous appeal.

I. BRIEF HISTORY OF THE CASE.

This partition action was commenced with a complaint dated February 12, 2015. The parties are co-owners of real property known as [redacted] (the "Property"). The Property consisted of two adjacent lots: the back lot and the front lot.

On May 23, 2016, the parties entered into a settlement agreement. The agreement was entered as a stipulated judgment on July 8, 2016 (#124.00 and #125.00). The stipulated judgment provides, *inter alia*, that if the back lot was not under contract by September 22, 2016, the front lot would be listed for sale; and states the various conditions under which the front lot would be listed and subsequently sold. The agreement further provides that acceptance of an offer on the front lot shall not be unreasonably withheld by either party. Paragraph 5 provides that both parties waive the right to appeal the stipulated judgment.

The back lot was not under contract by September 22, 2016. Thus, under the terms of the stipulated judgment, the front lot was to be listed for sale. However, the defendant refused to cooperate with the terms of the agreement and list the front lot for sale. On October 3, 2016, the plaintiff filed a motion (#126.00) to order the defendant to take the necessary steps to have the front lot listed for sale, pursuant to the terms of the stipulated judgement. The court granted the motion on October 20, 2016 (#126.01).

The defendant failed to comply with the order and refused to accept any of the multiple offers that the parties received for the Property, in breach of the unambiguous terms of the stipulated judgement. On November 11, 2016, the plaintiff filed another motion for order to enforce the stipulated judgment (#130.00). That motion was settled by an agreement that was read into the record on January 30, 2017 and made an order of the court (#130.02). That agreement provides that within thirty (30) days from January 30, 2017 or fourteen (14) days from the closing of the back lot, the defendant had the option of presenting the plaintiff with a signed, no contingencies offer to purchase the Estate of Timothy Kennedy's interest in the front lot at a price in excess of the high offer for the front lot then existing with a ten percent deposit. The order further provides that if the defendant does not make such an offer and present such a deposit within said time frame, the defendant shall cooperate with the plaintiff for the sale of the front lot to the high bidder at the time, and sign all required documents to contract and close.

The closing of the back lot occurred on May 1, 2017 and the defendant did not present the plaintiff with a signed, no contingencies offer to purchase the front lot or a ten percent deposit within the timeframe provided for in the January 30, 2017 order. Further,

paragraph 2 of stipulated judgment provides that the defendant had the right to purchase the front lot only if the back lot sells for at least $350,000. The back lot sold for only $325,000. On May 23, 2017, the defendant signed a Binder of Sale ("binder") in connection with the sale of the front lot to a third party buyer. The plaintiff and the buyer also signed the binder. In signing the binder, the defendant agreed to and accepted the terms of the transaction, including, *inter alia*, a closing date of June 15, 2017. However, the defendant refused to comply with the terms of the binder and unequivocally stated that she would not honor the agreed upon closing date of June 15, 2017. As a result, on June 1, 2017 the plaintiff filed yet another motion for order (#139.00) seeking an order that the defendant cooperate with the plaintiff in the sale of the front lot and comply with the terms of the binder. On June 22, 2017, the buyer signed a contract for the sale of the front lot.

The court granted the plaintiff's June 1, 2017 motion for order by an order dated July 21, 2017 (#139.01). The defendant filed an appeal from that order on August 4, 2017 (#146.00). Also on August 4, 2017, the defendant filed a motion to reargue order #139.01 (#145.00), which was granted by the court on October 2, 2017. Reargument occurred on December 4, 2017. As of the date of this filing, no decision following reargument has been released. On October 6, 2017, the plaintiff filed a motion to terminate the appellate stay, which has not yet been ruled on by the court.

The potential buyer that signed the binder and contract is still a willing buyer and has indicated it is his intention to honor the contract and close on the property as soon as practical.

II. SPECIFIC FACTS UPON WHICH THE PLAINTIFF RELIES.

The parties were assigned to a preargument settlement conference with [redacted] on November 27, 2017. The parties agreed to request a later date for the preargument conference to allow for the trial court decision following reargument to be released. By notice dated November 21, 2017, [redacted] assigned the parties to a preargument conference on December 13, 2017.

On December 13, 2017, the plaintiff, plaintiff's counsel, and defendant's counsel appeared in front of [redacted] at [redacted] for the scheduled preargument conference. The defendant, [redacted], was not present in court and she purportedly refused to attend the preargument settlement conference. As a result, the preargument conference was of no value and a waste of time for both the plaintiff and plaintiff's counsel. Plaintiff and plaintiff's counsel both made the approximately one hour drive each way to Danbury from Stamford and back. Further, plaintiff and plaintiff's counsel spent time preparing for and discussing the preargument conference in anticipation of meaningful settlement negotiations, which did not happen because the defendant was not present.

III. SANCTIONS ARE APPROPRIATE BECAUSE THE DEFENDANT FAILED TO ATTEND THE PREARGUMENT SETTLEMENT CONFERENCE.

A. Legal Grounds Upon Which the Plaintiff Relies

Pursuant to Rules of Appellate Procedure § 63-10, parties to appeals of civil cases are required to attend a preargument settlement conference prior to oral argument. Practice Book § 85-2(7) provides that "[f]ailure to attend a preargument settlement conference" is an action that may result in the imposition of sanctions. Sanctions include,

but are not limited to, "the prohibition against appearing in the court or filing any papers in the court for a reasonable and definite period of time, the imposition of a fine pursuant to General Statutes § 51-84, and costs and payment of expenses, together with attorney's fees to the opposing party." Practice Book § 85-2. Practice Book § 85-3 provides that sanctions may be imposed by the court on its own motions, or on motion by a party at any time.

This court has previously imposed sanctions on parties and counsel who do not attend the preargument conference. See, e.g., Esposito v. Presnick, 15 Conn. App. 654, 666–67, 546 A.2d 899, 905 (1988) (awarding attorney's fees); Feuerman v. Feuerman, 39 Conn. App. 775, 775–76, 667 A.2d 802, 802 (1995) (same).

The defendant's failure to appear at the preargument settlement conference is the most recent action in a long pattern of conduct of defying the court and instituting every possible delay tactic to prevent the sale of the front lot—in direct contrast to her court ordered agreements with the plaintiff. She has demonstrated time and time again her disdain for court orders and court procedures. Her failure to appear at the preargument conference is not an aberration, but another example of her refusal to follow court orders throughout this case and her disrespect for the judicial process. Therefore, sanctions for her failure to attend the preargument conference are warranted in this case where it is a pattern of behavior. The Appellate Court should use its discretion to order sanctions including attorney's fees, the imposition of a fine, and the imposition of an expedited briefing schedule to minimize further delay in this case.

IV. SANCTIONS ARE APPROPRIATE BECAUSE THE DEFENDANT HAS PRESENTED A FRIVOLOUS APPEAL.

A. Legal Grounds Upon Which the Plaintiff Relies

Practice Book § 85-2(5) provides that "[p]resentation of a frivolous appeal or frivolous issues on appeal" is an action that may result in the imposition of sanctions. Sanctions include, but are not limited to, "the prohibition against appearing in the court or filing any papers in the court for a reasonable and definite period of time, the imposition of a fine pursuant to General Statutes § 51-84, and costs and payment of expenses, together with attorney's fees to the opposing party." Practice Book § 85-2. Practice Book § 85-3 provides that sanctions may be imposed by the court on its own motions, or on motion by a party at any time.

An appeal is frivolous "if the [appellant] desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable to either make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law." Taxaco, Inc. v. Golart, 206 Conn. 454, 464, 538 A.2d 1017 (1988).

The defendant's issues on appeal are bereft of legal merit on their face and are not made in good faith. Her first two issues on appeal are that the trial court erred by failing to address the defendant's Request for Argument and by failing to hold a hearing prior to ruling on plaintiff's motion for order. There is no obligation that the court must affirmatively address the Request for Argument prior to making its ruling or that the court must hold a hearing on a non-arguable motion. Further, J[redacted]entertained oral argument on the defendant's motion for reargument on December 4, 2017 and the defendant had an

opportunity to be heard. Thus, her first two issues are both frivolous and moot. The defendant's third issue is that the trial court erred by failing to make any findings of fact, applying any stated burden of proof, and failing to make any conclusions of law. Again, the court is under no obligation to make express findings of facts, articulate the applicable burden of proof, or state conclusions of law. This issue is without legal merit as well. The defendant's fourth issue is that the trial court erred by failing to weigh the equities of the parties. Such an issue is frivolous when, as in this case, the court issued an order that was simply enforcing a prior order of the court.

In short, this appeal is another tactic designed to delay the sale of the front lot and circumvent multiple court orders requiring her to cooperate with the plaintiff. The Appellate Court should exercise its discretion to order sanctions, including attorney's fees, the imposition of a fine, and the imposition of an expedited briefing schedule.

WHEREFORE, the plaintiff-appellee requests that this Court grant this motion and impose sanctions on the defendant-appellant including an expedited briefing schedule, attorney's fee, the imposition of a fine pursuant to General Statues § 51-84, and such other relief as the Court finds equitable and proper.

RESPECTFULLY SUBMITTED,
THE PLAINTIFF-APPELLEE

By: /s/[redacted]

[redacted]

Tel. 2[redacted]0 / J[redacted]

CERTIFICATION

I hereby certify that the foregoing complies with the requirements of Practice Book § 66-3. I further certify that a copy of the foregoing was served by first-class U.S. mail and/or e-mail in accordance with the provisions of Practice Book § 62-7 on the following counsel of record on December 27, 2017.

[redacted]
Phone: [redacted]
Fax: [redacted]
[redacted]

/s/ [redacted]
[redacted]

A.C. [redacted]	:	APPELLATE COURT
[redacted]OR [redacted]EDY	:	STATE OF CONNECTICUT
v.	:	
[redacted]	:	APRIL 17, 2018

AFFIDAVIT RE: ATTORNEYS' FEES

[redacted]s, being duly sworn, deposes and says that:

1. I am over the age of eighteen years and believe in the obligations of an oath.

2. I am a partner in the law firm [redacted], LLP ([redacted]), [redacted]t, [redacted]cut. [redacted] is counsel for the plaintiff [redacted]. [redacted]no, A[redacted]y in the above-captioned appeal.

3. The [redacted] attorneys involved with the PAC Conference and the plaintiff's Motion for Sanctions are my associate [redacted]n and me. Our bios, taken from the firm's website, are attached as Exhibit A to this Affidavit.

4. My agreed-upon billing rate for purposes of this case is [redacted] per hour. (My usual hourly rate was [redacted]00 in [redacted], and is [redacted]0 for [redacted].) My associate [redacted]'s hourly rate was [redacted]0 in [redacted], and was raised to [redacted]0 effective January 1, 2018.

5. [redacted] has devoted [redacted] hours to preparing for and attending the Pre-Argument (PAC) Conference and preparing and prosecuting the plaintiff's Motion for Sanctions. This has resulted in attorneys' fees of [redacted] as detailed on Exhibit B to this Affidavit.

6. I believe that the foregoing legal fees and costs are reasonable in light of the issues presented and the time required to prepare for and attend the PAC conference, and to prepare and prosecute the plaintiff's Motion for Sanctions.

STATE OF CONNECTICUT:
: ss: [redacted]rd
COUNTY OF [redacted] :

Subscribed and sworn to, before me,
this 17th day of April, 2018.

[redacted]

WOFSEY, ROSEN, KWESKIN & KURIANSKY, LLP
600 SUMMER STREET • STAMFORD, CONN. 06901-1490 • (203) 327-2300 • JURIS NO. 068550

DOCKET NO. AC[redacted] APPELLATE COURT

C[redacted]

vs.

[redacted]D, et al. JANUARY 30, 2019

MOTION TO COMPEL

Pursuant to Practice Book §60-2, the Defendants respectfully request this court to require the trial court, Hon. [redacted]J., to court to rule on their September 24, 2018 Motion for Articulation (AC 185161) and articulate its August 7, 2018 award of counsel fees to the defendants (#119.10).

I. Brief History of the Case

The above entitled summary process action was filed on September 13, 2017 by Concetta Piro, as owner of the subject premises, against[redacted]nd and [redacted]a seeking possession of the residential premises located at [redacted]et, F[redacted] V[redacted]5. On November 7, 2017, the court,[redacted], issued a written order granting defendants' Motion to Dismiss and entered a judgment of dismissal (#105.10).

On December 1, 2017, defendants filed their motion for counsel fees (#112.00) and on February 5, 2018, filed their supplemental motion for counsel fees (#119.00).

Defendants' motion for counsel fees was scheduled to be heard on February 6, 2018. At the February 6, 2018 hearing, plaintiff averred that her January 16, 2018 Objection to Motion for Counsel Fees and Cross Motion for Stay (#117.00) constituted a motion to open and vacate the trial court's November 7, 2017 judgment of dismissal. The trial court, [redacted]., determined that it must rule on plaintiff's purported motion to open before hearing defendants' motions for counsel fees. The trial court then heard argument from both parties on plaintiff's purported motion to open. The trial court did not rule on plaintiff's purported motion to open within one hundred twenty days as required by Connecticut General Statute § 51-183b. On June 12, 2018, defendants filed their Motion for a New Hearing and Objection (#122.00). The trial court, [redacted]., granted defendants' Motion for a New Hearing on July 10, 2018 (#122.10).

The trial court scheduled a new hearing on plaintiff's purported motion to open for July 26, 2018. The trial court, [redacted], heard both parties and orally denied plaintiff's motion to open. The trial court, [redacted], then ruled that a hearing on defendants' motions for counsel fees would be "docketed at the appropriate time."

On August 7, 2018, the trial court, [redacted], without any further hearing, entered an order (#119.10) restating its denial of plaintiff's purported motion to open and further

entered an order granting defendants' February 5, 2018 Motion for Counsel Fees and entered an award of certain counsel fees to the defendants.

On August 10, 2018, the defendants filed their Motion to Reargue their motions for counsel fees (#125.00). The trial court, [redacted], denied the Motion to Reargue on August 28, 2018 (#125.10). The defendants timely filed their appeal of the trial court's award of counsel fees and denial of their Motion to Reargue.

II. Specific facts upon which Defendants rely

On September 24, 2018, the defendants timely file their Motion for Articulation with this court requesting the trial court, [redacted], to articulate its award of counsel fees and its reasons for denying the Motion to Reargue. As of the date hereof, the trial court has not ruled on the defendant's Motion for Articulation. [redacted].

III. Legal grounds upon which the Appellants/Defendants rely

The trial court's failure to decide the Motion for Articulation deprives the Defendants of an adequate record to argue their claims that the trial erred in its determination of the number of hours and hourly rate of the attorney's fees it awarded to the defendants, abused

its discretion in awarding the defendants' attorney's fees without conducting an evidentiary hearing, and abused its discretion in denying defendants' Motion for Reargument.

"It is the appellant's burden to provide an adequate record for review." *Connecticut Nat. Bank v. Gager*, 66 Conn.App. 797, 800, 786 A.2d 501 (2001). Without an adequate record it would be difficult for this court to determine how the trial court arrived at its decision and determine if the trial court had abused its discretion. *Connecticut Nat. Bank v. Gager*, supra.

"We recognize that '[w]hen a trial court fails to answer a motion for articulation or does so incompletely, the appellant should seek a further articulation.' *Blakeslee Arpaia Chapman, Inc. v. El Constructors, Inc.*, 239 Conn. 708, 737, 687 A.2d 506 (1997). 'When a party is dissatisfied with the trial court's response to a motion for articulation, he [or she] may, and indeed under appropriate circumstances he [or she] must, seek immediate appeal of the rectification memorandum to this court via the motion for review .... *Buchetto v. Haggquist*, 17 Conn.App. 544, 549, 554 A.2d 763,cert. denied, 211 Conn. 808, 559 A.2d 1141 (1989); see also Practice Book §§ 4053 [now §§ 66-6].' (Internal quotation marks omitted.) *Viets v. Viets*, 39 Conn.App. 610, 613, 666 A.2d 434 (1995)." *Reader v. Cassarino*, 51 Conn.App. 292, 295-296, 721 A.2d 911 (1998).

This motion is filed pursuant to Practice Book §60-2 requesting the Appellate Court to exercise its supervision and control of the proceedings on appeal to enable the defendants to provide this court with an adequate record of the issues raised in this appeal.

Wherefore, the defendants respectfully move this court to direct the trial court to rule on their Motion for Articulation.

THE DEFENDANTS

By [redacted]

[redacted]
Tel. [redacted]

DOCKET NO. AC[redacted] APPELLATE COURT

[redacted]

vs.

[redacted] JANUARY 30, 2019

CERTIFICATION OF SERVICE

In accordance with P.B. §62-7, I hereby certify that a copy of the Appellant/Defendant's Motion to Compel was mailed postage pre-paid or electronically delivered on January 30, 2019 to all counsel and pro se parties of record and non-appearing parties: [redacted] Telephone [redacted], no known facsimile number, Email [redacted].

I further certify that Appellant/Defendant's Motion to Compel has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; I further certify that the Motion to Compel complies with all applicable rules of appellate procedure.

[redacted]

The Quirky Ones Can Trip You Up: Special Aspects of Appellate Procedure

Daniel J. Krisch
Michael S. Taylor
May 2019

I. Writs of Error: Getting Invited to the Party If You're Not A Party

A. Why Do Writs Exist: Right to appeal is "purely statutory[,]" *In re Santiago G.*, 325 Conn. 221, 229 (2017), and legislature can restrict or eliminate it.

1. Conn. Gen. Stat. § 52-263 limits appeals to aggrieved **parties**.

2. Writ of error is a common-law vehicle for appellate review. **Most common** (though **not** only) use is for trial court orders against **non-parties**, e.g.,

   a. **Discovery orders**; see *Woodbury Knoll, LLC v. Shipman & Goodwin, LLP*, 305 Conn. 750 (2012).

   b. **Attorney sanctions/discipline**; see *Thalheim v. Greenwich*, 256 Conn. 628, 636 (2001); *Bergeron v. Mackler*, 225 Conn. 391 (1993).

   c. **Crime victims**; see *State v. Skipwith*, 326 Conn. 512 (2017).

   d. **Bail bond issues (other than bail itself)**; see *B&B Bail Bonds Agency of CT, Inc. v. Bailey*, 256 Conn. 209 (2001).

   Other examples:

   a. **Criminal contempt**; see *Martin v. Flanagan*, 259 Conn. 487, 494 (2002); Practice Book § 72-1(a)(2).

   b. **Denial of transfer of small claims action**; see Practice Book § 72-1(a)(3).

B. A Writ of Error **Cannot**:

1. Be used to review an error that "might have been reviewed by process of appeal, or by way of certification". Practice Book § 72-1(b)(1).

   a. **Not 'either/or'**: If you can appeal, you must.

b. Note certification clause: Some self-represented litigants misuse writ after they lose in the Appellate Court, e.g., if Court dismisses appeal for procedural reason.

2. Create appellate review of tribunal "from whose judgment there is no right of appeal or opportunity for certification." Practice Book § 72-1(b)(1). Must have "fail[ed] timely to seek a transfer or otherwise" from tribunal.
3. Avoid jurisdictional problems that would doom an appeal, e.g.:

a. **Lack of final judgment**; see *Niro v. Niro*, 314 Conn. 62 (2014).

b. **Lack of standing**; see *Crone v. Gill*, 250 Conn. 476 (1999).

c. **Lack of aggrievement**; see *State v. Ross*, 272 Conn. 577 (2005).

C. Procedural Pitfalls: Writ is subject to the same rules as an appeal, **except**:

1. **Form**: Use numbered paragraphs (like a complaint); Practice Book § 72-2.

2. **Filing**: Same time period as an appeal (20 days from order/judgment), **but**:

a. **1st step**: Judge/clerk from same court must sign it within 20 days. (Must sign even if late, but subject to dismissal like late appeal.)

b. **2nd step**: Serve & return just like civil complaint, **except**:

i. Return to appellate clerk.

ii. Return day is quirky, see Practice Book § 72-3(b).

c. **3rd step**: Within 20 days of filing (date returned to clerk) file "such documents as are necessary to present the claims of error" with the appellate clerk, i.e.:

i. Pertinent pleadings.

ii. Decisions/orders.

iii. Judgment file.

II. **Public Interest Appeals (Conn. Gen. Stat. § 52-265a)**: I Need to Know NOW!!!!!

A. Why Do 52-265a Appeals Exist: Review of "matter[s] of **substantial public interest** … in which delay may work a **substantial injustice**[.]" § 52-265a.

1. No final judgment required. See *Kelsey v. Comm. of Correction*, 329 Conn. 711, 713 n. 1 (2018).

2. Often expedited briefing, argument & decision. See, e.g., *Feehan v. Marcone*, 2019 WL 396543, at *3 (Slip. Op. 1/30/19).

3. Substantial means SUBSTANTIAL. See *Cook-Littman v. Bd. of Selectmen of Fairfield*, 328 Conn. 758, 765 n. 7 (2018) (Chief Justice denied two § 52-265a applications in election case).

B. Substantial Public Interest: No set definition, but four relevant factors:

1. Whether order affects an important legal principle or public policy. See *Met. Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 249 Conn. 36, 48 (1999) (granting certification because order involved attorney-client privilege).

2. Whether broad public interest is at stake, or issue "potentially will affect only the parties[.]" *State v. Fielding*, 296 Conn. 26, 35, n. 7 (2010);

3. Whether order accounts for any public interest concerns. See *id.*

4. Whether any "special circumstances of [the] case fit within the substantive ambit" of § 52-265. *State v. Ayala*, 222 Conn. 331, 341 (1992).

5. For example:

a. Whether to enjoin Secretary of State from declaring winner in state election; see *Feehan*, *supra*.

b. Habeas court's refusal to act on order to show cause why untimely habeas petition should proceed; see *Kelsey*, *supra*.

c. Whether trial court must hold hearing on application for restraining order by domestic violence victim. See *Wendy V. v. Santiago*, 319 Conn. 540, 542 (2015).

d. Candidate's entitlement to public financing under Citizens' Election Program. See *Foley v. State Elections Enforcement Comm'n*, 297 Conn. 764, 770, n. 2 (2010).

e. Hearing required for court to issue criminal protective order in family violence case. See *State v. Fernando A.*, 294 Conn. 1, 4 (2009).

f. Standing to sue for damage to state's economy from antitrust violations. See *State v. Marsh & McLennan Companies, Inc.*, 286 Conn. 454, 457 n. 2 (2008).

g. Effect of discovery order on attorney-client privilege. See *Met Life*, *supra*.

h. Constitutionality of expelling high school student for possession of marijuana. See *Packer v. Bd. of Educ. of Thomaston*, 246 Conn. 89, 91 & 97 (1998).

i. Retroactive application of amendment to statute governing Second Injury Fund. See *Hall v. Gilbert & Bennett Mfg. Co.*, 241 Conn. 282, 286 (1997).

j. Constitutionality of revoking bail if defendant would endanger another person. See *Ayala*, *supra*.

C. Substantial Injustice from Delay: Also no test; key factor is possibility of harm that ordinary appeal will be too late to remedy. See *Met* Life, 249 Conn. at 49-50 (§ 52-265a appeal proper because ordinary appeal too late to prevent "privileged documents detailing, among other things, the plaintiff's legal strategy regarding the asbestos tort actions could be ordered to be disclosed in cases pending in other jurisdictions"); *Ayala*, 222 Conn. at 342 (constitutionality of revoking bail "warrant[ed] an immediate appeal in accordance with § 52-265a").

D. Procedural Pitfall: Only **14 days** to file application to Chief Justice.

III. Court Closure and Document Sealing Orders (Conn. Gen. Stat. § 51-164x; Practice Book § 77-1)

A. Scope: Review of orders closing the court or sealing or limiting disclosure of files, documents or other materials are reviewed under this section by filing a petition for review.

1. For court closure orders, see Practice Book § 11-20(f)

2. For file sealing and disclosure limiting orders, see Practice Book § 11-20A(g)

3. Does **NOT** apply to closures and limited disclosure under:

a. Conn. Gen. Stat. § 46b-11 (court closures in family relations cases where the welfare of involved children or the nature of the case so requires);

b. Conn. Gen. Stat. § 46b-49 (court closures in dissolution cases where the interests of justice so require);

c. Conn. Gen. Stat. § 46b-122 (court closures in juvenile matters);

d. Conn. Gen. Stat. § 54-76h (youthful offender matters);

e. Orders sealing affidavits in support of arrest warrants, and;

f. Orders under any other statute that permits a court to close proceedings.

B. Who may file:

Any person affected by an order closing the court or restricting access to documents. (Apparently **NOT** those affected by orders denying motions to close or restrict disclosure: See, *State v. Gates*, 38 Conn. Supp. 546 (1982)

C. Procedure: Petition for review **MUST** be filed within 72 hours after issuance of the challenged order. 72 hours **DOES NOT** necessarily mean 3 business days.

1. Petition is filed with the Appellate Court;

2. Limited to 10 pages, not including the required appendix;

3. Appendix must be included and must contain (similar to Practice Book § 63-4):

   a. Information or complaint;

   b. Answer;

   c. All motions relevant to the closure order;

   d. Order of the trial court that is to be reviewed;

   e. Names and contact information of parties and their counsel (with juris numbers);

   f. Names of all judges who participated in the case;

   g. Transcript order form (JD-ES-38). Transcript must be filed within **ONE Business Day** after receipt of transcript and notice of completion.

4. Any party or nonparty that filed the request for closure must be served and may file a response within 96 hours after the filing of the petition for review.

D. Automatic Stay:

1. If the order is a closure order, filing a petition for results in an automatic stay of the order.

2. If the order restricts or precludes disclosure of documents or materials, no automatic stay.

Note that while not apparently covered under these rules, an order denying the right to proceed under a pseudonym has been held to be immediately appealable. *Doe v. Rackliffe*, 173 Conn. App. 389 (2017). (*Curcio*).

IV. Reservations (Practice Book § 73-1)

A. Purpose: The superior court may reserve questions of law to the Appellate or Supreme courts where doing so "would serve the interest of simplicity, directness and judicial economy." This process typically is used where the legal question on which the case turns is a question of first impression.

B. Procedure:

1. Parties must agree and file joint request for reservation with superior court;

2. Joint request must include:

a. Stipulation of undisputed facts;

b. "Clear and full" statement of the question(s) to be answered - questions must be in yes or no format;

c. Statement of the reasons why resolution of the question by an appellate court would serve the interest of "simplicity, directness and judicial economy";

d. Statement that the answers to the questions will determine the issues in the trial court or are reasonably certain to do so.

3. Reservation requests may only be made in cases where an appeal could have been filed had judgment been entered;

4. Reservations are made to the court that would have had appellate jurisdiction had an appeal been filed, or to the Supreme Court if the appropriate court is not clear;

5. If the Superior Court judge concludes that a reservation would be appropriate, the Superior Court clerk will forward the reservation request to the Appellate Court clerk;

6. The Appellate Court will either preliminarily accept or decline the reservation, or may request that the Superior Court provide additional facts;

7. If the reservation is accepted, it is filed with the Appellate Court in accordance with Practice Book § 63–3. Appellant also must file a docketing statement within 10 days of the filing;

8. Briefing is as for an appeal, per Practice Book Chapter 67. Parties must file initial briefs and appendices within 45 days of the issuance of notice of preliminary acceptance;

9. Review of a reservation decision by the Appellate Court may be had by petition for certification to the Supreme Court.

C. Limitations/Consequences:

1. Final judgment is not required, but courts may refuse reservations where the answer to the question will not result in final judgment. See *State v. Ross*, 237 Conn. 332 (1996), *Lehrer v. Davis*, 214 Conn 232 (1990).

2. Extensions of time for briefing will not be granted except for "extraordinary cause."

3. Questions of fact will not be decided.

4. Issues decided by reservation may not be challenged in a subsequent appeal from a final judgment. *Nichols v. City of Bridgeport*, 27 Conn. 459 (1858).

5. The reservation typically will be rejected if the rights of nonparties will be affected.

V. **PJR Appeals (Conn. Gen. Stat. § 52-278l)**: The Early Bird Gets the Worm

A. Three bases to appeal:

1. Trial court grants or denies a prejudgment remedy.

2. Trial court grants or denies motion to dissolve a prejudgment remedy.

3. Trial court grants or denies motion to preserve existing prejudgment remedy.

B. Procedural Pitfalls:

1. **ONLY SEVEN CALENDAR DAYS TO FILE APPEAL**; see § 52-278l(b); and time limit **is subject matter jurisdictional**. See *Ambroise v. William Raveis Real Estate, Inc.*, 226 Conn. 757 (1993).

2. **No** automatic stay – must ask for stay and post a bond. See § 52-278l(c).

VI. Appeals from Temporary Injunction Orders:

A. Final Judgment: "In the absence of a statutory provision to the contrary, a denial or grant of a temporary injunction does not constitute a final judgment for purposes of appeal*." Massachusetts Mut. Life Ins. Co. v. Blumenthal*, 281 Conn. 805, 811 (2007), citing *Doublewal Corp. v. Toffolon*, 195 Conn. 384, 388 (1985); *Board of Education v. Shelton Education Assn.*, 173 Conn. 81, 88 (1977); *Olcott v. Pendleton*, 128 Conn. 292, 295 (1941).

Statutory authorization to appeal exists in appeals arising out of labor disputes under Conn. Gen. Stat. § 31-118.

Appeal also could be statutorily authorized in matters involving a substantial public interest under Conn. Gen. Stat. § 52-265a.

B. Curcio: where appeal is not statutorily authorized, the only avenue for appellate review is under *State v. Curcio*, 191 Conn. 27 (1983). "In both criminal and civil cases ... we have determined certain interlocutory orders and rulings of the Superior Court to be final judgments for purposes of appeal. An otherwise interlocutory order is appealable in two circumstances:

(1) [when] the order or action terminates a separate and distinct proceeding,

(2) [when] the order or action so concludes the rights of the parties that further proceedings cannot affect them." *Id.*

VII. Mechanic's Lien Appeals

A. Scope: Where a motion to discharge or reduce a mechanic's lien is filed under Conn. Gen. Stat. § 49-25a, appeal is governed by Conn. Gen. Stat. § 49-35c.

1. Appeal **MUST** be filed within 7 days of the order or the Appellate Court is without subject matter jurisdiction to consider the appeal. *Burke Construction v. Smith,* 41 Conn. App. 737 (1996).

Where a mechanic's lien is discharged or reduced as a part of a foreclosure trial on the merits, review may be had in an appeal from the final judgment as in other cases. *NE Savings Bank v. Meadow Lakes Realty*, 235 Conn. 663 (1996).

SPECIAL APPELLATE ASPECTS OF CHILD PROTECTION AND FAMILY LAW

SAMUEL V. SCHOONMAKER, IV, ESQ.

JAMES P. SEXTON, ESQ.

Unique CP Practice Rules

- Rules of Appellate Procedure Chapter 79a:
  - Some Rules are Similar to Rules Governing Civil and/or Criminal Appeals:
    - § 79a-2: Time to file an appeal is 20 days, unless extended by one additional 20-day period or a new appeal period is created.
  - Many Rules are Different or Unique to Rules Governing Civil and/or Criminal Appeals:
    - § 79a-3(c): Standard for assigned counsel to not take an appeal is arguably whether appeal has merit, not frivolous. Also, appeals have been dismissed when counsel filed an appeal without even being able to know whether it merit prior to filing.
    - § 79a-5: Transcripts must be ordered on an expedited basis.
    - §79a-6: Appellant's brief is in due 40 days; Appellee's brief is due in 30 days; Appellant's Reply Brief is due in 10 days; Statement by the AMC is due 10 days after Appellee's brief is filed; case is marked ready and assigned for argument as soon as the appellee's brief is filed.

CP Rules Continued

- § 79a-7: METs must be presented to a judge of the Appellate Court; not decided by case manager. METs longer than 2-3 days are rarely granted.
- §79a-8: CP appeals may be assigned without ever appearing on the docket and take precedence over all other assignments for oral argument.
- §79a-11: Slip opinion of the Appellate Court or Supreme Court is what starts the pert-cert clock, not date of publication in the law journal (unless no slip opinion issued).
- §79a-12: Records only available to parties and others having a proper interest; child's name shall not appear on appellate record. See also General Statutes § 46b-124.
- §79a-13: Court may exclude any person from the court during a hearing to ensure confidentiality; all proceedings are to be conducted in manner that preserves anonymity of children.
  - Amicus implications.
- §79a-14: All motions must state on first page whether the opposing party objects or consents to the motion.

Criteria For Taking An Appeal

"Upon the trial of all matters of fact in any cause or action in the Superior Court, whether to the court or jury, or before any judge thereof when the jurisdiction of any action or proceeding is vested in him, **if either party is aggrieved by the decision of the court** or judge upon any question or questions of law arising in the trial, including the denial of a motion to set aside a verdict, **he may appeal to the court having jurisdiction from the final judgment of the court** or of such judge . . . ."

Conn. Gen. Stat. Ann. § 52-263 (West)

- Party must be aggrieved.

- Decision must constitute a final judgment for purposes of appeal.

Same Requirements In CP Context

"The Department of Children and Families, or any party at interest aggrieved by any final judgment or order of the court, may appeal to the Appellate Court in accordance with the provisions of section 52-263."

Conn. Gen. Stat. Ann. § 46b-142 (West)

State v. Curcio, 191 Conn. 27, 31 (1983)

Under Curcio, "[a]n otherwise interlocutory order is appealable in two circumstances:

- where the order or action terminates a separate and distinct proceeding, or
- where the order or action so concludes the rights of the parties that further proceedings cannot affect them."

Although both prongs have application in the CP context, the second prong gets the most use.

Curcio's Second Prong:

where the order or action so concludes the rights of the parties that further proceedings cannot affect them

There must be

- (1) a colorable claim, that is, one that is superficially well founded but that may ultimately be deemed invalid,
- (2) to a right that has both legal and practical value,
- (3) that is presently held by virtue of a statute or the state or federal constitution,
- (4) that is not dependent on the exercise of judicial discretion and
- (5) that would be irretrievably lost, causing irreparable harm to the appellants without immediate appellate review.
- *Sharon Motor Lodge, Inc. v. Tai*, 82 Conn. App. 148, 158 (2004).

Curcio's 2d Prong Outside CP Context

Even interlocutory decisions denying a MTD or MSJ can be appealed if the motion was based on:

- a colorable claim of sovereign immunity; *Shay v. Rossi*, 253 Conn. 134, 167 (2000);
- a colorable claim of absolute common law immunity; *Chadha v. Charlotte Hungerford Hospital*, 272 Conn. 776, 784-87 (2005);
- or a colorable claim of qualified statutory immunity; *Manifold v. Ragaglia*, 94 Conn. App. 103 (2006);
  - but not one based on governmental immunity. *Vejseli v. Pasha*, 282 Conn. 561, 563 (2007).
- Or on a claim of collateral estoppel. *LaFayette v. General Dynamics, Inc*., 255 Conn. 762, 763 n.1 (2001).

Final Judgments in Family Cases

Dissolution decrees and related orders are immediately appealable:

* Parenting Orders

- Custody
- Visitation
- Relocation
- GAL/AMC Appointment

* Financial Orders

- Equitable Division
- Alimony
- Child Support
- Life Insurance
- Attorney's Fees
- Educational Support

Final Judgments in Family Cases

Many *pendente lite* orders are immediately appealable:

* Legal and Physical Custody
* Alimony
* Child Support
* Unallocated Alimony and Child Support
* Support Orders Entered “Without Prejudice”
* Denial of a Motion to Modify Temporary Support

Final Judgments in Family Cases

Many *pendente lite* orders ***are not*** immediately appealable:

* Discovery Orders
* Partial Lifting of the Practice Book § 25-5 “Automatic Orders"
* Effectuation of Many Orders
* Infinite Variety of Orders That Advance a Case

Final Judgments in Family Cases

Other immediately appealable family decisions:

* Rulings on Post Judgment Motions to Modify Alimony and Child Support
* Modification of Custody and Visitation Orders
* Domestic Violence Restraining Orders (*e.g.* General Statutes §§ 46b-15, 46b-16a)
* Contempt Judgments

Final Judgments In CP Context

Rule of Thumb: Almost any decision that substantially impacts the child-parent relationship will constitute a final judgment.

- Orders of Temporary Custody
- Decisions of Neglect Petitions
- Extension of Commitment to DCF
- Decisions that Reasonable Efforts are No Longer Necessary

Final Judgments In CP Context Continued

There are some limitations on final judgment rules:

- Decision on Neglect Petition is NOT an appealable final judgment unless dispositional orders were ordered at the same time.
- Where a neglect decision is internally contradictory, rendering both dispositional orders and allowing the parent to file a further contest that decision through the filing of an additional pleading, there is not a final judgment.

Practical Considerations in Family Cases

* Most litigants want closure for themselves and their children
* Family law litigation often continues after the final decree
* Failure to appeal can have a protracted and evolving impact on rights and interests
* A judge is not disqualified while an appeal is pending
* It is difficult to win an appeal

Practical Considerations In CP Cases

- Most appeals from Orders of Temporary Custody, Neglect Petitions, etc. will become moot before the appeal will be completed.
- Final goodbyes are usually done soon after TPR judgment and visitation/reasonable efforts are almost never provided during an appeal. Can render CP appeals somewhat illusory.
- Judge is not disqualified while an appeal is pending.
- Very difficult to win on appeal.

Stays of Execution in Family Cases

Practice Book § 61-11(a) and (c):

Automatic Stay:

* Property Division
* Attorneys' Fees

No Automatic Stay:

* Custody
* Visitation
* Periodic Alimony
* Child Support
* C.G.S. § 46b-15 Restraining Orders
* Exclusive Possession of a Residence

Stays of Execution in Family Cases

Practice Book § 61-11(a) and (c):

Orders That Fall Between the Categories:

* Lump Sum Alimony
* Pay a Mortgage and Other Expenses Until a House is Sold
* Life Insurance
* Post-Majority Educational Support

Specific Automatic Orders Remain Effective

Practice Book §§ 25-5(b) (1), (2), (3), (5) and (7) remain in effect until determination of the appeal, “unless terminated, modified or amended further by order of a judicial authority upon motion of either party.”

(1) Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

O'Brien v. O'Brien, 326 Conn. 81 (2017)

Specific Automatic Orders Remain Effective

Practice Book §§ 25-5(b):

(2) Neither party shall conceal any property.

(3) Neither party shall encumber (except for the filing of a lis pendens) without the consent of the other party, in writing, or an order of a judicial authority, any property except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

Specific Automatic Orders Remain Effective

Practice Book §§ 25-5(b):

(5) Neither party shall incur unreasonable debts hereafter, including, but not limited to, further borrowing against any credit line secured by the family residence, further encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards.

(7) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners or renters insurance policies in full force and effect.

Appellate Stays Have Meaningful Consequences

Who controls the property?

Who pays liabilities that have been divided as property?

How will a party pay living and legal expenses while an appeal is pending?

What happens if the final orders conflict with Practice Book § 25-5(b)?

Is the appeal primarily for the purpose of delaying property division?

What will happen if the matter is remanded for a new trial on finances?

Motions to Terminate or Impose Stays in Family Cases

Under Practice Book § 61-11(c) the court must consider six factors:

(1) the needs and interests of the parties, their children and any other persons affected by such order;

(2) the potential prejudice that may be caused to the parties, their children and any other persons affected, if a stay is entered, not entered or is terminated;

(3) if the appeal is from a judgment of dissolution, the need to preserve, pending appeal, the mosaic of orders established in the judgment;

(4) the need to preserve the rights of the party taking the appeal to obtain effective relief if the appeal is successful;

(5) the effect, if any, of the automatic orders under Section 25-5 on any of the foregoing considerations; and

(6) any other factors affecting the equities of the parties.

Motions to Terminate or Impose in Family Cases

"The judge who entered the order in a family matter from which an appeal lies may terminate any stay in that matter upon motion of a party as provided in this subsection or *sua sponte*, after considering the factors set forth in this subsection or if the judge is of the opinion that an extension of time to appeal is sought or the appeal is filed only for delay. Whether acting on a motion of a party or sua sponte, the judge shall hold a hearing prior to terminating the stay.

Attorneys sometimes file motions that only address the *Griffin Hospital* considerations, but not Practice Book § 61-11 (c).

Motion for review under Practice Book § 61-14

Appellate Stays In CP Cases

- Almost never granted.
  - Likelihood of success on appeal too remote and court's often conclude that there will not be any prejudice to the parent because DCF will not seek adoption until appeal process is complete.
- Failure to obtain a stay can result in pyrrhic victory for parent if appeal is successful.
  - Without continued visitation during appeal, little chance that reunification will be deemed in the child's best interests when appeal is over 2-3 years after TPR judgment.
- *Griffin Hospita*l still relied on in motions for a discretionary stay pursuant to Practice Book § 61-12.

Motions For Review

Important to note that not all trial court decisions are subject to a full appeal, some are limited to a motion for review.

Challenges to the

- Orders regarding the appointment of counsel and waiver of costs and fees,
- Orders regarding a motion for stay,
- Orders regarding the withdrawal of appellate counsel (criminal and habeas context)

Should all be challenged within 10 days of decision through a motion for review.

The Mosaic Rule

* The appellate court may determine under the "mosaic rule" that all of the financial orders are interrelated, and that a new trial on all financial issues is required. Ehrenkranz v. Ehrenkranz, 2 Conn. App. 416, 424 (1984).

* If a financial order is reversed on appeal, but it is severable from the other financial orders, then a remand may be limited to that financial order. Misthopoulos v. Misthopoulos, 297 Conn. 358, 389-90 (2010).

The *Sunbury* Rule

* If a marital dissolution judgment is reversed and remanded for a new trial on all financial issues, then the date used for valuing marital assets is the date of the marital dissolution.

* A different valuation date is possible if there are "exceptional intervening circumstances." A dramatic change of value of an asset is ***not*** an exceptional intervening circumstance, nor is disposition of an asset while an appeal is pending. Sunbury v. Sunbury, 216 Conn. 673, 676 (1990).

* Resolution on remand of a post-judgment motion to modify child support or alimony will depend on financial conditions as they exist at the time of the new hearing. Tomlinson v. Tomlinson, 305 Conn. 539, 561 (2012).

Mootness

Subsequent Events

Modified and Subsequent Orders

Final Orders Render *Pendente Lite* Orders Moot

Merger and Full Faith and Credit

Capable of Repetition but Evading Review Exception

JUDGMENTS APPEALABLE BY RULE OR STATUTE IN CONNECTICUT

Prepared by Jeffrey Babbin, Wiggin and Dana LLP © 2019

Final judgment rule

Ordinarily, only a "final judgment" may be appealed, which is usually considered to be the last action by the court that disposes of the entire lawsuit leaving nothing further to be done in the case in court. *See* C.G.S. § 51-197a ("Appeals from final judgments or actions of the superior court shall be taken to the appellate court . . . except for . . . appeals within the jurisdiction of the supreme court as provided for in section 51-199 . . . ."); C.G.S. § 52-263 (allowing an aggrieved party to "appeal to the court having jurisdiction from the final judgment of the [trial] court"); P.B. § 61-1 ("An aggrieved party may appeal from a final judgment, except as otherwise provided by law.")

See Stroiney v. Crescent Lake Tax District, 197 Conn. 82 (1985) (holding that a judgment only as to liability, which left the amount of damages unresolved, and left a request for equitable relief unresolved, is not an appealable final judgment). In *Stroiney*, the trial court entered summary judgment declaring the formation of a tax district to be illegal, but the prayers for relief seeking both damages and an injunction remained unresolved when the appeal was filed.

Zoning and inland wetlands appeals

Superior Court judgments in appeals from a municipal zoning or inland wetlands agency may *not* be appealed as of right to a higher court, either the Appellate Court or Supreme Court. A further appeal is allowed only if the Appellate Court permits it, by an affirmative vote of two or more Appellate Court judges granting a petition for certification. C.G.S. §§ 8-8(o), 8-9 (zoning appeals); C.G.S. § 22a-43(e) (inland wetlands appeals). The procedure for a petition for certification to the Appellate Court is found in P.B. §§ 81-1 to 81-6.

Striking of a pleading for failure to state a claim

A ruling granting a motion to strike a pleading for failure to state a claim is not, by itself, an appealable judgment. P.B. § 10-44 allows for repleading a stricken pleading as of right within 15 days. If no substitute pleading is filed, either party can move for judgment on the stricken pleading. Until an affirmative motion for judgment is filed and granted, the order granting a motion to strike (even if the entire pleading is stricken) is not a judgment and is not appealable. The Appellate Court often has to dismiss appeals, sometimes after they are fully briefed, because a party appealed from a ruling striking its complaint without either party first moving for entry of a judgment. (This differs from rulings granting a motion to dismiss a complaint or granting summary judgment on a complaint, as those rulings constitute judgments in and of themselves and can be appealed without further motions practice.)

Practice note: So long as no judgment has been entered on a stricken complaint (or counterclaim), a party can move in the trial court for leave to amend the

stricken pleading even if the 15-day window in P.B. § 10-44 has expired. The only difference is that after the 15-day period, amendment is at the discretion of the trial court and no longer as of right. *See Dennison v. Klotz*, 12 Conn. App. 570, 572-75 (1987); *D'Occhio v. Bender*, 2001 WL 1199837 (Conn. Super. Ct. Sept. 12, 2001) (Rogers, J.).

Exception – stricken count is considered disposed of when the remainder of the pleading is later fully disposed of: In *Decorso v. Calderaro*, 118 Conn. App. 617, 623-24 (2009), one count of a complaint was stricken, the plaintiff did not replead the count, and no party moved for judgment on the stricken count. Later, the defendant obtained summary judgment on the remainder of the complaint, and the plaintiff appealed. The Appellate Court held, in that narrow circumstance, there was a final appealable judgment disposing of the entire complaint. It appears that once judgment had entered on the non-stricken counts, it is implicit that the case is at an end and the window of opportunity to replead the stricken count is closed, so a judgment can be considered entered on the stricken count along with the remainder of the complaint. This principle can be traced back to *Breen v. Phelps*, 186 Conn. 86, 88-91 & 91 n.7 (1982).

Partial judgments

Ordinarily, judgment entered on only some, but not all, of the claims asserted in an action is an interlocutory judgment and cannot be appealed until the entry of final judgment at the end of the case. There are important exceptions, which must be studied to ensure you do not miss the only opportunity to appeal a dispositive ruling:

All claims asserted in a pleading (even if another pleading is still pending): See P.B. § 61-2. If an entire pleading has been adjudicated, there is a final, appealable judgment even if another pleading remains pending in the case. Pleadings include complaints, counterclaims, and cross-complaints. This applies whether the pleading is fully disposed of due to a motion to strike, motion to dismiss, motion for summary judgment, or otherwise (although, if the ruling was on a motion to strike, and the losing party does not replead, the procedure mentioned earlier for affirmatively moving for a judgment on the stricken pleading has to be followed before there is an appealable judgment).

All claims by or against a party within a single pleading: See P.B. § 61-3. If a court ruling disposes of only a portion of a pleading (i.e., a complaint, counterclaim, or cross-complaint) but, as a result, there is a party that is no longer a party to any remaining portion of that particular pleading, then the ruling is treated as a final judgment and the time to appeal begins to run even though other aspects of the case remain. (Remember, if it is a motion to strike that disposed of a portion of a pleading, and there is no substitute pleading within 15 days, a motion for judgment on the disposed-of portion of the

pleading must be filed and granted before there is a judgment for purposes of P.B. § 61-3.)

Deferral of appeal (to the end of the entire case) of a judgment described in P.B. §§ 61-2, 61-3: In the circumstances just described, where an entire pleading has been disposed of, or a pleading is partially disposed of but a party is no longer part of that pleading, P.B. §§ 61-2 & 61-3 instruct that the appeal clock starts to run. But, while an appeal *may* be taken immediately from the partial judgment, it can also be *deferred* until the entry of final judgment disposing of the *entire* case – but only if certain steps are timely taken as addressed in P.B. §§ 61-2, 61-3, and 61-5.

- If an entire pleading has been disposed of, but all of the parties to the action remain in the case (because they are all parties to a remaining pleading), deferral is a matter of right and no notice of a deferral need be filed. However, if a partial judgment described in P.B. § 61-2 (i.e., an entire pleading has been disposed of) results in a party being entirely out of the case, then the aggrieved party preserving appellate rights must file a notice deferring its appeal until the end of the case. The notice is commonly called a Notice of Intent to Appeal.
- If there is a partial judgment described in P.B. § 61-3 (i.e., disposing of a portion of a pleading, but resolving all claims asserted by or against a party in that pleading), then the aggrieved party – if it wishes to defer the appeal to the end of the case – must file a Notice of Intent to Appeal in the trial court deferring its appeal.
- The aggrieved party wishing to defer an appeal to the end of the case, where a notice of deferral is required, must file the Notice of Intent to Appeal within the appeal period running from the issuance of the partial judgment. Nevertheless, any party who is entirely out of the case because of the judgment disposing of an entire pleading, or who is entirely out of a pleading as a result of the judgment disposing of a portion of that pleading, can object to deferral and force an immediate appeal if it doesn't want to wait to the end of the case for the opposing party to pursue its appeal. In that event, the party wanting to force an immediate appeal must file in the trial court an Objection to the Notice of Intent to Appeal within 20 days of the filing of the deferral notice. If an Objection is filed, then the aggrieved party wishing to appeal can no longer defer the appeal but must file the Appeal Form within 20 days of the filing of the Objection.

An entire cause of action: See P.B. § 61-4. If the trial court disposes of an entire cause of action in a pleading, but the ruling does not meet the criteria for a final judgment under §§ 61-2 or 61-3, a party can still seek to have the court certify the ruling as a final, appealable judgment on the cause of action. Within the appeal period following the ruling, any party can move the trial court to make "a written determination that the issues resolved by the judgment are of such significance to the determination of the outcome of the case that the delay incident to the appeal would be justified." P.B. § 61-4(a). If the trial court

issues the written determination, then, within 20 days, any party that wishes to appeal must seek permission to appeal by motion directed to the Chief Judge of the Appellate Court (or the Chief Justice of the Supreme Court for appeals that go directly to that court). If the Chief Judge or Chief Justice concurs with the trial judge, and grants permission to appeal, then the party wishing to appeal will file the Appeal Form within the appeal period following the issuance of the order granting permission.

The standards for deciding whether a trial court should grant a § 61-4 motion are discussed in *Moore v. Brower*, 2006 WL 2411382 (Conn. Super. Ct. July 26, 2006), and in *ShareAmerica, Inc. v. Ernst & Young LLP*, 1999 WL 566930 (Conn. Super. Ct. July 23, 1999), both of which denied the motion.

Denial of motion for summary judgment

"The denial of a motion for summary judgment is ordinarily not an appealable final judgment; however, if parties file cross motions for summary judgment and the court grants one and denies the other, this court has jurisdiction to consider both rulings on appeal." *Hannaford v. Mann*, 134 Conn. App. 265, 267 n.2 (2012).

Implied judgments

Sometimes a court will expressly rule on a portion of a complaint and not expressly mention its disposition of another portion of the pleading, but it is apparent that the court considers the case fully adjudicated and at an end. In that situation, the appellate court can infer that there is a judgment on the entire complaint, allowing the appeal to proceed forward, rather than go through the meaningless exercise of a dismissal of the appeal and the trial court expressly saying what is already evident on the record. *See, e.g.*, *Russell v. Russell*, 91 Conn. App. 619, 628 n.8 (2005) (where trial court stated in its decision that its disposition of first four counts of complaint made fifth count superfluous, but did not expressly rule on fifth count, a denial of relief on fifth count can be inferred to create final judgment).

Judgments entered before attorney's fees are awarded

An important exception to the final judgment rule is when a court has adjudicated a complaint but not yet ruled on the plaintiff's request for attorney's fees. The Connecticut Supreme Court has created a bright-line rule that a judgment that is complete except for a potential award of attorney's fees is *not* an interlocutory judgment but is, instead, a final, appealable judgment (with the appeal period already running). The Court treats fees as akin to costs, which do not destroy the finality of a judgment even if not yet requested or awarded. A later ruling on a request for fees can be the subject of a subsequent appeal or amended appeal. It makes no difference whether the claim for fees arises by statute or by contract. *See Benvenuto v. Mahajan*, 245 Conn. 495 (1998); *Paranteau v. DeVita*, 208 Conn. 515 (1988).

Judgments entered before punitive damages are awarded

CUTPA punitive damages:

There is no final judgment where a court has yet to rule whether to award CUTPA punitive damages or determined their amount. The punitive damages claim is part of the substantive claim. *Perkins v. Colonial Cemeteries, Inc.*, 53 Conn. App. 646 (1999).

Common-law punitive damages under Connecticut law:

Connecticut has a unique rule among the 50 states, where punitive damages for intentional torts under the common law are measured by attorney's fees and expenses and not by the traditional measure of punitive damages to punish and deter wanton or malicious misconduct. The Connecticut Supreme Court has held (overruling earlier Appellate Court precedent) that because common-law punitive damages are akin to a claim for attorney's fees, then they will be treated like fees (and other costs) for purposes of appealability: If a claim is fully resolved in court, including a claim that common-law punitive damages should be awarded, but the amount of those punitive damages are not yet determined, the judgment on the claim is final and appealable even before the amount of fees is resolved – so the clock is running and don't wait for the fees to be awarded to file the appeal. This applies only where the punitive damages are measured solely by attorney's fees and litigation expenses. *Hylton v. Gunter*, 313 Conn. 472, 484-85 (2014), *overruling Lord v. Mansfield*, 50 Conn. App. 21, 25-28 (1998).

Judgments entered before pre-judgment interest is awarded

A judgment is not yet final (and therefore not yet appealable) where a claim for *pre*-judgment interest is not yet resolved in the trial court. Unlike fees or costs, pre-judgment interest is treated as a substantive part of the claim. *Balf Co. v. Spera Construction Co.*, 222 Conn. 211, 214-15 (1992).

Important exception: If the claim for pre-judgment interest arises only under the offer-of-judgment (now called offer-of-compromise) statute, then the unresolved claim for that interest does *not* undermine the finality of a judgment and the appeal period begins to run even before offer-of-judgment (offer-of-compromise) interest is awarded. That is because the award of such punitive interest is ordinarily just a ministerial task more akin to costs, whereas ordinary pre-judgment interest is a substantive part of the claim. *Earlington v. Anastasi*, 293 Conn. 194, 196 n.3 (2009).

Workers' compensation appeals

Public Act 09-178 amended C.G.S. § 31-301b, effective 6/30/09, to permit interlocutory appeals to the Appellate Court from decisions of the Compensation Review Board. A final judgment disposing of both liability and compensation is no longer required (overruling *Hummel v. Marten Transport, Ltd.*, 282 Conn. 477 (2007), and *Hall v. Gilbert & Bennett Mfg. Co.*, 241 Conn. 282, 293-98 (1997)).

Even before Public Act 09-178, if the Compensation Review Board has affirmed an award of survivor benefits under C.G.S. § 31-306, but the award does not specify an actual dollar amount, the Board's decision is still a final, appealable judgment. *Birnie v. Electric Boat Corp.*, 288 Conn. 392, 394 n.1 (2008) ("subsequent calculation of those benefits is a ministerial act requiring no more than the application of a simple mathematical formula").

C.G.S. § 31-290a permits a direct appeal to the Appellate Court (as opposed to the Compensation Review Board) from a decision of a workers' compensation commissioner in an employee's claim of discrimination arising from having sought workers' compensation benefits.

Class certification orders

An order granting or denying a motion for certification of an action as a class action is not appealable generally until final judgment. *Palmer v. Friendly Ice Cream Corp.*, 285 Conn. 462 (2008).

Important exceptions: By statute, class certification orders for CUTPA claims are immediately appealable. C.G.S. § 42-110h. Also, if an appeal is taken from a CUTPA class certification order, and the class certification order also governs other non-CUTPA causes of action in the same complaint, there is appellate jurisdiction to review the order as to the non-CUTPA claims where the decision whether to certify the class for the CUTPA claim is intertwined with the decision whether to certify the class for the non-CUTPA claims. *Collins v. Anthem Health Plans, Inc.*, 266 Conn. 12, 28-29 (2003).

Temporary injunctions

An order granting or denying a temporary (preliminary) injunction is interlocutory, and not an appealable judgment, except as specifically provided by statute. *See* C.G.S. § 31-118 (authorizing an immediate, expedited appeal "when any court . . . issues or denies a temporary injunction in a case involving or growing out of a labor dispute"). This is in contrast to federal practice where, by statute (28 U.S.C. § 1292), decisions on a motion for any type of preliminary injunction [the federal term for a temporary injunction] are immediately appealable.

Family law cases have developed their own line of authority on appealing interim relief entered before final judgment. *Pendente lite* orders can be appealed, for example, regarding alimony, *Litvaitas v. Litvaitas*, 162 Conn. 540, 548-49 (1972); custody, *Madigan v. Madigan*, 224 Conn. 749 (1993); and the religious or educational upbringing of a child, *Sweeney v. Sweeney*, 271 Conn. 193, 207-13 (2004) (appeal of order allowing placement of child in parochial school). This outcome derives from the *Curcio* doctrine addressed at the end of this outline.

Prejudgment remedies

An order granting or denying an application for a prejudgment remedy (or granting or denying a motion to dissolve or modify an existing PJR) is an interlocutory ruling immediately appealable by statute, C.G.S. § 52-278*l*. The appeal must be filed within 7 days. (The General Statutes include a few other provisions permitting immediate appeals of certain types of specialized orders, and this outline does not include them all.)

Discovery and contempt orders

Discovery orders are not appealable, but if a party resists the order and the court issues a contempt citation or case-dispositive sanctions against the party, then there is an appealable order.

Barbato v. J. & M. Corp., 194 Conn. 245, 248, 249 (1984) (stating that an order compelling testimony does not meet *Curcio* standard, and noting requirement that a party "ordered to comply with discovery be found in contempt of court before we consider an appeal"); *id.* at 250 ("A judgment of contempt is a final, reviewable judgment.").

Green Rock Ridge, Inc. v. Kobernat, 250 Conn. 488, 495 n.12, 498-99 (1999) (holding that discovery sanction of $751 as compensation to moving party where the opposing party's officer refused to answer deposition questions was not appealable, and the sanction had to be resisted to draw a contempt citation in order to appeal it).

Complying with a civil, coercive contempt order pending appeal does not usually moot the appeal and, in fact, one may *have* to comply with the order for the appellate court to hear your appeal in certain circumstances. *See Papa v. New Haven Fed'n of Teachers,* 186 Conn. 725, 731 n.6 (1982) ("Because the appeal from a judgment of civil contempt does not automatically stay the enforcement of the contempt penalties, the defendants can not be expected to continue in contempt throughout their appeal."); *id.* (payment of contempt fines "does not waive the defendants' right to limited review of the propriety of the imposition of these fines"); *cf. Greenwood v. Greenwood*, 191 Conn. 309 (1983) (exercising discretion to dismiss appeal of contempt sanction where appellant continued to refuse to comply with trial court orders while pursuing the appeal).

Collateral order doctrine

The so-called "collateral order doctrine" can, on occasion, permit an interlocutory appeal of an order that meets specific criteria, where the order has certain attributes of finality even if the case is not at an end. This doctrine is not found in any statute or rule but is judge-made law. In Connecticut, it is also known as the *Curcio* doctrine, named after *State v. Curcio*, 191 Conn. 27 (1983): "An otherwise interlocutory order is appealable in two circumstances: (1) where the order or action terminates a separate and distinct proceeding, or

(2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them." *Curcio*, 191 Conn. at 31.

A full discussion the doctrine is beyond the scope of this outline. Just a few examples of caselaw in this area are *Santorso v. Bristol Hosp.*, 127 Conn. App. 606, 613 (2011) (immediate appeal of denial of summary judgment motion raising res judicata); *BNY Western Trust v. Roman*, 295 Conn. 194 (2010) (allowing immediate appeals of denial of colorable claim to intervene in lawsuit as of right, but dismissing appeal upon finding no such colorable claim in this instance); *Clark v. Clark*, 115 Conn. App. 500, 503-10 (2009) (same); *State v. Tate*, 256 Conn. 262, 275-76 (2001) (immediate appeal of denial of double jeopardy argument); *Shay v. Rossi*, 253 Conn. 134, 165-67 (2000) (immediate appeal of denial of colorable claim of sovereign immunity), *overruled in part by Miller v. Egan*, 265 Conn. 301 (2003); *Lougee v. Grinnell*, 216 Conn. 483, 486-87 (1990) (immediate appeal of denial of application to quash subpoena for deposition testimony for use in out-of-state lawsuit where, although discovery orders are not usually immediately appealable, the order terminated a proceeding separate and distinct from the out-of-state lawsuit).

Writ of error versus an appeal

The right of appeal in C.G.S. 52-263 is limited to a "party" aggrieved by a final judgment of the Superior Court. The Connecticut Supreme Court has held that a person who was not a party to the underlying action may not seek review of a final judgment by means of an appeal; instead, if aggrieved by the judgment, the person must obtain review by means of a "writ of error." *See State v. Salmon*, 250 Conn. 147 (1999). It is beyond the scope of this outline to explain the historical underpinnings and procedures of a writ of error, but it is important to recognize when to file a writ of error instead of an appeal.

For example, under *Salmon*, it would appear that an attorney (as opposed to a party) seeking review of a trial court sanctions order could do so only by means of a writ of error, and *Salmon* also refers to a previous case that required a non-party witness to seek review of an order disqualifying its counsel through a writ of error instead of an appeal. In *Salmon* itself, the Court held that a bail bondsman, who was not a party to the underlying criminal case, could not appeal an order forfeiting the bond but would have to file a writ of error to obtain review.

Finally, *Salmon* overruled that part of *Lougee v. Grinnell* (discussed above in the "collateral order doctrine" section of this outline) that allowed a subpoenaed deponent to file an appeal from an order denying an application to quash a subpoena issued for use in an out-of-state case, because the deponent was not a party to the underlying litigation – even though a party to the application to quash in this state's courts – so while the collateral order doctrine would still give the order finality for purposes of review by a higher court, that review could be sought only with a writ of error and not an appeal.

Interlocutory appeals certified by the Chief Justice

C.G.S. § 52-265a(a) allows an aggrieved party to petition the Chief Justice of the Connecticut Supreme Court, within two weeks of a non-appealable, interlocutory order, to allow an appeal to the Supreme Court where it "involves a matter of substantial public interest and in which delay may work a substantial injustice." This section is sparingly invoked, and only a few appeals a year are heard in the Supreme Court under this statute. The procedure for a § 52-265a application is set out in P.B. §§ 83-1 to 83-4.

AC 37822

CLARENCE MARSALA, ET AL.	:	APPELLATE COURT
VS.	:	
YALE-NEW HAVEN HOSPITAL	:	MAY 6, 2015

MOTION TO DISMISS APPEAL

Pursuant to Practice Book § 66-8, defendant-appellee Yale-New Haven Hospital ("the Hospital") moves to dismiss portions of the appeal filed jointly by the plaintiffs-appellants on April 6, 2015. The Court lacks appellate jurisdiction over the appeal to the extent it was filed on behalf of plaintiff Clarence Marsala in both of his capacities: (1) as administrator of the Estate of Helen Marsala, and (2) individually on his own behalf. The motion is not addressed to the appeal to the extent it was filed on behalf of plaintiffs Michael, Gary, Tracey, Kevin, and Randy Marsala, as the case is finished as to them in the trial court. But, as discussed below, Clarence Marsala still has claims pending in the trial court. He cannot now pursue an interlocutory appeal of a partial disposal of his claims against the Hospital in either of his capacities as a plaintiff.

A. Brief History

This is a personal injury action arising from the death of Helen Marsala at Yale-New Haven Hospital in July 2010. Plaintiffs are Clarence Marsala, as administrator of the Estate of Helen Marsala ("the Estate"), Clarence Marsala in his individual capacity as the spouse of Helen Marsala, and their five adult children, Michael, Kevin, Gary, Randy and Tracey Marsala.

The operative complaint in this action, the Second Amended Complaint ("Complaint"), was filed on October 22, 2012, attached to a motion for leave to amend the

complaint. *See* Exhibit A. The motion was granted on December 3, 2012. *See* Exhibit B. On October 30, 2013, the trial court (Lee, J.) granted in part the Hospital's motion to strike. *See* Exhibit C. No plaintiff repleaded in response to that decision. Later, on March 19, 2015, the trial court (Tyma, J.) granted in part the Hospital's summary judgment motion. *See* Exhibit D. The two decisions will be discussed in more detail in the following section of this motion. As a result of those decisions, what remains of the 27-count Complaint are only claims asserted by the Estate (through its administrator Clarence Marsala) for wrongful death and medical malpractice and derivative claims for loss of consortium brought by Clarence Marsala.[1]

B. Factual Basis for Motion

Set forth here is a listing of the claims of each plaintiff in the operative Complaint and whether a claim has been disposed of or is still pending in the trial court.

Clarence Marsala, as administrator of the Estate of Helen Marsala

Nineteenth Count – Connecticut Unfair Trade Practices Act

Stricken by Judge Lee

Twentieth Count – Violation of Conn. Gen. Stat. § 19a-571

Stricken by Judge Lee

Twenty-first Count – Wrongful Death (Conn. Gen. Stat. § 52-555)

Still pending in trial court

[1] This appeal is from Superior Court docket no. AAN-CV12-6010861-S. There is a second, related appeal (no. AC 37821) from Superior Court docket no. AAN-CV12-6011711-S. The two cases were consolidated in the trial court for coordinated proceedings but kept their separate identities under Practice Book § 9-5(c). The complaint in the second action asserted only a single count by the Estate, which was disposed of by Judge Tyma's summary judgment decision. Thus, there is a final judgment on the entire complaint in the second action, and the appeal of that judgment in AC 37821 is properly before this Court.

Twenty-third Count – Assault

Stricken by Judge Lee

Twenty-fourth Count – Battery

Stricken by Judge Lee

Twenty-fifth Count – Right to privacy

Stricken by Judge Lee

Twenty-sixth Count – Medical malpractice (Conn. Gen. Stat. § 52-555)

Still pending in trial court

Clarence Marsala in his individual capacity

First Count – Negligent infliction of emotional distress

Stricken by Judge Lee

Seventh Count – Intentional infliction of emotional distress

Summary judgment for defendant by Judge Tyma

Thirteenth Count – Connecticut Unfair Trade Practices Act

Stricken by Judge Lee

Twenty-second Count – Loss of consortium [wrongful death] (Conn. Gen. Stat. § 52-555)

Still pending in trial court

Twenty-seventh Count – Loss of consortium [medical malpractice] (Conn. Gen. Stat. § 52-555)

Still pending in trial court

Michael Marsala

Second Count – Negligent infliction of emotional distress

Stricken by Judge Lee

Eighth Count – Intentional infliction of emotional distress

Summary judgment for defendant by Judge Tyma

Fourteenth Count – Connecticut Unfair Trade Practices Act

Stricken by Judge Lee

Gary Marsala

Third Count – Negligent infliction of emotional distress

Stricken by Judge Lee

Ninth Count – Intentional infliction of emotional distress

Summary judgment for defendant by Judge Tyma

Fifteenth Count – Connecticut Unfair Trade Practices Act

Stricken by Judge Lee

Tracey Marsala

Fourth Count – Negligent infliction of emotional distress

Stricken by Judge Lee

Tenth Count – Intentional infliction of emotional distress

Summary judgment for defendant by Judge Tyma

Sixteenth Count – Connecticut Unfair Trade Practices Act

Stricken by Judge Lee

Kevin Marsala

Fifth Count – Negligent infliction of emotional distress

Stricken by Judge Lee

Eleventh Count – Intentional infliction of emotional distress

Summary judgment for defendant by Judge Tyma

Seventeenth Count – Connecticut Unfair Trade Practices Act

Stricken by Judge Lee

Randy Marsala

Sixth Count – Negligent infliction of emotional distress

Stricken by Judge Lee

Twelfth Count – Intentional infliction of emotional distress

Summary judgment for defendant by Judge Tyma

Eighteenth Count – Connecticut Unfair Trade Practices Act

Stricken by Judge Lee

To sum up, both the Estate (through its administrator Clarence Marsala) and Clarence Marsala individually have claims still pending in the trial court. The claims of the other plaintiffs have all been disposed of.

C. Legal Grounds for Motion

A party may appeal only from a final judgment in the trial court. *See* Conn. Gen. Stat. § 52-263; Practice Book § 61-1. "[A]ppeals to the Appellate Court or to this [Supreme] court must ordinarily await the rendering of a final judgment in the trial court." *Balf Co. v. Spera Construction Co.*, 222 Conn. 211, 212 (1992). Here, Clarence Marsala as administrator of the Estate and Clarence Marsala individually have *not* appealed from a final judgment. They have claims that remain pending in the trial court, including claims by the Estate for wrongful death and medical malpractice and claims by Clarence Marsala for loss of consortium. The appeal as to them must be dismissed in its entirety, and they must

await a final resolution of all of their claims before they can challenge the disposition of some of their claims on appeal.

The appeal can therefore only go forward only as to the claims of plaintiffs Michael, Gary, Tracey, Kevin, and Randy Marsala. Practice Book § 61-3 treats as a final judgment a court order that disposes of all claims by or against a party in a complaint.[2] Judge Tyma's summary judgment ruling disposed of the last remaining claims in the Complaint asserted by Michael, Gary, Tracey, Kevin, and Randy Marsala.[3] They are the only plaintiffs for which there is final judgment in the trial court.

This situation is analogous to *Decorso*, 118 Conn. App. at 621 n.10, where a plaintiff asserted claims against three defendants, two defendants obtained summary judgment on the remaining claims against them, the third defendant obtained only partial summary judgment, and the plaintiff appealed from the summary judgment ruling as to all three defendants. The defendant who had claims remaining against her in the trial court moved to dismiss the appeal as to herself, and the Appellate Court granted the motion, allowing the plaintiff's appeal to go forward only with respect to the two defendants for which the case was at an end in the trial court.

---

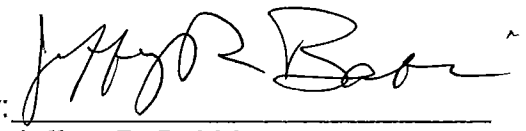
[2] Section 61-3 provides in relevant part: "A judgment disposing of only a part of a complaint, counterclaim, or cross complaint is a final judgment if that judgment disposes of all causes of action in that complaint, counterclaim, or cross complaint brought by or against a particular party or parties."

[3] Although no party moved for judgment on the counts previously stricken by Judge Lee, once Judge Tyma granted summary judgment on the remaining claims asserted by Clarence's and Helen's children, the lawsuit was at an end as to those plaintiffs and there was a final judgment that could be appealed. *See Decorso v. Calderaro*, 118 Conn. App. 617, 623-24 (2009).

As our Supreme Court has instructed, "[b]ecause the lack of a final judgment is a jurisdictional defect, we must dismiss the appeal." *Stroiney v. Crescent Lake Tax District*, 197 Conn. 82, 86 (1985) (footnote omitted).

WHEREFORE, the Hospital respectfully requests that the Court grant this motion and dismiss the appeal filed by Clarence Marsala on behalf of the Estate of Helen Marsala and on his own behalf.

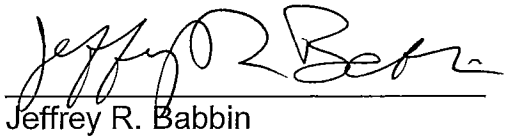
DEFENDANT-APPELLEE
YALE-NEW HAVEN HOSPITAL

By: 

Jeffrey R. Babbin
Wiggin and Dana LLP
One Century Tower
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4400 (tel.)
(203) 782-2889 (fax)
Juris No. 67700

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with all of the provisions of the Connecticut Rules of Appellate Procedure § 66-3.

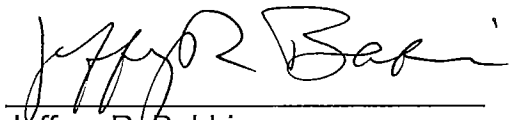


Jeffrey R. Babbin

CERTIFICATION

I hereby certify that on this 6th day of May, 2015, a copy of the foregoing motion and accompanying exhibits was served by first-class mail, postage prepaid, and by e-mail upon all counsel and pro se parties of record as follows:

Jeremy C. Virgil, Esq.
Zeldes, Needle & Cooper, P.C.
P.O. Box 1740
Bridgeport, CT 06601-1740
(203) 332-5775 (tel.)
(203) 333-1489 (fax)
jvirgil@znclaw.com



Jeffrey R. Babbin

487/13067/3266807.1

APPELLATE COURT

STATE OF CONNECTICUT

AC 37822

CLARENCE MARSALA ET AL.

V.

YALE NEW HAVEN HOSPITAL

JUNE 10, 2015

O R D E R

THE MOTION OF THE DEFENDANT-APPELLEE, FILED MAY 6, 2015, TO DISMISS APPEAL, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **O R D E R E D** GRANTED ONLY IN THAT THE APPEAL IS DISMISSED AS TO CLARENCE MARSALA INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF HELEN MARSALA.

BY THE COURT,

RENE L. ROBERTSON
TEMPORARY ASSISTANT CLERK-APPELLATE

NOTICE SENT: June 11, 2015
HON. THEODORE R. TYMA
WIGGIN & DANALLP
ZELDES, NEEDLE & COOPER
CLERK, MILFORD SUPERIOR COURT
AAN CV12-6010861-S
AAN CV12-6011711-S

143148

PETITIONS FOR CERTIFICATION
TO CONNECTICUT SUPREME COURT

Linda L. Morkan
Denis J. O'Malley

I. TECHNICAL REQUIREMENTS

1) Mandatory Contents of Petition: Practice Book § 84-2 & 84-5

- Questions Presented for Review
  - Specific, pithy, and in query form
  - Offer all possible viable grounds; Court may not allow you to brief issues they did not certify for review. *E.g.*, *Enrico Mangiafico v. Farmington*, 331 Conn. 404, 417 n.5 (2019) (declining to review issue outside certified question)

- Basis for Certification, such as, but not limited to, the following (again, be pithy):
  - Appellate Court has decided an issue of substance not yet addressed by the Supreme Court, or resolved one in a way "probably not in accord" with Supreme Court precedent
  - The ruling of the Appellate Court in this case conflicts with other Appellate Court decisions
  - The Appellate Court has itself so far departed from the accepted and usual course of judicial proceedings, or allowed such a departure by another court, such as to call for Supreme Court supervision
  - A question of great public importance is involved
  - Where the Appellate Court panel was divided or unable to agree upon a common ground of decision

- Summary of Facts & Proceedings
  - Must describe how action was resolved by the Appellate Court.
  - Give central, necessary facts only ~ save argument for next section and refer to Appellate Court decision (which will be attached in Appendix) for further explanation where possible.

- Argument
    - "Amplifying" reasons for granting extraordinary relief of certification
    - This is where you marry your "Questions Presented" with your "Basis for Certification."
    - For each proposed Question, explain what the Appellate Court did wrong, why it was harmful, and why it is important enough that the Supreme Court should care.
    - Be cognizant of the fact that the Supreme Court is a POLICY court and is most interested in cases where an Appellate Court error is significant to the area of law, or is otherwise going to create havoc.
    - This is first and foremost a PERSUASIVE document; providing information about your case is certainly necessary, but your objective at this juncture is to bait the hook (not win the appeal).

- Appendix
    - List of Parties to Appeal (including address, phone, etc.)
    - Full copy of opinion or order of the Appellate Court underlying petition
        - If the Appellate Court issued a summary decision, also include the pertinent Superior Court memorandum of decision
    - Copy of the order granting a motion for extension of time to file petition (if applicable)

2) Mechanics: Practice Book § 84-4 & 84-5

- 10 page maximum (exclusive of required Appendix)
    - Arial or Univers 12pt font only
    - Margins: 1 in. top & bottom, 1¼ left, ½ right

- Due 20 days from date Appellate Court decision was officially released (Prac. Bk. § 71-4), or from issuance of notice of Appellate Court order or judgment as applicable
    - 20 day period will cease running if a timely motion is filed in the Appellate Court which would render its decision ineffective (*i.e.,* Motion for Reconsideration, etc., Prac. Bk. § 71-5)
    - 20 day period will begin running anew from issuance of notice of resolution of such timely motion

- Fee, currently $75 (CGS § 52-259)
    - Unless fees were waived by Supreme Court or had been waived earlier in proceedings

- Electronically filed, copies sent to all certification parties per Prac. Bk. § 62-7(c), clerk will provide copies to appropriate Superior Court clerks

3) Miscellanea

- Every party must file their own petition for certification; the grant of your co-appellant's petition will not extend relief to your client (Prac. Bk. § 84-4(d))
- An extension of time to file a Petition is available (Prac. Bk. § 84-7)
- Cross-petition for certification can be filed within 10 days of the filing of a petition for certification; all other rules and procedures outlined regarding petitions apply
    - If you are a reluctant appellant ~ would not be considering a petition except for the fact someone else filed one ~ then consider filing a "conditional petition" asking the Court to take up your cross-request for review only if the original petition is going to be granted.
- Statement in Opposition to a petition must be filed within 10 days of the filing of the original petition (Prac. Bk. § 84-6)
    - No motion to dismiss a petition is permitted; whatever ground you have to oppose certification (including jurisdictional grounds) should be contained in the Statement in Opposition

II. MAKING YOUR PETITION WORK FOR YOU

1) Include an Introduction

- In his recent remarks to the CBA's Appellate Advocacy Section, Justice Mullins strongly recommended that petitions include a brief introduction (*see* attached samples)
- The Introduction should appear before the Questions Presented, summarize your argument, and map out the argument's main points
- Use the Introduction to orient the Court to the issue(s) presented in your case and provide the context to understand why review is necessary
- Tell your story

2) Draft a Clear, Concise Question

- Do not miss the forest for the trees. Justices have limited time to review each petition. Focus your petition with a clear, well-articulated issue and omit excessive detail when framing the question
- Your window of opportunity to persuade the Court to certify your case is small. Use your Introduction to tee up the Question Presented and use these two elements together to quickly and clearly illustrate for the Court the issues raised
- If it would require excessive factual details and a very lengthy question, do not force a construction of your question that would only allow an answer in your favor. Use your introduction to demonstrate the correct outcome so that your question can instead provide a clear, digestible legal issue for the Court to consider.

3) Be Strategic in Selecting Your Reason(s) for Certification

- Exercise discretion: Determine the central issue you want to present and provide only the basis or bases for certification that actually correspond to it.
- Including too many bases for certification in your petition can render each one less persuasive than it ought to be.
- You are not limited to the "Bases for Certification" listed in § 84-5(a)(2), some additional ideas include:
    - Requires existing Supreme Court precedent to be overruled
    - Involves an issue which has split the Superior Court bench
    - Involves a state constitutional issue not previously decided
    - Involves a US constitutional issue not yet settled by SCOTUS
    - Involves a difficult question of Indian law
    - Involves a difficult or unusual question of statutory interpretation or of the Code of Evidence

4) Give the Court the Facts It Needs

- Practice Book § 84-5(a)(3) requires that your petition include a "*summary* of the case containing the facts *material* to the consideration of the questions presented" (emphasis added).
- Read this literally and approach the Court for what it is: a new audience. Give the Court what it will need to understand the question presented and to determine whether the question warrants certification, but do not provide so much factual detail as to distract the Court from the question or questions left to be decided on.

5) Give the Court the Issue It Wants

- Treat the Supreme Court as a policy court rather than an error-correcting court. Your petition should demonstrate how the Appellate Court's mistake will not just affect your client but also future litigants and the judicial system in general.
- In interviews conducted by the Appellate Advocacy Section (*see* "Judicial Interview Project" link on the Appellate Advocacy Section website), several current and past members of the Court expressed a preference to deny petitions that fail to demonstrate how the Appellate Court's decision could affect other cases if left uncorrected.
- The late Justice David M. Borden summarized this view well: "[T]here are some cases where you could say, 'Well, I think this is wrong,' but it's so fact specific it's not significant enough to take cert on; on the other hand, it's wrong and the way the court has interpreted the statute or articulated a rule of evidence, it's going to have its ripple effects, its consequences on the trial court and it will not be good." (Interview with Justice David M. Borden (July 1, 2009) at 62). Justice Borden's comments should highlight the danger of bogging your petition down with anything but the most critical, material facts of the case.
- Senior Justice Christine S. Vertefuille described her view similarly: "Is this an issue that is of significance beyond this particular case or is it just an issue about the trial in this case and the facts that were found in this case? If it's case specific, it's not very likely that we're going to grant certification; there's no point to it." (Interview with Justice Christine S. Vertefeuille (December 11, 2008) at 52-53). Here again, petitioners should bear in mind the priority of legal issues with the potential to affect other cases rather than the specific way in which the facts of the case at hand should have compelled a different result in the Appellate Court.

A.C. DOCKET NO.: 37307

(Superior Court Docket No.: HHD-CV11-6025680-S)

C. ANDREW RILEY Appellee	:	STATE OF CONNECTICUT
v.	:	
	:	SUPREME COURT
THE TRAVELERS HOME AND MARINE INSURANCE CO. Appellant	:	JUNE 12, 2017

PETITION FOR CERTIFICATION

Pursuant to § 84-1 of the Practice Book, the defendant-appellant, **The Travelers Home and Marine Insurance Co. ("Travelers")** respectfully petitions this Court to certify the decision of the Appellate Court reported at 173 Conn. App. 422 (2017) (App. A2 – A22).

Introduction

This Petition and the proceedings below arise from a dispute over insurance coverage for fire damage to Plaintiff Andrew Riley's home. After conducting an investigation into the cause and origin of the fire, Travelers concluded that Plaintiff had set the fire. Based on the results of its investigation, Travelers declined to provide coverage to Plaintiff. Plaintiff brought suit, alleging breach of contract (First Count) and the negligent infliction of emotional distress (Third Count).[1]

The only negligent act alleged in the Complaint was that Travelers did not conduct a reasonable investigation into the cause and origin of the fire.[2] At trial, however, Plaintiff presented no evidence in his case in chief regarding the particulars of Travelers' cause and origin investigation, nor did he present any evidence of the accepted standards for

---

[1] The Second Count of the Complaint, alleging a violation of General Statutes § 38a-323b, was stricken and played no part in the underlying proceedings.

[2] No one disputes that Plaintiff could not base his claim of negligent infliction of emotional distress on only the denial of his insurance claim. *See* App. at 14.

determining the cause and origin of a fire, or of accepted standards for distinguishing between an incendiary fire and an accidental fire.

Because Plaintiff had introduced no evidence of an unreasonable or inadequate investigation by Travelers, when he rested, Travelers moved for a directed verdict on the Third Count of the Complaint, the claim for negligent infliction of emotional distress. *See* Prac. Bk. § 16-37. The trial court deferred ruling on the motion. Travelers proceeded to introduce its own evidence.

The jury returned a verdict for Plaintiff on both the contract claim and the negligence claim. Thereafter, Travelers renewed its directed verdict motion, reiterating that, as a matter of law, the evidence presented in Plaintiff's case in chief was not sufficient to send the negligent infliction of emotional distress claim to a jury. The trial court – citing only to evidence Travelers had presented in its case in chief – denied the motion and entered judgment for Plaintiff. The Appellate Court concluded that, by electing to introduce its own evidence after the trial court deferred ruling on the motion for directed verdict, Travelers had waived the right to claim Plaintiff had not carried his burden of production on the Third Count, *e.g.* the "waiver rule."

Travelers respectfully submits that the application of the waiver rule in this case is incorrect and inconsistent with Connecticut law. *See* Prac. Bk. § 16-37, *infra* note 3. Not only has Connecticut never adopted the rule for use in civil cases generally, but its use in a case such as this (where multiple counts are pleaded in a complaint and affirmative defenses are pleaded in the answer) creates a Hobson's choice for defendants, requiring them to sacrifice one of their claims for the benefit of another. For example, in this case, to defend against the contract claim, Travelers had to prove its special defense that Plaintiff

caused the loss in question. Under the waiver rule, Travelers would be forced to choose between (a) immediately resting on both counts (and thereby surrender its right to defend against the contract claim) or (b) introduce its evidence in defense of the contract claim and run the risk that evidence would be used to fill the evidentiary gaps in Plaintiff's negligence claim. It is patently unfair to require a defendant to forgo putting on a defense against one claim in order to preserve its right to have Plaintiff meet his burden of production on another claim. Travelers urges this Court to accept review in this appeal, and resolve this important issue of first impression.

Questions Presented For Review:

1. In accordance with the plain language of Practice Book 16-37 that authorizes a trial court to reserve decision on "the legal questions raised by [a] motion for directed verdict], where the "legal questio[n] raised by [such a] motion" is whether Plaintiff has presented evidence in its own case in chief sufficient to send the case to a jury, should this Court decline to extend the waiver rule to civil cases?

2. If this Court elects to adopt the waiver rule, should its application be prohibited where a defendant is forced to choose between: (a) forgoing presenting any evidence in defense of not only the claim that is the subject of a motion for directed verdict but also other claims in the complaint or affirmative defenses; and (b) presenting evidence and risking having its own evidence used to fill an evidentiary gap in plaintiffs case?

Bases for Certification:

1. The Appellate Court has decided questions of substance not yet determined by this Court, with respect to the interpretation and application of Practice Book § 16-37, Prac. Bk. § 84-2(1);

2. The Appellate Court has decided questions of substance in a way not in accord with applicable decisions of this Court, Prac. Bk. § 84-2(1);

3. The Appellate Court's resolution of this matter conflicts with its resolution of similar issues in other Appellate Court decisions, Prac. Bk. §84-2(2);

4. The Appellate Court has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of supervision by this Court, Prac. Bk. § 84-2(3); and

5. A question of great public importance is involved, Prac. Bk. § 84-2(4).

Summary of the Case:

This case concerns a 2009 fire loss at Plaintiff's home, insured by Travelers. Although Pomfret's volunteer fire marshal determined that the fire was caused by an electrical fault, 6/3/14 PM Tr. at 74-75, Travelers' investigators were troubled by the presence of an open, tipped-over kerosene container in the room of origin, *id.* at 61-62, and determined that a thorough investigation was necessary. At its conclusion, Travelers determined that the fire was intentionally set, Plaintiff was involved, and Plaintiff had made material misrepresentations to Travelers during its investigation of the loss. Travelers sent letters to Plaintiff denying his own claim for benefits under the policy (Exs. 20 & 21), but Travelers paid benefits to Plaintiff's family under the "innocent co-insured" doctrine, compensating them for their damaged personal belongings and for the damage to the house itself. App1 at 215-16. These payments totaled $622,592.52. Ex. 347.

Plaintiff sued Travelers alleging a breach of contract and the negligent infliction of emotional distress based on Travelers' conduct during its investigation. (Complaint, Counts One and Three). In his case in chief, Plaintiff called seven witnesses, including two

purported fire experts. None of Plaintiff's witnesses discussed the particulars of Travelers' investigation, nor did they provide testimony regarding accepted standards for determining the cause and origin of a fire or accepted standards for distinguishing between an incendiary fire and an accidental fire.

When Plaintiff rested, Travelers moved for a directed verdict on Plaintiff's negligence claim. The basis of the motion was that Plaintiff had not introduced evidence capable of supporting a conclusion that Travelers conducted an unreasonable investigation; indeed, Plaintiff had not provided any evidence regarding Travelers' investigation whatsoever. App2 at 299-305. The trial court reserved decision on this motion. *Id.* at 305.

The jury returned a verdict in Plaintiff's favor on both the contract claim and the negligence claim, awarding $504,346.10 on Count One (breach of contract), and $1,000,000 on Count Three (negligent infliction of emotional distress). App1 at 191. Thereafter, Travelers filed its post-judgment motions, including a motion for judgment notwithstanding the verdict, renewing the earlier motion for directed verdict on the negligence claim. Plaintiff moved for an award pre-judgment interest. *Id.* at 195.

The trial court issued two memoranda of decision. Plaintiff's motion for interest was granted, and an award of 3% interest was added to the judgment. *Id.* at 208-14, 245. Travelers' motions were all denied. *Id.* at 215-43. The trial court did not address the waiver rule, but relied solely on the evidence Travelers presented in its case following its directed verdict motion to hold that Plaintiff satisfied his burden of proof. Travelers then appealed to the Appellate Court, challenging, *inter alia*, the trial court's denial of Travelers' directed verdict motion. Plaintiff cross-appealed, claiming error in the award of 3% interest.

Following oral argument, the Appellate Court (DiPentima, C.J., Sheldon & Bishop, Js.) issued its decision affirming the judgment of the trial court. On the directed verdict issue (the issue raised to this Court), the Appellate Court held that because Travelers did not rest after "unsuccessfully moving for a directed verdict" at the end of Plaintiff's case, and instead put on evidence in its own defense, Travelers was "precluded by the waiver rule from claiming that the trial court was limited in its review of [the evidence]." *Id.* at 11. In rejecting Travelers' claim of error, the Appellate Court erred in its recitation of the proceedings below; Travelers had not "unsuccessfully" moved for a directed verdict; the trial court had deferred its ruling. In its opinion, the Appellate Court did not discuss the legal arguments Travelers raised and instead relied on precedent where the parties did not contest the application of the waiver rule.

Argument:

Travelers now seeks certification from this Court on a the question whether the trial court, in ruling on Travelers' motion for directed verdict, which alleged that Plaintiff had not carried his burden of production on his claim of negligent infliction of emotional distress, should have considered only the evidence introduced by Plaintiff in his case in chief. For all of the following reasons, Travelers urges this Court to accept this matter for review.

A. The Appellate Court Applied The Incorrect Standard Of Review: Whether Travelers was entitled to a directed verdict on the Third Count presents a pure question of law. *Haynes v. City of Middletown*, 314 Conn. 303, 311-12 (2014). The Appellate Court, however, consolidated the first and third issues briefed by Travelers, and then treated both issues as if they involved only a question of the sufficiency of the evidence. App. at 9-10. This was error.

B. The Appellate Court Misunderstood What Happened Below: The Appellate Court applied the "waiver rule" after noting that Travelers had "unsuccessfully mov[ed] for a directed verdict after Plaintiff rested." App. at 11. This is incorrect and is an error of some magnitude. As the Appellate Court acknowledged in its own recitation of the facts, the trial court reserved its right to decide Travelers' motion; it did not deny the motion initially. App. at 9. This fact plays a critical role in Travelers' appellate analysis, and is one of the features that distinguishes civil practice in Connecticut from criminal practice as respects such motions. *See infra.*

C. The Appellate Court's Application of the Waiver Rule Is Contrary To The Express Language of Practice Book § 16-37: A significant part of Travelers' appellate analysis centered on the fact that our Practice Book was amended in 1978 to allow – for the first time – defendants to make a motion for directed verdict at the end of a plaintiff's case. Prac. Bk. § 16-37.[3] This revision was intended to permit defendants to claim that a plaintiff had not provided sufficient evidence to prove the elements of its claim, and to have the trial court rule on that motion based only on the evidence in the record at that time. The rule clearly contemplates that, when a court declines to rule on a legal issue raised in a defendant's motion for directed verdict and the jury later finds against the defendant, the

---

[3] Section 16-37 provides, in pertinent part (emphasis added):

> Whenever a motion for a directed verdict made . . . after the close of Plaintiff's case in chief is denied or <u>for any reason is not granted</u>, the judicial authority is deemed to have submitted the action to the jury <u>subject to a later determination of the legal questions raised by the motion</u>. . . . After the acceptance of a verdict and within the time state in Section 16-35 for filing a motion to set a verdict aside, a party who has moved for a directed verdict may move to have the verdict and any judgment rendered thereon set aside and have judgment rendered <u>in accordance with his or her motion for a directed verdict</u> . . . .

defendant has a right to have the legal issue raised in the directed verdict motion (namely, whether the evidence presented in the plaintiff's case in chief was legally sufficient) decided by the court. Thus, the trial court's application of the waiver rule to defeat this purpose flies in the face of the explicit language of Practice Book § 16-37.

D. The Appellate Court Invoked The "Waiver Rule" Without Considering Whether It Applies In Connecticut Civil Practice: Travelers dedicated a significant portion of its opening brief to an analysis of the waiver rule's checkered history in Connecticut (including comparisons to how the corollary motion for judgment of acquittal is handled in Connecticut criminal cases). Inconsistent with the Appellate Court's cursory analysis, the doctrine has never been explicitly adopted for civil practice in this state.

The Appellate Court did not address Travelers' analysis, nor did it acknowledge that there are conflicting precedents from this Court. App. at 10-11. Instead, the Appellate Court incorrectly stated that the waiver rule was a longstanding feature of Connecticut procedure. It is not. Nor should it be a new feature, especially not under the circumstances presented here where there are multiple legal issues presented in both the Complaint and in the Answer and Special Defenses. *See infra*. Travelers respectfully asks this Court to undertake the legal analysis that did not occur in the Appellate Court.

E. The Authorities The Appellate Court Relies On Do Not Support Its Holding: To support its statement that the waiver rule is "well settled" in Connecticut, the Appellate Court cited to two cases, one of its own: *Elliott v. Larson*, 81 Conn. App. 468 (2004), and one from this Court: *State v. Perkins*, 271 Conn. 218 (2004). App. at 11. In its appellate briefs, Travelers had distinguished each of these cases. The *Elliott* decision, far from being precedential, states that no argument was articulated by the defendant in that case why the

waiver rule should not apply. 81 Conn. App. at 472. Contrast here where Travelers argued vociferously against the rule.

As for *Perkins*, our state criminal practice does not allow a trial court to defer ruling on the analogous motion for judgment of acquittal. In the one odd instance where the trial court mistakenly deferred, the Appellate Court applied the rule Travelers champions: that only the evidence introduced by the State could be considered:

> [B]ecause the court delayed ruling on the motion for a judgment of acquittal *without prejudice*, we conclude, as did the trial court, that to avoid prejudicing the defendant, only the evidence that was presented by the state in its case-in-chief is material to consideration of the defendant's claim of insufficient evidence and that no waiver of his right to have the motion decided solely on that evidence occurred by virtue of his decision to put on evidence when the court had reserved judgment on his motion. Accordingly, as we undertake appellate review of the denial of the motion for a judgment of acquittal, we will examine the legal sufficiency of the evidence at the close of the state's case-in-chief.

State v. Higgins, 74 Conn. App. 473, 481 (emphasis added), *cert. denied*, 262 Conn. 950.

F. The Waiver Rule Should Never Be Applied When A Defendant Is Defending Against Multiple Counts Or Has Raised Special Defenses: One of the distinguishing features of this case is that Travelers was defending against two counts of the Complaint, as well as having raised three Affirmative Defenses. The waiver rule requires a defendant who has moved for a directed verdict to make a choice when the motion is not granted: to itself rest and, in the event of an unfavorable verdict, pursue on appeal Plaintiff's failure to meet his burden, or to introduce evidence of its own and run the risk of plugging Plaintiff's evidentiary gaps. A problem arises, though, where a defendant is defending against more than just one count (but has moved for directed verdict on only one), or has affirmative claims of its own to establish. When such additional claims are taken into consideration, application of the waiver rule inevitably forces a defendant to choose between its right to

insist a plaintiff meet his burden and its right to defend against the additional claims or to present special defenses. If Travelers had opted to immediately rest after Plaintiff rested and the jury had thereafter returned a verdict for Plaintiff, Travelers would not have had a basis to argue on appeal that the evidence was insufficient on the contract claim. In order to avoid this inequitable situation, the rule in Connecticut should be that whenever the trial court decides a directed verdict motion, only the plaintiff's evidence should be considered.

CONCLUSION

For the foregoing reasons, the defendant Travelers respectfully requests certification. This appeal presents issues that have broad implications for all civil actions tried to a jury in this state. The Appellate Court's holding disregards the text of Practice Book § 16-37 and emasculates a defendant's right to move for a directed verdict based only on Plaintiff's evidence. Especially in cases where there are multiple counts and affirmative defenses, imposition of the waiver rule inequitably forces defendants to choose between their right to have Plaintiff prove its case and their right to defend themselves.

DEFENDANT- APPELLANT
THE TRAVELERS HOME AND MARINE INSURANCE COMPANY

By_____

Linda L. Morkan (lmorkan@rc.com)
Daniel J. Sullivan (dsullivan@rc.com)
ROBINSON & COLE LLP
280 Trumbull Street
Hartford, CT 06103
T: (860) 275-8200
F: (860) 275-8299
Juris No. 50604

CERTIFICATION

This is to certify that a copy of this petition was electronically filed on this the 12th day of June 2017 and that a copy was sent to all counsel and self-represented litigants of record as noted below.

Proloy K. Das Murtha Cullina LLP CityPlace I 185 Asylum Street Hartford CT 06103-3101 T: 860.240.6000 F: 860.240.6150 Juris No. 040248 pdas@murthalaw.com	Leonard M. Isaac Isaac Law Offices LLC 100 Grand Street, Suite 2H, P.O. Box 1470 Waterbury, CT 06702 T: 203.528.4317 F: 203.437.8153 Juris No. 433117 lisaac@isaacmaki.com
James Nugent Nugent & Bryant 234 Church Street – 7th Floor New Haven, CT 06510 T: 203.795.1111 F: 203.777.6442 Juris No. 043421 jim@nugentlawyers.com	

This is to further certify that this motion complies with all applicable rules of Appellate Procedure. *See* Prac. Bk. §§ 62-7, 66-2, 66-3, 84-4.

_____
Linda L. Morkan

INDEX TO APPENDIX

PARTIES TO APPEAL

Plaintiff:	C. Andrew Riley
Plaintiff's Trial Counsel:	Leonard M. Isaac Isaac Law Offices LLC 100 Grand Street, Suite 2H, P.O. Box 1470 Waterbury, CT 06702 T: 203.528.4317 F: 203.437.8153 Juris No. 433117 lisaac@isaacmaki.com James Nugent Nugent & Bryant 234 Church Street – 7th Floor New Haven, CT 06510 T: 203.795.1111 F: 203.777.6442 Juris No. 043421 jim@nugentlawyers.com
Plaintiff's Appellate Counsel	Proloy K. Das Murtha Cullina LLP CityPlace I 185 Asylum Street Hartford CT 06103-3101 T: 860.240.6000 F: 860.240.6150 Juris No. 040248 pdas@murthalaw.com
Defendant:	The Travelers Home & Marine Ins. Co.
Defendant's Trial & Appellate Counsel:	Linda L. Morkan Daniel J. Sullivan Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597 T: (860) 275-8219 F: (860) 275-8299 Juris No.: 050604

A.C. DOCKET NO.: 33458

(Superior Court Docket No.: HHD-CV09-5034411-S)

STATE OF CONNECTICUT DEPARTMENT OF TRANSPORTATION Appellant	:	STATE OF CONNECTICUT
v.	:	SUPREME COURT
WHITE OAK CORPORATION Appellee	:	MAY 20, 2013

PETITION FOR CERTIFICATION

Pursuant to § 84-1 of the Practice Book, the defendant **White Oak Corporation** hereby petitions this Court to certify for review the decision of the Appellate Court reported at 141 Conn. App. 738 (2013) (attached hereto at Appendix A1 – A52). The Appellate Court's decision runs contrary to the explicit direction of General Statutes § 4-61(e) that an arbitrator's decision "not [be] subject to review by any forum ... for errors of fact and law," and also runs contrary to the spirit of the law, which this Court has said should be applied so that "the scale tip[s] in favor of affording the contractor the right to pursue its claim." *C.R. Klewin Northeast, LLC v. State*, 299 Conn. 167, 183 (2010).

In this dispute spanning more than a decade (with more than 150 arbitration hearing days), involving thousands of documents and tens of thousands of man-hours, the Appellate Court held that the Arbitration Award must be vacated because White Oak had somehow unwittingly abandoned its claim for the return of liquidated damages assessed against it by the State. Relying on remarks made in open court by White Oak's counsel during an injunction proceeding, the Appellate Court held that White Oak was bound by these remarks even though the subject of the liquidated damages claim was never discussed, was not mentioned by the trial court in its written decision, was not raised by the State in later proceedings when White Oak actively pursued the return of the liquidated

damages, and was not raised by the State in its Application to Vacate.[1] In so holding, the Appellate Court has far departed from the "accepted and usual course of judicial proceedings," and has done so in a case of great public importance, as it concerns the law of public contracting. *See generally* Prac. Bk. § 84-2.

In *Klewin*, this Court recognized the legislative intent underlying General Statutes § 4-61 to offer a fair and functional dispute-resolution procedure to those who contract with the State for public works projects. The legislature waived the State's sovereign immunity and intentionally created a system that was not beholden to red tape and procedural requirements because "[t]he legislature apparently was concerned that requiring too much detail could impede contractors' rights to bring actions thereby interfering with the policy objectives of § 4-61." *Klewin*, 299 Conn. at 181.

Here, the spirit, if not the text, of *Klewin* has been flouted. By holding ~ at the end of ten long years of litigation, and arbitration, and more litigation, and then an appeal ~ that White Oak, a public works contractor, lost its right to seek the return of monies wrongfully and illegally withheld by the State based on comments made during an oral argument on a different topic, is the very height of placing form over substance. White Oak urges this Court to accept review of this matter and right the injustice that has been done.

Questions Presented For Review:

Did The Appellate Court Err In Reversing The Judgment Of The Superior Court Which Had Confirmed The Arbitration Award In The Defendant's Favor?

---

[1] White Oak uses the word "abandonment" to describe the Appellate Court's holding that the liquidated damages claim was lost, because it is unclear exactly what legal theory the Appellate Court was relying on. The State never alleged or briefed the theories of waiver, collateral estoppel, or res judicata, the usual suspects for claims of this nature.

Did The Arbitration Panel Correctly Conclude That White Oak Complied With General Statutes § 4-61 And Properly Presented The Claim For The Return Of The Liquidated Damages, Plus Interest?

Bases for Certification:

1. The Appellate Court has decided questions of substance not yet determined by this Court, with respect to General Statutes § 4-61 and the arbitration proceedings required thereunder;

2. The Appellate Court has decided questions of substance in a way probably not in accord with applicable decisions of this Court;

3. The decision of the Appellate Court is in conflict with other decisions of the Appellate Court;

4. The Appellate Court has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of supervision by this Court; and

5. A question of great public importance is involved.

Summary of the Case:

The proceedings underlying this appeal were long and tortuous.[2] White Oak and the State contracted in 1997 for the reconstruction of a bridge in Bridgeport. The relationship between the parties was rocky and the State assessed liquidated damages against White Oak. Eventually, White Oak was replaced as general contractor.

White Oak served a Notice of Claim on the State in early 2001, pursuant to General Statutes § 4-61. The Notice specifically asserts a claim for the recovery of the liquidated damages assessed by the State as a line item in the damages claim. Record ("R") at 13, App. at A53. White Oak later filed its Demand for Arbitration which included the claim that

---

[2] It is difficult in a ten-page petition for certification to do justice to the complicated factual underpinnings of this matter. White Oak would refer the Court to the fuller description of facts and proceedings set forth in its appellate brief at 3-10 (*see* App. at A98-103), and Judge Rittenband's decision, R. at 13-23 (*see* App. at A53-63).

DOT improperly and without justification assessed liquidated damages. *Id.* The Demand explicitly incorporated the Notice.[3]

More than eight months later, the State commenced an action to enjoin a different arbitration between the same parties. A lengthy oral argument was held before Judge Sheldon on that complaint in October 2002. A few weeks later (more than one year after the filing of White Oak's Demand), the State amended its complaint to add claims regarding the Bridgeport Notice and Demand; liquidated damages were not mentioned anywhere in that 18-Count Complaint. A second oral argument was held before Judge Sheldon in March 2003, but, again, the discussion never touched upon the issue of the liquidated damages assessed against White Oak in the Bridgeport project. When he finally issued his written decision in April 2006, denying the State the relief it sought, Judge Sheldon held that the Bridgeport Notice and Demand clearly set forth a claim for wrongful termination. *See* App. at A64-97. In addition, Judge Sheldon quoted directly from White Oak's Notice which included reference to the assessment of liquidated damages as a part of its wrongful termination claim:

> **III. WRONGFUL TERMINATION**
>
> By the end of 1999, it had become clear that the Project could not be completed until well after the original completion date due to the delays described in Section I above. Although the delays had been caused by the DOT's own actions, the DOT nonetheless continued to reject WOC's repeated requests for reasonable time extensions. On December 16, 1999, the DOT sent WOC a demand letter, in which the DOT inaccurately and wrongly blamed WOC for the lateness of the Project. In the letter, the DOT indicated that it would assess liquidated damages of $12,000.00 per day against WOC, even though such a heavy penalty, according to the DOT itself, might 'render White Oak financially incapable of

---

[3] Despite the Appellate Court's intimations to the contrary, *see, e.g.*, 141 Conn. App. at 786 n.29, the trial court held that the liquidated damages claim was contained in both the Notice and the Demand. *See* R. at 13, App. at A53. This was not a newly-raised claim.

> completing the project.' The letter claimed that WOC was in violation of the Contract . . .

App. at A89 (emphasis added). There is no other mention of White Oak's liquidated damages claim; the Court never held that it had been abandoned. The State did not appeal Judge Sheldon's ruling, and the arbitration continued for another two and a half years.

During the arbitration, both White Oak and the State offered evidence to the Panel on the issue of entitlement to liquidated damages (as the State was seeking a further award of liquidated damages against White Oak). At no time did the State object to White Oak's introduction of evidence on the ground that White Oak had abandoned its claim; nor did the State return to Judge Sheldon and ask that White Oak be enjoined from pursuing the claim.

The Arbitration Panel issued its Award in October 2009. While it found that White Oak had not been wrongfully terminated as the general contractor, the Panel did find that the operative liquidated damages clause constituted an unenforceable penalty, and ordered White Oak reimbursed. R. at 14. The State filed a Petition to Vacate the Award (which petition did not allege that White Oak abandoned the liquidated damages claim). R. at 5.

The Superior Court (Rittenband, J.) denied the State's Application to Vacate, and instead confirmed the Award. Judge Rittenband concluded that his review was deferential and that the issue was arbitrable:

> This Court finds that Judge Sheldon's decision as to jurisdiction and arbitrability is the law of the case and agrees with same. The State cannot now challenge the arbitrability or the jurisdiction of the panel when it did so seeking an injunction on that claim which was denied.

R. at 18-19, App. at A58-59. In reaching this holding, Judge Rittenband construed Judge Sheldon's ruling to hold that White Oak's wrongful discrimination claim "is based upon and

subsumes within it the entire, allegedly unreasonable course of conduct that lead up to it." R. at 18, App. at A58. The State appealed.

The Appellate Court reversed the decision of the Superior Court, holding that the Arbitration Panel could not award the return of the assessed liquidated damages because White Oak had abandoned that claim during oral arguments before Judge Sheldon by virtue of counsel's comments that White Oak was raising "a single claim of wrongful termination." 141 Conn App. at 747-48. Many of the comments the Court relied on were made in the first hearing which was held before the State challenged the arbitrability of the Bridgeport Award. *Id.* at 754-61; 788-89 (citing to October 2002 argument). And none of the comments qualify as an intentional relinquishment of a known right by White Oak.

Applying a plenary standard of review, the Appellate Court held that Judge Rittenband's adoption of Judge Sheldon's ruling as "law of the case" was legally proper, but then held that Judge Rittenband had misunderstood Judge Sheldon's decision.[4] Finally, the Appellate Court held that, based on its own independent review of the colloquies between White Oak's counsel and Judge Sheldon, White Oak had voluntarily abandoned its claim for the return of the liquidated damages, by repeatedly stating that it was raising a claim for wrongful termination. *Id.* at 761-62, 788. The Court never explained why the two were mutually exclusive. Significantly, the Court never examined the contents of White Oak's Notice and Demand to determine their compliance with General Statutes § 4-61.

---

[4] The Appellate Court similarly held that White Oak "misunderstood" Judge Sheldon's ruling. 141 Conn. App. at 781. White Oak interpreted Judge Sheldon's decision the same way that Judge Rittenband did, *i.e.*, that Judge Sheldon held that the Arbitration Panel had jurisdiction over White Oak's claims, including the liquidated damages claim which was subsumed into the wrongful termination claim. This is the holding that Judge Rittenband adopted as his own. R. at 18-19, App. at A58-59.

IV. Argument

White Oak asks this Court to review two discrete issues: (1) the errors made by the Appellate Court that led it to conclude that the Arbitration Award was defective; and (2) consideration of the merits of Judge Rittenband's confirmation of the Award.

A. The Appellate Court's Errors

The Appellate Court made a number of legal errors in reversing Judge Rittenband's ruling. Each of these errors played its own small part in the overall fabric of the Appellate Court's decision, and will be discussed briefly *seriatim*:

1. Invoked the Wrong Standard of Review: The Appellate Court consistently applied a de novo/plenary standard of review, rather than the entirely deferential standard required by General Statutes § 4-61(e), and arbitration awards generally. 141 Conn. App. at 751. Mistaking the issue as one involving sovereign immunity, the Appellate Court undertook to decide on a plenary basis whether the Arbitration Panel had jurisdiction over White Oak's liquidated damages claim.[5] Because the question whether White Oak waived or abandoned a claim during a conversation with the Court is at best a mixed question of fact and law (and certainly not a question of subject matter jurisdiction), plenary review was inappropriate here. The Appellate Court not only applied a wrong standard of review, it actually engaged in fact-finding. *See infra.*

2. Misperceived the Facts Regarding White Oak's Statements: The Appellate Court examined the colloquies between White Oak's counsel and Judge Sheldon, construing counsel's statements to mean that White Oak agreed to abandon all

---

[5] Although the Appellate Court stated that White Oak "was silent" on the issue, *see* 141 Conn. App. at 750 n.9, in actuality, White Oak dedicated nearly a third of its appellee's brief to the subject of the proper standard of review. *See* Appellee's Brief, pp. 9-24.

claims it had raised except for a claim of wrongful termination. Of course, there was no finding to this effect by Judge Sheldon, nor is there any evidence that the parties conducted themselves thereafter with an understanding that White Oak had so waived its claim. To the contrary, White Oak introduced evidence on the issue of liquidated damages to the Arbitration Panel. Moreover, for its finding of waiver, the Court principally relied on statements made by counsel in the October 2002 hearing which was held before the State amended its complaint to challenge the Bridgeport Notice and Demand. These remarks could not be construed to waive a claim that was not even before the Superior Court at the time. In substituting its own perceptions and presumptions for the actual findings in the record, the Appellate Court made itself a fact-finder, a role it is forbidden to play.

3. **Misapplied the Doctrine of Law of the Case**: Judge Rittenband analyzed Judge Sheldon's 2006 ruling and, construing it to hold that the Arbitration Panel had jurisdiction to proceed on all of White Oak's claims which had been "subsumed into" the wrongful termination claim, Judge Rittenband adopted it as the law of the case. R. at 18, App. at A58. The Appellate Court held that Judge Rittenband misconstrued Judge Sheldon's ruling. Then, inexplicably, the Appellate Court held that even though Judge Rittenband was mistaken about Judge Sheldon's ruling, White Oak was still bound under the law of the case doctrine. This is illogical and an impossible twisting of the doctrine. If Judge Sheldon's ruling was the opposite of what Judge Rittenband thought, the former never would have adopted it as his own. *Id.*

4. **Failed to Limit Consideration of Issues to Those Properly Raised:** As noted, the State never made a formal claim that White Oak waived/abandoned its liquidated damages claim, nor did the State ever assert that White Oak's conduct was

subject to a claim of collateral estoppel or res judicata, never setting forth the essential elements of these causes of action. Thus, the issue was never properly presented, and no evidence was ever adduced (or challenged) before a fact-finder to render a decision on whether any of these theories applied. The Appellate Court cannot engage in fact finding, nor does it take up issues in the first instance. The Appellate Court should have rejected the State's effort to claim that White Oak was bound by comments made in the injunction action; that was a matter for the Arbitration Panel or, perhaps, the Superior Court.

5. Overlooked the Effect of the State's Claim For Liquidated Damages: When it argued that the Arbitration Panel did not have jurisdiction over the liquidated damages claim, the State disregarded the fact that it had also asked the Panel to consider this issue. Clearly, then, the Panel had jurisdiction over this issue, because the State itself raised it (and the State is not limited by General Statutes § 4-61). The Appellate Court did not address this issue although it was briefed by White Oak.

B. Judge Rittenband's Ruling Should Be Affirmed

Once satisfied that the Appellate Court erred in holding that White Oak abandoned its claim for liquidated damages, this Court still needs to address the issue of whether the Superior Court properly confirmed the Arbitration Award in White Oak's favor.

White Oak contends that Judge Rittenband properly held that the Arbitration Award was within the scope of the submission to the Panel, and the Award is adequately supported by the evidence in the record. For all of the reasons stated by Judge Rittenband, the State's argument that White Oak could not recover on its claim of liquidated damages because the Notice and/or Demand did not comply with § 4-61 is not persuasive.

First, a deferential review of the issue should be applied. Although the sufficiency of the Notice and Demand raise a question of arbitrability, the State ~ by knowingly and intentionally deciding not to appeal Judge Sheldon's refusal to enjoin the arbitration and by encouraging the Arbitration Panel to themselves decide the issue of arbitrability ~ lost its right to claim a de novo determination of that issue. *Bacon Constr. Co. v. Department of Pub. Works*, 294 Conn. 695, 713-14 (2010). Second, even if de novo review is applied, the record here reveals that both the Notice and the Demand easily meet the requirements of § 4-61. This is especially so since this Court interprets these requirements liberally, so that meritorious claims are not improperly squelched. *Klewin*, 299 Conn. at 183.

CONCLUSION

For the foregoing reasons, the defendant respectfully requests this Court to grant certification. This appeal presents issues that have broad implications for those who enter into construction contracts with the State. The Appellate Court disregarded the mandate of General Statutes § 4-61(e) and, instead of allowing the arbitration process to resolve the sometimes thorny issues raised by construction disputes, took it upon itself to determine whether White Oak had successfully presented for resolution in arbitration the questions the Panel thought it had before it. This is not an issue of sovereign immunity; the Legislature already waived the State's immunity for all claims properly raised. This is a case about fairness and equity under § 4-61, which was enacted to protect the interests of those who would do business with the State. The Appellate Court's dissection of the proceedings here in order to support the State's desire to squirm out from under the Arbitration Award cannot be countenanced.

DEFENDANT- APPELLEES
WHITE OAK CORPORATION

By_____
Linda L. Morkan (lmorkan@rc.com)
Todd R. Regan (tregan@rc.com)
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
T: (860) 275-8200
F: (860) 275-8299
Juris No. 50604

CERTIFICATION

This is to certify that the foregoing statement in opposition complies with all provisions of Practice Book § 84-5, including the use of Arial font and 12-point type, and that a copy has been mailed, first class and postage prepaid, on this the 20th day of May 2013 to:

Lawrence Russ, Esq.
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Lawrence.russ@ct.gov
T: (860) 808-5090
F: (860) 808-5384

Howard K. Levine, Esq.
Carmody & Torrance
195 Church Street
P.O. Box 1950
New Haven, CT 06509-1950
hlevine@carmodylaw.com
T: (203) 784-3102
F: (203) 784-3199

_____
Linda L. Morkan

PARTIES TO APPEAL

Plaintiff:	State of Connecticut Dept. of Transportation 2800 Berlin Turnpike Newington, CT 06111
Plaintiff's Trial Counsel:	Howard K. Levine Carmody & Torrance LLP 195 Church Street P.O. Box 1950 New Haven, CT 06509 T: (203) 784-3102 F: (203) 784-3199 Lawrence Russ, Assistant Attorney General Office of the Attorney General 55 Elm Street P.O. Box 120 Hartford, CT 06141-10120 T: (860) 808-5090 F: (860) 808-5384
Plaintiff's Appellate Counsel	Same as Trial Counsel
Defendant:	White Oak Corporation 7 West Street Plainville CT 06062
Defendant's Trial Counsel	Raymond A. Garcia Garcia & Milas 44 Trumbull Street New Haven, CT 06510
Defendant's Appellate Counsel:	Linda L. Morkan Todd R. Regan Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597 T: (860) 275-8219 F: (860) 275-8299 Juris No.: 050604

INDEX TO APPENDIX