Members

Task Force To Study Legal Disputes Involving the Care and Custody of Minor Children

Connecticut Legislature

c/o Legislative Judiciary Committee Office

Legislative Office Building/Office 2500

Hartford, CT 06106

November 6, 2013

Dear Task Force Members:

Like many other parents whose custody rights have been severed through the efforts by those who have been appointed by the courts as AMC's, GAL's and court appointed court evaluators, we hold hopes that the "invited" testimonial you have permitted to be provided to date by Attorney Sarah Stark Oldham will not be given inordinate weight in the early deliberations of recommendations to be made by this task force.

The focus on the November 7 hearing is to be centered on the role of AMC's in the custody evaluation process.

I submit this letter as a matter of public record to be posted as testimony.

We witnessed last week testimony from Attorney Sally Stark Oldham on the manner in which these GAL appointments have been ordered. Attorney Oldham provided one person's assessment that generally most GAL assignments do not result in "economically" devastating fees.

In addressing the issue of these court appointed "experts", Attorney Oldham made no mention that a judge first looks at the financial affidavits of the parents to determine the "affordability" of these appointments and that the attorneys are allowed access to that financial information.

Attorney Oldham made no mention of retainers and per hour fee schedules which the court orders the parties to pay, and sign contracts to pay, as an accumulated

amount. Attorney Oldham made no references to the statutory authority of the court to order the liquidation of "retirement funds", "college education funding" or the tax consequences of these ordered liquidations to the parents.

Attorney Oldham made no reference to the difference between a post judgment orders or pre-judgment orders for these appointments and the impact on the potential liquidation of the primary home of the children in order to pay these ordered fees.

At no point in time did the task force ask a question about whether GAL's advocates for joint legal and physical custody—one of the three assessment prongs of this task force's legislative mission.

Many of us have been watching the coverage of the hearings of this task force on CT-N either live on our local cable channel or on the internet replay.

We would encourage the task force hearings to continue to be cablecast as a matter of public interest.

This letter provides a specific recounting of my case in Stamford, FST FA 04 0201276S and the abuse of the limited statutory authority of an appointed AMC, Attorney Veronica Reich of firm of Bai, Pollock, Blueweiss and Mulcahey.

C.G.S. §46 (b)-129a(2) defines the role of the attorney for the minor child (AMC):

"The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child's wishes or position and that which the counsel for the child believes is in the best interest of the child, the court shall appoint a guardian ad litem for the child. The guardian ad litem shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children. In the event that a separate guardian ad litem is appointed, the person previously serving as both counsel and guardian ad litem for the child shall continue to serve as counsel for the child and a different person shall be appointed as guardian ad litem, unless the court for good cause also appoints a different person as counsel for the child. No person who has serve as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem.

In re: Tayquon H. 76 App. 693, 821 A. 796 (2003), the Appellate Court stated:

"It also is clear...that the obligation of the person appointed as counsel is shaped by the Rules of Professional Conduct, which in pertinent part, obligate counsel to abide by a client's decisions concerning the objectives of representations...It is when counsel

perceives that this obligation is in conflict with the child's best interest that counsel must bring that to the courts' attention, and the court, in turn, must appoint a separate guardian ad litem to protect and to promote the child's best interests in the process."

C.G.S. 46b-56a(b), modified in 2007 states:

"There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of the minor child where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage. If the court declines to enter an order awarding joint custody pursuant to this subsection, the court shall state in its decision the reasons for denial of an award of joint custody."

From June 29, 2005 until December 2, 2009, by agreement of the parents in a shared joint legal and physical custody plan in place signed on January 18, 2005, my children had in place the equal access to the love and devotion to both of their parents.

On December 2, 2009, Attorney Veronica Reich, without authority or consultation from either of her clients, filed an Ex Parte Motion for Order to Modify Custody without a hearing—despite a statutory obligation of Attorney Reich to abide by the Rules of Professional Conduct that involves providing children with the same rights of an adult—for advised consent.

The task force needs to consider this one fact (gleaned from a Freedom of Information request made of Michael Bowler of the Statewide Grievance Committee, which is required to investigate upon sworn applications, violations of the Code of Professional Conduct):

"Despite hundreds of complaints made against court appointed attorneys who serve as AMC's over the years, there has never been a finding of lawyer misconduct by the Statewide Grievance Committee for violating the "advised consent" rules on the representation of children in custodial matters."

In my case, FST FA 02 0401276S, after she was appointed by the family court at a fee of $425.00 per hour, Attorney Veronica Reich of Bai, Pollock, Blueweiss and Mulcahey, abused the limits of her statutory authority defined in C.G.S. §46b-129a(2) with malice.

Attorney Reich, over the course of her nearly two year appointment as an AMC, without regard for the respecting the objectives of the stated representations of her clients, engaged in the "malicious neglect" of the rights of her clients to "advised consent" at ages 13 and 15.

Attorney Reich filed motions in family courts in both Stamford and Middletown, Connecticut, which violated the Rules of Professional Conduct because she pursued a course of legal action to interfere with the established joint legal and physical custody rights of one parent, without any consultation or permission from her clients.

Despite the conflicted agenda of Attorney Reich with her clients objectives of representation, it wasn't until February 2010, that Attorney Reich applied to the court for the appointment of a Guardian Ad Litem. That motion for a GAL appointment was never marked "ready" for a hearing--- which violated the provisions in the General Statutes that required her to seek such an appointment.

The billing records of Attorney Reich demonstrate she had no consultations with her clients regarding the filing of Ex Parte Motions in December 2009 and February 2011.

Attorney Reich operated with shameless disregard for the economic and emotional impact on her clients during the course of her representations and made every effort to destroy the loving and devoted relationship of this father with his two children—with no accountability for her actions.

During her two years of misrepresentations of the well-articulated objectives of representations outlined by her clients in September 2009 (which were to leave the custody arrangement in place) Attorney Reich deemed her "lawyer-client confidentiality" relationship with her clients as superordinate to the "confidant" relationship this father had with his children.

Despite the filing in September 2010 of a highly detailed 57 page attorney complaint citing a litany of violations by Attorney Reich of the Rules of Professional Conduct with the Statewide Bar Counsel, the grievance against Attorney Reich was dismissed without a panel assignment.

There has been no enforcement of the Rules of Professional Conduct by the Statewide Bar Counsel—thus promoting the abuse by AMC's such as Attorney Reich of the mandates of C.G.S. §46b-129a(2).

Attorney Reich in May 2012 sought the incarceration of me for the refusal to pay the $154,066 (80%) of outstanding fees (which included a compound interest of 10% per annum) for the misrepresentation of the informed consent of my children for profit of her firm. Because this extorted payment was made from IRA holdings (not liquid assets as Attorney Reich suggested in her pleadings), the taxes owed on the distribution of these funds totaled another $50,000 in federal and state income taxes.

I was in jail for seven days in May 2012 until the extortion of payments was completed under the threat that the court would fine me $10,000 per week if the payments were not made.

Add in the $14,500 (one half of the fees) paid previously to Attorney Reich in 2009, the nearly $12,500 (one half) of fees assessed by Dr. Robson (at $350.00 per hour) and Dr. Frank Stoll (for psychological testing) and another $7,000 (half) to the GAL, Dr. Harry Adamakos, ($275.00 per hour) appointed in March 2011, and you can begin to understand that the system of family court injustice resembles "racketeering".

After investigating Dr. Kenneth Robson's credentials submitted to the court in his "curriculum vitae," it turned out that his "hospital appointments" with the Hartford Healthcare Corporation had been severed in 2004.

In addition to the above, I hired my own forensic psychiatrist, Dr. Douglas Anderson, who largely contested Dr. Robson's assessment, for $10,000.

Attorney Oldham suggested last week at your hearings that parents were the source of the conflicts resulting in fee escalations.

No, Attorney Oldham, perhaps you should review the Connecticut Law Tribune article posted by your partner Arnold Rutkin which suggested that the very spirit of the legal profession involves "conflict".

There would be little question, my home and entire lifetime retirement savings would have been liquidated to pay legal fees had I not chose self-representation in these post judgment modification hearings.

During the course of her representation, Attorney Reich amassed, combined fees from this one assignment, of nearly $250,000 in combined fees for both parents for herself, the court appointed psychiatrist/psychologist and the GAL.

Now the question is for this task force to consider: How did any of this advance the best interests of the children?

There has been no contact between Attorney Reich with my two children since she was "removed" at the end of the custody proceedings.

Couldn't these funds, which were extorted from these court appointees for their unmonitored and egregious fees, have been better served in educating my two children?

Couldn't these funds which are now in their pockets, have been better utilized in my children's ability to fund their their children's educations rather than court appointees who have no legal authority or involvement in children's lives after the age of 18?

It is the failure of our legislators in the judiciary committee to have held public hearings since 1969, concerning the Connecticut Practice Book Rules, which were required by C.G.S. §51-14, which assisted in the promotion of the growth of family court system filled with corrupt practitioners.

The unlawful seizure of family assets by these court practitioners, who have no accountability for the economic and emotional harm inflicted on parents and children in the State of Connecticut is unprecedented.

The suggestion by Attorney Oldham that parents are at the root cause of these escalating legal fees is refuted by reviewing the thousands of pages of transcripts, court motions, Ex Parte Motions for Order, denial of due process and equal protection rights of just my case file FST FA 04 0201276S.

This task force needs to look no further than the third prong of your legal review to Study Legal Disputes Involving the Care and Custody of Minor Childre .

This task force needs to focus its attention on the adoption of legal mandates in the State of Connecticut for any court appointed official to forge joint legal and physical custody parenting plan in the State of Connecticut--for all parents who represent no risk of harm of from physical or emotional abuse to their children.

By adopting such a legal reform, by filing motions for an appointment of a GAL or AMC (or any sua suponte order of the court), the courts and parents will be committing themselves to joint parenting plans as the outcome favorable for our children and bring an end to GAL's and AMC's profiting from the creation of custodial conflict for profit.

I look forward to watching the task force hearings and look forward to my three minutes to testify at a public hearing in January 2014.

Cordially,

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SC (No Docket Assignment)

FST FA 04 0201276S

NOWACKI, SUZANNE

V.

NOWACKI, MICHAEL

SUPREME COURT

STATE OF CONNECTICUT

NOVEMBER 4, 2011

MOTION/APPLICATION

TO

SUPREME COURT

FOR

DIRECT APPEAL

OF MEMORANDUM OF DECISION

OF JUDGE HARRY E. CALMAR OF OCTOBER 25, 2011

Defendant, as a self-represented party, as sanctioned by **C.G.S. 52-265 (a),** files this direct appeal to the Supreme Court. Defendant seeks a Supreme Court hearing to be immediately scheduled for oral argument by the Chief Justice of the Supreme Court. to contest the constitutionality of the writ of error issued as a **Memorandum of Decision** issued by Judge Harry E. Calmar of October 25, 2011.

The October 25, 2011, **Memorandum of Decision** is not supported by a single case law cite to justify the modification of an existing agreement that was serving in the best interests of the children from January 18, 2005 until it was unlawfully severed on December 2, 2009. In filing a series of Ex Parte Motions for Orders for custody

modification, the AMC abridged the multiple covenants of the Rules of Professional Conduct in filing such a motion. **C.G.S. 46b-129a (2)** states:

"The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct."

The Defendant seeks the Supreme Court to review the entire case file of misrepresentations of the two minor children by the AMC since she was appointed on July 2, 2009 and remove counsel's standing to ever represent children in the future for having abused the children's rights to proper representations to informed consent and to have their objectives of representation honored in all court proceedings lawful as a requisite of her appointment defined by the **C.G.S. 46b-129a (2).**

The AMC's billing records are a matter of evidence. The billing records clearly Indicate the children in September 2009 met with the AMC at both parent's homes. The trial court (Calmar, J.) and the AMC are required to operate within the lawful authority invested in them by the legislature. Instead both the AMC and the trial courts ignored the proper legislatively defined limitations to personal jurisdictional authority for an AMC.

The moving party on the custody modification was the Plaintiff, Suzanne Sullivan. At no point in time, did the Plaintiff supply evidence, testimony, or witnesses which her Attorney Kevin F. Collins called to support her motion for a custody change who were subjected to full rebuttal testimony.

. The AMC had no legislative authority or informed consent to have filed a motion for custody change on May 2, 2011, or on December 2, 2009 because her clients specifically directed her to maintain the existing custody plan in September 2009.

Attorney Reich has billed over $200,000 in legal fees which are being contested by the Defendant, because they were fraudulent representations of her limited responsibilities as defined by the legislature not her own hubris.

Instead, the AMC subverted the child's wishes and exercised an unlawful assertion of the AMC's will upon the children for supporting the Plaintiff's platforms for sole legal and physical custody. The court records of the Ex Parte filing, captures the AMC and the trial court (Schofield, J.) criticizing the Defendant for seeking validations from this two "intelligent" children who articulated their preferences for maintaining the existing parenting plan since January 18, 2005, serving the "best interests" standard.

The trial court (Calmar, J.) failed to note in his Memorandum of Decision that both children's grades declined, their attendance at religious services became almost non-existent, and that the Plaintiff interfered and willfully obstructed the restoration of the full parenting rights of the Defendant on March 4, 2011.

The trial court, in a biased and prejudicial manner that circumvented the Defendant's rights to a fair trial, refused every single motion filed by the Defendant from March 15, 2011 through incorrect characterization that the Defendant filed a Motion for Mistrial on October 4, 2011.

The Defendant and the trial court record, clearly indicates a motion for mistrial was lawfully filed on June 30, 2011, not October 5, 2011. Such misstatements of fact are among 35 factual errors made in the **Memorandum of Decision** (Calmar, J.)..

The Defendant challenges the factual basis of this **Memorandum of Decision** as writ of error and an act of an unconstitutional assertion of authority. The Defendant

states that the **Memorandum of Decision** is festooned with fraudulent representations of the procedural history of the case. The trial court (Calmar, J.) failed to mention he is a Defendant/Litigant in the federal suit for Constitutional and civil rights abuse or that Dr. Kenneth Robson, Dr. Frank Stoll and Dr. Harry Adamakos are named as litigants in the federal suit along with Attorney Kevin F. Collins and Attorney Veronica Reich.

The **Memorandum of Decision** is a fraudulent document prepared by a trial court (Calmar, J.) who at seven published meetings of the judges annual meetings, voted to adopt "unlawful" expansions of judicial authority which abridge "substantive" rights of parents to the love, care and companionship of their children. **Troxel v. Granville 530 U.S. 57, 68-69**, stated the limited authority of state courts to interfere with a parenting plan which was clearly operating in the children's best interests for more than five years:

"Accordingly, so long as a parent adequately cares for his or her children (i.e. is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."

There is simply no reference in the **Memorandum of Decision** to the five years of successful co-parenting engineered through the agreement of the parents to co-parent.

What is simply in this articulated decisions is that the Plaintiff, upon the issuance of the restoration of custody, wrote the following on March 9, 2011 to a trial court judge (Dennis, J.) to be read into the record:

"I am afraid that if Michael is allowed to contact me again, this pattern of behavior will begin immediately and cause me incredible emotional distress which could ultimately lead to a nervous breakdown"

The trial court (Calmar, J.) also failed to compare the testimony of Suzanne Sullivan to the documents in the evidence to measure the inconsistencies in the testimony of Suzanne Sullivan, the testimony of Tony Pavia, and the letter written June 6, 2011 to Dr. Harry Adamakos which was discrepant with sworn testimony delivered by the Plaintiff, which would validate the alleged "malignant narcissism" of the Plaintiff.

The court ordered both parties to communicate via my Family Wizard.com. The Defendant joined this service, the Plaintiff refused. Again, the facts which are omitted in this decision, and the conclusions reached by the trial court (Calmar, J.) of the Defendant's demeanor were not validly characterized as expressions of anger, but expressions of righteous indignation by the Defendant that a court could so violate the dignity of this citizen and this parent to his protected parenting rights through the assistance of a judge who is now under judicial grievances for his administrative errors.

The absence of the proper depiction of the adherence to the parenting agreement by the Defendant for five years received no articulation in the **Memorandum of Decision.** Instead, the report of Dr. Kenneth Robson failed to evaluate the evidence provided to him that the Plaintiff and her Attorney Kevin F. Collins and Attorney Veronica Reich engaged in obstructing the introduction of evidence concerning inheritance tax avoidance and the filing of fraudulent financial affidavits. The truth was never told by bi-furcating the case file and moving the financial matters to Stamford.

Noteworthy in its absence in the **Memorandum of Decision** is the reference to the automatic orders of the trial court issued by Judge Lynda Munro via Karen Franchi by email. These automatic orders, legally reversed the decision of the trial court

(Calmar, J.) and mandated full financial information to be supplied to the trial court, again creating administrative misunderstandings initiated by the use of email, which no permissible for use by self represented parties. The unlawful, one dimensional communications with the court clerk's office with only Attorney Reich and Attorney Collins, is magnified in the Memorandum of Decision which fraudulently stated the Defendant filed a Motion for Mistrial on October 5, 2011. That is just one of the 35 factual errors authored on October 25, 2011 by the trial court (Calmar, J.).

Now the trial court (Calmar, J.) my mentioning the issue of the Defendant's claims about fraudulent financial affidavits being filed by the Plaintiff, has now implicated himself in aiding and abetting a federal crime of tax avoidance..

Emails, transcripts and Dr. Adamakos notes which were submitted as evidence clearly substantiate the Defendant's claims set forth in this motion of modification of custody, directly refutes the trial court (Calmar, J.) assertions of having noted any contradictory evidence in the construction of this Memorandum of Decision which fraudulently states in the "carefully reviewed" all evidence "submitted by all parties".

The evidence in the trial court record, clearly reflects the AMC was **required** in September 2009 by covenants in C.G.S. 46b-129a (2) and the Rules of Professional Conduct to apply for a GAL in September 2009 and refused:

"When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person guardian ad litem for the child."

The procedural history of the **Memorandum of Decision**, fails to note the trial court (Malone, J.) allowed the GAL, Lacey Bernier, appointed by the court to be

removed on June 29, 2009. The trial court decision (Malone, J.) decision to remove the GAL, was a grievous error inasmuch as the GAL was an integral source for non-trial court based adjudications of parental disputes defined in the parenting plan.

The parenting plan adopted on January 18, 2005 and made an order of the court on June 29, 2005 called for the GAL to meet with both parties to resolve all disputes in order to keep the parties out of the court system. The promotion of conflict with the children's best interests, and an avaricious appetite for creating legal fees was **promoted** by the AMC who had just changed law firms and was determined to undermine the existing parenting plan, a pattern of conduct for Attorney Veronica Reich in other assignments as both GAL and AMC. The AMC has never represented the children's informed consent or the intelligently articulated representations of her clients as required by the Rules of Professional Conduct concerning informed consent and in the **C.G.S. 46b-129 a (2),** as previously cited.

This application for direct appeal is amply justified in such documented abridgments of the **C.G.S. 46b0129a (2)** by the AMC who was allowed to trample on this law and other case precedents which defined the limitations to her authority.

The Defendant clearly articulates in this legal pleading, that the Supreme Court itself has promoted the lack of accountability to the laws of the State of Connecticut which define the limited authority of these court appointments. The **Carruba v. Moskowitz (274 Conn. 533, 549, 877 A.2d 773 (2005) decision is not an impenetrable "immunity"** as defined in **Ireland v. Ireland 246 Conn. 413, 438-39, 717 A.2d 676 (1998):**

"In which we concluded that it was improper for and attorney appointed pursuant to 43b-54 to submit an unsolicited report to the court, supported only by his personal opinion, containing a conclusion as to the proper outcome of the case. In that context, although we recognized the principle that an attorney for the child should provide "independent representation of the child's interests", we concluded that, regarding the manner in

which an attorney for the minor child may present information to the court "such representation is limited to the type of representation enjoyed by unimpaired adults."

Therefore, since there has never been a disciplinary action involving an AMC which has been administered by the Statewide Bar Counsel, Attorney Veronica Reich is being sued in the U.S. District Court under the under the provisions which address "honest services fraud" as defined in **18 U.S.C. Section 1246** for the abuse of her legal discretion. Attorney Reich's limitations of authority were clearly defined by the unenforced **C.G.S. 46b-129a (2)**. She knowingly and willfully abused her limited authority and obstructed her responsibilities to self apply Title 42, Sections 1983, 1984, 1985, 1987, 1988 in filing multiple abridgments to the Defendant's rights to fair hearing. In doing so, the AMC clearly denied her clients their rights for fair hearings in submitting fraudulent representation in Ex Parte Motions for Order, honest representations of her client's informed consent defined by the Attorney's Oath **(C.G.S. 1-25)** in her unlawful abuse of **C.G.S. 46b-129a (2).** The attempts of the trial court (Calmar, J.) to salute fraud as a lawful representations must result in a nullity of **Memorandum of Decision.**

Hence, the Defendant has taken his case of "judicial and legal tyranny" to the federal courts and to the U.S. Senate Judiciary Committee seeking the appointment of a special prosecutor to be appointed through federal legislation to investigate this corruption of the protection of fundamental rights under the civil rights laws.

On August 8, 2011, this citizen/parent filed a federal complaint (**3:11-cv-01242 (SRU Michael Nowacki v. Governor Dannel Malloy et. al.)** and named preliminarily 143 Defendants and litigants. Included as defendants are employees at the tax payer funded public agencies in Connecticut, alleging widespread failures by these agencies

to enforce the laws of the State of Connecticut for Judicial Misconduct and under **Title 42, Sections 1983, 1985 (2)(3),1986, 1987, 1988 (a),** and seeking penalties be administered under **Title 42, Section 1995** to all public officials who have obstructed the rights of this citizen for proper protection of Constitutional and civil rights abridged by the **Memorandum of Decision and the proceedings conducted by the trial court (Calmar, J.) orchestrated between December 2010 and October 25, 2011.**

The abridgment since 1969 of by the Superior Court Judges of **C.G.S. 51-14** (which also mandated "hearings" by the legislature and the judiciary) resulted in the adoption and promulgation of rules of practice which "abridge, enlarge, or modify a substantive right or the jurisdiction of any of the courts" –actions prohibited by law.

C.G.S. 4-165 states in clear and unambiguous language if a public official acts in a "wanton", "neglectful" or "malicious" manner, and operates outside of their limited administrative authority "under the color of law" by the General Statutes *and the Constitution of the State of Connecticut, or engages in the passing of* "unconstitutional" laws, the "doctrine of sovereign immunity" does protect even judges from liability for damages to be collected both individually and as public officials.

Defendant asserts that the proceedings conducted by the trial court (Calmar, J.) violate **C.G.S. 4-165** because the Defendant was not permitted on May 19, 2011 to have a "compulsory process to call witnesses to his favor" which was guaranteed to him as a "defined right" in the court record of the "teleconference" hearing conducted on May 10, 2011. Article 1, Section 8 of Connecticut State Constitution **and** the Sixth Amendment of the U.S. Constitution protect such "compulsory rights".

Instead, the court (Calmar, J.) obstructed the Defendant's clearly articulated efforts for his handwritten writ of habeas corpus to be read into the court record of April 15, 2011. The court transcript of April 15, 2011, captures the trial court in muting the microphone of the Defendant after he started to read such a writ into the court record:

Page 3: MR. NOWACKI: Yes, your Honor. And your Honor I did not—

THE COURT: Thank you. You're confirming –

MR. NOWACKI: --consent to a video conference hearing. It is unconstitutional to remove a right for a defendant—

THE COURT: I suggest—

MR. NOWACKI; ---and ask that--

THE COURT—You pause for a moment.

MR. NOWACKI: --a writ of habeas corpus in front of the court to be present in the court.

THE COURT: I suggest you pause for a moment.

MR. NOWACKI: It is unconstitutional. Is there a legislative act sir that permits this?

THE COURT: I'm muting you sir.

The transcript reflects that the Defendant walked out of the unlawful proceeding, convened on April 15, 2011 or his consent would have been conferred. The trial court (Calmar, J.) continued a hearing which commenced at 10:03 until 11:51. The court appointed a counsel, Attorney Ronald Kunz, who failed to comply with the Defendant's request to ensure a writ of habeas corpus would allow the Defendant to represent himself in the hearing ordered for May 10, 2011. This kind of an obstruction of a fundamental Constitutional right for a writ of habeas corpus was referenced in the **Memorandum of Decision** as permissible practice by P.B. Rule 25-63. The Rules of Practice are not a series of rules that override an legislative edict that defined the right a writ of habeas corpus must be protected by federal and state constitutions as inviolate.

Such abuse of authority demands that the Supreme Court mandate an immediate appeal be heard on matters of "public interest" in the preservation of basic Constitutional rights. To not grant such a hearing would be an insult to the proper application of the supreme law of the country defined in Article VI: the U.S. Constitution.

A denial by the Chief Justice of the Supreme Court to schedule this requested oral argument for an immediate hearing to be scheduled concerning this direct appeal, carries with this motion a request to certify any decision by Chief Justice Chase Rogers to dismiss or deny this petition and tosubmit any such dismissal or denial for s 52-265 (a) hearing to an Supreme Court, En Banc review of this motion, so as to provide the necessary clearance to file a writ of certiorari with with the U.S. Supreme Court.

The Defendant seeks an order from the Supreme Court at time of oral argument to declare a mistrial on this erroneous write issued by the trial court (Calmar, J.) based upon a series of unlawfully convened proceedings. The Defendant's seeks an immediate restoration of his full legal and physical shared custody rights, for good cause shown and to issue orders to overturn the **Memorandum of Decision** and requests the Supreme Court conduct the new trial for custody and financial issues.

C.G.S. 51-14 and the Constitution of the State of Connecticut Article Fifth, in Section 1, defined the limited authority of judges to engage in self empowerment, (See pages 32-33 to Annual Judges meeting minutes of June 29, 2007 that captures Justice Zarella proposing a "resolution" which abridged **C.G.S. 51-14** mandate for "hearings to be conducted by the legislature. Instead, the Supreme Court itself, including Chief

Justice Rogers orchestrated unlawful "non-public meetings" with the judiciary committee to meet secretly with members of the Supreme Court and the Rules Committee.)

The Defendant's burden of proof to validate the assertion of unlawful conduct of the judiciary is contained in a sworn affidavit attached to a **Motion for Reconsideration** (active) filed on September 23, 2011 on **SC 18824**, **Michael Nowacki v. Suzanne Nowacki**, which defines the conflicts of interests of the Supreme Court.

There are **no** provisions in the Constitution of the United States for a state to have the authority to deny a petition for a writ of habeas corpus by applying Practice Book Rule 23-65, as articulated by the trial court (Calmar, J.) in its **Memorandum of Decision**. The Defendant, as a self represented party contests the application of P.B. Rule 23-65 as an "unconstitutional provision as applied to a self represented party.

No consent was pursued by the trial court (Calmar, J.) which assigned a legislative authority to strip the Defendant's rights to be brought to court "in corpus" to be honored by reading into the court record of April 15, 2011 a writ of habeas request. Similarly, the trial court violated the same principles on May 10, 2011.

The AMC abridged the Rules of Professional Conduct again on May 2, 2011 by filing an Motion for Custody Modification without the informed consent of her clients—another noteworthy omission by the **Memorandum of Decision**.

The AMC did not have a single conversation with her clients between mid-January 2010 and June 2010.

The **Memorandum of Decision** clearly abridges the Defendant's rights as a parent to have conversations with his children without the interference of the judiciary.

The **Memorandum of Decision** does not allege any "compelling interest" of the State of Connecticut, to interfere with an existing parenting agreement

To "modify" post judgment **agreement** of custody without considering a "substantial change of circumstances" is an unlawful assertion of an authority which circumvents provisions stated by the U.S. Supreme Court in **Troxel v. Granville 530 U.S. 57** 72-73:

"As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a "better" decision could be made."

The "burden of proof" in any modification proceeding is on the moving party, which in this case is the Plaintiff. The Memorandum of Decision failed to mention that the Defendant filed on May 10, 2011, a Motion for Modification of Custody based upon a "substantial change of circumstances" which occurred on January 10, 2010. This substantial change of circumstances indicated that the Defendant was able to retire from his 35 year career at CBS and was now able to fulfill the responsibilities of a full time parent since he was no longer commuting to Manhattan.

The Memorandum of Decision completely ignores that the trial court (Calmar, J.) has now assigned parental rights for the care, custody and companionship of his two children have been assigned to a full time live in child care provider rather than the children's father. No court has the authority to assign care to a third party when a

parent has the ability to fulfill that responsibility and K.N. has expressed her desire to be with her father at age 15.

The trial court (Calmar, J.) refused to consider that the Defendant's proposed modification for the Parenting Plan would have increased the time for both parents to have additional time with both children and removed the need for the expense of the child care provider. The savings from eliminating the child care provider was to be used for the direct benefit of funding the expenses for the expressed desires of T.N. to go to prep school.

The refusal and failure of the trial court (Calmar, J.) to consider alternatives to the Plaintiff's Motion for Modification #327 is a clear indication that the "best interests" of the children were not served in the decision reached.

Instead, the trial court (Calmar, J.) conducted a series of unlawful proceedings and in doing so, engaged in abridgment of due process and equal protection rights defined on May 19, 2011 in nine federal court decisions that were presented at evidence to indicate that any severance of a parent's rights to agreed upon "joint legal and physical custody must involve "compelling interests of the state." No such claim for any "compelling" interests of the state were articulated in the Memorandum of Decision.

Instead, the Memorandum of Decision, defines "parenting time" in a manner which is "discriminatory" to the Defendant's rights, and violates **Title 42, Section 1983, 1985, 1986, 1988 and 1995**. Such a Memorandum of Decision is therefore being challenged in this direct appeal as "unconstitutional" and thereby "unenforceable".

The Defendant need only meet one of two requirements of **C.G.S. 52-265 (a)** to qualify for the granting of such a direct appeal: that either this Memorandum of Decision is of "substantial public interest" and in which delay of an Appellate Court review "may work a substantial injustice."

The Defendant states that his parental rights were unlawfully interfered with by the trial court (Schofield, J.) from December 2, 2009 until March 4, 2011. The trial court (Calmar, J.) concurred with that evaluation and restored the custody rights of the Defendant on March 4, 2011, despite further attempts by the AMC, Attorney Veronica Reich, to improperly represent the rights of the children to "informed consent" and to have the "intelligently articulated preferences for the objective of their representation honored by the trial court" affirmed in Ireland v. Ireland

The issue of substance in this Memorandum of Decision is that it is fraudulent in its construction and does not serve the only standard of review, "which is the best interests of the children" which had been served well by the parenting plan which was in place from January 18, 2005, until that plan was unlawfully abridged on December 2, 2009.

The Supreme Court is required to enforce the 2011 Code of Judicial Conduct on those who operate outside of their "statutory" authority defined by C.G.S. 46 (b)-56 (a) (B):

"There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child where the parents have agreed to an award of the joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or the children of the marriage."

The Supreme Court must review this case because the "moving party" was the Plaintiff, Suzanne Sullivan. Attorney Kevin F. Collins, did not call a single witness for testimony except the Defendant on June 27 and June 28, 2011, so a "burden of proof" could not have been met by the Plaintiff. The Defendant was not permitted to conduct a refutation of the questioning of Attorney Collins on ~~July~~ June 27, 2011.

The refusal of the Supreme Court to conduct a hearing concerning the 35 factual misstatements in a Memorandum of Decision would negatively impact taking this decision directly to the United States Supreme Court.

Therefore, for good cause shown, the Defendant seeks an immediate scheduling of a hearing, with proper briefs to be filed by both parties, for good cause shown and an order be considered appropriate to order such a hearing within fourteen days of the submission of this application for a direct appeal as a matter of substantive public interest (as noted in the 1,600 views of two UTube videos and in the filing of a federal complaint) and because a delay in such a hearing would result in substantive harm to the relationship of the Defendant and his two children.

Respectfully Submitted,

Michael J. Nowacki 11/4/2011

Michael Nowacki
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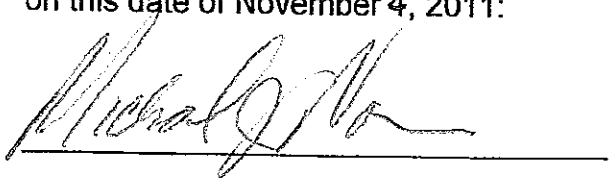
Certification:

In accordance with the requirement of Practice Book Rules 62-6, 62-7, 63-4, the Defendant certifies that he has sent a copy of this Direct Appeal to the Supreme Court under provisions in C.G.S. 52-265 (a) to the following parties of record by first class mail on this date of November 4, 2011:



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Michael J. Nowacki Date

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Certification:

A copy of this pleading has been sent to the following parties of record as required by Connecticut Practice Book Rules 67-2, 62-7 and 63-2 by first class mail, and by email.

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Table 1 Factors court may consider effective October 1, 2005

Statutory Factors Conn. Gen. Stats § 46b-56(c) (2007)
"In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors:
(1) The temperament and developmental needs of the child;
(2) the capacity and the disposition of the parents to understand and meet the needs of the child;
(3) any relevant and material information obtained from the child, including the informed preferences of the child;
(4) the wishes of the child's parents as to custody;
(5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child;
(6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders;
(7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute;
(8) the ability of each parent to be actively involved in the life of the child;
(9) the child's adjustment to his or her home, school and community environments;
(10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household;
(11) the stability of the child's existing or proposed residences, or both;

(12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custom unless the proposed custodial arrangement is not in the best interests of the child;
(13) the child's cultural background;
(14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child;
(15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and
(16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers.
The court is not required to assign any weight to any of the factors that it considers."

Section 2.1

Guardian Ad Litem in Connecticut

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the role of the guardian ad litem.

DEFINITION:

- "The term **Guardian ad litem** shall mean a person appointed by the court during any proceeding in which a minor child, undetermined or unborn or class of such person, a person whose identity or address is unknown, or an incompetent person is a party, to represent and protect the interests of such parties." CONNECTICUT PROBATE PRACTICE BOOK Rule 1.1.09.
- "The record does not disclose why independent counsel was not sought in this case. For the future, we suggest that, in the absence of strong countervailing considerations such as physical urgency or financial stringency, the better course is to appoint independent counsel whenever the issue of child custody is seriously contested." Yontef v. Yontef, 185 Conn. 275, 284, 440 A.2d 899 (1981).
- "The **PRIMARY ROLE** of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The guardian ad litem shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children. In the event that a separate guardian ad litem is appointed, the person previously serving as both counsel and guardian ad litem for the child shall continue to serve as counsel for the child and a different person shall be appointed as guardian ad litem, unless the court for good cause also appoints a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem." CONN. GEN. STATS. § 46b-129a(2) [Emphasis added].
- "In any criminal proceeding involving an abused or neglected minor child, a guardian ad litem shall be appointed." Conn. Practice Book § 44-20(a) (2006 ed.).

STATUTES:

CONN. GEN. STAT. (2008)

- Chapter 801b. Probate court procedure
  - § 45a-132. Appointment of guardian ad litem for minors and incompetent, undetermined and unborn persons.
- Chapter 802h. Protected persons and their property
  - § 45a-620. Appointment of counsel. Appointment of Guardian ad litem to speak on behalf of best interests of minor
  - § 45a-621. Appointment of guardian ad litem.
    "The Court of Probate shall appoint a guardian ad litem to make any application under sections 45a-603 to 45a-622, inclusive, to represent or appear on behalf of any parent who is less than eighteen years of age or incompetent."
- Chapter 803. Termination of parental rights and adoption
  - § 45a-708. Guardian ad litem for minor or incompetent parent.
    (a) When, with respect to any petition for termination of parental rights ... it appears that either parent of the child is a minor or incompetent, the court shall appoint a guardian ad litem for such parent."
    (b)" If the conservator does not appear in court, or if the adverse party has no conservator, the court shall appoint a guardian ad litem for the adverse party."
- Chapter 815j. Dissolution of marriage, legal separation and annulment
  - § 46b-47. Complaint for dissolution of marriage on ground of confinement for mental illness; procedure
  - § 46b-54. Counsel for minor children. Duties.
- Chapter 815t. Juvenile matters
  - § 46b-129a. Examination by physician. Appointment of counsel and guardian ad litem.

STANDARDS:

- Commission on Child Protection, State of Connecticut, Connecticut Standards of Practice for Attorneys & Guardians Ad Litem Representing Children in Child Protection Cases, v.68 *Conn. Law Journal* 3E (January 30, 2007).
  - I. Definitions
  - II. Connecticut framework for appointment of attorney and GAL's for children in Child Protection matters basic obligations of parents' attorneys
  - III. Summary of the general authority and duties of the attorney/GAL and duties of the GAL
  - IV. General authority and duties of the attorney/GAL
  - V. Duties of GAL for the minor child

LEGISLATIVE:

- 2001 CONN. ACTS 148 § 1
  1. requires Superior Court judges to appoint guardians *ad litem* (people who represent a child's best interests) in all abuse and neglect cases, rather than only those they deem appropriate
  2. eliminates a requirement that the child's attorney and guardian *ad litem* be different people, specifies criteria when separate representation is required, and directs courts to appoint as attorneys and guardians *ad litem* only people knowledgeable about abuse and neglect matters

Summary of Connecticut Public Acts 2001

REGULATIONS:

- CODE OF FEDERAL REGULATIONS
  45 C.F.R. § 1340.14(g) (2006). Guardian ad litem.
  "In every case involving an abused or neglected child which results in a

judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child."

COURT RULES

CONNECTICUT PROBATE PRACTICE BOOK (4th ed. Revised—2000)

- Rule 3.5. Appointment of guardian ad litem in conservator proceedings
- Rule 4. Guardians ad litem
  - 4.1. Definitions for purpose of this rule
  - 4.2. Appointment of a Guardian ad Litem
  - 4.3. Duties and functions of the Guardian ad Litem
  - 4.4. Who shall be appointed Guardian ad Litem
  - 4.5. Limitations on authority of Guardian ad Litem
  - 4.6. Appeals and employment of counsel
  - 4.7. Compensation of Guardian ad Litem
- CONNECTICUT PRACTICE BOOK (2007)
  - Chapter 25. Superior Court—Procedure in family matters
    - § 25-62 Appointment of Guardian Ad Litem
  - Chapter 44. Superior Court—Procedure in criminal matters
    - § 44-20. Appointment of Guardian Ad Litem

LEGISLATIVE REPORTS:

- SUSAN PRICE, GUARDIAN AD LITEM PROGRAMS: CONNECTICUT AND MASSACHUSETTS, Connecticut General Assembly, Office of Legislative Research, Report No. 2007-R-0414 (AUGUST 8, 2007). "You asked for a comparison of guardian ad litem programs in Connecticut and Massachusetts family courts."
- GEORGE COPPOLO, IMMUNITY-ATTORNEYS APPOINTED IN CHILD CUSTODY CASES, Connecticut General Assembly, Office of Legislative Research, Report No. 2004-R-0226 (February 20, 2004). "You asked whether attorneys the Superior Court appoints to represent minor children in divorce and child custody cases are immune from liability in connection with such representation."
- PAMELA LUCAS, GUARDIANS AD LITEM AND COUNSEL IN CUSTODY CASES, Connecticut General Assembly, Office of Legislative Research, Report No. 97-R-0290 (Feb. 21, 1997).
- LAWRENCE K. FURBISH, GUARDIAN AD LITEM IN NEGLECT AND ABUSE CASES, Connecticut General Assembly, Office of Legislative Research, Report No. 98-R-0648 (April 23, 1998).

FORMS:

- 2 CONNECTICUT PRACTICE BOOK Form 106.16 (1978).
  Motion for appointment of guardian ad litem
- MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT (2007).
  App. 3F. *Petition of Minor Plaintiff for Appointment of Guardian Ad Litem; Acceptance; and Order of Court*

CASES:

- Carrubba v. Moskowitz, 274 Conn. 533, 549, 877 A.2d 773 (2005). "Therefore, because the complaint was not grounded on any conduct by the defendant in which she acted outside the usual role of an attorney for the minor children, she is entitled to absolute immunity."
- In re Christina M., 90 Conn. App. 565, 579, 877 A.2d 941 (2005). "We therefore reject the argument of the parents that the trial court failed to fulfill its constitutional obligation to provide counsel for the daughters. In light of the record before it, the court properly appointed an attorney to represent the daughters' legal interests. Until the court was asked also to appoint a guardian ad litem,that was all that our constitution required the court to do."
- In re William H., 88 Conn. App. 511, 870 A.2d 1102 (2005). "Our second

concern is the guardians' role in the decision-making process of the court. As a general rule, the role of a guardian ad litem is to represent the best interest of the child. See *In re Tayquon H.*, 76 Conn. App. 693, 704, 821 A.2d 796 (2003). It would follow that in this case, the guardians' role would have been to review the materials requested and to communicate to the court which materials they believed should or should not be released in light of the best interests of the children they represented.[fn11] The guardians, however, premised their opinions as to what the court should or should not release on whether § 46b-124 precluded the requested disclosure."

- Shockley v. Okeke, 92 Conn. App. 76, 80-82, 882 A.2d 1244 (2004). "A change of name may be sought either in the Superior Court under General Statutes §§ 52-11 or 46b-1(6), or before the Probate Court under General Statutes § 45a-99. The only guidance on filing a change of name request for a minor is provided by Practice Book § 9-24, which by its terms governs an application for a name change brought by a minor child through his or her next friend under General Statutes § 52-11. As a general matter, a minor may bring suit only through a guardian or next friend. *Mendillo v. Board of Education*, 246 Conn. 456, 460 n. 3, 717 A.2d 1177 (1998). Parents commonly serve as next friend. . . . To serve as next friend, 'no previous appointment by the court is required, and the prochein ami named in the writ is permitted to appear and prosecute in the infant's name, though if he is not a proper person or fails to properly discharge his duties, the court may remove him and appoint another person in his place." *McCarrick v. Kealy*, 70 Conn. 642, 646, 40 A. 603 (1898). In addition, if the court is concerned that the child's interests are not adequately represented by a parent acting as next friend, it may appoint a guardian ad litem under General Statutes § 45a-132."
- Lowe v. City of Shelton, 83 Conn. App. 750, 756-757, 851 A.2d 1183 (2004), certification denied 271 Conn. 915. Although there is no appellate case law in Connecticut addressing whether parents, without the aid of an attorney, can represent the interest, as next friends, of their children, the courts in other jurisdictions that have addressed that issue have universally held that they may not do so. The reasoning of the United States Court of Appeals for the Second Circuit is persuasive: 'The choice to appear pro se is not a true choice for minors who under state law . . . cannot determine their own legal actions. There is thus no individual choice to proceed pro se for courts to respect, and the sole policy at stake concerns the exclusion of non-licensed persons to appear as attorneys on behalf of others.'"
- Oliver v. Oliver, 85 Conn. App. 57, 66, 855 A.2d 1022 (2004). "The defendant argues that the court incorrectly permitted counsel for the minor child to offer his opinion on the ultimate issue of the child's best interest, thereby depriving the defendant of a fair trial. The defendant is mistaken."
- Kennedy v. Kennedy, 83 Conn. App. 106, 111, 847 A.2d 1104, cert. den. 270 Conn. 915 (2004). "We have held that a court's failure to advise a party of the right to counsel in a contempt proceeding in which he faces potential incarceration, and in the event he is indigent, to court-appointed counsel, is fatal to the finding of contempt and any order related thereto."
- In re Tayquon H., 76 Conn. App. 693, 821 A.2d 796 (2003).
  "On the basis of those allied decisions and amplified by our understanding of the fundamental role of a guardian ad litem, we believe that as between a guardian ad litem and a natural guardian, the presumption should be that the court-appointed guardian ad litem is the proper person to speak for the child for the purposes of the litigation, barring a showing that he or she cannot peroperly fulfill the guardian ad litem role and that another is better suited to the role." (710)
  "It also is clear ... that the obligation of the person appointed as counsel is

shaped by the Rules of Professional Conduct, which, in pertinent part, obligate counsel to abide by a client's decisions concerning the objectives of representation... It is when counsel perceives that this obligation is in conflict with the child's actual best interest that counsel must bring that to the courts' attention, and the court, in turn, must appoint a separate guardian ad litem to protect and to promote the child's best interest in the process." (703)

- Schult v. Schult, 241 Conn. 767, 699 A.2d 134 (1997).
  "... we conclude, that where the court has appointed both an attorney and a guardian ad litem to represent a child in a dissolution action, the attorney for the child may advocate a position different from that of the guardian ad litem so long as the trial court determines that it is in the best interests of the child to permit such dual, conflicting advocacy." (780)
- Newman v. Newman, 235 Conn. 82, 663 A.2d 980 (1995).
  "Typically, the child's attorney is an advocate for the child, while the guardian ad litem is the representative of the child's best interests. As an advocate, the attorney should honor the strongly articulated preference regarding taking an appeal of a child who is old enough to express a reasonable preference; as a guardian, the attorney might decide that, despite such a child's present wishes, the contrary course of action would be in the child's long term best interests, psychologically or financially." (96-97)
- Orsi v. Senatore, 230 Conn. 459, 645 A.2d 986 (1994).
  The appropriateness of the foster parent representing the minor as a next friend when both a guardian and a guardian ad litem have already been appointed.
- Ridgeway v. Ridgeway, 180 Conn. 533, 429 A.2d 801 (1980).
  "Under General Statutes §46b-54. the court 'may' appoint counsel to protect the interests of a minor child in a dissolution action if it deems it to be in the best interests of the children. The term 'may' imports discretion..."
- Cottrell v. Connecticut Bank & Trust, 175 Conn. 257, 398 A.2d 307 (1978).
  An appeal may be brought by a next friend when the guardian ad litem refuses to appeal
- Potter v. Alcorn, 140 Conn. 96, 99 A.2d 97 (1953)
  The probate court has the "power to appoint a guardian ad litem in any proceeding in which the minor's interest would be affected, whether the interest was pecuniary or not". The probate court has the power to "make allowance" to the guardian ad litem to compensate him for his services.

STANDARDS:

- *American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* (A.B.A., 1996), *reprinted in* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 843 (2d ed., 2001).
- *Standards of Practice for Lawyers Representing Children in Custody Cases* (Approved by the ABA House of Delegates, August 2003), *reprinted in* 37 FAM. L. QUART. 131 (2003).
- Connecticut Bar Association, Family Law Section. Committee on The Role of Counsel. *Counsel For Children: Guidelines For Courts And Counsel In Civil Custody Cases*, 56 CONN. B.J. 484 (1982).

KEY NUMBER:

- West Key Numbers: Infants
  - # 76. Guardian ad litem or next friend
  - # 77. —In general
  - # 78. —Necessity of appointment
  - # 79. —Time for appointment
  - # 80. —Proceedings for appointment

81. —Eligibility and qualification
82. —Termination of authority and appointment of successor
83. —Compensation and expenses
84. —Rights and powers
85. —Duties and liabilities
86. —Liabilities on bonds
87. —Failure to procure appointment

ENCYCLOPEDIAS:

- 42 AM. JUR. 2d *Infants* (2000).
  - §§ 158-201. Representation of Infant
    - § 183. *Guardian Ad Litem*
    - § 184. —Scope of discretion
- 43 C.J.S. *Infants* (2004).
  - §§ 321-328. Representation of infant by guardian ad litem, next friend, and attorney
    - § 321. Generally
    - § 322. Necessity for representation
    - § 323. —Domestic relations and family law proceedings
    - § 324. —Probate proceedings
    - § 325. Effect of lack of representation
    - § 326. —Waiver of objections
    - § 327. Persons who represent infants
    - § 328. —Authority to act; consent of infant
    - § 329. Appointment of representative, generally
    - § 330. Time for appointment
    - § 331. Who may apply for appointment
    - § 332. Persons who may be appointed; selection criteria
    - § 333. Proceedings for, and effect of, appointment
    - § 334. Powers, duties, and liabilities of representative
    - § 335. —Compromise and settlement of claim
    - § 336. —Concessions, waiver of rights, or admissions
    - § 337. Appearance and representation by attorney
    - § 338. Compensation and allowance for representatives, generally
    - § 339. Amount
    - § 340. Liability for payment
    - § 341. Compensation for attorney
    - § 342. Termination of authority
    - § 343. Removal
- Sherry S. Zimmerman, Annotation, *Parents' Mental Illness Or Mental Deficiency As Ground For Termination Of Parental Rights—Issues Concerning Guardian Ad Litem And Counsel*, 118 ALR5th 561 (2004).
- Susan L. Thomas, Annotation, *Liability of Guardian Ad Litem for Infant Party to Civil Suit for Negligence in Connection with Suit*, 14 ALR5th 929 (1993).
- Carol A. Crocca, Annotation, *Propriety and Prejudicial Effect of Third Party Accompanying or Rendering Support to Witness During Testimony*, 82 ALR4th 1038, § 7 (1990).
- Danny R. Veilleux, Annotation, *Necessity Or Propriety Of Appointment Of Independent Guardian For Child Who Is Subject Of Paternity Proceedings*, 70 ALR4th 1033(1989).
- Thomas R. Malia, Annotation, *Validity, Construction, And Application Of Statute Limiting Physician-Patient Privilege In Judicial Proceedings Relating To Child Abuse Or Neglect*, 44 ALR4th 649 (1986)
  - § 5. Proceedings to terminate parental rights

TEXTS & TREATISES:

- ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
  - Chapter 18. Process
    - § 18.10. Service on parties who are incompetent or incarcerated; Service on third parties
  - Chapter 23. Evidentiary Matters and Trial
    - § 23.10. Privileged communications in custody disputes
  - Chapter 42. Child custody and visitation
    - **§ 42.18. Appointment of a Guardian ad litem**
  - Chapter 45. Attorney fees & expenses
    - **§ 45.16. Fees for counsel for minor child or guardian ad litem**
- ARNOLD H. RUTKIN, GEN. ED. FAMILY LAW AND PRACTICE (2006).
  - Chapter 32. Child custody and visitation
    - § 32.01[4]. Expanding roles of the attorney in custody controversies
      - [a] Child's representatives
        - [i] Counsel's role
        - [ii] Counsel's duties
- FAMILY LAW PRACTICE IN CONNECTICUT (1996).
  - Chapter 7. Trial practice considerations
    - § 7.60. Guardian ad litem, p. 7-26
- ANN M. HARALAMBIE, THE CHILD'S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES (1993)
  - Guardians Ad Litem, p. 5-10
  - Selected Guidelines for Guardian Ad Litem, Appendix B, p. 239.
  - Excerpt, D. WHITCOMB, GUARDIANS AD LITEMS IN THE CRIMINAL COURTS (1988), Appendix C, p. 289.
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE (2006).
  - Chapter 12A. Legal representation of children in custody and visitation cases
    - § 12A.01. Introduction
    - § 12A.02. Appointment of the attorney-guardian ad litem
    - § 12A.03. Functions of the attorney-guardian ad litem
    - § 12A.04. Performing the functions of attorney-guardian ad litem: A general guide
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (Rev. 2d ed. 2005).
  - Chapter 2. Child custody
    - § 2:31. Counsel or guardian *at litem* for the child
  - Chapter 12. The Guardian *ad litem*
    - § 12:1. The guardian *ad litem* or next friend: Background
    - § 12:2. —Provisions for guardians *ad litem* in procedural rules and statutes
    - § 12:3. The parent as the "duly appointed representative
    - § 12:4. Rules and circumstances requiring appointment of guardian *ad litem*
    - § 12:5. Authority and responsibilities of a guardian *ad litem*
    - § 12:6. Payment of fees and expenses to guardians *ad litem*
    - § 12:7. Guardian ad litem's immunity from suit and harassment
- 2 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (Rev. 2d ed. 2005).
  - Chapter 16. Child abuse
    - § 16:31: The attorney or guardian *ad litem* for the child
    - § 16:32. Immunity of guardian
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION

CASES (1993).

§ 4.24. Independent Representation for the Child [Dependency and Neglect Proceedings]

§§ 11.23-11.24. Independent Representation for the Child [Custody Incedent to Dissolution of Marriage]

§§ 21.04-21.05. Trial Techniques

- 1 MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT (2007).
  § 4.06. The right to counsel for children in dependency proceedings
  [1] The right to independent counsel
  [a] Guardian *Ad Litem*
- 2 MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT (2007).
  § 9.02[5]. Guardian Ad Litem distinguished from the role of an attorney

ARTICLES:

- Carolyn Wilkes Kaas and Sharon Wicks Dornfeld, *Serving as a AMC after Carrubba v. Moskowitz*: What Every Judge and Lawyer should know, CONNECTICUT FAMILY LAWYER Issue2 (June 2007).
- Frederic S. Ury, et al., *A Law Primer for Risky Behavior in Minors*, 14 CONN. LAWYER 12 (November 2003).
- Linda D. Elrod, *Raising the Bar for Lawyers Who Represent Children: ABA Standards of Practice for Custody Cases*, 37 FAM. L. QUART. 105 (2003).
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- Wilhelm, Hemenze & Fowler, *The Role of the Guardian Ad Litem in Probate Proceedings*, 65 CONN. B.J. 462 (1991).
- Richard Ducote, *Guardians Ad Litem in Private Custody Litigation: The case for Abolition*, 3 LOY. J. PUB. INT. L. 106 (2002).
- Judge Chester T. Harhut, *An Expanded Role for the Guardian Ad Litem*, 51 JUV. & FAM. CT. J., Summer 2000, at 31.
- *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 43 (1996), *reprinted in* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 787 (1997).
- Jean Koh Peters, *The Roles and content of Best Interest in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 FORDHAM L. REV. 1505 (1996), *reprinted in* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 483 (1997).
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- Catherine M. Brooks, *When a Child Needs a Lawyer*, 23 CREIGHTON L. REV. 757 (1990). ("This essay speaks to that lawyer who has just received a first-time appointment as a guardian ad litem to represent a child.")
- Rebecca H. Heartz, *Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness*, 27 FAM. L.Q. 327 (1993).
- Janice & Fred Morganroth, *Why Winging it Won't Work: Know Your Role as Guardian Ad Litem or Mediator. Otherwise You May Succumb to*

Malpractice, 13 FAMILY ADVOCATE, Spring 1991, at 44.

- John H. Lightfoot, Jr., *Children's Rights, Lawyers Roles: Are the Duties of a Guardian Ad Litem the Same as an Advocate for the Child? Yes. No. Maybe*, 10 FAMILY ADVOCATE, Winter 1988, at 4.

COMPILER:

- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch, Law Library at Middletown, One Court Street, Middletown, CT 06457. EMAIL

Section 2.2

Attorney for the Minor Child

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the role of the attorney for a minor child (AMC) in legal proceedings and how this role differs from that of the guardian ad litem (GAL).

DEFINITIONS:

- "The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The guardian ad litem shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children. In the event that a separate guardian ad litem is appointed, the person previously serving as both counsel and guardian ad litem for the child shall continue to serve as counsel for the child and a different person shall be appointed as guardian ad litem, unless the court for good cause also appoints a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem." CONN. GEN. STATS. § 46b-129a(2) (2007).

STATUTES

CONN. GEN. STAT. (2008)

- § 45a-620. Appointment of counsel. Appointment of Guardian ad litem to speak on behalf of best interests of minor. *(Probate Court).*
- **§ 46b-54. Counsel for minor children. Duties.**
- § 46b-62. Orders for payment of attorney's fees in certain actions.
- § 46b-129a. Examination by physician. Appointment of counsel and guardian ad litem.

LEGISLATIVE:

- 2001 CONN. ACTS 148. An Act concerning Juvenile Matters

1. requires Superior Court judges to appoint guardians *ad litem* (people who represent a child's best interests) in all abuse and neglect cases, rather than only those they deem appropriate
2. eliminates a requirement that the child's attorney and guardian *ad litem* be different people, specifies criteria when separate representation is required, and directs courts to appoint as attorneys and guardians *ad litem* only people knowledgeable about abuse and neglect matters

2001 *Summary of Public Acts* p. 140

COURT RULES

CONNECTICUT PRACTICE BOOK (2008)

- § 25-24. *Motion for appointment of counsel for minor child.*
- § 30-3. Advisement of Rights *(juvenile matters).*
- § 32a-1. Right to Counsel and to Remain Silent *(juvenile matters).*

RULES OF PROFESSIONAL CONDUCT:

CONNECTICUT PRACTICE BOOK (2008)

- Rule 1.14 Client under a Disability

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority ... or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

FORMS:

- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 163 (1991)
  Form VIII-A-3. Motion for Appointment of Counsel for Minor Children
- LEGAL ASSISTANCE RESOURCE CENTER OF CONNECTICUT, GETTING A LAWYER APPOINTED FOR YOUR CHILD: DIVORCE, CUSTODY OR VISITATION CASES (April 2005).
  Motion for Appointment of Counsel for Minor Children

CASES:

- Carrubba v. Moskowitz, 274 Conn. 533, 537, 877 A.2d 773(2005). "We agree with the Appellate Court that the defendant was entitled to immunity, but we disagree as to the proper scope of the immunity. We conclude that attorneys appointed by the court pursuant to § 46b-54 are entitled to absolute, quasi-judicial immunity for actions taken during or, activities necessary to, the performance of functions that are integral to the judicial process."
- In re Christina M., 90 Conn. App. 565, 579, 877 A.2d 941 (2005). "We therefore reject the argument of the parents that the trial court failed to fulfill its constitutional obligation to provide counsel for the daughters. In light of the record before it, the court properly appointed an attorney to represent the daughters' legal interests. Until the court was asked also to appoint a guardian ad litem,that was all that our constitution required the court to do."
- In re Tayquon H., 76 Conn. App. 693, 821 A.2d 796 (2003).
  "It also is clear ... that the obligation of the person appointed as counsel is shaped by the Rules of Professional Conduct, which, in pertinent part, obligate counsel to abide by a client's decisions concerning the objectives of representation... It is when counsel perceives that this obligation is in conflict with the child's actual best interest that counsel must bring that to the courts' attention, and the court, in turn, must appoint a separate guardian ad litem to protect and to promote the child's best interest in the process." (703)
- Ireland v. Ireland, 246 Conn. 413, 717 A.2d 676 (1998).
  "... the attorney for the child is just that, an *attorney*, arguing on behalf of his or her client, based on the evidence in the case and the applicable law. The attorney is not, however, a witness, whether quasi-expert or otherwise. Thus, an attorney for a minor child shall be heard in a similar manner as most other attorneys ar heard, ..." (438-439)
- Newman v. Newman, 235 Conn. 82, 663 A.2d 980 (1995).
  "Typically, the child's attorney is an advocate for the child, while the guardian ad litem is the representative of the child's best interests. As an advocate, the attorney should honor the strongly articulated preference regarding taking an appeal of a child who is old enough to express a reasonable preference; as a guardian, the attorney might decide that, despite such a child's present wishes, the contrary course of action would be in the child's long term best interests, psychologically or financially." (96-97)
- Schaffer v. Schaffer, 187 Conn. 224, 445 A.2d 589 (1982)
  "The purpose of appointing counsel for a minor child in a dissolution action is to ensure independent representation of the child's interest and such representation must be entrusted to the professional judgment of appointed counsel within the usual constraints applicable to such representation."

(p.224 n.1)

- Schult v. Schult, 241 Conn. 767, 699 A.2d 134 (1997).
  "... we conclude, that where the court has appointed both an attorney and a guardian ad litem to represent a child in a dissolution action, the attorney for the child may advocate a position different from that of the guardian ad litem so long as the trial court determines that it is in the best interests of the child to permit such dual, conflicting advocacy." (p. 780)
- G.S. v. T.S., 23 Conn. App. 509, 582 A.2d 467 (1990).
  "In this case, where custody is hotly contested, where, prior to trial, the court is made aware of allegations of child abuse and sexual molestation, ... it is an abuse of discretion not to appoint counsel for the minor children." (p. 516)
- Weinstein v. Weinstein, 18 Conn. App. 622, 561 A.2d 443 (1989).
  "No authority is given to court appointed counsel to issue orders affecting the parties or their children or to resolve, in quasijudicial fashion, disputes between the parties concerning their children." (p. 628)
- Ridgeway v. Ridgeway, 180 Conn. 533, 429 A.2d 801 (1980).
  "Under General Statutes §46b-54. the court 'may' appoint counsel to protect the interests of a minor child in a dissolution action if it deems it to be in the best interests of the children. The term 'may' imports discretion..."

STANDARDS:

- *American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* (A.B.A., 1996), *reprinted in* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICALAND PRACTICAL DIMENSIONS 843 (2d ed., 2001).
- *Standards of Practice for Lawyers Representing Children in Custody Cases* (Approved by the ABA House of Delegates, August 2003), *reprinted in* 37 FAM. L. QUART. 131 (2003).

ENCYCLOPEDIAS:

- 42 AM. JUR. 2d *Infants* §§ 158—201(2000). *Representation of Infant*
- Christopher Bello, Annotation, *Validity and Efficacy of Minor's Waiver of Right to Counsel—Modern Cases*, 25 A.L.R. 4th 1072 (1983).

CLE SEMINARS:
Available at the Norwich Law Library

- CONNECTICUT BAR ASSOCIATION, ADVANCED AND COMPLEX ISSUES IN JUVENILE LAW (CLE Seminar, Dec. 13, 1996).
- CONNECTICUT BAR ASSOCIATION, REPRESENTING PARENTS OR CHILDREN IN TERMINATION OF PARENTAL RIGHTS CASES (CLE Seminar, Oct. 6, 1993).

TEXTS & TREATISES:

- ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
  - Chapter 18. Process
    - § 18.10. Service on parties who are incompetent or incarcerated; Service on third parties
  - Chapter 23. Evidentiary Matters and Trial
    - § 23.10. Privileged communications in custody disputes
  - Chapter 42. Child custody and visitation
    - § 42.18. Appointment of a Guardian ad litem
  - Chapter 45. Attorney fees & expenses
    - § 45.16. Fees for counsel for minor child or guardian ad litem
- 3 ARNOLD H. RUTKIN, GEN. ED. FAMILY LAW AND PRACTICE (2007).
  - Chapter 32. Child custody and visitation
    - § 32.01[4]. Expanding roles of the attorney in custody controversies
      - [a] Child's representatives
        - [i] Counsel's role
        - [ii] Counsel's duties

- FAMILY LAW PRACTICE IN CONNECTICUT (1996).
  Chapter 7. Trial practice considerations
  § 7.60. Guardian ad litem, p. 7-26
- ANN M. HARALAMBIE, THE CHILD'S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES (1993)
  Guardians Ad Litem, p. 5-10
  Selected Guidelines for Guardian Ad Litem, Appendix B, p. 239.
  Excerpt, D. WHITCOMB, GUARDIANS AD LITEMS IN THE CRIMINAL COURTS (1988), Appendix C, p. 289.
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE (2007).
  Chapter 12A. Legal representation of children in custody and visitation cases
  § 12A.01. Introduction
  § 12A.02. Appointment of the attorney-guardian ad litem
  § 12A.03. Functions of the attorney-guardian ad litem
  § 12A.04. Performing the functions of attorney-guardian ad litem: A general guide
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (Rev. 2d ed. 2005).
  Chapter 2. Child custody
  § 2:31. Counsel or guardian *at litem* for the child
  Chapter 12. The Guardian *ad litem*
  § 12:1. The guardian *ad litem* or next friend: Background
  § 12:2. —Provisions for guardians *ad litem* in procedural rules and statutes
  § 12:3. The parent as the "duly appointed representative
  § 12:4. Rules and circumstances requiring appointment of guardian *ad litem*
  § 12:5. Authority and responsibilities of a guardian *ad litem*
  § 12:6. Payment of fees and expenses to guardians *ad litem*
  § 12:7. Guardian ad litem's immunity from suit and harassment
- 2 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (Rev. 2d ed. 2005).
  Chapter 16. Child abuse
  § 16:31: The attorney or guardian *ad litem* for the child
  § 16:32. Immunity of guardian
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
  § 4.24. Independent Representation for the Child [Dependency and Neglect Proceedings]
  §§ 11.23-11.24. Independent Representation for the Child [Custody Incedent to Dissolution of Marriage]
  §§ 21.04-21.05. Trial Techniques
- MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT (2007).
  § 4.06[1][a]. Guardian Ad Litem - Dependency Proceedings
  § 9.02[5]. Guardian Ad Litem distinguished from the role of an attorney
- ANNE GRAFFAM WALKER, HANDBOOK ON QUESTIONING CHILDREN: A LINGUISTIC PERSPECTIVE (1999).

LAW REVIEWS:

- Carolyn Wilkes Kaas and Sharon Wicks Dornfeld, *Serving as a AMC after Carrubba v. Moskowitz*: What Every Judge and Lawyer should know, CONNECTICUT FAMILY LAWYER Issue2 (June 2007).
- Frederic S. Ury, et al., *A Law Primer for Risky Behavior in Minors*, 14 CONN. LAWYER 12 (November 2003).
- Linda D. Elrod, *Raising the Bar for Lawyers Who Represent Children: ABA*

Standards of Practice for Custody Cases, 37 FAM. L. QUART. 105 (2003).

- Robert Solomon, *Staying in Role: Representing Children in Dependency and Neglect Cases*, 70 CONN. B.J. 258 (1996).
- Connecticut Bar Association, *Counsel for Children: Guidelines for Courts and Counsel in Civil Custody Cases*, 56 CONN. B.J. 484 (1982).
- Kim J. Landsman & Martha L. Minow, Note, *Lawyering for the Child: Principles of Representation in Custody and Visitation Disputes Arising from Divorce*, 87 YALE L.J. 1126 (1978).
- Carolyn Richter & Gina A. Pasquini, *The Role of the Counsel for the Minor Child: Minority Report*, 6 CONN. FAM. LAW. 37 (1991).
- *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 43 (1996), *reprinted in* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 883 (2d ed., 2001).
- Ann M Haralambie, *Representing Children in Civil Cases*, 30 TRIAL, no. 2, 37 (Feb. 1994).
- Jean Koh Peters, *The Roles and content of Best Interest in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 FORDHAM L. REV. 1505 (1996), *reprinted in* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 559 (2d ed., 2001).
- Nancy W. Perry and Larry L. Teply, *Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys*, 18 CREIGHTON L. REV. 1369 (1985), *reprinted in* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 665 (2d ed., 2001).
- Angela D. Lurie, *Representing the Child-Client: Kids are People too; an Analysis of the Role of Legal Counsel to a Minor*, 11 N.Y. L. SCH. J. HUM. RTS. 205 (1993).
- Judith Larsen, *Does the Child's Lawyer Owe "The Whole Truth" to the Court in Neglect-Abuse Cases?*, 47 JUV. & FAM. CT. J., Spring 1996, at 49.
- Sarah H. Ramsey, *Representation of the Child in Protection Proceedings: The Determination of Decision-Making Capacity*, 17 FAM. L.Q. 287 (1983).

COMPILERS:

- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch, Law Library at Middletown, One Court Street, Middletown, CT 06457. EMAIL

Sec. 51-14. Rules of court. Disapproval of rules by General Assembly. Hearings. (a) The judges of the Supreme Court, the judges of the Appellate Court, and the judges of the Superior Court shall adopt and promulgate and may from time to time modify or repeal rules and forms regulating pleading, practice and procedure in judicial proceedings in courts in which they have the constitutional authority to make rules, for the purpose of simplifying proceedings in the courts and of promoting the speedy and efficient determination of litigation upon its merits. The rules of the Appellate Court shall be as consistent as feasible with the rules of the Supreme Court to promote uniformity in the procedure for the taking of appeals and may dispense, so far as justice to the parties will permit while affording a fair review, with the necessity of printing of records and briefs. Such rules shall not abridge, enlarge or modify any substantive right or the jurisdiction of any of the courts. Subject to the provisions of subsection (b) of this section, such rules shall become effective on such date as the judges specify but not in any event until sixty days after such promulgation.

(b) All statutes relating to pleading, practice and procedure in existence on July 1, 1957, shall be deemed to be rules of court and shall remain in effect as such only until modified, superseded or suspended by rules adopted and promulgated by the judges of the Supreme Court or the Superior Court pursuant to the provisions of this section. The Chief Justice shall report any such rules to the General Assembly for study at the beginning of each regular session. Such rules shall be referred by the speaker of the House or by the president of the Senate to the judiciary committee for its consideration and such committee shall schedule hearings thereon. Any rule or any part thereof disapproved by the General Assembly by resolution shall be void and of no effect and a copy of such resolution shall thereafter be published once in the Connecticut Law Journal.

(c) The judges or a committee of their number shall hold public hearings, of which reasonable notice shall be given in the Connecticut Law Journal and otherwise as they deem proper, upon any proposed new rule or any change in an existing rule that is to come before said judges for action, and each such proposed new rule or change in an existing rule shall be published in the Connecticut Law Journal as a part of such notice. A public hearing shall be held at least once a year, of which reasonable notice shall likewise be given, at which any member of the bar or layman may bring to the attention of the judges any new rule or change in an existing rule that he deems desirable.

(d) Upon the taking effect of such rules adopted and promulgated by the judges of the Supreme Court pursuant to the provisions of this section, all provisions of rules theretofore promulgated by the judges of the Superior Court shall be deemed to be repealed.

(1953, 1955, S. 3129d; 1955, S. 3130d; 1957, P.A. 651, S. 27; P.A. 76-436, S. 48, 681; June Sp. Sess. P.A. 83-29, S. 9, 82; P.A. 07-217, S. 186.)

History: P.A. 76-436 amended section to extend power to adopt and modify rules, etc. to superior court judges and added Subsec. (e) re rules to effectuate transfer of jurisdiction, effective July 1, 1978; June Sp. Sess. P.A. 83-29 included reference to judges of appellate court, added provision re rules of appellate court and deleted provisions of Subsec. (e) re rules necessary for transfer of jurisdiction pursuant to Sec. 51-164s; P.A. 07-217 made technical changes in Subsec. (a), effective July 12, 2007.

Rules made under former section have the force of statutes. 59 C. 45. Rules can only give effect to the real purpose of the practice act. 73 C. 6. Cited. 115 C. 101. Cited. 140 C. 643. Cited. 145 C. 222. Cited. 157 C. 157. Cited re constitutional separation of powers (Diss. Op.). 166 C. 501. Cited. 217 C. 532. Cited. 223 C. 411. Cited. 226 C. 757. Cited. 229 C. 178.

Cited. 37 CA 252; judgment reversed, see 236 C. 388. Cited. 42 CA 17.

Cited. 24 CS 25. Cited. 28 CS 34. Any change proposed in criminal court procedure should be brought before rules committee of judges. Id., 366. Cited. 38 CS 389. Cited. 43 CS 211.

Cited. 3 Conn. Cir. Ct. 8 (Diss. Op.); Id., 698, 700.

CA 768.

Cited. 40 CS 238.

Subsec. (a):

Subsec. (c):

Cited. 190 C. 657.

STATE OF CONNECTICUT
SUPREME COURT

SUPREME COURT BUILDING
HARTFORD

CHAMBERS OF
CHIEF JUSTICE

P. O. ADDRESS
BOX 1350, HARTFORD 06101

January 14, 1969

Honorable Attilio Frassinelli
Lieutenant Governor and
President of the Senate
State Capitol
Hartford, Connecticut 06115

Dear Sir:

As Chief Justice, I enclose herewith a report to the General Assembly of certain changes in the rules of court adopted, promulgated, or approved by the judges of the Supreme Court since the beginning of the 1967 Regular Session of the General Assembly. (See General Statutes § 51-14 (b)). One executed duplicate report is being sent to the Speaker of the House and another to Senator Alfano who is the President Pro Tempore of the Senate.

Yours very respectfully,

Chief Justice

JHK:abk

Enclosure

Location:
COURTS;

OLR RESEARCH REPORT

March 27, 2009 2009-R-0165

CHANGES TO COURT RULES UNDER CGS § 51-14(B)

By: Jillian L. Redding, Legislative Fellow

You asked us to identify statutes that were converted to court rules under CGS § 51-14(b). You also want to know whether (1) any of the rules were changed, (2) the Judicial Branch submitted proposed changes to the legislature as required by the statute, and (3) the legislature ever took any action on submitted rules.

SUMMARY

CGS § 51-14(b) directs that all statutes relating to pleading, practice, and procedure in existence on July 1, 1957 be deemed to be rules of court and remain in effect as rules only until modified, superseded, or suspended by rules adopted and promulgated by the judges of the Supreme Court or the Superior Court. The law requires the chief justice to report any such rules to the General Assembly for study at the beginning of each regular session. It directs that such rules be referred to the Judiciary Committee for its consideration. The law specifies that any rule or any portion of a rule disapproved by the General Assembly by resolution is void. It requires that a copy of such a resolution be published once in the Connecticut Law Journal.

This statute, which was initially adopted in 1953, has been amended a few times but none of the amendments have altered its requirements or procedures in any significant way.

Based on our examination of the 1963 Connecticut Practice Book, it appears that 103 court rules had as their origin statutes in existence in 1957. We were able to identify 44 of these rules that have been amended or repealed since then. Many have been amended more than once. We found 67 instances of one of these rules being substantively changed or repealed.

The Judicial Branch provided us with letters from February 9, 1965 to the present. These letters appear to cover periods 1963 to 1964, 1967 to 1979, 1981 to 1985 (although the 1985 letter is simply a copy of a letter from the lieutenant governor confirming receipt of the Practice Book addenda), and 1987 to 2008. Only four years appear to be missing: 1965, 1966, 1980, and 1986. The Judicial Branch was unable to locate the letters covering these years. For 10 of these years (1967 to 1977), the Court did not specify any changes to rules. Its letters to the legislature indicated that changes to Supreme Court and Superior Court rules were not subject to legislative review under the Connecticut Constitution. For 21 years, the Court either included copies of rule changes or cited to a supplement or addenda for the rule changes. For nine years, the Court indicated that none of the rule changes affected the 1957 statutes (See Table 1). Copies of the letters are attached.

We have traced the changes made to each of these court rules in Table 2.

We were not able to find any instances where the legislature took action on any of the rule changes by a resolution.

STATUTORY MANDATES

Connecticut General Statute § 51-14(b) was originally passed in 1953. It stated, in relevant part, "All statutes relating to pleading, practice and procedure in existence on July 1, 1953, shall be deemed to be rules of court and shall remain in effect as such only until modified, superseded or suspended by rules adopted and promulgated by the judges of the Superior Court . . . " The statute further requires the Supreme Court chief justice to report any such changes to the General Assembly at the beginning of each regular session, when a Judiciary Committee hearing is held to review the changes. If the committee disagrees with any of the changes, that specific rule change may be considered void by a resolution, which is then published in the Connecticut Law Journal.

In 1957, this statute was amended, replacing "July 1, 1953" with "July 1, 1957," making any such statute in effect on July 1, 1957 a rule of court. The amendment also substituted "Supreme Court of Errors" for "Superior Court." Since 1957, there has been only one small adjustment to subsection (b). In 1976, the legislature added the words "or the Superior Court" to follow "judges of the Supreme Court." This provision has not been changed since 1976.

1963 PRACTICE BOOK

The 1963 Practice Book was the first Practice Book after the adoption of CGS § 51-14(b) that incorporated procedural statutes into the court rules. In the Preface of the 1963 Practice Book, it notes this fact by stating:

Another important change has resulted from the action of the judges adopting, as rules of court, such procedural statutes as appeared desirable, with any necessary changes in phrasing. These new rules are incorporated in the revision with the

result that all matters of procedure are, so far as possible, now governed by rules of court appearing in a single volume.

Thus, we identified the rules in the 1963 Practice Book that cited statutes as their source. We traced these rules through various practice books issued since then and noted any cited amendments to these rules.

LETTERS FROM JUDICIAL BRANCH

The Judicial Branch provided us with copies of letters sent to the legislature that covered rule changes affecting the 1957 statutes, covering all years since 1963, except four years (1965, 1966, 1980, and 1986), as required by CGS § 51-14(b). Under this law, the Court must advise the legislature of any proposed rule changes at the beginning of the regular session.

In the letters from 1965 and 1969 through 1977, the Court did not identify any rule changes for the Supreme and Superior Courts. The Court noted that

Rule changes in the rules of the Supreme Court [and Superior Court] made by the justices [and judges] thereof are not reported since they are not, under the Constitution, subject to legislative review or revision. Of course, all such rule changes are available in the supplement to the 1963 Practice Book.

This format is followed for 1969 through 1977, where the Court states that it is not responsible for reporting Practice Book rule changes for the Supreme and Superior Courts. The letters for 1978 and 1979 direct the Judiciary Committee to see the Connecticut Law Journal for any changes made during those years.

In Table 1 below, for each letter provided to us by the Judicial Branch, we show the date of the letter, the time period that the latter apparently covers, and a summary of pertinent portions of the letter.

Table 1: Letters from the Judicial Branch to the Legislature

Date of letter	*Period Covered*	*Rules*
Feb. 9, 1965	1963 and 1964	Specifies rules for common pleas and circuit court
Jan. 14, 1969	1967 and 1968	Specifies that Supreme and Superior Court rules not subject to legislative review.
Jan. 11, 1971	1969 and 1970	Specifies that Supreme and Superior Court rules not subject to legislative review.

	:	SUPREME COURT
ANNUAL PUBLIC HEARING	:	STATE OF CONNECTICUT
	:	MARCH 25, 2013

B E F O R E:

THE HONORABLE CHASE T. ROGERS, CHIEF JUSTICE
THE HONORABLE FLEMMING L. NORCOTT, JR., JUSTICE
THE HONORABLE PETER T. ZARELLA, JUSTICE
THE HONORABLE DENNIS G. EVELEIGH, JUSTICE
THE HONORABLE ANDREW McDONALD, JUSTICE
THE HONORABLE CARMEN E. ESPINOSA, JUSTICE

A P P E A R A N C E S:

[redacted]
MONICA FORE
JOHN DOE
JOHN DOE 2
JANE DOE 1
MIKE DOE
MOLLY DOE
JOHN DOE 3
BETSY ROSS
PATRICK HENRY
HENRY MARTOCCHIO

Recorded and transcribed by:

Kimberly Silverman
Court Recording Monitor
101 Lafayette Street
Hartford, CT 06106
860-566-34001 X3061

CHIEF JUSTICE ROGERS: Good morning, everybody. For the record, let me open this proceeding by stating that the Supreme Court is here this morning to conduct a public hearing to receive suggestions for new rules and forms or changes in existing rules and forms regulating pleading, practice, and procedure. Connecticut General Statute 51-14(c) states in part that a public hearing shall be held at least once a year of which reasonable notice shall be given at which any member of the bar or layman may bring to the attention of the judges any new rule or change in existing rule that he or she deems desirable.

Notice of this hearing was given to the public by a notice published in the Connecticut Law Journal on March 12, 2013, and on March 19, 2013. Notice was also provided on the Judicial Branch website. I would like to add that we're grateful to have Chief Judge DiPentima, co-chair of the Advisory Committee, and Justice Eveleigh, the chair of the Rules Committee of the Superior Court, in attendance at this hearing.

Now let us begin. This hearing is now open for the purpose of receiving suggestions for new rules and forms or changes in existing rules and forms regulating pleading, practice, and procedures in the courts of this state.

So I have a list of speakers. The first one is [redacted].

(Pause in the proceedings.)

CHIEF JUSTICE ROGERS: Good morning, [redacted].

[redacted]: Good morning, Your Honors.

CHIEF JUSTICE ROGERS: As you know, you'll have

five minutes. Also, if you are going to exceed that time, you're free to submit any written testimony that you would like to do so.

[redacted]: Thank you, Your Honors. Thank you for the opportunity to speak this morning at this forum. I have submitted three pages of written testimony prior to my statements which I'll make, and I'm not going to use my time to, kind of, read it into the record. I think that would be, you know, counter-productive and insulting, as well, and I don't mean to do that at all. I will have to glance down from time to time.

In short, Your Honors, I have been involved in litigation in the state of Connecticut, sadly, since 2008, litigation which I think was kind of unnecessary, but, be that as it may, I stand here today, in March of 2013.

I had been previously represented at the trial court and at the Appellate Court by counsel. I am still in those courts now currently without counsel primarily because I have no funds available, not because I want to exercise my right to try to be my own attorney. I'd much rather have people like Attorney Gallagher representing me on an appeal again but sadly I can't do that.

But I'm not here to talk about the details of my case. I think anybody who is here today could probably go on and on about that and a lot of emotion, a lot of everything else. What I am here to talk about is what I think are some flaws as -- respectfully, by the way, I do say this -- as from my view as I've seen in practice as it pertains to primarily Rule 2-52 that

deals with the resignation and waiver by an attorney.

Now, in an instance where you have an individual who perhaps thinks an attorney did something wrong, if that attorney was their attorney, they can pursue that through civil matters and so forth, grievance -- not only grievance, but they can also file a civil complaint.

In an instance where somebody like myself had very specific and numerous issues dealing with opposing counsel, the only remedy available to me in the state of Connecticut currently is through the Statewide Grievance Committee, period. I recognize -- and I was here in this room on September 19 of 2012 when the matter of *Simms v. Seaman* was taken up and there's no decision on that yet, but I've watched that case closely.

In an instance where opposing counsel in an underlying matter had caused harm or was alleged to have caused harm, the litigation privilege or absolute immunity protects that attorney from any civil remedy that I might have against them. The Statewide Grievance, while I'm able to pursue that, on paper it looks good and I could pursue that, but sadly the first hurdle that somebody would have to go through and cross is the local reviewing panel; and I would submit that sadly it's a big state, but it's a small fraternity of attorneys who, in many cases, will -- it's difficult to say respectfully, but, especially when there's a pro se party bringing the complaint forward, in many cases some of the attorneys would kind of look the other way and protect the individual.

In my instance, what I also experience is getting

past a review panel of finding of probable cause, disciplinary proceedings, a public hearing of discipline, and two weeks prior to a decision actually being issued in the matter, the attorney was allowed to resign with a waiver in an unrelated matter which immediately closed mine, as well as two other grievance issues pending against them; and, while for disciplinary counsel's office that might seem, you know, like a home run because they're able to resolve three or four matters all with one resignation, for somebody like me, it's devastating because I was the only person who had no other remedy, none whatsoever.

And, so -- so even though there was probable cause of misconduct, there was clear and convincing evidence at the public hearing of the misconduct, this attorney who had -- who at 69 years old went and built a house down in North Carolina, he'd already decided that he wasn't going to be practicing law in the state of Connecticut anymore anyway, so, really, there's no penalty to him, but the damages to me are very real.

And, so, that's why I stand before you today is -- with some very specific suggestions to rule changes, very small and very minor, which I think make sure that at least the Court is very conscious of when accepting a resignation from an attorney of what the ramifications that might have for their potential litigants.

And while I focused on Rule 2-52, I would like to point out that I think that there is the possibility that, I think in any rule change, of course, it may implicate other minor changes or at least review of other rules.

And, so, I think, possibly 2-59 and 2-71, the client security fund, I wasn't a client, so I can't make a claim under the client security fund.

You know, I know it was kind of a sprint to put all that information out in five minutes. I don't do this for a living, so I did my best.

CHIEF JUSTICE ROGERS: Thank you very much and we have what you have -- what you submitted in writing and we'll review that.

[redacted] Any questions at all?

(Pause.)

CHIEF JUSTICE ROGERS: Thank you.

[redacted] Thank you.

CHIEF JUSTICE ROGERS: Monica Fore?

(Pause in the proceedings.)

CHIEF JUSTICE ROGERS: Good morning.

MS. FORE: Good morning, Justices. I would like to read just a short statement that I made. I put the flag on here and what I'm stating is declaration of unconstitutionality.

Connecticut Practice Book and forms are written for judges and attorneys, not pro se litigants, and I will provide a copy of this to all the judges. I have a few copies but I didn't have enough.

It says: To the Honorable Judges of the State of Connecticut. The Connecticut Practice Book and forms are written for attorneys and not for pro se litigants. According to the current written procedures, the Court implies that a pro se

litigant is to be held to the same standards of a lawyer. This is in clear violation of the Constitution of the United States and federal laws as it deprives pro se litigants of their fundamental right of due process.

Pro se litigants are not getting their fair day in court, as they are not standing before an impartial tribunal because of the constitutional violations. Judges and attorneys are professionals and the rules apply to rules of professional conduct.

Many pro se litigants have not attended college and some have not graduated high school. Many pro se litigants cannot afford attorneys to help them with their cases. The Court often gets frustrated with pro se litigants and many of the decisions of the Court reflect the judge's frustration.

These acts also affect a pro se litigant in the appellate process, as many of their cases are thrown out and based upon the rules of professional standard that the pro se litigant did not apply. The State of Connecticut needs to find a way to make its courts pro se written friendly; that is, to make the rules of practice in a manner that a pro se litigant can easily understand and find without having to guess at its meaning.

This is especially important in family and housing court, as these cases affect the pro se litigants life, liberty, and happiness. Pro se litigants also do not receive the Connecticut Law Journal to find out what is coming out new from the courts, such as new case studies, statutes, and rules of the

when it comes down to people who don't have the, you know, lawyer skills, who didn't go to college.

So, you know, not just making a complaint, I'm sure a group of us would be glad to sit together and work with the judges as pro se litigants to come up with a plan to make our courts friendlier, and, no, we're not taking over the courts; we just don't have the money to pay for lawyers.

Thank you.

CHIEF JUSTICE ROGERS: Thank you very much.

John Doe No. 1, please.

(Pause in the proceedings.)

MR. JOHN NO. 1: Good morning, Your Honors.

CHIEF JUSTICE ROGERS: Good morning.

MR. JOHN DOE NO. 1: My name is John Doe and I am a former citizen of the state of Connecticut who currently still has litigation in the state of Connecticut and my choice to speak anonymously today is no sign of disrespect for this Court or for this state; however, all of us who opt to choose self-representation in the courts in the state of Connecticut have been victimized by discriminatory conduct in the construction of the rules of practice formulated since 1968 when the legislature ceased conducting public hearings as required by Connecticut General Statute 51-14(a).

As a self-represented party who has been victimized by the denial of access of my due process and equal-protection rights under the Fourteenth Amendment by the family court system of the state of Connecticut, it is imperative that

this discrimination against pro se representatives cease and desist and cease and desist immediately.

Today, I am proposing the following forms in family matters be modified:

(1) That all financial affidavits using the form JD-FM-6 or any document filed in lieu of JD-FM-6 as a financial affidavit shall be signed under the penalties of perjury by each litigant and by their counsels;

(2) The financial affidavit form JD-FM-6 shall contain specific questions that reference gross income and assets that are "foreign-held assets" declared on Federal IRS Form 1116 or on Federal IRS Form FBAR TD F 09-22.1;

(3) The financial affidavit form JD-FM-6 shall add a specific section in the gross income assets section which declares assets held in any state in the United States or territory. The use of moving assets to foreign countries during a divorce proceeding was cited in the *The Wall Street Journal* as one of the top six reasons why 57,000 Americans moved assets to UBS, which paid a $970 million fine in February of 2009.

Judges in Connecticut cannot allow lawyers who serve in the family commission to use "attorney-client privilege" with a trust attorneys [sic.] overseas or foreign and domestic estate attorneys to move assets overseas or to another state to avoid truthful disclosures of assets in a divorce proceeding or a modification of children's expenses proceeding post-judgment.

(1) The following Practice Book rules should be created concerning property distribution: (1) New Practice Book

Rule 25-19a. In any final dissolution order issued by a trial court as a MOD, if the value of an asset cannot be determined at the time of the dissolution of marriage and if the value of that asset is incorporated into the property dissolution orders as alimony by the trial court, the portion of the property distribution declared as alimony shall be declared as non-modifiable.

(2) New Practice Book Rule 20-7. Any litigant, pursuant to Rules of Professional Conduct 1.OC (as read) may submit in writing written request to a judicial authority in any proceeding to require a court reporter be assigned in chambers to make an official record of any conversations conducted in a family matter and the following Practice Book rule shall be modified to include the following provision: Practice Book Rule 25-61(h) and Practice Book Rule 1-13A shall both be amended so that all sworn statements of expenses, assets, etcetera, shall be filed on Form JD-FM-6 or any other sworn financial affidavit filed by any judicial -- with any judicial authority and 1-13A shall be amended to add the following language: No self-represented party can be incarcerated without being provided counsel.

These rule modifications are necessary to prevent the continuing discrimination which is represented in current Practice Book rules.

Thank you very much, Your Honors.

CHIEF JUSTICE ROGERS: Thank you.

JUSTICE ZARELLA: Thank you.

CHIEF JUSTICE ROGERS: John Doe No. 2?

(Pause in the proceedings.)

CHIEF JUSTICE ROGERS: Good morning.

MR. JOHN DOE NO. 2: Good morning, Members of the Supreme Court. I elect to be known as John Doe 2. I'm a resident of the state of Connecticut. On March 4, 2012, the first Supreme Court hearing in 43 years was conducted in this courtroom pursuant to CGS 51-17c.

I arrived last year with my videotape camera to record this historic public administrative judiciary committee public hearing governed by the provisions of Chapter 14 of the Connecticut General Statutes, more commonly known as the Freedom of Information Act.

On numerous occasions, I have been permitted to tape the public administrative committee hearings of the judiciary, including meetings of the Family Commission and the Rules Committee commencing November 17, 2010, when the chief administrative judge in the state of Connecticut, Judge Barbara Quinn, posted a notice that any public meetings conducted in any courtroom of the state of Connecticut would permit the use of video cameras.

On March 1, 2012, Chief Clerk of the Supreme Court and Appellate Court, Attorney Michele Angers, was contacted to confirm that my professional video equipment would be permitted to be used to tape the first public hearing in over 40 years, which conformed with the requirements of 51-14c; however, Justice Flemming Norcott, Jr., informed the security personnel on

March 4, 2012, to not allow my camera into the Supreme Court Chambers.

I spoke last year as John Doe 2. On March 20, 2013, Attorney Melissa Farley was contacted by email to confirm that the same obstruction of the proper implementation of the court rules concerning the use of video cameras set forth by the chief administrative judge in 2010 would be enforced for today's public hearing.

It was not until late on Wednesday afternoon March 21, 2013, that Ms. Farley, the judiciary's external affairs director, who approved my previous clearances to tape any Rules Committee meeting, notified me that an unidentified judicial authority refused to grant my request to tape the second public administrative hearing conducted in accordance with 51-14c.

Immediately upon this public administrative hearing required by CGS 51-14c, it is my intent to order a transcript of this public hearing governed by the FOI Act and file a complaint with the Freedom of Information Commission to challenge the authority of this panel of appointed judges by Chief Justice Chase Rogers -- excuse me -- will be alleged to have violated my rights as a citizen and a professional to have recorded these proceedings today.

The abridgments of the FOI Act of the Supreme Court are best captured by the failure in 2007 of the Chief Justice of the Supreme Court, the Honorable William Sullivan, to have withheld the release of the controversial opinion in *FOIC v. GA 7* which Justice Sullivan failed to release a final Supreme

Court opinion he authored in order to attempt to shield the legislature from questioning the then nominated Peter Zarella, who was nominated at the time by Governor Jodi Rell, to become the next chief justice of the Supreme Court.

The lack of integrity of Chief Justice William Sullivan in withholding the release of this controversial FOI decision by the Supreme Court was revealed by Justice David Borden who became the whistleblower on his judicial colleagues. Justice Zarella removed his nomination in consideration of the legislature for the first time in recorded history of the judiciary of Connecticut and the chief justice of the Supreme Court was subject to the, quote/unquote, grand inquisition of the Judicial Review Counsel and Justice Sullivan was then found guilty of having violated the code of judicial conduct.

What is amazing is how justices of the Superior Court seem to fall up rather than be punished. What is amazing -- excuse me. Who is the judge who -- who was the judge who also denied me my lawful right to access, the right to tape the first public hearing in 43 years conducted in accordance with the law? Justice Flemming Norcott, Jr., was also found guilty of probable cause that he had violated the judicial code of conduct.

Now, the irony of this preamble is that Justice Andrew McDonald will have to answer our questions, why did the senator, Andrew McDonald, as the chair of the -- co-chair of the joint committee on the judiciary refuse to conduct public hearings on the Connecticut Practice Book Rules after the Justice Sullivan debacle?

Isn't it true that on June 29, 2007, at the annual judge's meeting that Justice Zarella cut a deal with Senator McDonald --

CHIEF JUSTICE ROGERS: Mr. Doe?

MR. JOHN DOE NO. 2: -- as a --

CHIEF JUSTICE ROGERS: Mr. Doe?

MR. JOHN DOE NO. 2: -- resolution of --

CHIEF JUSTICE ROGERS: Mr. Doe?

MR. JOHN DOE NO. 2: Yes?

CHIEF JUSTICE ROGERS: Five minutes is up, sir, and --

MR. JOHN DOE NO. 2: Okay.

CHIEF JUSTICE ROGERS: -- I know that you have submitted written testimony --

MR. JOHN DOE NO. 2: Yes.

CHIEF JUSTICE ROGERS: -- and we have it.

MR. JOHN DOE NO. 2: Thank you very much.

CHIEF JUSTICE ROGERS: Thank you very much.

Jane Doe No. 1?

(Pause in the proceedings.)

CHIEF JUSTICE ROGERS: Good morning.

MS. JANE DOE NO. 1: Good morning, Justices. My name is Jane Doe. I am a citizen of the state of Connecticut and I will be commenting on video conferencing in regard to Rule No. 23-68.

On November 2, 2010, Superior Court Judge Michael Sheldon delivered an eloquent defense of why video conference

hearings, if challenged in the federal court, would need withstand a federal constitutional challenge.

On December 20, 2010, Judge Sheldon capitulated on his position objecting to the adoption of teleconferencing rules and voted in favor of them. When Justice Peter Zarella delivered his own reprise of the history of the Rules Committee before he handed the baton as chair of the Rules Committee to Justice Dennis Eveleigh. Fifteen months later, Superior Court Judge Michael Shelden became an Appellate Court judge fulfilling the promise Justice Zarella made to Judge Shelden if he endorsed the Video Conferencing Rule 23-68.

Despite the Constitution of the United States protecting the writ of habeas corpus as a constitutionally defined privilege in Article I, Section 9, in the Constitution, there are no protected federal constitutional rights in this state. If these comments sound rather harsh, then these prepared remarks are carrying the desired message.

In a recent Appellate Court oral argument, there was the use of video conference hearings in a hearing in which an incarcerated, self-represented party was denied the access to any paperwork prior to the hearing. In the oral argument questioning, one judge actually suggested that the issue regarding the use of teleconferencing -- sorry, video conferencing, was moot because later hearings conducted included the presence of the self-represented party in court.

The absurdity of this legal argument was apparent to me as an observer; in other words, that if legal proceedings

conducted using video conferencing does not involve a final proceeding of the trial court, then it doesn't matter if due process and equal protection rights are obliterated.

The Appellate Court is -- the Appellate Court's argument suggested that the constitution has no applicability in court proceedings in Connecticut as long as the final hearing is constitutionally -- sorry. The Appellate Court's argument suggesting that the Constitution has no applicability in court proceedings in Connecticut, as long as the final hearing is constitutionally sound, is pure circumlocution.

Accordingly, having also been a victim myself of the abusive utilization of teleconferencing hearings without my agreement, I am suggesting the following modification of Connecticut Practice Book Rule 23-68 to add the following additional caveat emptors:

Additions to the Practice Book Rule 23-68(e): No self-represented party who is incarcerated can be ordered to participate in a videoconferencing hearing without written consent to be secured seven days in advance of such a hearing. If the self-represented party refuses to provide consent for such a videoconferencing hearing, the trial court is provided no authority to deny a writ of habeas corpus.

(f) In the event that an incarcerated self-represented party consents to a videoconferencing hearing, all motions, papers, evidence to be considered or reference by any party in such a videoconference proceeding shall be provided to the inmate at the correctional facility by certified mail no

later than six days before such proceedings.

(g) All Superior Court judges who have access to the use of such videoconferencing equipment shall be required to be trained for the use of videoconference hearings by attending training classes conducted at a correctional facility equipped with video conference equipment.

There are simply no circumstances in which judicial discretion should be utilized in order for videoconference hearings proceedings as a means to create a prejudicial judicial proceeding against a self-represented party.

Thank you very much.

CHIEF JUSTICE ROGERS: Thank you.

Mike Doe No. 1.

(Pause in the proceedings.)

CHIEF JUSTICE ROGERS: Good morning.

MR. MIKE DOE NO. 1: Good morning, Justices --

JUSTICE EVELEIGH: Good morning.

MR. MIKE DOE NO. 1: -- and thank you for the opportunity to speak to you this morning. The first thing I'd like to address is a proposed rule to be added to the Practice Book which limits the information about children which can be contained in divorce opinions.

In divorce proceedings, minor children do not have the same rights as those children involved in juvenile proceedings or parental right termination cases. The children's private information, including their names, birth dates, and other information is routinely published in divorce opinions.

These decisions appear on the internet. They can be read by hundreds of millions of people. Those people include sex offenders and identity thieves.

Children of divorce have their personal information exposed and they are routinely stigmatized and psychologically damaged by the sometime salacious and other private information about their parents which is contained in the decision.

In one recent case, a family law judge published a 28-page decision which contained the minor children's names, their birth dates, their home addresses, as one as -- as well as one child's psychiatric history. It was lifted directly from a custody evaluation which the parents believed was for the eyes of the attorneys and the court only.

Since the publication of that decision, Your Justices, one child, he's my child, has suffered uncontrolled anxiety and can no longer attend school on a regular basis. Every time either one of my children Googles their name, that decision is the first thing that they read.

My requested rule change is that matters involving child custody has to be automatically sealed. They do it in the states of New Jersey; they do it in the states of New York. All child custody evaluations must be automatically sealed. The public cannot trust that these decisions are not going to contain information that damages our children so much.

My second proposal is an amendment with respect to GAL, AMC, fees and the appointment of GALs and AMCs. In the

Stamford Judicial District, family law judges repeatedly appoint the same small group of attorneys as GALs and AMCs. The majority of these attorneys are billing families at $500 per hour. Many do not have GAL and AMC certification and, meanwhile, there are hundreds of GAL- and AMC-certified professionals now in our state who are willing to work for state rates but they are never appointed.

In one Stamford case, the GAL billed $500 an hour. His fees exceeded $160,000. He spent a total of 4½ hours with the same two children whose public information now appears on the internet. In addition, when he was criticized for not performing his duties, he succeeded himself and an attorney -- as an attorney, having an attorney appointed for him at the cost of another $500 an hour. That attorney was then also appointed as AMC representing both the GAL, himself an attorney, and representing the children.

After an 11-day trial, it was determined that that AMC had never even met with or spoken to either of the children. Her bill, $100,000. The family, a family of modest means, now a family that is insolvent, paid GAL fees of $260,000.

The rule should be amended, Rule 25-62. We have the rules but they're not followed. It says that GALs shall be appointed pursuant to a branch fee schedule. They should be. I don't know why they're not. We have the rule; it has to be enforced.

Thank you for your time.

CHIEF JUSTICE ROGERS: Thank you very much.

The next one is Molly Doe No. 1.

(Pause in the proceedings.)

CHIEF JUSTICE ROGERS: Good morning.

MS. MOLLY DOE NO. 1: Good morning, Justices. Thank you for allowing all of us to have this opportunity to address particular issues that we feel are most pressing. This morning I'd like to discuss a review of the automatic appellate stay that is addressed in the Connecticut Practice Book.

Connecticut Practice Book Rule 61-11 states that: 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 take an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause.

And the Practice Book Rule 61-14 states: The sole remedy of any party desiring the Court to review an order concerning a stay of execution shall be a motion for review under Section 66-6. Execution of an order of the Court terminating a stay of execution shall be stayed for 10 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.

In practice, one family law judge in Stamford, Connecticut, is routinely ordering that if a party files an appeal of any issue, the 61-11 stay is hereby lifted prospectively. That same family judge and at least one family --

another judge in Middletown is also continuing with proceedings where the stay had been lifted, but a motion for review is pending under 61-14.

These judges do not believe that 61-14 applies in divorce proceedings which -- and in the Connecticut Practice Book still maintains that divorce proceedings are civil proceedings. For an example, in a recent Stamford divorce case, a family law judge awarded an AMC a large sum of money without hearing evidence as to the financial circumstances of the parties. The order was followed by the statement that should that party appeal, the automatic stay is hereby lifted.

In another case, that same judge continued with proceedings where one party appealed her finding that the spouse was not in contempt for failing to produce a single, signed tax return for himself or for any of the multiple trusts of which he is a beneficiary -- of which he was an admitted beneficiary.

The aggrieved party filed a motion for an appeal. The judge lifted the stay. The aggrieved party then filed a motion for review in following the Connecticut Practice Book rules. The judge ignored the fact that the motion for review was filed and sent the case to trial.

Requested suggestions that -- the Practice Book Rule 61-11 should be amended to state that no judge may prospectively lift the automatic stay and Practice Book Rule 61-14 should be amended to clearly state that a motion for review suspends the lifting of a stay under 61-11 in all proceedings, including those involving divorce. If this is already obvious,

then family law judges should be trained in these Practice Book rules.

Another issue I'd like to discuss is a litigant's ability to listen to his or her audio tapes of her -- of proceedings. The current procedure states that if any party or other individual challenges the accuracy of a transcript produced from an audio recording, arrangements may be made with the official court reporter for that person to listen to the audio recording and compare its contents with the transcript.

The official court reporter or a designee shall be present at all times that the audio recording is being played to the requesting person and such playing shall be at a time of mutual convenience to the person in the court reporter's office. The source of that document is the judicial branch audio access policy memo dated January 8, 2009.

In practice, in --

CHIEF JUSTICE ROGERS: You can finish your sentence.

MS. MOLLY DOE NO. 1: Okay. In all but one judicial district, litigants are permitted to listen to audio tapes of their proceedings. Inexplicably, a different rule is followed in the Stamford family court. The court reporter's office refuses all requests to listen to audio tapes. In order to hear the tape, the litigant must file a motion with the family law judge and hope for a favorable ruling.

CHIEF JUSTICE ROGERS: All right, Ms. Doe, let's --

MS. MOLLY DOE NO. 1: Okay.

CHIEF JUSTICE ROGERS: All right. Thank you very much. We're going to take a very brief recess.

MS. MOLLY DOE NO. 1: Thank you.

(The Court stands in recess.)

(Justice Peter T. Zarella is no longer present.)

CHIEF JUSTICE ROGERS: Thank you very much. John Doe No. 3.

MR. JOHN DOE NO. 3: Good morning, Justices.

CHIEF JUSTICE ROGERS: Good morning.

MR. JOHN DOE NO. 3: I stand before you today as John Doe No. 3. I am a citizen of the state of Connecticut. I choose to remain anonymous because I have been subjected to repeated retaliations and discriminations and the court system of the state of Connecticut, in my opinion, directly attributed to my disability.

When I was contacted by a member of this parent group, I immediately accepted the opportunity to speak to you today on behalf of the manner in which those of us with disabilities continue to be mistreated by the court system of the State of Connecticut. All you need to do is look at the public notice of today's meeting. Was there any reference on the website of the posting of notice of this meeting that there would be any procedure set forth for any accommodations for those who needed their due process because of their disability?

There was no effort made whatsoever by Attorney Melissa Farley to respond in a prompt fashion to the requested

accommodations for those who have physical handicaps for today's public meeting. It was only after a day of waiting and a follow-up phone conversation and an email was sent to one individual within our group that it was able to transmit certain information in regards to today's public hearing.

Most people see me and my disability and it's somewhat easy to perceive. As my mother always used to say, I have it easy; mine is obvious, but there are many with disabilities that are not. I am here for just not myself and the obvious, but for the concern of the level of insensitivity for those whose disabilities are not visible. They include those who have great fears of public speaking, who have a parallel disability and inability to articulate their opinions in writing.

The ADA Act contains many official definitions of a disability, qualifications pursuant to federal law. In a release -- in a recent letter sent by Attorney Martin Levin (phonetic) suggesting he had some sort of right to limit the request under the Freedom of Information Act concerning communications about the number of AD accommodation requests or to provide types of accommodations that have been made available for some but not all agencies in the state of Connecticut.

The judiciary of the State of Connecticut has now been sued by one litigant in federal court for failure for the courts of the state of Connecticut who refuse to understand or accept that speaking and stating -- that speaking in court for some creates enormous anxiety. The courts in Connecticut universally refuse to accept the economic challenges for those

who are disabled and assessing income potential in support of their obligations.

I was wrongly incarcerated for a period of time for which a judge was unable to see I was unable to meet certain guidelines, though, that he truly knew that I was -- he had qualified me unemployed at the time and refused to hear a motion for modification that was on the table for some nine months.

In the challenging economic environment for many citizens, the courts in the state of Connecticut continue to show many accommodations for those who depend on love, care, and companionship of our children as an emotional anchor. Courts disable our access in connection with our children who see how hard it is to work to maintain an appropriate connection with a lifeline of love which is intrinsic to the integrity of familial association.

Yes, life is challenging for those with physical disabilities, as it is many, but those who have other learning and developmental challenges as a lifetime of challenges also are deserving of accommodations here. Why do these hearings have such a stringent requirement that should eliminate the ability for someone who arrives late to the procedures due to inclement-weather-like mornings or to be removed because of the ability to address a group of senior judges of court who sets the policies? Why isn't there a morning session or perhaps an afternoon session that would allow parents who have children to care for, responsibility for disabled children who require special accommodations, to arrive on time to have opinion to choose which

time period might be more convenient for them to attend the hearing?

Isn't it compelling testimony that the ADA subcommittee of the judiciary met last April 17, 2009, and the minutes of that meeting are still listed as draft meetings -- minutes? I will wrap and I will see you once again in May for your thoughts. Thank you.

CHIEF JUSTICE ROGERS: Thank you very much.

Betsy Ross?

(Pause in the proceedings.)

CHIEF JUSTICE ROGERS: Good morning.

JUSTICE EVELEIGH: Good morning.

MR. PATRICK HENRY: Good morning. Obviously, we are switching gears a little bit here based upon what we view as being a very responsive court here this morning.

In your folder are copies of Patrick Henry's address of March the 23rd of 1775. The reason why I included that is that we're all here this morning in a unified parental and discriminatory issue that we believe exists in the family court system in the state of Connecticut.

We have been parents, most of us stripped of our joint legal and physical custody rights without access to due process or equal protection of the Fourteenth Amendment. In *Troxel v. Granville*, the United States Supreme Court of 2005, a decision that I know that this Court is well aware of, Justice Sandra Day O'Connor delivered an eloquent defense of the rights of parents as a fundamental liberty interest that is subject to

due process and equal protection.

In your folders today, you will find two letters to the editor, one going to my hometown newspapers in New Canaan and the other being distributed to every single weekly newspaper about the passage by the Joint Committee of the Judiciary of an endorsement of House Bill 6387 which directly emanated for more than two years of meetings that I personally attended of the family commission.

We have a very difficult issue about judges writing law. Articles 2, 3, 4, 5, and 6 of the supreme law of this land declares the separation of powers of government. No judge in this state has the right to submit legislation imbedded in a court operation's bill submitted with only seven days of a public notice that this was going to occur on March the 4th in the legislative office building.

I'm here to address one issue and that is Practice Book Rule 1-9a created in a seditious conspiracy by Justice Peter Zarella and captured on the June 29, 2007, minutes of the annual judges' meeting in which a resolution was passed to start creating clandestine meetings between the legislature of this state and members of this Court. How dare you? And you have denied us.

And you, Senator McDonald -- former Senator McDonald, now Justice McDonald, participated in not conducting a public hearing as the co-chair of the judiciary committee of this legislature for 43 years and now you sit on this bench. I wrote to you, sir, asking where is the public hearings on Connecticut

General Statute 51-14a? You never wrote back.

CHIEF JUSTICE ROGERS: Patrick Henry?

MR. PATRICK HENRY: That was Patrick Henry.

CHIEF JUSTICE ROGERS: Then is there a Betsy Ross?

(Pause in the proceedings.)

CHIEF JUSTICE ROGERS: Good morning.

MS. ROSS: Good morning, Panel. I'm representing Betsy Ross, one who has brought about change to our nation with a symbol of our flag which stands for liberty to our freedoms of this great nation of the United States of America.

JUSTICE NORCOTT: Ma'am, could you lower the microphone so we can hear you, please?

(The microphone is adjusted.)

JUSTICE NORCOTT: Thank you.

MS. ROSS: Did you hear what I said? My First, Fifth, Ninth, and Fourteenth Amendment rights were serious violated and I have a rule book here, it's called the Constitution of the United States of America which states so -- by someone on this bench here, Judge Maureen Keegan, seriously violated those rights when she falsely arraigned me in the criminal court last year by way of hearing my testimony on May 31, 2011, and then acting upon a false report that it was a conflict of interest for her to arraign me.

And I don't have a script written but I'm just going to be stating that many times in the family court, parents' rights are not properly listened to. They just rule from what they want to do with parents in the court and whosever has a

bigger pocketbook, who has more money to pay lawyers, pay judges -- because I know that goes on -- pay therapists, to say what they want in their reports, and there's many false reports written to the courts by way of therapists, evaluators, and it only hurts our children's lives.

My child's life is not afforded the same education because of faulty decisions made by judges in the courts -- in the family courts, the juvenile courts. I don't have to be a rocket science to know this or research the laws to know that my child's life has been thwarted because of the inadequacy by the judges in the family courts and the juvenile courts, and it says -- and I can quote a child's statement by saying that he looked over the juvenile justice system, a recent bill in the legislation in which I'm sure you're all privy to and know about, that it states throughout the whole bill, best interest of the child, and that child stated that never once when he was in the system his best interests were looked at and his best interests were never taken into consideration.

The judges -- you need to enforce that the best interests of the child be taken into consideration and that's what's ruining our country. Our children's future is being damaged -- severely damaged because everybody is on a power trip in the courts and everybody thinks that, you know, we won for the best candidate, the person who has the most power, but you're just hurting our children. Our children's future is being damaged.

So if we want this country to go forward on a

positive note, I firmly believe that you should uphold our constitutional rights. Thank you.

CHIEF JUSTICE ROGERS: Thank you.

Henry Martocchio?

(Pause in the proceedings.)

MR. MARTOCCHIO: Good day, Justices.

CHIEF JUSTICE ROGERS: Good morning.

JUSTICE EVELEIGH: Good morning.

MR. MARTOCCHIO: My name is Henry Martocchio. I've presently submitted eight copies over there. This is a complaint underneath the American Disabilities Act. I have petitioned this Supreme Court in my matters in regarding my autistic child in family courts. I have shown that the courts are in non-compliance.

My biggest problem here today is when we go to the Advisory Committee underneath the American Disabilities Act that the judicial department has, they are not following the established rules that are in the rules I have inside of my complaint. They have obstructed me. It is a Fourteenth Amendment due process right for me to be able to sit in front of the judge to understand what our civil rights are. I've been deemed non-eligible because I refuse to tell a judge what my disability rights are. My child and me, as we know in *Troxel*, are the same side of the coin. His disabilities are my disabilities.

We had a gentleman state here earlier today -- there was no association. There's other parents out there in

this world today that we live in that have to take vehicle rides, get here two hours ahead of time; so there is accommodations. There's also accommodations needed in family studies. If we have expert psychologists that will sit there and say, yup, you're a bad dad; you're violent; you're this; you're that, where's my people to understand my child's needs, then determine what the best interest is?

There is nothing in the courts today and, as far as I'm concerned, Mark Cielo and the whole Advisory Committee, after 23 years of being too late on the American Disabilities Act, should be released immediately due to the violations of state ethics and the ethics of their jobs. I have tried numerous times.

Chief Justice Rogers, I was in this courtroom one day and I was in the case of -- in Joseph W. and you asked -- and this is what hurts the most -- what is a designated, responsible ADA coordinator? A coordinator is to coordinate and cease and desist all, all -- and that even means from a judge -- discrimination. They have the absolute power and it has to be absolute power because as a community we want to forward the rights of people that are perceived as having a problem.

Do we need to go back to the ugly laws of the 1900s? Should we sit there and say that this is not a common law court anymore and if that's the case, then we're only segregating the disabled to say we don't have to have effective communication with these people? If that's the case, I am not putting nobody down by no means, but if the true common law court says no women

can be in there, nobody of a minority, nobody of a disabled, my question is to you guys, when are we gonna get finally with the 2013 standards? There are new guidelines. There is no remedy in this courtroom for me. There is nobody to turn to.

If we know we have three different gun subject control courts in this state, where are my -- where is one court that a disabled person can go to and plead their rights to a judge and have them understand what the disabled rights are -- to be the modification before entering into this courtroom, whether it's an unjust due burden or not? That rule could be only applied to 1992. It's 2013. By now, you guys, we should have had something in place.

I do not have to explain myself to Mark Cielo and tell him that underneath certain cases, it's already been ruled on that -- I am not an employee of this state, one of the first and foremost. I don't get how he can ask me what my disabilities are and, at that, it's been identified by Judge Shluger that my child is autistic. I don't have to go any further than that. I don't have to explain. These are the rules in the civil rights for me to be in the public. I have the right to access this court and have effective communication.

I do not have the burden of writing a 77-page brief, again, to Abery-Wetstone, Judge Abery-Wetstone, who has denied me again underneath the bright-line rules of my constitutional right to be a parent. I have a third-party that's interfering for seven years in my family life. Do I not have a right to live and have a family autonomy no different than any

one of you guys? When you guys had children, did anyone come to you and ask you: Well, are you the father? are you the mother? are you the father? No. Then, at that, perform a test and make me get subjected to a DCF evaluation, a family court evaluation?

The question here, you guys, how many tests do I need and how many times did it have to come back and say that I'm absolutely fit? When does the government get out of my child's life? -- because it was the government that stopped this parent from doing maximum amount of therapies at an early age intervention for my child. Now it scares me the worst.

Do I have the next Adam Sandler [sic.], the Sandy Hook shooter, on my hands? -- because in my opinion, two years after that court was done, the mother was giving up that child to the state; and I don't know if it's the truth, the whole known truth, but I just -- that's what I'm hearing right now.

Why wasn't that brought up as --

CHIEF JUSTICE ROGERS: Sir?

MR. MARTOCCHIO: -- part of the permanency plan of the court?

CHIEF JUSTICE ROGERS: Sir? Five minutes is up.

MR. MARTOCCHIO: Good day, Your Honor.

CHIEF JUSTICE ROGERS: Thank you.

MR. MARTOCCHIO: I thank you very much and here's your last copy and I -- this is a complaint and I'm asking for a response from every member of this committee in regards to why we do not have rights, civil rights, due process rights underneath the Fourteenth Amendment because they --

CHIEF JUSTICE ROGERS: Thank you.

MR. MARTOCCHIO: -- Mark Cielo has obstructed me from getting to you guys.

CHIEF JUSTICE ROGERS: Thank you.

MR. MARTOCCHIO: Thank you.

CHIEF JUSTICE ROGERS: There being no further signups, we'll adjourn this public hearing. Thank you very much.

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RULES COMMITTEE HEARING : SUPREME COURT
: STATE OF CONNECTICUT
: MARCH 25, 2013

CERTIFICATION

I, Kimberly Silverman, do hereby certify that the foregoing pages are a true and accurate transcription of the digital audio recording of the above-referenced hearing heard before the aforementioned Justices of the Supreme Court of the State of Connecticut, on the 25th day of March, 2013.

Dated this 30 day of April, 2013, in Hartford, Connecticut.

Kimberly Silverman
Court Recording Monitor