2-6. Proposal by Ms. Maureen M. Martowska to amend Sections 25-60 of the Practice Book. On May 15, 2017 Rules Committee tabled this matter to its September 2017 meeting and referred it to Jude Bozzuto for her review and consideration. On 9-18-17, RC referred matter to Judge Bozzuto for her consideration and comment by 10-16-17 meeting. On 10-16-17, RC tabled entire matter until J. Bozzuto gets back Committee on issue regarding articulation by court of basis for restricting access to report. On 2-5-18, J. Bozzuto requested that the RC postpone its consideration of this matter until the Appellate Court decides *Martowska v. White*, HHD-FA-05-401-7673; AC 39970. On 2-26-18, RC voted to postpone matter until *Martowska v. White* is decided. **On 7-31-18, the Appellate Court dismissed *Martowska v. White* for lack of jurisdiction. On 9-17-18, RC was given a report by counsel on the case status and the matter was referred to Judge Albis. Received comments from Judge Albis on 10-4-18. Received additional comments from Ms. Martowska on 10-8-18.**

STATE OF CONNECTICUT

SUPERIOR COURT

Michael A. Albis
Chief Administrative Judge
Family Division

1 COURT STREET
MIDDLETOWN, CT 06457
PHONE: (860) 343-6570
FAX: (860) 343-6589

October 4, 2018

Hon. Andrew J. McDonald
Chair of the Rules Committee of the Superior Court
Connecticut Supreme Court
231 Capitol Avenue
Hartford, CT 06106

RE: Maureen Martowska's request to revise Practice Book Section 25-60

Dear Justice McDonald:

It is my understanding that on September 17, 2018, the Rules Committee tabled the above matter in order to afford me the opportunity, as Chief Administrative Judge of the Family Division, to comment on the proposed revision. I thank the Rules Committee for the opportunity.

In particular, it is my understanding that you seek comment on the proposal to add language to Practice Book Section 25-60(b) regarding the denial or restriction of access to the report of an evaluation or study conducted by Family Services or a private evaluator. The proposed additional language would require a judge who orders the denial or restriction of access to the report (by a person otherwise entitled thereto under the rule) to provide "an articulated and reasonable basis for such denial or restriction."

As you know, when my predecessor, the Hon. Elizabeth A. Bozzuto, was previously asked to comment on the proposed revision, an appeal was pending in the Connecticut Appellate Court involving this issue. *Martowska* v. *White*, HHD-FA-05-4017673; AC 39970. As Judge Bozzuto suggested in her letter of February 5, 2018, the Rules Committee deferred consideration of the proposal pending the resolution of that appeal.

The appeal has now been decided with its dismissal by the Appellate Court for lack of subject matter jurisdiction on July 31, 2018. Due to the nature of the disposition, the decision in the appeal provides little substantive guidance on the question of the proposed revision. In dismissing the appeal, the Appellate Court noted that the case in which the evaluation had been filed had ended years before the request for the report was made and had no pending motions.

I understand and share the goal of having a clear standard for judicial decisions on questions of access to the reports covered by the rule. But I believe an appropriate standard already exists, namely the well-established "abuse of discretion" standard which has been applied to orders regarding the disclosure of such reports.[1] In my view, the proposed new language would unnecessarily change the existing standard of review and limit the discretion of the trial court in these sensitive matters.

I would be happy to respond further to any questions or concerns the Rules Committee may have regarding this proposal. Thank you again for the opportunity to provide input.

Respectfully yours,

Michael A. Albis
Chief Administrative Judge, Family Division

cc: Hon. Patrick L. Carroll III
Hon. Elizabeth Bozzuto
Attorney Joseph J. Del Ciampo

[1] See, e.g., *Martowska* v. *White*, 149 Conn. App. 314 (2014), an earlier appeal in the same case noted herein.

Del Ciampo, Joseph

From: Maureen Martowska <maureen.martowska@gmail.com>
Sent: Monday, October 08, 2018 3:58 PM
To: Del Ciampo, Joseph
Subject: Re: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8
Attachments: Ltr #2 to Rules Committee_Evaluations_Oct 2018.pdf; Ltr to Rules Committee_Evaluations_May 2017_0002 (1).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Mr. Del Ciampo,
I have attached my letter of Oct. 8, 2018 as well as my previous letter of May 11, 2017 regarding proposed changes to certain sections of P.B. 25-60, ref. item 1-8 of the Rules Committee's September 2018 agenda.

Please forward these items to Judge Albis and the entire Rules Committee for their thoughtful consideration at the upcoming October 2018 Rules Committee meeting.

Thank you for your assistance.
Maureen Martowska

On Tue, Sep 18, 2018 at 3:57 PM Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov> wrote:

Dear Ms. Martowska,

As regards Item 1-8 on the Rules Committee Agenda for September 17, 2018, the Committee tabled the matter to the next meeting in order to obtain comments from Judge Albis, Chief Administrative Judge, Family Division. Justice McDonald recused himself from the decision to table the matter.

As regards Item 1-7, please see attached. Thank you.

Joseph J. Del Ciampo

Director of Legal Services

Connecticut Judicial Branch

100 Washington Street, 3rd Floor

Hartford, CT 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120

Fax: (860) 566-3449

From: Maureen Martowska [mailto:maureen.martowska@gmail.com]
Sent: Tuesday, September 18, 2018 11:46 AM
To: Del Ciampo, Joseph
Subject: Fwd: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8

Mr. DelCiampo,

Could you also be so kind as to provide me with the email sent by Judge Adelman referenced in item 1-7 of the Rules Committee Agenda for Sept. 17, 2018, or direct me to where it is posted for public review.

Thanks,

Maureen Martowska

---------- Forwarded message ---------
From: **Maureen Martowska** <maureen.martowska@gmail.com>

Date: Tue, Sep 18, 2018 at 11:12 AM
Subject: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8
To: <Joseph.DelCiampo@jud.ct.gov>

Hi Mr. DelCiampo,

I noted that the Rules Committee took up agenda item 1-8 yesterday. Whereas the minutes have not been posted yet, can you please advise as to the outcome of that particular agenda item.

> **Item 1-8** - Proposal by Ms. Maureen M. Martowska to amend Sections 25-60 of the Practice Book. On 2-26-18, at the request of Judge Bozzuto, Chief Administrative Judge, Family Matters, the Rules Committee tabled the matter until Martowska v. White, AC 39970, was decided. (On 7-31-18, the Appellate Court dismissed that case for lack of jurisdiction over the Appeal.)

Thanks for your cooperation.

Maureen Martowska

Maureen M. Martowska
2 Edgewater Dr.
Lakeville, MA 02347

October 8, 2018

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

Dear Rules Committee members,

It has come to my attention that my previous letter of May 11, 2017 regarding proposed changes to P.B. §25-60(b) & (c), "*Evaluations, Studies, Family Services Mediation Reports and Family Services Conflict Resolution Reports*" regarding access to psych evaluations and their automatic admissibility is again up for your review after having been tabled for some time. I am writing to reaffirm my position previously stated in my May 11, 2017 letter (attached hereto).

In regards to P.B. §25-60(b), the proposed language reads:

> *(b) Any report of an evaluation or study . . . shall be provided to counsel of record, guardians ad litem, and self represented parties to the action, unless otherwise ordered by the judicial authority. [emphasis added]*

I have proposed adding language to the end of section (b) as follows:

> *No access or restriction of access to such evaluation shall be allowed without the judicial authority providing an articulated and reasonable basis for such denial and restriction.*

My proposed additional sentence to section (b) is important for the following reasons:

1) **Both substantive and procedural due process demand both parties should have equal access to court documents as well as an equal opportunity to prepare their case and mount a defense in their case.**
   When a parent is denied access to a key psych evaluation that might deny him/her access to the care and custody of his/her child in whole or in part due to the party's inability to review the evaluation and challenge its completeness, veracity, process, expertise, etc., it deprives the parent of fundamental 14th amendment due process rights that should be subject to strict scrutiny.
   NOTE: In my son's case, despite the psych evaluator directing the court to release the evaluation to both parties, despite having both a family court order and an appellate decision that ordered the release of his psych evaluation, and despite the fact that he paid thousands of dollars for that evaluation, the Hartford Family Court refused to release it to him without articulating their basis for such denial. Instead an "informal notation" placed on the psych evaluation is what prohibited his access to his evaluation. My son was instructed by the court that that informal notation could not be shared with him. Meanwhile, the opposing counsel had the legal ability to access that evaluation, regardless of whether or not she exercised that right. Such cases do exist and whether they are rare or not, there must me an articulated reasonable basis to deny a litigant access to the evaluation.

2) **Giving a judge unfettered discretion to deny access to an evaluation without articulating a reasonable basis for such denial puts vulnerable classes of litigants with mental and intellectual disabilities at heightened risk of becoming casualties to inherent biases and stigma that plague these vulnerable groups of litigants.**

3) **It deprives litigants of the ability to appeal unjustified and unreasonable denials of access to an evaluation when the judicial authority fails to articulate the basis for such denial.** One of the core requirements of any appeal is that the appellant must perfect the record. When a judge fails to articulate the grounds/basis for his depriving a party of access to an evaluation, it makes it impossible for a litigant to determine whether or not he/she has been unfairly discriminated on, especially in cases involving invisible disabilities such as mental illness. It basically ensures that no unwarranted denial of a psych evaluation can ever be challenged on appeal.

4) **Traditional notions of fair play suggest that all parties have a right to review the evidence either for or against them.**

5) **It protects a vulnerable population of litigants, both those with perceived or real mental, intellectual, or cognitive disabilities from undeserved biases and discrimination precluding them from meaningful participation in preparation and defense of their own cases as a result of very real stigma**

In regards to P.B. §25-60(c), the proposed language reads

> *(c) Any report of an evaluation or study prepared pursuant to Section 25-60A or Section 25-61 shall be admissible in evidence provided the author of the report is available for cross examination.*

I disagree with this new section in that it allows for the automatic admissibility of psych evaluations. I anticipate this section will lead to much rubberstamping by overburdened judicial resources without sufficient inquiry as to the admissibility of the evidence at all. This again violates the parties' rights of due process and would appear to be violative of the Rules of Evidence that were established for the purpose of ensuring the trustworthiness/reliability of evidence based on certain standards, including Daubert standards for threshold admissibility of scientific evidence (reference pg 2 of my May 11, 2017 letter). In *State v Porter*, 241 Conn. 57, 694 A.2d 1262 (1997), the CT supreme court decided the evidentiary standard to be implemented in CT, stating:

> We conclude that Daubert provides the proper threshold standard for the admissibility of scientific evidence in Connecticut. *Id.* at 752.
>
> In addition, we believe it is proper for trial judges to serve as gatekeepers for scientific evidence because a relevance standard of admissibility inherently involves an assessment of the validity of the proffered evidence. *Id.* at 749.
>
> It is important to remember that Daubert only provides a threshold inquiry into the admissibility of scientific evidence. Even evidence that has met the Daubert inquiry into its methodological

validity, and thus has been shown to have some probative value, may be excluded for failure to satisfy other evidentiary rules. *Id.* at 757.

Only by being knowledgeable, in at least a basic way, about the issues surrounding the scientific evidence before them, can judges discharge their duties properly. Accordingly, Daubert, at its most fundamental level, merely directs "trial judges consciously [to] do what is in reality a basic task of a trial judge-ensure the reliability and relevance of evidence without causing confusion, prejudice or mistake." *Id.* at 758.

Thank you for your further consideration,

Maureen M. Martowska, J.D.
508-946-0767
Maureen.martowska@gmail.com

Member, Parent Empowering Parents (PEP) Advisory Board
Lurie Institute for Disability Policy
The Heller School for Social Policy and Management
Brandeis University, Waltham, MA

Member of MA Chapter of National Alliance of Mental Illness

Encl.

Maureen M. Martowska
2 Edgewater Dr.
Lakeville, MA 02347

May 11, 2017

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

Authorized for public disclosure.

Dear Rules Committee members,

I am writing to comment on the proposed changes to P.B. §25-60(b) & (c), "*Evaluations, Studies, Family Services Mediation Reports and Family Services Conflict Resolution Reports*" regarding access to psych evaluations and the automatic admissibility of such evaluations.

The proposed changes allow the evaluation to be released to the counsel of record, guardian ad litem, and pro se parties subject to the judicial authority's discretion. I believe the proposed change does not adequately protect the population of vulnerable pro se litigants with mental disabilities or suspected disabilities. Mental disability in and of itself is not a reason to deny access to a psych evaluation absent a well articulated and reasonable basis to do so.

If the proposed current wording were adopted, I feel that judicial discretion would give way to the stigma that mental illness often carries – that is that those litigants with mental illness are incapable of or need protection from reviewing their psych evaluations or are more prone to mishandling the information. I believe this section could be strengthened by adding the following:

> **(b) Any report of an evaluation or study . . . shall be provided to counsel of record, guardians ad litem, and self-represented parties to the action, unless otherwise ordered by the judicial authority. No denial or restriction of access to such evaluation shall be allowed without the judicial authority providing an articulated and reasonable basis for such denial or restriction. [*emphasis added*]**

Currently, my son has a case pending in the CT Appellate Court regarding the very matter P.B. §25-60 proposes to address regarding how evaluations are handled in the CT Family Court. Despite having two court decisions (one appellate case decision and one family court order that allowed for the immediate release of the psych evaluation to the parties, along with a cover letter by the

psych evaluator herself directing the court to distribute the evaluation to the parties and in fact supplying a copy for such distribution, the Hartford Family court nonetheless refused to release that evaluation. This was done despite my son's articulated legitimate basis for seeking review of such evaluation for the purpose of file preparation and/or possible negotiation with the other party. Still his request to have the same unrestricted access to the evaluation as a pro se party that counsel to the other party had was denied to my son. The presiding judge of the Hartford Family Court had placed an "informal notation" on the file to NOT allow my son, a pro se disabled litigant with ADA accommodations, to receive a copy of that evaluation that was conducted on both parties. I encourage you to review this case along with the current pending complaint with the Chief State Attorney's office regarding the mishandling of release of this evaluation and misrepresentations made by the presiding judge of the Hartford Family Court to the Judiciary Committee at a recent reappointment hearing.

Additionally, I feel that P.B. §25-60(c) which seeks to now permit automatic admissibility of psych evaluations violates the parties' rights of due process, as well as the Rules of Evidence.

P.B. §25-60 (c) in pertinent part states:

> **(c) Any report of an evaluation or study prepared pursuant to Section 25-60A or Section 25-61 shall be admissible in evidence provided the author of the report is available for cross-examination**

The Rules of Evidence ensure the trustworthiness of evidence by meeting certain standards, in particular the Daubert standard where laying the foundation to qualify experts and evidence applicable thereto ensures the trustworthiness of evidence so presented. To eliminate scrutiny and challenges by litigants to the psych evaluations – except on the "back end" - is tantamount to denial of substantive and procedural due process rights. It is a denial of a litigant's constitutional rights. It denies the scrutiny by the parties to challenge if:

> **(a)** the expert's (i.e., evaluator's) scientific, technical, or other specialized knowledge will help the trier of fact (the judge) to understand the evidence or to determine a fact in issue;
>
> **(b)** the evidence/testimony is based on sufficient facts or data;
>
> **(c)** the evaluation is the product of reliable principles and methods; and
>
> **(d)** the expert has reliably applied the principles and methods to the facts of the case.

Personal experience has taught me that there have been significant times psych evaluators have failed to follow professional standards and best practices. For instance, in my son's case, professional guidelines and best practices for Court-Appointed Therapists (CAT) versus Court-Involved Therapists (CIT) were often

not followed nor understood by the court, and often they failed to make the due diligent inquiries incumbent upon them under their professional and ethical code of conduct.

The current proposed change leaves it up to the judge to review and determine the admissibility of the evaluation upon receipt and to allow "back end" challenges after the court has deemed an evaluation admissible. This undermines the whole notion of due process. Judges are already overwhelmed in family courts, and my guess is that more often than not these psych evaluations will receive a "rubber stamp" by family court judges when it comes to admissibility.

AFCC and other organization's "*Model Standards of Practice*" for child custody evaluators have a step that ensures the evaluator first sits down with the parents to go over the final evaluation in order to cure any misstatements or errors. In one of the evaluations done with my son's case, that did not occur, yet I doubt a judge would have made that important inquiry. It seems somewhat incredible that judges will indeed make the necessary detailed review of these psych evaluations prior to deeming them admissible. Such review should include inquiries as suggested by the Justice Action Center's Best Practice Guide in the New York State Court System. See the following link:
http://www.nyls.edu/documents/justice-action-center/student_capstone_journal/cap12kellyetal.pdf

Unlike other states, it is my understanding that CT does not have "Appointment Orders" regarding education, training requirements, and experience, relative to psych evaluators, nor are their instructions to the evaluators as to their ability to make a decision on the ultimate issue of custody or visitation, or even requirements for the judge to clearly articulate the issues the court is trying to resolve and exactly what the court wants in the report with no ambiguity regarding whether or not the evaluator is to provide a final recommendation on custody or visitation.

In the past, judges have been subject to much scrutiny for their appointment of fellow AFCC (Association of Familial Conciliation Courts) associates/members that have included psych evaluators. The failure by the judiciary and court vendors to disclose their mutual association and financial interest with the AFCC (Association of Family Conciliation Courts) has led to an erosion of public trust and confidence. The AFCC is an international, multidisciplinary professional group of judges, lawyers, therapists, counselors, and social workers that offer professional education and training to their peers and other professionals. At times, the very same judges and GALs and family law counselors who are or have been members of this organization (including judges who have been on the Board of Directors of the AFCC) appoint or select other professionals that the court may deem necessary to the case. Typically, no disclosure of a conflict of interest or perceived conflict of interest has been disclosed to the parents. The **CT Committee on Judicial Ethics in their April 19, 2013 Informal Opinion #**

2013-15 (attached) unanimously stated that when a judicial official serves on the board of directors of a nonprofit organization that provides services to court-involved clients, and receives the majority of its funding from Judicial Branch contracts, that it is a conflict of interest and unethical. The potential for judges to give a "rubber stamp" to fellow AFCC-associated or aligned evaluators is a real concern.

In other states, there are Mental Health Professional Panels to assure the parties have access to qualified mental health professionals and to provide oversight on these vendors and the power to remove them.

I would appreciate your full consideration of the issues I have raised above.

Sincerely,

Maureen Martowska, J.D.

State of Connecticut Judicial Branch
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Supreme and Appellate Court
Case Detail

Supreme & Appellate Court Look-up Home | Printer Friendly Version | New Search | Judicial Home Page | Back

Case Information

AC 39970 MATTHEW MARTOWSKA v. KATHRYN R. WHITE **Status: Disposed**

Appeal Case Information

To receive an email when there is activity on this case, click here.

Date Filed:	12/29/2016	**Response to Docket Due Date:**	04/16/2018 Term 8
Appeal By:	Plaintiff	**Disposition Method:**	Opinion
Argued Date:	05/23/2018 02:00 PM	**Disposition Date:**	07/31/2018
Submitted on Briefs Date:		**Cite:**	183 CA 770 (2018) Web Opinion Rescript
Panel:	HON. BETHANY J. ALVORD HON. MICHAEL R. SHELDON HON. STUART D. BEAR	**Petition(s) For Certification:**	

Cross Appeal/Amended Appeal

Trial Court Case Information

Docket Number:	HHDFA054017673S		
Judgment For:	Plaintiff	**Court:**	JD COURTHOUSE AT HARTFORD **FA Only**
Trial Judge(s):	HON. JOSE A SUAREZ	**Judgment Date:**	12/06/2016
		Case Type:	CIVIL - CUSTODY APPLICATION

Party/Attorney or Self-Represented Information

	Trial Court Party Class	Appeal Party Class
MATTHEW MARTOWSKA Juris: 104083 O'CONNELL ATTMORE & MORRIS LLC Self Rep: MATTHEW MARTOWSKA	Plaintiff	Appellant
KATHRYN R WHITE Juris: 063006 DEVLIN PETERS & TARPEY LLC	Defendant	Appellee

Transcripts and Exhibits Exhibits Received By Court: 04/10/2018

Party	Transcripts Ordered	Estimated Delivery Date	Delivered To Party	Pages	Delivered To Court
MATTHEW MARTOWSKA	01/05/2017	01/06/2017	01/04/2017	10	02/07/2017

Preliminary Papers

Party Name	Preliminary Statement of Issues	Designation Contents of Record	Certificate re Transcript Received	Docketing Statement	PAC Statement	Draft Judgment File	Constitutionality Notice	Sealing Notice
MATTHEW MARTOWSKA	01/05/2017		01/05/2017	01/05/2017	01/05/2017		01/05/2017	

Briefs and Prepared Record Record Filed: 02/21/2017

	Type	Original Due Date	Due Date	Date Filed
MATTHEW MARTOWSKA Appellant	Brief	02/21/2017	11/08/2017	11/16/2017
KATHRYN R WHITE Appellee	Brief	12/18/2017	01/16/2018	01/16/2018
MATTHEW MARTOWSKA Appellant	Reply Brief	02/05/2018	02/26/2018	02/26/2018

Case Activity

Activity	Number	Date filed	Initiated By	Description	Action	Action Date	Notice Date
APPEAL	AC 39970	12/29/2016			Filed		

				Direct Appeal				
PRELIMINARY PAPER/APPEAL DOCUMENTS		12/30/2016		Correspondence from Court	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		1/4/2017		Appeal Transcript Order Form with Certificate of Completion	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		1/5/2017		Appeal Transcript Order Form	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		1/5/2017		Constitutionality Notice	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		1/5/2017		Docketing Statement	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		1/5/2017		Pre Argument Conference Statement	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		1/5/2017		Preliminary Statement of Issues	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		1/5/2017		Sealing Notice	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		1/9/2017		Return of Filing Notice	Filed			
MOTION FOR EXTENSION	AC 1632443	1/27/2017	Court	Appellant Brief Extension Date:	Granted	01/27/2017	1/27/2017	
ORDER	AC 1632443	1/27/2017		Clerk uploaded Order	Filed			
TC MOTION	AC 165307	2/3/2017	MATTHEW MARTOWSKA	Motion for Articulation (Trial Court Only)	Denied	02/27/2017	03/01/2017	
PRELIMINARY PAPER/APPEAL DOCUMENTS		2/3/2017		Appeal Transcript Filing Form to Accompany Transcripts and/or Land Use Regulations	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		2/3/2017		Appeal Transcript Order Form with Certificate of Completion	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		2/3/2017		Certificate Regarding Transcripts	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		2/3/2017		Certificate Regarding Transcripts	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		2/3/2017		Correspondence to Court	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		2/3/2017		Return of Filing Notice	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		2/3/2017		Withdrawal	Filed			
PRELIMINARY PAPER/APPEAL DOCUMENTS		2/21/2017		Appeal Transcript Filing Form to Accompany Transcripts and/or Land Use Regulations	Filed			
ORDER	AC 165307	3/1/2017		Clerk uploaded Order	Filed			
MOTION	AC 163627	3/8/2017	MATTHEW MARTOWSKA	Motion for Review	Other	05/24/2017	05/24/2017	
ORDER	AC 163627	5/24/2017		Clerk uploaded Order	Filed			
MOTION FOR EXTENSION	AC 1730568	8/25/2017	MATTHEW MARTOWSKA	Appellant Brief Extension Date:11/08/2017	Granted	08/31/2017	8/31/2017	
BRIEF		11/6/2017		Electronic version of Appendix	Rejected			
BRIEF		11/6/2017		Electronic version of Appendix	Rejected			
BRIEF		11/6/2017		Electronic version of Brief	Rejected			
BRIEF		11/7/2017						

				Electronic version of Appendix		
BRIEF		11/7/2017		Electronic version of Appendix		
BRIEF		11/7/2017		Electronic version of Appendix		
BRIEF		11/7/2017		Electronic version of Appendix		
BRIEF		11/7/2017		Electronic version of Appendix		
BRIEF		11/7/2017		Electronic version of Appendix	Rejected	
BRIEF		11/7/2017		Electronic version of Brief	Rejected	
PRELIMINARY PAPER/APPEAL DOCUMENTS		11/8/2017		Return of Filing Notice	Filed	
BRIEF		11/15/2017		Electronic version of Appendix		
BRIEF		11/15/2017		Electronic version of Brief		
MOTION FOR EXTENSION	AC 1731679	12/6/2017	KATHRYN R WHITE	Appellee Brief Extension Date:01/16/2018	Granted	12/12/2017 12/12/2017
OPPOSITION/RESPONSE/WITHDRAWAL	AC 1731679	12/11/2017		E-filed Opposition/Response/Withdrawal	Filed	
ORDER	AC 1731679	12/12/2017		Clerk uploaded Order	Filed	
BRIEF		1/16/2018		Electronic version of Brief		
MOTION FOR EXTENSION	AC 1732189	1/22/2018	MATTHEW MARTOWSKA	Other Extension Date:02/26/2018	Granted	01/29/2018 1/29/2018
BRIEF		2/26/2018		Electronic version of Brief		
PRELIMINARY PAPER/APPEAL DOCUMENTS		2/26/2018		Return of Filing Notice	Filed	
OPPOSITION/RESPONSE/WITHDRAWAL	AC 1731679	2/26/2018		E-filed Opposition/Response/Withdrawal	Filed	
PRELIMINARY PAPER/APPEAL DOCUMENTS		4/12/2018		Assignment Form (Response to Docket)	Filed	
DISPOSITION			Court	Opinion	Disposed 07/31/2018	
PRELIMINARY PAPER/APPEAL DOCUMENTS		7/31/2018		Rescript	Filed	

MATTHEW M. MARTOWSKA *v.* KATHRYN R. WHITE (AC 39970)

Alvord, Sheldon and Bear, Js.

Syllabus

The plaintiff filed an application seeking joint custody of the parties' minor child. After the trial court rendered judgment granting joint legal custody to the parties and visitation rights to the plaintiff, the plaintiff filed a motion seeking enforcement of certain visitation orders contained in the court's decision. As part of an agreement to resolve that motion, the parties agreed to undergo a psychological evaluation, which was filed with the court. Thereafter, the plaintiff sought a copy of the evaluation to use in an unrelated proceeding in Massachusetts. Subsequently, the court issued an order permitting the plaintiff to review the evaluation in the clerk's office but did not allow the plaintiff to have a copy of the evaluation or use its information in any other action. The plaintiff then appealed to this court, claiming, inter alia, that the court erred in restricting his ability to review the psychological evaluation and that the restriction violated his due process and equal protection rights. *Held* that this court lacked jurisdiction over the plaintiff's appeal, as the postjudgment discovery order from which the plaintiff appealed was not a final judgment; it is well established that interlocutory rulings on motions related to discovery generally are not immediately appealable, and the trial court's order did not satisfy either of the prongs of the test set forth in *State* v. *Curcio* (191 Conn. 27) that governs when an interlocutory order is appealable, as the plaintiff sought the release of a copy of a document prepared in the context of a custody action that no longer was pending and, thus, the resolution of the issue did not constitute a separate and distinct proceeding, and no presently existing right of the plaintiff had been concluded by the court's order prohibiting release of a copy of the psychological evaluation.

Argued May 23—officially released July 31, 2018

Procedural History

Application for joint custody of the parties' minor child, and for other relief, brought to the Superior Court in the judicial district of Hartford and tried to the court, *Epstein, J.*; judgment granting, inter alia, joint legal custody to the parties and visitation rights to the plaintiff; thereafter, the parties filed a psychological evaluation with the court; subsequently, the court, *Suarez, J.*, ordered, inter alia, that the plaintiff could review but not obtain a copy of the psychological evaluation, and the plaintiff appealed to this court. *Appeal dismissed.*

Matthew M. Martowska, self-represented, the appellant (plaintiff).

Kerry A. Tarpey, for the appellee (defendant).

Opinion

PER CURIAM. The plaintiff, Matthew M. Martowska, appeals from the 2016 postjudgment order of the trial court that, although allowing the plaintiff to inspect a psychological evaluation performed in 2012 as part of a then pending proceeding regarding the parties' custody/visitation matter, prevented the plaintiff from obtaining a copy of the evaluation. On appeal, the plaintiff raises a number of claims regarding the court's order prohibiting the release of a copy of the 2012 evaluation.[1] We conclude that the postjudgment order at issue is not a final judgment. Accordingly, we dismiss this appeal for lack of subject matter jurisdiction.

Many of the underlying facts and lengthy procedural history of this case are not relevant to the issues on appeal. Accordingly, we provide only the facts and history pertinent to our discussion, some of which are set forth in this court's decision in *Martowska* v. *White*, 149 Conn. App. 314, 87 A.3d 1201 (2014). The plaintiff and the defendant, Kathryn R. White, are the parents of one minor child. The plaintiff filed a custody/visitation application in October, 2005. Id., 316. In 2007, the parties sought final custody and visitation orders, and the court issued a memorandum of decision on October 9, 2007. Id. On January 13, 2012, the plaintiff filed a motion seeking enforcement of visitation orders contained in the court's October, 2007 decision. Id., 317. As part of a February 7, 2012 agreement resolving that motion, the parties agreed to undergo a psychological evaluation "for custodial/parenting plan purposes." Id., 317–18. Both parties submitted to a psychological evaluation, and the evaluation was filed with the court. Id., 318 n.6. The defendant filed a motion to release the psychological evaluation, which the court granted over the plaintiff's objection on January 16, 2013. Id., 319. The court order was stayed pending an appeal to this court. Id. In a decision released April 8, 2014, this court affirmed the trial court's order releasing the psychological evaluation, and stated, in a footnote, that "[a]fter today, the evaluation can be released." Id., 324 n.14.

Between May, 2014, and December, 2016, no motions were filed in this custody/visitation matter in the trial court. The plaintiff and his family members did, however, engage in a series of communications with judges and staff of the Superior Court. In November and December, 2014, the plaintiff sent two letters to Delinda Walden of the Hartford Superior Court, seeking confirmation of the following: the plaintiff's mother was denied a copy of the psychological evaluation, neither party may obtain a copy of the evaluation, no third parties may access the evaluation, and Walden is unable to provide a copy of the evaluation for use in a different case pending in Massachusetts. On September 11, 2015, the plaintiff again wrote to Walden inquiring whether he could obtain a copy of the psychological evaluation,

and whether he could share the copy with Dr. Denise Mumley in connection with an order of a Massachusetts court. The plaintiff wrote that the psychological evaluation would *"be used in a different case unrelated to [the defendant]"* and further stated that the evaluation "will be shared initially with Dr. Mumley (as part of my evaluation) and thereafter with others." (Emphasis added.) Also on September 11, 2015, the plaintiff's mother sent an e-mail to Walden, inquiring whether the plaintiff would be permitted to obtain a copy of the evaluation. Walden responded in part that Judge Suarez had informed her that "we can only release the evaluation for purposes involving the case here – it is not available for any other purpose. Otherwise [the plaintiff] will need to file a motion."

On October 12, 2016, the plaintiff appeared at the Superior Court to review the 2012 psychological evaluation. According to the plaintiff, he was denied access to the evaluation. The following day, the plaintiff sent an e-mail to Kevin Diadomo of the Hartford Superior Court, in which he represented that his inquiry was "for the purpose of potentially bringing forward a motion involving the case here in CT, but I needed to review the [evaluation] before I could decide my plan of action." He requested that Diadomo share the e-mail with Judge Suarez. The plaintiff also sent letters to a number of judges of the Superior Court, including Judge Suarez.

The court, *Suarez, J.*, then scheduled a status conference in the matter for December 6, 2016. Following the status conference, the court issued an order providing that "[t]he plaintiff may review the psychological evaluation dated November 23, 2012, in the clerk's office. The plaintiff is reminded that the information cannot be used in any other action. He was reminded that he cannot have copies of any of the information."[2] It is from this order that the plaintiff appeals.

"Before examining the plaintiff's claims on appeal, we must first determine whether we have jurisdiction. It is axiomatic that the jurisdiction of this court is restricted to appeals from judgments that are final. General Statutes §§ 51-197a and 52-263; Practice Book § 61-1 . . . . Thus, as a general matter, an interlocutory ruling may not be appealed pending the final disposition of a case." (Citations omitted; internal quotation marks omitted.) *Parrotta* v. *Parrotta*, 119 Conn. App. 472, 475–76, 988 A.2d 383 (2010).

The plaintiff appeals from a discovery order prohibiting release of a copy of the psychological evaluation. "It is well established in our case law that interlocutory rulings on motions related to discovery generally are not immediately appealable." *Cunniffe* v. *Cunniffe*, 150 Conn. App. 419, 433, 91 A.3d 497, cert. denied, 314 Conn. 935, 102 A.3d 1112 (2014). As an interlocutory order, this order would be immediately appealable only if it met at least one prong of the two prong test articulated

by our Supreme Court in *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983). Under *Curcio*, "[a]n 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." Id.; see also *Radzik* v. *Connecticut Children's Medical Center*, 317 Conn. 313, 318, 118 A.3d 526 (2015) ("Discovery orders generally do not satisfy either *Curcio* exception, absent extraordinary circumstances. See, e.g., *Woodbury Knoll, LLC* v. *Shipman & Goodwin, LLP*, 305 Conn. 750, 757–58, 48 A.3d 16 (2012); *Abreu* v. *Leone*, 291 Conn. 332, 344, 968 A.2d 385 (2009).").

Our Supreme Court has elaborated on the application of the final judgment doctrine in the context of discovery disputes, recognizing the fact specific nature of such disputes. *Incardona* v. *Roer*, 309 Conn. 754, 760, 73 A.3d 686 (2013). "First, the court's focus in determining whether there is a final judgment is on the order immediately appealed, not [on] the underlying action that prompted the discovery dispute. . . . Second, determining whether an otherwise nonappealable discovery order may be appealed is a fact specific inquiry, and the court should treat each appeal accordingly. . . . Third, although the appellate final judgment rule is based partly on the policy against piecemeal appeals and the conservation of judicial resources . . . there [may be] a counterbalancing factor that militates against requiring a party to be held in contempt in order to bring an appeal from a discovery order." (Citations omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) Id., 760–61.

With these considerations in mind, we conclude that the trial court's order in the present case does not satisfy either of the exceptions set forth in *Curcio*. The first prong of *Curcio* "requires that the order being appealed from be severable from the central cause of action so that the main action can proceed independent of the ancillary proceeding. . . . If the interlocutory ruling is merely a step along the road to final judgment then it does not satisfy the first prong of *Curcio*." (Internal quotation marks omitted.) *McGuinness* v. *McGuinness*, 155 Conn. App. 273, 276–77, 108 A.3d 1181 (2015).

In the present case, the record reflects that the issue at hand involved the plaintiff seeking release of a copy of a document prepared in the context of a custody/visitation action, which no longer was pending. The resolution of that issue does not constitute a separate and distinct proceeding. In fact, the order arose not out of a separate motion regarding the psychological evaluation but rather out of multiple communications from the plaintiff to the court and its staff, years after the end of the proceeding for which the evaluation had been ordered. No motions were pending in the case at

the time of the multiple communications. The plaintiff represented during oral argument before this court that he sought release of a copy of the evaluation in order to determine what motions, if any, he should file. This court, however, has previously recognized in the discovery context that "[a] party to a pending case does not institute a separate and distinct proceeding merely by filing a petition for discovery or other relief that will be helpful in the preparation and prosecution of that case." (Internal quotation marks omitted.) *Radzik* v. *Connecticut Children's Medical Center*, 145 Conn. App. 668, 680, 77 A.3d 823 (2013) (concluding that defendants' appeal from order granting plaintiff's motion to compel electronic discovery did not satisfy first prong of *Curcio*), aff'd, 317 Conn. 313, 118 A.3d 526 (2015).

"Satisfaction of the second prong of the *Curcio* test requires the parties seeking to appeal to establish that the trial court's order threatens the preservation of a right already secured to them and that that right will be irretrievably lost and the [party] irreparably harmed unless they may immediately appeal. . . . An essential predicate to the applicability of this prong is the identification of jeopardy to [either] a statutory or constitutional right that the interlocutory appeal seeks to vindicate." (Citation omitted; internal quotation marks omitted.) *Cunniffe* v. *Cunniffe*, supra, 150 Conn. App. 431–32. No presently existing right of the plaintiff has been concluded by the court's order prohibiting release of a copy of the 2012 psychological evaluation. Thus, under *Curcio*, there is no final judgment and no basis on which to appeal the court's ruling. As a result, we lack jurisdiction over this appeal.

The appeal is dismissed.

[1] Specifically, the plaintiff claims that: (1) the court erred in restricting his ability to review the psychological evaluation, (2) such restriction violated his constitutional rights to due process and equal protection, (3) he was improperly denied access to the evaluation on the basis of an "informal notation on file", (4) the court improperly called a status conference in the absence of any pending motions in the case, and (5) the plaintiff's letters to the judges of the Superior Court did not constitute ex parte communications.

[2] The plaintiff filed a motion for articulation dated February 3, 2017, which was denied. The plaintiff thereafter filed a motion for review of the denial of the motion for articulation. This court granted review but denied the relief requested.

Proposal by Ms. Maureen M. Martowska to amend Sections 25-60 of the Practice Book regarding access to evaluations. On May 15, 2017 Rules Committee tabled this matter to its September 2017 meeting and referred it to Judge Bozzuto for her review and consideration. On 9-18-17, RC referred matter to Judge Bozzuto for her consideration and comment by 10-16-17 meeting. On 10-16-17, RC tabled matter. On 2-5-18, J. Bozzuto requested that the RC postpone its consideration of this matter until the Appellate Court decides *Martowska v. White*, HHD-FA-05-401-7673; AC 39970.

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STATE OF CONNECTICUT

SUPERIOR COURT

Elizabeth A. Bozzuto
Chief Administrative Judge
Family Division

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February 5, 2018

Justice Richard A. Robinson
Chairman of the Rules Committee
Supreme Court
231 Capitol Avenue
Hartford, CT 06106

RE: Maureen Martowska's request to revise P.B. Rule 25-60

Dear Justice Robinson:

As a follow up to the letter sent to me by Attorney Joseph J. Del Ciampo, dated October 19, 2017, please be advised that I, along with legal services, gave further consideration to Maureen Martowska's requested revision to P.B. Rule 25-60.

As previously mentioned in my letter to the Rules Committee dated October 12, 2017, Ms. Martowska's requested revision to P.B. Rule 25-60 is predicated upon an experience her son had in family court regarding access to an evaluation, filed under seal with the court pursuant to P.B. Rule 25-60. Upon thorough review of the trial court file, it appears clear that the nature and substance of Ms. Martowska request to the Rules Committee is part of an appeal brought by her son, which is currently pending before the Appellate Court.[1] The appeal is in briefing status, with no argument date set as of the date of this correspondence.

Given the pendency of this appeal, I believe it would be prudent to postpone further consideration by the rules committee of this requested revision until after disposition of the appeal. I thank you for allowing me to consider this proposed amendment and await your further direction.

Very truly yours,

Elizabeth A. Bozzuto
Chief Administrative Judge
Family Division

EAB/klm

Cc: Attorney Joseph J. Del Ciampo
Joseph DiTunno
Attorney Adam P. Mauriello

[1] *Matthew Martowska* v. *Kathryn R. White*: HHD-FA-05-401-7673 and A.C. 39970.

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October 19, 2017

Hon. Elizabeth A. Bozzuto
Chief Administrative Judge, Family Matters
90 Washington Street
Hartford, CT 06106

Dear Judge Bozzuto:

On October 16, 2017, the Rules Committee of the Superior Court considered your comments regarding the proposal submitted by Maureen Martowska relating to Section 25-60 (comments and proposal attached).

After discussion, the Rules Committee tabled consideration of Ms. Martowska's proposals until such time as you report back to the Committee on Ms. Martowska's first proposal which would require a judge to articulate the basis of any ruling that restricts access to an evaluation report or study under Section 25-60. Please let me know if you have any questions.

Very truly yours,

Joseph J. Del Ciampo
Counsel to the Rules Committee

JJD:pt
Attachment

c: Hon. Richard A. Robinson

2-2b
2-3b
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STATE OF CONNECTICUT

SUPERIOR COURT

Elizabeth A. Bozzuto
Chief Administrative Judge
Family Division

90 WASHINGTON STREET
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October 12, 2017

Justice Richard A. Robinson, Chair
Rules Committee of the Superior Court
Supreme Court
231 Capitol Ave
Hartford, CT 06106

Dear Justice Robinson:

I submit the following in response to comments provided to the Rules Committee relative to the new amendments to Practice Book Section 25-60, effective January 1, 2018:

Proposals by Ms. Maureen M. Martowska

Notwithstanding representations to the contrary, Ms. Martowska's comments do not relate to the recent amendments to P.B. § 25-60 that are scheduled to take effect on January 1, 2018. Instead, the comments are proposals for revisions to the current rule.

Ms. Martowska's first proposal would require a judge to articulate the basis of any ruling that restricts access to an evaluation report or study filed under P.B. § 25-60. I believe that the factual basis of this proposal, which appears to be drawn from a case involving Ms. Martowska's son in a family case, should be examined more closely to determine if the proposed rule change is for a legitimate and appropriate purpose. I intend to report back to the Committee with my findings in that regard.

Ms. Martowska's second proposal would revise P.B. § 25-60(c) to effectively require a Porter hearing as a prerequisite to the admissibility of reports in family cases. In my view, the existing rule provides adequate safeguards to address the concerns raised by Ms. Martowska regarding the qualifications and methods of the evaluator. In particular, P.B. § 25-60(c) provides that such reports are admissible only if the author is available for cross-examination. Therefore, a party may challenge the author's qualifications and methods prior to the report being admitted into evidence. In addition, a party may depose the author of the report in advance of trial to examine the author's qualifications and substance of the report. Respectfully, I do not see anything in Ms. Martowska's comments that would warrant the requested modification to P.B. § 25-60(c).

Proposals by Mr. Hector Morera

Mr. Morera's first proposal was considered previously by the Rules Committee, and is reflected in subsection (e) of the final rule.

Mr. Morera's second proposal would establish a new rule to limit the publication of what he characterizes as "damaging allegations in Family Court decisions, which were either proven to be false and/or unsubstantiated" in Memorandums of Decision (MODs). This proposal is without merit for several reasons. First, adequate safeguards exist to prevent publication of such allegations. The content of a MOD is a matter within the discretion of the judge; however, there is nothing to prevent a party from requesting that certain facts be omitted from an MOD before it is issued. Further, the Practice Book permits a party to move to seal an MOD after it is issued. In addition, the proposal would raise concerns about openness and transparency by preemptively limiting the kinds of information that can be published in an otherwise public court file. Finally, I disagree with Mr. Morera's contention that current practice regarding MODs conflicts with statutes relative to erased criminal records and non-conviction information. Those statutes deal with the disclosure of very narrowly defined categories of information relating to criminal matters. This proposal would affect a much broader and more subjective body of information, leading to difficulties in determining what would constitute "damaging information" for purposes of the rule.

Mr. Morera's third proposed practice book rule would require periodic judicial review of supervised visitation orders. I believe this to be unnecessary, as parties are free to make such requests of the court or move for modification of such orders at any time.

Comments from Attorney Sharon Dornfeld

Attorney Dornfeld's first comment raises concerns about the new language in P.B. § 25-60(d) that would permit access to family services files "to the extent permitted by any applicable authorization for release of information." According to Attorney Dornfeld, that language will result in less information being provided to the court because parties will be unwilling to provide an authorization for the opposing party to view such information. Attorney Dornfeld also comments that the new language conflicts with existing law regarding the disclosure of GAL files.

These concerns are misplaced because the new language is simply a codification of existing practices and procedures with respect to the sharing of information pursuant to a release. Family Services obtains information (such as medical, mental health and substance abuse information) held by third parties pursuant to Judicial Branch Form JD-CL-46, Authorization for Information. That form was designed to implement the requirements of state and federal privacy laws regarding the release and disclosure of sensitive information. The form states, among other things, that the person signing the

release gives permission for the information to be made available "for inspection...to the Court, to parties to the case, to attorneys in this case, and to any appointed Guardian Ad Litem." The new language in Section 25-60(d) does not in any way alter that form that has been in existence for years or the procedure by which Family Services obtains and shares such information.

Attorney Dornfeld's second comment is in opposition to the new language in Practice Book § 25-60(d) that permits the listed individuals to obtain copies of material in the Family Services file upon written certification that the copies are requested for legitimate purposes of trial preparation and/or proceedings. Attorney Dornfeld is concerned that such material may end up on social media, and therefore proposes that the file should be made available for review but not copying.

The issue of whether copies of material in Family Services' files should be provided to parties and counsel, including the attendant privacy concerns, was vetted extensively in the process of drafting the amendments to Section 25-60 and has been addressed on a case-by-case basis over the years as family relations officers were subpoenaed to deposition. After much discussion, it was determined that the language as drafted struck an appropriate balance between privacy concerns and the needs of litigants and attorneys to prepare for trial and effectively depose and cross-examine the authors of Family Services' reports and evaluations. I do not see anything in Attorney Dornfeld's comments that would provide a basis for modifying the rule.

The remainder of Attorney Dornfeld's comments concern hypothetical future rule changes and do not require further discussion at this time.

Thank you for your kind consideration. I hope you find these remarks helpful.

Respectfully Submitted,

Elizabeth A. Bozzuto
Chief Administrative Judge, Family Division

EAB/klm

Cc: Attorney Joseph J. Del Ciampo
Judge Patrick Carroll
Judge Elliot Solomon
Joseph DiTunno

Item #-5

2-2 a

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May 25, 2017

Hon. Elizabeth A. Bozzuto
Chief Administrative Judge, Family Division
90 Washington Street
Hartford, CT 06106

Dear Judge Bozzuto:

At its meeting on May 15, 2017, the Rules Committee of the Superior Court considered the attached proposal submitted by Ms. Maureen M. Martowska regarding additional revisions to Section 25-60 of the Practice Book.

After discussion, the Rules Committee decided to consider this proposal at its September 2017 meeting and to refer the item to you for your review and consideration. The next meeting of the Rules Committee is expected to take place in early September 2017.

Please let me know if you have any questions.

Very truly yours,

Joseph J. Del Ciampo
Counsel to the Rules Committee

JJD:pt
Attachment

Maureen M. Martowska
2 Edgewater Dr.
Lakeville, MA 02347

May 11, 2017

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

Authorized for public disclosure.

Dear Rules Committee members,

I am writing to comment on the proposed changes to P.B. §25-60(b) & (c), "*Evaluations, Studies, Family Services Mediation Reports and Family Services Conflict Resolution Reports*" regarding access to psych evaluations and the automatic admissibility of such evaluations.

The proposed changes allow the evaluation to be released to the counsel of record, guardian ad litem, and pro se parties subject to the judicial authority's discretion. I believe the proposed change does not adequately protect the population of vulnerable pro se litigants with mental disabilities or suspected disabilities. Mental disability in and of itself is not a reason to deny access to a psych evaluation absent a well articulated and reasonable basis to do so.

If the proposed current wording were adopted, I feel that judicial discretion would give way to the stigma that mental illness often carries – that is that those litigants with mental illness are incapable of or need protection from reviewing their psych evaluations or are more prone to mishandling the information. I believe this section could be strengthened by adding the following:

> **(b) Any report of an evaluation or study . . . shall be provided to counsel of record, guardians ad litem, and self-represented parties to the action, unless otherwise ordered by the judicial authority. No denial or restriction of access to such evaluation shall be allowed without the judicial authority providing an articulated and reasonable basis for such denial or restriction. *[emphasis added]***

Currently, my son has a case pending in the CT Appellate Court regarding the very matter P.B. §25-60 proposes to address regarding how evaluations are handled in the CT Family Court. Despite having two court decisions (one appellate case decision and one family court order that allowed for the immediate release of the psych evaluation to the parties, along with a cover letter by the

psych evaluator herself directing the court to distribute the evaluation to the parties and in fact supplying a copy for such distribution, the Hartford Family court nonetheless refused to release that evaluation. This was done despite my son's articulated legitimate basis for seeking review of such evaluation for the purpose of file preparation and/or possible negotiation with the other party. Still his request to have the same unrestricted access to the evaluation as a pro se party that counsel to the other party had was denied to my son. The presiding judge of the Hartford Family Court had placed an "informal notation" on the file to NOT allow my son, a pro se disabled litigant with ADA accommodations, to receive a copy of that evaluation that was conducted on both parties. I encourage you to review this case along with the current pending complaint with the Chief State Attorney's office regarding the mishandling of release of this evaluation and misrepresentations made by the presiding judge of the Hartford Family Court to the Judiciary Committee at a recent reappointment hearing.

Additionally, I feel that P.B. §25-60(c) which seeks to now permit automatic admissibility of psych evaluations violates the parties' rights of due process, as well as the Rules of Evidence.

P.B. §25-60 (c) in pertinent part states:

> **(c) Any report of an evaluation or study prepared pursuant to Section 25-60A or Section 25-61 shall be admissible in evidence provided the author of the report is available for cross-examination**

The Rules of Evidence ensure the trustworthiness of evidence by meeting certain standards, in particular the Daubert standard where laying the foundation to qualify experts and evidence applicable thereto ensures the trustworthiness of evidence so presented. To eliminate scrutiny and challenges by litigants to the psych evaluations – except on the "back end" - is tantamount to denial of substantive and procedural due process rights. It is a denial of a litigant's constitutional rights. It denies the scrutiny by the parties to challenge if:

> (a) the expert's (i.e., evaluator's) scientific, technical, or other specialized knowledge will help the trier of fact (the judge) to understand the evidence or to determine a fact in issue;
>
> (b) the evidence/testimony is based on sufficient facts or data;
>
> (c) the evaluation is the product of reliable principles and methods; and
>
> (d) the expert has reliably applied the principles and methods to the facts of the case.

Personal experience has taught me that there have been significant times psych evaluators have failed to follow professional standards and best practices. For instance, in my son's case, professional guidelines and best practices for Court-Appointed Therapists (CAT) versus Court-Involved Therapists (CIT) were often

not followed nor understood by the court, and often they failed to make the due diligent inquiries incumbent upon them under their professional and ethical code of conduct.

The current proposed change leaves it up to the judge to review and determine the admissibility of the evaluation upon receipt and to allow "back end" challenges after the court has deemed an evaluation admissible. This undermines the whole notion of due process. Judges are already overwhelmed in family courts, and my guess is that more often than not these psych evaluations will receive a "rubber stamp" by family court judges when it comes to admissibility.

AFCC and other organization's "*Model Standards of Practice*" for child custody evaluators have a step that ensures the evaluator first sits down with the parents to go over the final evaluation in order to cure any misstatements or errors. In one of the evaluations done with my son's case, that did not occur, yet I doubt a judge would have made that important inquiry. It seems somewhat incredible that judges will indeed make the necessary detailed review of these psych evaluations prior to deeming them admissible. Such review should include inquiries as suggested by the Justice Action Center's Best Practice Guide in the New York State Court System. See the following link:
http://www.nyls.edu/documents/justice-action-center/student_capstone_journal/cap12kellyetal.pdf

Unlike other states, it is my understanding that CT does not have "Appointment Orders" regarding education, training requirements, and experience, relative to psych evaluators, nor are their instructions to the evaluators as to their ability to make a decision on the ultimate issue of custody or visitation, or even requirements for the judge to clearly articulate the issues the court is trying to resolve and exactly what the court wants in the report with no ambiguity regarding whether or not the evaluator is to provide a final recommendation on custody or visitation.

In the past, judges have been subject to much scrutiny for their appointment of fellow AFCC (Association of Familial Conciliation Courts) associates/members that have included psych evaluators. The failure by the judiciary and court vendors to disclose their mutual association and financial interest with the AFCC (Association of Family Conciliation Courts) has led to an erosion of public trust and confidence. The AFCC is an international, multidisciplinary professional group of judges, lawyers, therapists, counselors, and social workers that offer professional education and training to their peers and other professionals. At times, the very same judges and GALs and family law counselors who are or have been members of this organization (including judges who have been on the Board of Directors of the AFCC) appoint or select other professionals that the court may deem necessary to the case. Typically, no disclosure of a conflict of interest or perceived conflict of interest has been disclosed to the parents. The **CT Committee on Judicial Ethics in their April 19, 2013 Informal Opinion #**

2013-15 (attached) unanimously stated that when a judicial official serves on the board of directors of a nonprofit organization that provides services to court-involved clients, and receives the majority of its funding from Judicial Branch contracts, that it is a conflict of interest and unethical. The potential for judges to give a "rubber stamp" to fellow AFCC-associated or aligned evaluators is a real concern.

In other states, there are Mental Health Professional Panels to assure the parties have access to qualified mental health professionals and to provide oversight on these vendors and the power to remove them.

I would appreciate your full consideration of the issues I have raised above.

Sincerely,

Maureen Hartnett, J.D.