

Complaints with the CHRO Process:

January 28, 2011

- 1- Timeline for filing: October 2005 Complaint Filed
April 7, 2006 MAR
January 2007- Rebecca Johnson assigned to case
November 12, 2008- Reasonable Cause Finding
Subpoena to be issued for documents in 2007- took 1 year until 2008 before CHRO realized they could not issue across state lines and they held up my complaint for 1 year with the DOL. And we were told numerous times, by the AG attorney that these complaints could not be combined as they are distinctly and legally different.
- 2- CHRO Atty. David Kent never filed the Unequal Pay Act in my complaint violating my right to this claim which is professional negligence.
- 3- David Kent refused to file my request for an appeal to the final decision. Also he did not advise me of my rights or timeline to file for reconsideration.
- 4- Mr. Fitzgerald, the Hearing Officer, refused to allow additional time to file for reconsideration of his final decision as I had not been immediately informed of my rights by the CHRO attorney. The Hearing Referee had no intension of reconsidering his decision as his denial of my Motion for Additional Time to file a motion for reconsideration was made within 24 hrs of being received by him. Amazing how fast people work when they are up against the wall.
- 5- Mr. Fitzgerald chose to allow circumstantial, 3rd party hearsay evidence to be admitted and rejected actual facts & documented evidence supporting my claim as determined and confirmed by two CHRO attorneys. Which we believe to be prejudicial, arbitrary, capricious & legal negligence for his own agenda.

- 6- Fitzgerald mentioned on the last day of hearing that he may not have a job by the following week and may not be deciding my case. We believe his decision could have been prompted by political pressure to keep employers in the state.
- 7- Fitzgerald's ruling not to allow the Unequal Pay act actually contradicts his final decision because that is what he found Pulte in violation of. Unequal pay is discrimination according to the state statute.
- 8- Attorney Charlie Kritch shared his opinion about my case very early on that he did not believe it was worth more than \$10,000. This was before knowing or reviewing any of the facts- I find it interesting that was the approximate amount awarded to me in Fitzgerald's final decision. Had Mr. Kritch spoken to Mr. Fitzgerald? We will never know. Is every similar case worth the same? I was told that the CHRO never ever awards six figure amounts regardless of substantiating evidence and that the defendant in this case had over \$8.5 billion in assets, so \$10,000 would be valet parking money and no incentive to change their discriminatory practices. The Executive Director of the CHRO and the CHRO Hearing Officer ignored or erroneously rejected my claim of \$650,000 in lost wages, back pay and front pay without any punitive or emotion distress damages. Case law has demonstrated that large six figure awards have been made to victims of discrimination and it was a bold lie that CHRO never makes such awards. Awards should be based on the facts, verifiable evidence and testimony presented at the public hearing.

See: Civil Rights Act of 1964 "under section 703, 704, or 717 of the Act [42 U.S.C. 2000e-2, 2000e-3, 2000e-16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent. for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section.

The Civil Rights Act of 1991

TITLE I - FEDERAL CIVIL RIGHTS REMEDIES

DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION

“(b) COMPENSATORY AND PUNITIVE DAMAGES. -

“(1) DETERMINATION OF PUNITIVE DAMAGES. - A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

“(2) EXCLUSIONS FROM COMPENSATORY DAMAGES. - Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

“(3) LIMITATIONS. - The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party -

“(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000;

“(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000; and

“(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$200,000; and

“(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000.

9- According to CGSA Sec 4-183 and CGS Sec. 4-142(3) when a claimant has exhausted all administrative remedies for your claim & are dissatisfied with the final decision, you can appeal to Superior Court without the need to file a Request For Permission to sue the State. There is contradiction between two statutes that need to be resolved. One say you can sue and the other says you have to ask the king if you can sue the king. Sometimes old English Common Law is absurd and produces unworkable results. No one, including

the State should be above the law as it gives the State carte-blanche to establish a dictatorial stance which is unconstitutional in this democracy.

10-The Claims Commissioner & Attorney General's Office police themselves with request for permission to sue the state. Why would the AG or Claims Commissioner ever agree to let someone sue the State as State money is at risk. Claims less than \$7,000 are considered to be unimportant and not financially worthwhile to contest, so the Claims Commissioner can approve claims up to that amount.

11-We file a motion to Request Permission to sue the State with the Claims Commissioner in January 2010, the Attorney General's Office responded that we had no legal basis to file such a request, which was not exactly a surprise, in July 2010. Again the AG must file any objection timely and seven months after the Request was filed is not "timely" by any stretch of the imagination.

12- We also wrote the Claims Commissioner regarding our request to sue the state in January 2010- he responded 11 ½ months later. There are laws stating you can sue the state if you are aggrieved by their decision but you must ask their permission which is clearly absurd and overwhelmingly prejudicial to the claimants.

13-There has to be a definitive timeline for the Claims Commissioner to answer Motions or Request to sue the State. Otherwise, pursuant CT Practice Book Rules the Claims Commissioner waives the right to Sovereign Immunity defense based on the 120 day rule for a ruling and a Complaint against the State in Superior Court can be filed. The CHRO failed to advise me that I had to file any Motion with the Claims Commissioner pursuant to CT Gen. Statutes, which is a basis for professional malpractice against the State agency. As "gate-keeper" for legal action against the State or State Agency the Claims Commission must follow established Rule of Court Procedure and General Statutes. They cannot be a law unto themselves without accountability, as it puts the victims of discrimination at a severe disadvantage. The claimants must follow the law, but the Claims Commission does not? How absurd and unworkable this situation is.

- 14- According to 46A-54-79A- Upon certification of complaint the CHRO Chief Hearing Officer must appoint a presiding officer. This Gen. Statute does not state that the Chief hearing officer can also act as a presiding officer.
- 15- There should be 3 hearing officers to preside over these complaints for fairness to all parties.- 1 from the public & the other 2 should be bi-partisan who should be lawyers in good standing with the CT Bar. The three person commission should be governed by State Statutes and CT. Practice Book Rules and they should not be permitted to make up their own rules to suit themselves or the cases they are hearing.
- 16- CHRO hearing officer denied my constitutional right to file a claim for emotional distress: In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e-5, 2000e-16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act [42 U.S.C. 2000e-2, 2000e-3, 2000e-16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent. for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party - [Damages In Part: (D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000.][CM1]
- 17- How can the CHRO Hearing Officer or Referee be allowed to totally disregard two de novo CHRO investigations by State certified attorneys and ignore or reject existing Practice Book Rules of Evidence, the Connecticut Code of Evidence and General Statutes.

- 18- We believe the Judge at the hearing settlement conference coerced my husband into signing documents in the case although he was not a party to this case.
- 19- The Judge also erred in his decision that a portion is considered wages. This was strictly a court settlement not to be considered wages & the employer did not pay state or federal taxes on them as they agreed to do, but I appear to have no recourse against them.
- 20- There is total disrespect for discrimination victims throughout the legal community and the CHRO who appear to be above the law when it comes to accountability for their lack of legal knowledge and basic professional incompetence. How many have gone before me to have been treated with disregard & legal malpractice violating the victims constitutional rights to justice.
- 21- The CHRO Hearing Officer rejected or ignored Federal statutes regarding discrimination claims and the awarding of punitive damages: See section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e-5, 2000e-16]. "Title 42 The Public Health and Welfare, CH. 21 Civil Rights, SubChapter 1 Sec. 1981a Damages in cases of intentional discrimination in employment."
- 22- The EEOC refused to file an Appeal on my behalf following the Hearing Officer's Final Decision even though I was aggrieved by his decision. The EEOC merely accepted the finding of the CHRO hearing officer regardless of my legal rights to an Appeal based on matters of law and the erroneous and capricious actions of the Hearing Officer. A complete waste of time, money and effort. They always side with the CHRO with total disregard to the victims legal challenges based on State and Federal statutes and case law.
- 23- The Claims Commissioner is mandated by law to hold a hearing following a Request for Permission to sue the State by anyone aggrieved by the CHRO Hearing officer's decision

or ruling. The Claims Commission failed to hold that hearing. This is contrary to: "**Sec. 4-154. Time limit for decision. Notice to claimant.** (a) Not later than ninety days after hearing a claim, the Claims Commissioner shall render a decision as provided in subsection (a) of section 4-158. The Claims Commissioner shall make a finding of fact for each claim and file such finding with the order, recommendation or authorization disposing of the claim. The clerk of the Office of the Claims Commissioner shall deliver a copy of such finding and order, recommendation or authorization to the claimant and to the representative for the state, which representative may in appropriate cases be the Attorney General." Without a formal and mandated hearing the 90 day limitation must constitute a waiver of Sovereign Immunity, allowing the aggrieved party to file in Superior Court a Claim against the State for the erroneous or capricious acts of a State employee. The employer, in Connecticut, is responsible for the actions of his employee and as such the State is liable as would be any person or entity could be sued as an ordinary person.

24- When we applied to the CT Emergency Mortgage Assistance Program [EMAP] in 2009 Clive was told by the head of the program, a woman whose name we no longer have, rejected our application because of the following reasons:

- A. The EMAP program operated exactly as a regular mortgage company and I would not be able to repay any loan from the program as I was too old.
- B. We should never have been given a mortgage in the first place in 2000.
- C. I would not be able to get work sufficient to repay the loan.
- D. We had too much equity in the house.
- E. We had too much revolving credit with credit card companies.
- F. Our house was on the market.
- G. We were unemployed.
- H. We have not paid our property taxes.

We have had our house on the market, reduced the price by over \$150,000, and is well below market prices and still we have been unable to sell. The housing market in CT is at an all time low and the mega banks refuse to work with people like us who are struggling.

What is the purpose of EMAP if we had jobs, sufficient credit, could pay our taxes and were not behind in the mortgage payment? Either it is an Emergency Mortgage

Assistance Program or it is a mortgage lender, don't confuse the two and make sure that people in trouble get the help they need otherwise disband the EMAP and fire all the people who work there.

Connecticut has the highest property and other taxes in the Union. What is the legislature doing to help everyone in the State and in particular what is it doing to help people who have, through no fault of their own, fallen on hard times and are attempting to remain current on all bills and be responsible?

The SNAP program limits the assistance money to buying food only. Why not allow that money to be spent on other items like toothpaste, soap, shampoo, garbage bags, cleaning liquids, basic makeup and gasoline? In order to get through interviews we cannot look disheveled, unshaven, long unkempt hair and dirty clothes? Who would hire us looking like that? Without a wide area public transport system how can we get to interviews if we have no gas? Too many restrictions. Our first SNAP assistance was \$16 per month, how absurd is that considering our circumstance have not changed?

There is no mortgage assistance as there is rental assistance money for people in public housing. We want to stand on our own two feet and stay in our own home, but from time to time we may need a little assistance and compassion. The bureaucracy is absurdly complex, time consuming, unworkable and staffed by people who have never been on the asking side and consider all applications to be a nuisance. This applies to EMAP also.

Clive spent a long time going through the Danbury DOL system to get training only to be told on completion of the 4 week intake program and testing that the department had no money in the budget to actually put anyone through training. Again public servants being employed by the State to do nothing to help those of us who want to get retrained either through education or on-the-job.

Clive has over seven years of real life legal experience, having prepared Motions, Complaints, conducted depositions, argued in Complex Litigation Court for products liability and medical malpractice, cross-examined medical expert witness, researched

and prepared legal documentation for employment cases and is part of an expert witness round table group, yet he cannot afford to go to University to get a law degree or take a paralegal course, which takes 10 months to 3 years, even though he knows the legal system as well as any lawyer. Why can't he sit the Bar Entrance exam without a law degree from a university? It is the Bar Entrance exam which gives people the right to work as an attorney not a university degree. He understands the legal system, paralegal and law curriculum from the school of hard knocks based on real world experience sufficiently to take the Bar exam. Even the Chief Justice at Waterbury Superior court said he's never known any pro se litigant achieve so much with no formal training in Complex Litigation.

His approach and abilities to research complex legal questions is exemplary and no detail is too small. We have been dealing with a product liability claim in Complex Litigation for five years and the judge made numerous errors and now we filed with the Appeal Court over several points of law which Clive has researched and written our Appeal Brief and Supplemental Brief against a multibillion dollar pharmaceutical company, Yale University and Yale-New Haven Hospital and he intends to lead our argument in the Appellate Court and if that fails to the Supreme Court of Connecticut and the Federal Supreme Court if necessary. Judges cannot be above the letter of the law and be prejudiced against pro se litigants and judicial lawmaking is not permitted by statute. In our case the judge stated that the Practice Book rule and the Statute were exactly as Clive read, but that was not what it meant. The defendants also stated that the intent of the legislature was different to what was written, which is completely contrary to the Construction of Statutes 1-2Z. The trial court judge also granted Summary Judgment to the defendants when the law says that issues of material fact are for the trier of fact not the judge in summary judgment. The same judge also denied one defendant's first Motion for Summary Judgment for precisely this reason, yet he contradicted himself and his previous ruling when the same defendant filed a Second Renewed Motion for Summary Judgment.

That judge also held a Porter Hearing for our sole expert, who had provided care and treatment to Michele, when we argued that the Statute and Practice Book state quite clearly and unambiguously, that a Porter Hearing or Inquiry is only to be invoked to

determine if the scientific methodologies employed were new and untested. That was not the case as it was skin prick and blood testing that was in question, nothing new about that.

The list of errors by the judge goes on and on, but he has Sovereign Immunity, whereas he should do a refresher course in English and legal understanding. It is not for any judge to interpret the law if it is clear and unambiguous. He was clearly prejudiced against us as no matter how solid our arguments and case law were we lost every major hurdle. He and all judges should be held accountable for their actions. As any private person the State and its employees should not immune from prosecution otherwise

CHAPTER 53
CLAIMS AGAINST THE STATE

NEGLIGENCE - Definition: Conduct that falls below the standards of behavior established by law for the protection of others against unreasonable risk of harm. A person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances.

In order to establish negligence as a Cause of Action under the law of TORTS, a plaintiff must prove that the defendant had a duty to the plaintiff, the defendant breached that duty by failing to conform to the required standard of conduct, the defendant's negligent conduct was the cause of the harm to the plaintiff, and the plaintiff was, in fact, harmed or damaged.

The attorney for the CHRO/AG had a duty to represent Michele fully, but he failed when he omitted to include the Equal Pay Act in the Complaint. The CHRO Hearing Officer awarded Michele money damages based on the EPA when he ruled that she had been discriminated against in the form of unequal pay for the same job performed by men.

The CHRO Hearing Officer's decision and the CHRO Attorney both cause negligent infliction of emotional distress on Michele: *See: In negligence, duty is defined as "an obligation, to which the law will give recognition and effect, to conform to a particular Negligent infliction of emotional distress refers to the act of inflicting emotional distress on another by one's negligent act. Every person is having a duty to use reasonable care which avoids causing emotional distress to another person. Under law of torts, any breach of such duty will entertain monetary damages to the injured individual. Negligent infliction of emotional distress is also known as parasitic damages.*

The tort of negligent infliction of emotional distress is a controversial legal theory and is not accepted in many United States jurisdictions. It is generally disfavored by most states because it appears to have no definable parameters and the potential claims that can be made under the theory are wide open. However some states like Hawaii and California has accepted it.

In Rodrigues v. State, 52 Haw. 156 (Haw. 1970), Supreme Court of Hawaii held that plaintiffs could recover for negligent infliction of emotional distress as a result of negligently caused flood damage to their home. This decision marks the true birth of NIED as a separate tort. standard of conduct toward another." Boughter v. Town of Ocean City, 2009 U.S. Dist. LEXIS 108198 (D. Md. Nov. 19, 2009).

Michele claims that the CHRO attorney, the CHRO Hearing Officer are liable due to professional malpractice or negligence: *"Professional Malpractice is defined as : Professional negligence or malpractice is defined as "the failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss, or damage to the recipient of those services"* for the following reasons:

1. The CHRO failed to follow statutes by not making a decision on Michele's original complaint of age and gender discrimination within the mandated 190 days. They took four years.
2. The initial CHRO legal department did not know that they could or could not serve subpoenas across state line to get records from Pulte. Took them over a year to realize that they could not do so and no reason was given.
3. The second CHRO legal department also did not know how to serve a subpoena across state lines. Took them a year to realize that they could not do so. No reason was given.

4. The Attorney General's office also did not know if they could serve subpoenas across a state line. The AG was representing Michele in the lost wages aspect of her claim. There were always two legal claims: 1) with the DOL for discrimination and 2) through the AG for wage loss due to wrongful termination. The defendant wanted the two legal actions combined.

5. The judge who presided over the settlement conference coerced Clive Milton into signing the settlement agreement even though he was not a party to any action whether from the AG or the DOL/CHRO claims.

6. The same judge also warned Michele that she could not win in a court of law under any circumstances against the CHRO, thereby, coercing her to accept a lower settlement amount.

7. The CHRO Hearing referee accepted third party hearsay evidence, rejecting undisputed documental evidence provided by Michele.

8. The CHRO Hearing referee's decision final ruling that discrimination did not occur, yet he awarded Michele approx. \$7,500 plus interest in an unequal pay award. Pursuant to the Unequal Pay Act unequal pay based on gender is discrimination. So how could he, on the one hand, find no discrimination of gender when a male employee of equal standing was paid more and then on the other hand say there was no evidence of discrimination.

9. Michele's first CHRO investigating officer, Rebecca Johnston, filed her own discrimination complaint against the CHRO before completing the paperwork of finding of good cause certification against the very same agency. Ms. Johnston's claim was reviewed within two months. Michele's claim took four years. If the CHRO is and had been sued for discrimination what possible chance does a public victim have to get her claim dealt with within the statute of limitations. See: **Sec. 46a-60. (Formerly Sec. 31-126). Discriminatory employment practices prohibited.** (a) It shall be a discriminatory practice in violation of this section:

(1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, marital status, national origin, ancestry, present or past history of mental disability, mental retardation, learning disability or physical disability, including, but not limited to, blindness;

(2) For any employment agency, except in the case of a bona fide occupational qualification or need, to fail or refuse to classify properly or refer for employment or otherwise to discriminate against any individual because of such individual's race, color, religious creed, age, sex, marital status, national origin, ancestry, present or past history of mental disability, mental retardation, learning disability or physical disability, including, but not limited to, blindness;

Sec. 46a-68i. Right of appeal. The commission or any contractor or subcontractor aggrieved by a decision of the hearing officer or human rights referee following a hearing held pursuant to subsection (c) of section 46a-56 shall have a right of appeal to the Superior Court as provided for in section 4-183. Such appeal shall be privileged in order of assignment of trial.

10. **ec. 46a-82. (Formerly Sec. 31-127). Complaint: Filing.** (a) Any person claiming to be aggrieved by an alleged discriminatory practice, except for an alleged violation of section 4a-60g or 46a-68 or the provisions of sections 46a-68c to 46a-68f, inclusive, may, by himself or herself or by such person's attorney, make, sign and file with the commission a complaint in writing under oath, which shall state the name and address of the person alleged to have committed the

discriminatory practice, and which shall set forth the particulars thereof and contain such other information as may be required by the commission. After the filing of a complaint pursuant to this subsection, the commission shall serve upon the person claiming to be aggrieved a notice that: (1) Acknowledges receipt of the complaint; and (2) advises of the time frames and choice of forums available under this chapter. (f) Any complaint filed pursuant to this section must be filed within one hundred and eighty days after the alleged act of discrimination, except that any complaint by a person claiming to be aggrieved by a violation of subsection (a) of section 46a-80 must be filed within thirty days of the alleged act of discrimination.

11. Sec. 46a-82c. Jurisdiction over complaints filed after January 1, 1996. Compliance with time requirements by June 30, 1996. Review time tolled if answer not timely received.

(a) Notwithstanding any provision of the general statutes to the contrary, the Commission on Human Rights and Opportunities shall have jurisdiction over any complaint filed pursuant to section 46a-82 after January 1, 1996, that ~~the~~ ^{[[CM1]]} the commission would have had but for the failure of the Commission on Human Rights and Opportunities to comply with the time requirements of section 46a-83 provided the commission takes action to comply with such time requirements with respect to such complaints not later than June 30, 1996.

(b) The time frame contained in subsection (b) of section 46a-83 to conduct a review of the file shall be tolled if an answer is not timely received from the date the respondent's answer is due pursuant to subsection (a) of section 46a-83 until the date the answer is actually received by the commission.

12. **Sec. 46a-82e. Jurisdiction over complaints despite failure to comply with time requirements. Annual report. Delay in issuance of finding. Remedies. Court order.** (a) Notwithstanding the failure of the Commission on Human Rights and Opportunities to comply with the time requirements of sections 46a-83 and 46a-84 with respect to a complaint before the commission, the jurisdiction of the commission over any such complaint shall be retained.

(b) The commission shall report annually to the judiciary committee of the General Assembly and the Governor: (1) The number of cases in the previous fiscal year that exceeded the time frame, including authorized extensions, set forth in subsection (d) of section 46a-83; (2) the reasons for the failure to comply with the time frame; (3) the number of actions brought pursuant to subsection (d) of this section and the results thereof; and (4) the commission's recommendations for legislative action, if any, necessary for the commission to meet the statutory time frame.

(c) If a complaint has been pending for more than twenty-one months from the date of filing and the commission has not issued a finding of reasonable cause or no reasonable cause, the executive director shall send a notice by certified mail, return receipt requested, advising the complainant of his right to request a release of jurisdiction in accordance with section 46a-101. The executive director or his designee shall investigate the cause for the delay in issuing a finding. After such investigation, the executive director may, given the facts and circumstances of the case, schedule a date certain for issuance of a finding of reasonable cause or no reasonable cause.

d) (1) If a complaint has been pending for more than two years after the date of filing pursuant to section 46a-82, and if the investigator fails to issue a finding of reasonable cause or no reasonable cause by the date ordered by the executive director of the commission pursuant to subsection (c) of this section, the complainant or respondent may petition the superior court for the judicial district of Hartford for an order requiring the commission to issue a finding of reasonable cause or no reasonable cause by a date certain. The petitioner shall submit the petition on forms prescribed by the Office of the Chief Court Administrator.

Sec. 46a-83. Complaint: Review; dismissal; investigation; finding; reconsideration; attempt to eliminate discriminatory practice; default order. (a) Within twenty days after the filing of any discriminatory practice complaint pursuant to subsection (a) or (b) of section 46a-82, or an amendment to such complaint adding an additional respondent, the commission shall cause the complaint to be served upon the respondent together with a notice (1) identifying the alleged discriminatory practice, and (2) advising of the procedural rights and obligations of a respondent under this chapter. The respondent shall file a written answer to the complaint under oath with the commission within thirty days of receipt of the complaint, provided a respondent may request, and the commission may grant, for good cause shown, one extension of time of fifteen days within which to file an answer to a complaint. The answer to any complaint alleging a violation of section 46a-64c or 46a-81e shall be filed within ten days of receipt.

(b) Within ninety days of the filing of the respondent's answer to the complaint, the executive director or the executive director's designee shall review the file. The review shall include the complaint, the respondent's answer and the responses to the commission's requests for information, if any, and the complainant's comments, if any, to the respondent's answer and information

responses. If the executive director or the executive director's designee determines that the complaint fails to state a claim for relief or is frivolous on its face, that the respondent is exempt from the provisions of this chapter or that there is no reasonable possibility that investigating the complaint will result in a finding of reasonable cause, the complaint shall be dismissed. This subsection shall not apply to any complaint alleging a violation of section 46a-64c or 46a-81e. The executive director shall report the results of the executive director's determinations pursuant to this subsection to the commission quarterly during each year.

(c) The executive director of the commission or his designee shall determine the most appropriate method for processing any complaint pending after review in accordance with subsection (b) of this section. The commission may conduct mandatory mediation sessions, expedited or extended fact-finding conferences or complete investigations or any combination thereof during the investigatory process for the purpose of finding facts, promoting the voluntary resolution of complaints or determining if there is reasonable cause for believing that a discriminatory practice has been or is being committed as alleged in the complaint. As used in this section and section 46a-84, reasonable cause means a bona fide belief that the material issues of fact are such that a person of ordinary caution, prudence and judgment could believe the facts alleged in the complaint. A complaint may be dismissed if a complainant, after notice and without good cause, fails to attend a mandatory mediation session. A mediator may recommend, but not order, a resolution of the complaint. A complaint may be dismissed if the respondent has eliminated the discriminatory practice complained of, taken steps to prevent a like occurrence in the future and offered full relief to the complainant, even though the complainant has refused such relief.

(d) (1) Before issuing a finding of reasonable cause or no reasonable cause, the investigator shall afford each party and his representative an opportunity to provide written or oral comments on all evidence in the commission's file, except as otherwise provided by federal law or any other provision of the general statutes. The investigator shall consider such comments in making his determination. The investigator shall make a finding of reasonable cause or no reasonable cause in writing and shall list the factual findings on which it is based not later than one hundred ninety days from the date of the determination based on the review of the complaint, conducted pursuant to subsection (b) of this section, except that for good cause shown, the executive director or his designee may grant no more than two extensions of the investigation of three months each.

(2) If the investigator makes a determination that there is reasonable cause to believe that a violation of section 46a-64c has occurred, the complainant and the respondent shall have twenty days from receipt of notice of the reasonable cause finding to elect a civil action in lieu of an administrative hearing pursuant to section 46a-84. If either the complainant or the respondent requests a civil action, the commission, through the Attorney General or a commission legal counsel, shall commence an action pursuant to subsection (b) of section 46a-89 within ninety days of receipt of the complainant's or the respondent's notice of election of a civil action. If the Attorney General or a commission legal counsel, and a commissioner, believe that injunctive relief, punitive damages or a civil penalty would be appropriate, such relief, damages or penalty may also be sought pursuant to said subsection. Any civil action brought under this subdivision shall be limited to such claims, counterclaims, defenses or the like that would be required for the commission to have jurisdiction over the complaint had the complaint remained with the

commission for disposition. If the Attorney General or a commission legal counsel determines that a material mistake of law or fact has been made in such finding of reasonable cause, the Attorney General or a commission legal counsel may decline to bring a civil action and, in such case, shall remand the file to the investigator for further action. The investigator shall complete any such action not later than ninety days after receipt of such file.

(f) Upon a determination that there is reasonable cause to believe that a discriminatory practice has been or is being committed as alleged in the complaint, an investigator shall attempt to eliminate the practice complained of by conference, conciliation and persuasion within fifty days of a finding of reasonable cause. The refusal to accept a settlement shall not be grounds for dismissal of any complaint.

(g) No commissioner or employee of the commission may disclose, except to the parties or their representatives, what has occurred in the course of such endeavors provided the commission may publish the facts in the case and any complaint which has been dismissed and the terms of conciliation when a complaint has been adjusted. Each party and his representative shall have the right to inspect and copy documents, statements of witnesses and other evidence pertaining to his complaint, except as otherwise provided by federal law or any other provision of the general statutes.

(h) In the investigation of any complaint filed pursuant to this chapter, the commission may issue subpoenas requiring the production of records and other documents relating to the complaint under investigation.

[CM2]

(i) The executive director of the commission or his designee may enter an order of default against a respondent (1) who, after notice, fails to answer a complaint in accordance with subsection (a) of this section or within such extension of time as may have been granted or (2) who fails to answer interrogatories issued pursuant to subdivision (11) of section 46a-54 or fails to respond to a subpoena issued pursuant to subsection (h) of this section and subdivision (9) of section 46a-54, provided the executive director or his designee shall consider any timely filed objection or (3) who, after notice and without good cause, fails to attend a mandatory mediation session. Upon entry of an order of default, the executive director or his designee shall appoint a presiding officer to enter, after notice and hearing, an order eliminating the discriminatory practice complained of and making the complainant whole. The commission or the complainant may petition the Superior Court for enforcement of any order for relief pursuant to section 46a-95.[CM3]

Sec. 46a-94a. Appeal to Superior Court from order of presiding officer. Reopening of matters. (a) The Commission on Human Rights and Opportunities, any respondent or any complainant aggrieved by a final order of a presiding officer or any complainant aggrieved by the dismissal of his complaint by the commission for failure to attend a mandatory mediation session as provided in subsection (c) of section 46a-83, a finding of no reasonable cause as provided in subsection (d) of said section 46a-83 or rejection of reconsideration of any dismissal as provided in subsection (e) of said section 46a-83, may appeal therefrom in accordance with section 4-183. The court on appeal shall also have jurisdiction to grant to the commission, respondent or complainant such temporary relief or restraining order as it deems just and suitable, and in like manner to make

and enter a decree enforcing or modifying and enforcing as so modified or setting aside, in whole or in part, the order sought to be reviewed.

(b) Notwithstanding the provisions of subsection (a) of this section, a complainant may not appeal the dismissal of his complaint if he has been granted a release pursuant to section 46a-101.

(c) The commission on its own motion may, whenever justice so requires, reopen any matter previously closed by the commission in accordance with the provisions of this subsection, provided such matter has not been appealed to the Superior Court pursuant to section 4-183. Notice of such reopening shall be given to all parties. A complainant or respondent may, for good cause shown, in the interest of justice, apply in writing for the reopening of a previously closed proceeding provided such application is filed with the commission within two years of the commission's final decision.

(d) The standards for reopening a matter may include, but are not limited to: (1) A material mistake of fact or law has occurred; (2) the finding is arbitrary or capricious; (3) the finding is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and (4) new evidence has been discovered which materially affects the merits of the case and which, for good reasons, was not presented during the investigation.[CM4]

13. Sec. 46a-86. Complaint: Determination; orders; dismissal. Treatment of discrimination awards. (a) If, upon all the evidence presented at the hearing conducted pursuant to section 46a-84, the presiding officer finds that a respondent has engaged in any discriminatory practice, the presiding officer shall state the presiding officer's findings of

fact and shall issue and file with the commission and cause to be served on the respondent an order requiring the respondent to cease and desist from the discriminatory practice and further requiring the respondent to take such affirmative action as in the judgment of the presiding officer will effectuate the purpose of this chapter.

(b) In addition to any other action taken under this section, upon a finding of a discriminatory employment practice, the presiding officer may order the hiring or reinstatement of employees, with or without back pay, or restoration to membership in any respondent labor organization, provided, liability for back pay shall not accrue from a date more than two years prior to the filing or issuance of the complaint and, provided further, interim earnings, including unemployment compensation and welfare assistance or amounts which could have been earned with reasonable diligence on the part of the person to whom back pay is awarded shall be deducted from the amount of back pay to which such person is otherwise entitled. The amount of any such deduction for interim unemployment compensation or welfare assistance shall be paid by the respondent to the commission which shall transfer such amount to the appropriate state or local agency.

(c) In addition to any other action taken under this section, upon a finding of a discriminatory practice prohibited by section 46a-58, 46a-59, 46a-64, 46a-64c, 46a-81b, 46a-81d or 46a-81e, the presiding officer shall determine the damage suffered by the complainant, which damage shall include, but not be limited to, the expense incurred by the complainant for obtaining alternate housing or space, storage of goods and effects, moving costs and other costs actually incurred by the complainant as a result of such discriminatory

practice and shall allow reasonable attorney's fees and costs.

(d) In addition to any other action taken under this section, upon a finding of a discriminatory practice prohibited by section 46a-66 or 46a-81f, the presiding officer shall issue and file with the commission and cause to be served on the respondent an order requiring the respondent to pay the complainant the damages resulting from the discriminatory practice.

(e) In addition to any other action taken under this section, upon a finding of noncompliance with antidiscrimination statutes or contract provisions required under section 4a-60 or 4a-60a or the provisions of sections 46a-68c to 46a-68f, inclusive, the presiding officer shall issue and file with the commission and cause to be served on the respondent an order with respect to any remedial action imposed by the presiding officer pursuant to subsection (c) or (d) of section 46a-56.

(f) If, upon all the evidence and after a complete hearing, the presiding officer finds that the respondent has not engaged in any alleged discriminatory practice, the presiding officer shall state the presiding officer's findings of fact and shall issue and file with the commission and cause to be served on the respondent an order dismissing the complaint.

(g) Any payment received by a complainant under this chapter or under any equivalent federal antidiscrimination law, either as a settlement of a claim or as an award made in a judicial or administrative proceeding, shall not be considered as income, resources or assets

for the purpose of determining the eligibility of or amount of assistance to be received by such person in the month of receipt or the three months following receipt under the state supplement program, Medicaid or any other medical assistance program, temporary family assistance program, state-administered general assistance program, or the temporary assistance for needy families program. After such time period, any remaining funds shall be subject to state and federal laws governing such programs, including, but not limited to, provisions concerning individual development accounts, as defined in section 31-51ww.[CM5]

| **Sec. 46a-102. Civil action for discriminatory practice: Statute of limitations.** Any action brought in accordance with section 46a-100 shall be brought within two years of the date of filing of the complaint with the commission, except that an action may be brought within six months of October 1, 1991, with respect to an alleged violation provided a complaint concerning such violation has been pending with the commission for more than one year as of October 1, 1991, unless the complaint has been scheduled for a hearing.[CM6]

Cited. 211 C. 464. Filing requirement is not pure statute of limitations which may be raised only by a party as a special defense. Commission has standing to raise time limit issue due to its institutional responsibilities in the petition process, which are different from those of a court. 257 C. 258. Filing requirement is not subject matter jurisdictional; it is mandatory and subject to consent, waiver or equitable tolling. Id.

Subsec. is a mandatory time limitation and is jurisdictional. 54 CA 251. Filing period commences upon actual cessation of employment, rather than notice thereof. 103 CA 188.

14. CHRO attorney failed to provide legal advice re: filing an appeal or other rights available based on the decision of the CHRO Hearing Referee. Lack of action violates state statutes.

15. Federal Rules on State Immunity Section 1983 USC Title 42.

<http://www.huizenga.nova.edu/6240/Articles/Section1983LiabilityArticle.htm>

Accordingly, Section 1983 lawsuits often are brought against individual government officials, administrators, and employees who acted in their individual capacities but "under color of law."

Recall that Section 1983 damage claims cannot be maintained against states and state officials in their official capacities. Moreover, counties and municipalities are not liable for the unconstitutional actions of their officials, administrators, and employees unless the local government entity was the "moving force" behind the violation. Accordingly, Section 1983 lawsuits often are brought against individual government officials, administrators, and employees who acted in their individual capacities but "under color of law." The predictable result has been a marked increase in the legal liability exposure of government employees, and a concomitant anxiety that people would be apprehensive of commencing a public sector career. Such concerns engendered the development of a qualified immunity doctrine.

Qualified immunity under Section 1983, therefore, is a very important legal doctrine with consequential legal and practical public sector ramifications. Generally, the qualified immunity doctrine bars Section 1983 lawsuits when a government office, administrator, or employee acted within the course of his or her authority and employment to carry out an action or function in

"good faith," but unaware of its unconstitutionality. "Good faith," a subjective test, means that the government actor must possess a sincere and honest belief as to the legality of his or her action. This legal standard indicates that the government employee must have acted without malice, fraud, bad faith, or other corrupt motive. Significantly, in addition, there is an objective test; that is, the government administrator must have lacked knowledge and reasonable grounds to believe that he or she was contravening a person's "*clearly established*" constitutional rights. Section 1983 liability, of course, is predicated on the knowing violation of constitutional rights, and "knowing" means actual knowledge *or* inferential type knowledge. Whether a constitutional right is "clearly established" is yet another legal question for the courts to decide, and depends principally by reference to established and definitive Supreme Court decisions. This qualified immunity, one must emphasize, is construed by the courts as an affirmative defense, that is, one that must be asserted and proven by the defendant government official, administrator, or employee. Of course, the more the law is indefinite or unclear, the greater the likelihood that the government employee can show good faith and lack of knowledge. One final and important point: the obtaining the advice of legal counsel generally will provide an immunity defense to the government actor; and conversely, the failure to seek an attorney's opinion may be construed as evidence indicating a lack of good faith.²⁴

Consequently, where the conduct in question does transgress a constitutional right, qualified immunity can give way to personal liability if the government official, administrator, or employee acted in bad faith, *or knew*, or *should have known*, that the action would violate the aggrieved party's *clearly established* constitutional rights, regardless of the government actor's good faith. A leading decision is the Supreme Court case of *Wood v. Strickland*,²⁷ where the court expanded the "constitutional tort" liability potential of government officials and administrators by delimiting the

qualified immunity doctrine. In the case, local school board members were sued under Section 1983 by expelled high school students. The students contended that they had been deprived of their constitutional "due process" rights when they were expelled from school without the benefit of a full hearing. The Court ruled that the presence of good faith does not alone guarantee the protection of the qualified immunity doctrine if the government officials were aware, or should have been aware, that their actions, even though on the "outer perimeter" of their duties, would violate the constitutional rights of those involved. Accordingly, the Court held that if the government officials "knew or reasonably should have known" that their official actions would violate the students' constitutional rights, then the officials would not be found to be immune from damage suits. Without a doubt, if a government official or administrator also acts in bad faith or with a malicious purpose in depriving people of their constitutional rights, the qualified immunity is forfeited.

42 U.S.C. 1983

Section 1983 of Title 42 of the United States Code provides, in part:

§ 1983. Civil action for deprivation of rights

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, . . . “

Under this federal statute, a person who is deprived of their rights under the Constitution by someone acting under “color of law” (federal, state, or local) can bring a federal cause of action for

damages and other relief. The statute provides a right of redress for parties deprived of constitutional rights, privileges, and immunities by an official's abuse of his or her governmental position. |

[CM7]Elements of a Cause of Action

Generally speaking, there are three elements required to bring an action under 42 U.S.C. 1983. The plaintiff must prove the following:

1) He or she was deprived of a specific right, privilege, or immunity secured by the Constitution or laws of the United States;

2) The alleged deprivation was committed under color of state law; and

3) The deprivation was the proximate cause of injuries suffered by the

plaintiff. There must be a causal connection between the defendant's action and the

alleged injury. This means that harm experienced by the plaintiff must be the result of an action on the part of the governmental entity or its agent.

Who can be sued?

Anyone acting under "color of law" can be sued under this statute. Local governments, municipal corporations, and school boards can all be subject to liability under 42 U.S.C. 1983, but only if their policies or procedures were the proximate cause of the Constitutional deprivation and the injury alleged.

Generally, in the absence of a "policy claim", individuals employed by federal, state or local government are the parties named as defendants. They are sued individually for actions they took in their official capacity. In some cases, private citizens can become liable in a "1983 action", if they acted in concert with public officials to deprive someone of their Constitutional rights.

Qualified Immunity

An affirmative defense of qualified immunity is available to defendants who acted under circumstances where a reasonable official may not have understood that the conduct alleged was illegal. It is not necessary to show that the defendant officer was acting in bad faith and, indeed, the officer's subjective intentions, such as a good faith belief that what he was doing was lawful, are irrelevant. To defeat qualified immunity, it is necessary for the plaintiff to show that, given the facts and circumstances alleged, any reasonable officer would have known that the conduct complained of violated well-established law at the time of the incident.

Damages

A victim may recover compensatory damages, injunctive relief, and (except in the case of municipal defendants) punitive damages. The prevailing plaintiff can also recover the costs of the litigation and reasonable attorneys fees

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 21 - CIVIL RIGHTS

SUBCHAPTER I - GENERALLY

-HEAD-

Sec. 1981a. Damages in cases of intentional discrimination in

Employment

STATUTE-

(a) Right of recovery

(1) Civil rights

In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e-5, 2000e-16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act [42 U.S.C. 2000e-2, 2000e-3, 2000e-16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(2) Disability. In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e-5, 2000e-16] (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 794a(a)(1) of title 29, respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 791 of title 29 and the regulations implementing section 791 of title 29, or who violated the requirements of section 791 of title 29 or the regulations implementing section 791 of title 29 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(b) Compensatory and punitive damages

(1) Determination of punitive damages. A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political

subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

(2) Exclusions from compensatory damages. Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964 [42 U.S.C. 2000e-5(g)].

(3) Limitations: The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party -

[Damages In Part: (D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000.] [CMS]

CITE- 42 USC Sec. 2000e-7 02/01/2010

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 21 - CIVIL RIGHTS
SUBCHAPTER VI - EQUAL EMPLOYMENT OPPORTUNITIES

Sec. 2000e-7. Effect on State laws

-STATUTE-

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

-SOURCE-

(Pub. L. 88-352, title VII, Sec. 708, July 2, 1964, 78 Stat. 262.)

-End-

Sec. 4-147. Notice of claim. Filing fees. Any person wishing to present a claim against the state shall file with the clerk of the Office of the Claims Commissioner a notice of claim, in duplicate, containing the following information: (1) The name and address of the claimant; the name and address of his principal, if the claimant is acting in a representative capacity, and the name and address of his attorney, if the claimant is so represented; (2) a concise statement of the basis of the claim, including the date, time, place and circumstances of the act or event complained of; (3) a statement of the amount requested; and (4) a request for permission to sue the state, if such permission is sought. A notice of claim, if sent by mail, shall be deemed to have been filed with the Office of the Claims Commissioner on the date such notice of claim is postmarked. Claims in excess of five thousand dollars shall be accompanied by a check or money order in the sum of fifty dollars payable to the Treasurer, state of Connecticut. Claims for five thousand dollars or less shall be accompanied by a check or money order in the sum of twenty-five dollars payable to the Treasurer, state of Connecticut. Fees may be waived by the commissioner for good cause but such action by the commissioner shall not relieve the claimant from the obligation of filing his notice of claim in timely fashion within the statute of limitations under section 4-148. The clerk of the Office of the Claims Commissioner shall promptly deliver a copy of the notice of claim to the Attorney General. Such notice shall be for informational purposes only and shall not be subject to any formal or technical requirements, except as may be necessary for clarity of presentation and facility of understanding.

Sec. 4-148. Limitation on presentation of claim. Exception. (a) Except as provided in subsection (b) of this section, no claim shall be presented under this chapter but within one year

after it accrues. Claims for injury to person or damage to property shall be deemed to accrue on the date when the damage or injury is sustained or discovered or in the exercise of reasonable care should have been discovered, provided no claim shall be presented more than three years from the date of the act or event complained of.

(b) The General Assembly may, by special act, authorize a person to present a claim to the Claims Commissioner after the time limitations set forth in subsection (a) of this section have expired if it deems such authorization to be just and equitable and makes an express finding that such authorization is supported by compelling equitable circumstances and would serve a public purpose. Such finding shall not be subject to review by the Superior Court.

(c) No claim cognizable[CM9] by the Claims Commissioner shall be presented against the state except under the provisions of this chapter. Except as provided in section 4-156, no claim once considered by the Claims Commissioner, by the General Assembly or in a judicial proceeding shall again be presented against the state in any manner.

Sec. 4-151. Hearings. (a) Claims shall be heard as soon as practicable after they are filed.

[CM10]The following claims shall be privileged with respect to assignment for hearing: (1) Claims by persons who are sixty-five years or older or who reach such age during the pendency of the claim, (2) claims by persons who are terminally ill, as defined in section 52-191c, and (3) claims by executors or administrators of estates. Hearings may be held at the Office of the Claims Commissioner, at any available hearing facility in the State Capitol or Legislative Office Building, upon request at any courthouse serving a judicial district or geographical area or city or town hall

in the state or at such other suitable place as the Claims Commissioner finds is convenient and just to the claimant and to the Attorney General.

(b) The Claims Commissioner may call witnesses, examine and cross-examine any witness, require information not offered by the claimant or the Attorney General and stipulate matters to be argued. The Claims Commissioner shall not be bound by any law or rule of evidence, except as he may provide by his rules.

(c) The Claims Commissioner may administer oaths, cause depositions to be taken, issue subpoenas and order inspection and disclosure of books, papers, records and documents. Upon good cause shown any such order or subpoena may be quashed by the Claims Commissioner.

(d) If any person fails to respond to a subpoena, the Claims Commissioner may issue a *caapias*, directed to a state marshal to arrest such person and bring such person before the Claims Commissioner to testify.

(e) If any person refuses to testify or to produce any relevant, unprivileged book, paper, record or document, the Claims Commissioner shall certify such fact to the Attorney General, who shall apply to the superior court for the judicial district in which such person resides for an order compelling compliance. Further refusal of such person shall be punished as provided by section 2-46. If such person is the claimant, the Claims Commissioner shall summarily dismiss his claim and order it forfeited to the state.

(f) When subpoenaed by the Claims Commissioner, witnesses shall be offered the fees and mileage allowances authorized by section 52-260, provided no such fee or allowance shall be paid to any state officer or employee who appears on behalf of the state.

Sec. 4-151a. Waiver of hearings. On his own motion or at the request of the claimant or the representative for the state, which representative may in appropriate cases be the Attorney General, the Claims Commissioner may waive the hearing of any claim for five thousand dollars or less and proceed upon affidavits filed by the claimant and the state agency concerned.

Sec. 4-154. Time limit for decision. Notice to claimant. (a) Not later than ninety days after hearing a claim, the Claims Commissioner shall render a decision as provided in subsection (a) of section 4-158. The Claims Commissioner shall make a finding of fact for each claim and file such finding with the order, recommendation or authorization disposing of the claim. The clerk of the Office of the Claims Commissioner shall deliver a copy of such finding and order, recommendation or authorization to the claimant and to the representative for the state, which representative may in appropriate cases be the Attorney General.

(b) If such claim will automatically be submitted to the General Assembly by the Claims Commissioner pursuant to the provisions of subdivision (1) of subsection (a) of section 4-159, the clerk shall give written notice to the claimant that such claim will be so submitted and that the General Assembly may accept, modify or reject the recommendation of the Claims Commissioner or remand the claim to the Claims Commissioner.

(c) If the claimant has the right pursuant to subsection (b) of section 4-158 to request the General Assembly to review the decision of the Claims Commissioner, the clerk shall give written notice to the claimant that the claimant may request the General Assembly to review the decision and that the General Assembly may confirm, modify or vacate the decision or remand the claim to the Claims Commissioner. The notice shall indicate the date by which such a request must be filed with the Office of the Claims Commissioner.

Sec. 4-157. Rules of procedure. The Claims Commissioner shall adopt regulations in accordance with the provisions of chapter 54, not inconsistent with the policy and provisions of this chapter, governing his proceedings. The regulations shall avoid formal and technical requirements, but shall provide a simple, uniform, expeditious and economical procedure for the presentation and disposition of claims.

~~Sec. 4-160. Authorization of actions against the state. (a) When the Claims Commissioner deems it just and equitable, the Claims Commissioner may authorize suit against the state on any claim which, in the opinion of the Claims Commissioner, presents an issue of law or fact under which the state, were it a private person, could be liable. [CM11]~~

(b) In any claim alleging malpractice against the state, a state hospital or a sanitorium or against a physician, surgeon, dentist, podiatrist, chiropractor or other licensed health care provider employed by the state, the attorney or party filing the claim may submit a certificate of good faith to the Claims Commissioner in accordance with section 52-190a. If such a certificate is submitted, the Claims Commissioner shall authorize suit against the state on such claim.

(c) In each action authorized by the Claims Commissioner pursuant to subsection (a) or (b) of this section or by the General Assembly pursuant to section 4-159 or 4-159a, the claimant shall allege such authorization and the date on which it was granted, except that evidence of such authorization shall not be admissible in such action as evidence of the state's liability. The state waives its immunity from liability and from suit in each such action and waives all defenses which might arise from the eleemosynary[CM12] or governmental nature of the activity complained of. The rights and liability of the state in each such action shall be coextensive with and shall equal the rights and liability of private persons in like circumstances.

Sec. 4-164a. Commissioner exempt from certain provisions of Uniform Administrative Procedure Act. The Claims Commissioner is exempt from the provisions of sections 4-176e to 4-183, inclusive.[CM13]

Sec. 4-177. Contested cases. Notice. Record. (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall be in writing and shall include: (1) A statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and regulations involved; and (4) a short and plain statement of the matters asserted. If the agency or party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed

statement shall be furnished.

(c) Unless precluded by law, a contested case may be resolved by stipulation, agreed settlement, or consent order or by the default of a party.

(d) The record in a contested case shall include: (1) Written notices related to the case; (2) all petitions, pleadings, motions and intermediate rulings; (3) evidence received or considered; (4) questions and offers of proof, objections and rulings thereon; (5) the official transcript, if any, of proceedings relating to the case, or, if not transcribed, any recording or stenographic record of the proceedings; (6) proposed final decisions and exceptions thereto; and (7) the final decision.

(e) Any recording or stenographic record of the proceedings shall be transcribed on request of any party. The requesting party shall pay the cost of such transcript. Nothing in this section shall relieve an agency of its responsibility under section 4-183 to transcribe the record for an appeal.

Sec. 4-177a. Contested cases. Party, intervenor status. (a) **The presiding officer shall grant a person status as a party in a contested case if that officer finds that: (1) Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; [CM14]and (2) the petition states facts that demonstrate that the petitioner's legal rights, duties or privileges shall be specifically affected by the agency's decision in the contested case.**

(b) The presiding officer may grant any person status as an intervenor in a contested case if that

officer finds that: (1) Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

(c) The five-day requirement in subsections (a) and (b) of this section may be waived at any time before or after commencement of the hearing by the presiding officer on a showing of good cause.

(d) If a petition is granted pursuant to subsection (b) of this section, the presiding officer may limit the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition and shall define the intervenor's rights to inspect and copy records, physical evidence, papers and documents, to introduce evidence, and to argue and cross-examine on those issues. The presiding officer may further restrict the participation of an intervenor in the proceedings, including the rights to inspect and copy records, to introduce evidence and to cross-examine, so as to promote the orderly conduct of the proceedings.

Sec. 4-180. Contested cases. Final decision. Application to court upon agency failure. (a) Each agency shall proceed with reasonable dispatch to conclude any matter pending before it and, in all contested cases, shall render a final decision within ninety days following the close of evidence or the due date for the filing of briefs, whichever is later, in such proceedings.

[CM15]

(b) If any agency fails to comply with the provisions of subsection (a) of this section in any

contested case, any party thereto may apply to the superior court for the judicial district of Hartford for an order requiring the agency to render a final decision forthwith. The court, after hearing, shall issue an appropriate order.

(c) A final decision in a contested case shall be in writing or orally stated on the record and, if adverse to a party, shall include the agency's findings of fact and conclusions of law necessary to its decision. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed. The agency shall state in the final decision the name of each party and the most recent mailing address, provided to the agency, of the party or his authorized representative. The final decision shall be delivered promptly to each party or his authorized representative, personally or by United States mail, certified or registered, postage prepaid, return receipt requested. The final decision shall be effective when personally delivered or mailed or on a later date specified by the agency.

Sec. 4-183. Appeal to Superior Court. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section[CM16]. The filing of a petition for reconsideration is not a prerequisite to the filing of such an appeal.

(b) A person may appeal a preliminary, procedural or intermediate agency action or ruling to the Superior Court if (1) it appears likely that the person will otherwise qualify under this chapter to appeal from the final agency action or ruling and (2) postponement of the appeal would result in an inadequate remedy.[CM17]

(c) (1) Within forty-five days after mailing of the final decision under section 4-180 or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section, or (2) within forty-five days after the agency denies a petition for reconsideration of the final decision pursuant to subdivision (1) of subsection (a) of section 4-181a, or (3) within forty-five days after mailing of the final decision made after reconsideration pursuant to subdivisions (3) and (4) of subsection (a) of section 4-181a or, if there is no mailing, within forty-five days after personal delivery of the final decision made after reconsideration pursuant to said subdivisions, or (4) within forty-five days after the expiration of the ninety-day period required under subdivision [CM18](3) of subsection (a) of section 4-181a if the agency decides to reconsider the final decision and fails to render a decision made after reconsideration within such period, whichever is applicable and is later, a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision at its office or at the office of the Attorney General in Hartford and file the appeal with the clerk of the superior court for the judicial district of New Britain or for the judicial district wherein the person appealing resides or, if that person is not a resident of this state, with the clerk of the court for the judicial district of New Britain. Within that time, the person appealing shall also serve a copy of the appeal on each party listed in the final decision at the address shown in the decision, provided failure to make such service within forty-five days on parties other than the agency that rendered the final decision shall not deprive the court of jurisdiction over the appeal. Service of the appeal shall be made by United States mail, certified or registered, postage prepaid, return receipt requested, without the use of a state marshal or other officer, or by personal service by a proper officer or indifferent person making service in the same manner as complaints are served in ordinary civil actions. If service of

the appeal is made by mail, service shall be effective upon deposit of the appeal in the mail.

(d) The person appealing, not later than fifteen days after filing the appeal, shall file or cause to be filed with the clerk of the court an affidavit, or the state marshal's return, stating the date and manner in which a copy of the appeal was served on each party and on the agency that rendered the final decision, and, if service was not made on a party, the reason for failure to make service. If the failure to make service causes prejudice to any party to the appeal or to the agency, the court, after hearing, may dismiss the appeal.

(e) If service has not been made on a party, the court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify each party not yet served.

(f) The filing of an appeal shall not, of itself, stay enforcement of an agency decision. An application for a stay may be made to the agency, to the court or to both. Filing of an application with the agency shall not preclude action by the court. A stay, if granted, shall be on appropriate terms.

(g) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the agency shall transcribe any portion of the record that has not been transcribed and transmit to the reviewing court the original or a certified copy of the entire record of the proceeding appealed from, which shall include the agency's findings of fact and conclusions of law, separately stated. By stipulation of all parties to such appeal proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the

court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(h) If, before the date set for hearing on the merits of an appeal, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(i) The appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the agency are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(j) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or

characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For purposes of this section, a remand is a final judgment.

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(k) If a particular agency action is required by law, the court, on sustaining the appeal, may render a judgment that modifies the agency decision, orders the particular agency action, or orders the agency to take such action as may be necessary to effect the particular action.

(l) In all appeals taken under this section, costs may be taxed in favor of the prevailing party in the same manner, and to the same extent, that costs are allowed in judgments rendered by the Superior Court. No costs shall be taxed against the state, except as provided in section 4-184a.

(m) In any case in which a person appealing claims that he cannot pay the costs of an appeal under this section, he shall, within the time permitted for filing the appeal, file with the clerk of the court to which the appeal is to be taken an application for waiver of payment of such fees, costs and necessary expenses, including the requirements of bond, if any. The application shall conform to the requirements prescribed by rule of the judges of the Superior Court. After such hearing as the court determines is necessary, the court shall render its judgment on the application, which judgment shall contain a statement of the facts the court has found, with its conclusions thereon. The filing of the application for the waiver shall toll the time limits for the filing of an appeal until such time as a judgment on such application is rendered.

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CLAIMS AGAINST THE STATE REGULATIONS.

Connecticut Regulations

Sec. 4-157-1. Notice of claims All notices of claims shall be filed with the clerk and contain the information prescribed in section 4-147 of the General Statutes.

Sec. 4-157-2. Hearings All hearings shall be conducted in accordance with the procedural rules prescribed in section 4-151 of the General Statutes.

Sec. 4-157-3. Filing of claims

(a) Claims of less than \$750.00 must be accompanied by a statement concerning insurance coverage and an affidavit or supporting copy of policy which would indicate amount and types of coverage.

(b) The claims commissioner shall deny any claim not filed in a timely fashion without the need of filing of special defenses by the attorney general.

Sec. 4-157-4. Amendments The notice of complaint may be amended as a matter of right with in ninety (90) days of the filing of the notice with the office of the claims commissioner except that an extension beyond ninety (90) days may be granted upon request made at the time of the filing of the notice of claim. Such request must set forth the reasons why it is anticipated that an extension of time beyond the ninety (90) days is required.

Sec. 4-157-5. Motions prior to hearing Prior to the hearing on the merits, appropriate motions, including motions concerning discovery, inspection and disclosure of books, papers, records or documents, may be filed by the claimant or the attorney general and unless the parties request oral argument or testimony in conjunction with the motion, the claims commissioner shall decide the motion upon the written presentation. The claimant and the attorney general may submit memoranda in support of their respective positions.

Sec. 4-157-6. Pre-hearing conference Either party may request a pre-hearing conference and such request shall contain the reasons for such request. The commissioner may order a pre-hearing conference and as a result of the conference may issue orders in aid of the proceedings.

Sec. 4-157-7. Requirements for practice before the claims commissioner All claims against the state of Connecticut are defended by the office of the attorney general. A claimant need not be represented by an attorney. No person shall be permitted to represent a claimant except attorneys admitted to practice law before the courts of the state of Connecticut and who are in good standing before those courts. Student interns with the counsel of the claimant or the attorney general's office may be permitted to appear before the claims commissioner in any hearing or motion before the claims commissioner, but his representation must be accompanied by an attorney duly authorized and qualified.

Sec. 4-157-8. Filing appearances All attorneys representing clients before the state shall state their name, address, telephone number and juris number. Attorneys shall file their written appearance by filing the superior court appearance form, in use at that time, or facsimile in the office of the claims commissioner. Any substitute counsel shall file his appearance in the same manner and require of the claimant a statement that he has discharged his prior attorney.

Sec. 4-157-9. Notice of hearing The notice of hearing shall state the time and place of hearing which shall be not less than fourteen (14) days from the date of the notice. Notice of the hearing shall be given to the claimant and the attorney general.

Sec. 4-157-10. Powers and duties of the claims commissioner The claims commissioner shall have full authority to control the procedure of a hearing; to admit or exclude testimony or other evidence; and to rule upon all motions and objections. He shall make full inquiry into all facts at issue and shall obtain a full and complete of all facts necessary for a fair determination of the issues. The claims commissioner may call and examine witnesses, direct the production of papers and documents and introduce the same into the record of the proceedings.

Sec. 4-157-11. Motions and objections at hearings Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated orally and shall, with the ruling of the commissioner be included in the stenographic report of the hearing.

Sec. 4-157-12. Joinder of proceedings Two or more proceedings may be heard together by the commissioner in his discretion.

Sec. 4-157-13. Stipulations Stipulations with regard to matters and issues made with the consent of the commissioner may be introduced in evidence.

Sec. 4-157-14. Rights of parties at hearings All parties to a hearing may call, examine and cross-examine witnesses and introduce papers, documents and other evidence into the record of the proceedings subject to the ruling of the commissioner.

Sec. 4-157-15. Continuation of hearings The commissioner may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing or by appropriate notice.

Sec. 4-157-16. Oral arguments and briefs The commissioner shall permit the parties to submit oral arguments before him and to file briefs within such time limits as the commissioner may determine.

Sec. 4-157-17. Evidence in contested claims

In contested claims

(a) any oral or documentary evidence may be received, but the commissioner shall, as a matter of policy, exclude irrelevant, immaterial or unduly repetitious evidence. The commissioner shall give

effect to the rules of privilege recognized by the law. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(b) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon requests, parties shall be given an opportunity to compare the copy with the original;

(c) a party may conduct cross-examinations required for a full and true disclosure of the facts;

(d) notice may be taken of judicially cognizable facts.