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Rep. Rosa Rebimbas  
House Republican Office  
L.O.B. Room 4200  
Hartford, Connecticut 06106

Subject: Re-Nomination of Judge Thomas F. Parker

Dear Rep. Rebimbas:

It is a privilege to write in support of the re-nomination of Judge Thomas F. Parker. I worked at New London Superior Court as a temporary clerk from February 2009 to August 2010. During the course of my employment, I worked almost exclusively in serving walk-in customers at the Clerk's Office. Judge Parker always made himself available to address issues requiring immediate attention such as reviewing restraining orders and signing fee waivers. This was particularly helpful because often other judges were not always immediately accessible. Judge Parker's door was always open and he would always take the time to review and carefully deliberate over each document I put before him and issue orders accordingly. As a result of this, our customers often had their wait times significantly reduced from what they would have been had he not been there. At all times, Judge Parker reflected the highest standards of excellence expected of a member of the bench.

Having said that, it was sad to see this exemplary judge's reputation impugned by Mr. Sylvester Traylor who has spent years exhausting every forum possible to denigrate this fine judge's character and integrity with baseless accusations that range from racism to corruption. After all the sacrifice and service Judge Parker has given to the State of Connecticut, over a long career, it is difficult to remain silent in the face of this continuous assault on the character of Judge Parker by a litigant who offers neither credible nor reliable information to the Judiciary Committee. Judge Parker simply does not deserve that. Moreover, the Judiciary Committee is entitled to sufficient information to make an informed decision on the business before it.

Mr. Traylor has sought to taint the re-nomination of Judge Parker with unreliable information. His presentation was neither an accurate or complete portrayal of the facts. It is easy to paint any picture if you limit what the viewer can see. I wish to complete the picture with additional details so that the committee will see that Judge Parker brought focus, consistency and direction to Mr. Traylor's case.

I will also show that Judge Parker made the right decisions in the case. More importantly, I will demonstrate that Mr. Traylor's own attorneys did not review his file which ultimately led to their making mistakes that proved fatal to Mr. Traylor's case. In short, Mr. Traylor's attorneys amended his complaint which opened a door to dismissal that would have otherwise been procedurally shut. I will demonstrate that had Mr. Traylor's attorneys actually taken the time to review the file, they would have been readily alerted to why amending the complaint would open the door to dismissal. In other words, Judge Parker is being scapegoated for the blatant legal malpractice of Mr. Traylor's own attorneys. This is especially tragic, as I will demonstrate, because Judge Parker twice alerted Mr. Traylor to that malpractice, in two decisions, but Mr. Traylor failed to follow-up by taking any action against those attorneys.

In considering Mr. Traylor's allegations against Judge Parker, it is useful to begin by review the state of Mr. Traylor's case as it existed prior to Judge Parker being assigned to the case. This is a significant point because Mr. Traylor's case was drifting aimlessly along even though it had hundreds of pleadings filed in Mr. Traylor's case was characterized by a substantial number of petty skirmishes, but there was no movement whatsoever toward a decisive disposition one way or another. The case did not even have the benefit of one judge making rulings in the case. There were a total of ten judges ruling on the case prior to Judge Parker. Judge Parker should be credited for coming into the case and providing consistency and focus so that this previously stagnant case could move forward.

#### **JUDGE PARKER MOVED THE CASE AT A TIME WHEN IT WAS COMPLETELY STAGNANT**

If you look at the Docket Entries in *Traylor v. Awwa, e al*, it becomes readily apparent that Judge Parker first sat on the case on approximately in December 2009 which was about three years into the case. At that point, on December 15, 2009, there were already 352 docket entries in Mr. Traylor's case. Despite the high number of pleadings at that point, the case was not moving at all because the case was mired almost completely in petty legal skirmishes that were taking the focus off moving the case toward either a judicial disposition or a full blown trial. In other words, none of the parties were getting their day in court because they were too focused on the side issues in the case rather than the main event which was to bring the case to a disposition that would reach the ultimate issues in the case.

#### **(a) Mr. Traylor's Case Was Bugged Down Before Judge Parker Was Assigned to It**

Mr. Traylor's case was completely bogged down before Judge Parker was assigned to it. A review of the docket entries from August 2007 to December 2009 shows an endless stream of pleadings that were resulting in a stagnant case. There were several motions to reargue that were filed in the case (See Docket Entries #334.00, #316.00, #279.00, #278.00, #277.00, #240.00, #222.00, #219.00 and #216.00). There were also motions for clarification (See Docket Entries #347.00, #346.50 and #228.00) and motions for sanctions (See Docket Entries #334.50, #322.00, #238.00 and #233.00).

This was the state of Mr. Traylor's case before Judge Parker was assigned to it. Judge Parker detailed what the state of the case was like when he first came into it in a February 15, 2011 memorandum of decision. He wrote, "Between early July 2006 (when this case was returned) and early July 2010, pleading wise, there was no evident progress. The case was stuck. In July 2006 there was only the original complaint. In early July 2010, 4 years into the case, there was only a complaint but no progress pleading wise beyond the complaint stage. Although plaintiffs had filed amended or revised complaints, causing some skirmishes, no practical advancement of the pleadings occurred. Throughout, plaintiffs' complaints seem largely whim driven (See Exhibit A, 02/15/2011 Memo. Of Decision, pp. 3-4)." Judge Parker should, in fact, be given credit for agreeing to step into such a heavily contested case when it was so unfocused, contested and bogged down.

#### **(b) Judge Parker Brought Badly Needed Consistency and Direction to Mr. Traylor's Case**

Judge Parker brought badly needed consistency and direction to Mr. Traylor's case by virtue of his agreeing to take that assignment. A cursory review of the docket entries reveals that there were a total of eight judges who rendered rulings in the case between August 2007 and December 2009. Among the judges who entered rulings in the case during that time were the following: (1) Judge Devine; (2) Judge Young; (3) Judge Goldberg (4) Judge Peck; (5) Judge Leuba; (6) Judge Schimelman; (7) Judge Abrams; (8) Judge Martin; (9) Judge Purtill; and (10) Judge Cosgrove. Given the high number of judges that presided back and forth over the case, there was a lack of consistent vigilance over this very complicated case. Judge Parker is the judge who got to know the case best because he consistently stayed with the case and was cognizant of what was going on with the case. Mr. Traylor's case was no longer being bounced around from one judge's desk to the next. In that sense, Judge Parker was able to bring focus and direction to the case because he consistently stayed with it.

#### **(c) If it Were Not For Judge Parker, the Legal Malpractice of Mr. Traylor's Attorneys Would Have Fallen Under the Radar**

I will go into detail on the innocuous reason why Mr. Traylor's file was located in Judge Parker's chambers later in this document. For now, what is useful to know is that the legal malpractice of Mr. Traylor's own attorneys would easily have fallen under the radar if Mr. Taylor's file had been stored in the Clerk's Office. If Mr. Traylor's file was stored in the Clerk's Office, Judge Parker would be less likely to know who was accessing that file. This is a significant point because Judge Parker twice expressly stated in two rulings that Mr. Traylor's own attorneys never came in to review their client's file.

The first time Judge Parker pointed this out was in his February 15, 2011 memorandum of decision. In that document, Judge Parker noted that Mr. Traylor's attorney, from Hall Johnson, LLC filed his appearance on April 21, 2010. Judge Parker stated, "No one from Hall Johnson LLC ever looked at the court file before, on, or since April 21, 2010 and even to this date. The file has been in the undersigned's chambers throughout (See Exhibit A, 02/15/2011 Memo. of Dec., p. 7). Judge Parker also pointed out that after Hall Johnson LLC's appearance on April 21, 2010, there was no activity or word from Hall Johnson for several weeks (*Id.*). Judge Parker also stated that his attorney filed a document, entitled, "Second Amended Complaint," on July 12, 2010 (*Id.*). These are significant points given that Mr. Traylor's attorney filed an appearance in this very complicated case and then failed to review the file prior to amended his client's complaint.

By pointing this out, Judge Parker was, in fact, alerting Mr. Traylor to the critical mistake that actually directly resulted in opening the door to the dismissal of Mr. Traylor's case. In other words, Judge Parker's vigilance over the file actually gave Mr. Traylor a significant opportunity to hold his own attorneys accountable for a significant mistake that sent the case on a path to dismissal.

The problem was that Mr. Traylor decided to place all the blame on squarely on Judge Parker instead of on his own attorneys who were, in fact, actually directly responsible for opening the door to dismissal by virtue of a mistake that could have been easily avoided had they reviewed the file. Mr. Traylor did not attempt to pursue a legal malpractice claim against his attorney, but he did later "fire" him (See Exhibit B, 10/05/2010 *Memo. of Dec.* p. 2). However, it is important to note that Mr. Traylor's attorney, James Hall, IV, Esq., filed a motion to withdraw in which he stated that Mr. Traylor has "...become increasingly hostile and threatening to various attorneys and paralegals at the attorney of record's office (See Ex. C, 09/07/2010 Mot. To Withdraw, p. 2)." Mr. Traylor could very well have filed a legal malpractice lawsuit against his attorney, but chose not to pursue it. In order to fully understand this issue, we need to review the certificate of merit issue to determine what really happened.

### **THE CERTIFICATE OF MERIT ISSUE: WHAT REALLY HAPPENED**

Mr. Traylor represents himself as someone who had no opportunity to be heard due to the existence of the certificate of merit requirement and his status as an indigent. It is important to note that even though Mr. Traylor did not have the certificate of merit, at the time that he initially filed his medical malpractice case, the matter was still headed for full-blown trial until Mr. Traylor's lawyer made a very serious error directly resulting in the dismissal of the case. Specifically, Mr. Traylor's lawyer made the simple mistake of amending Mr. Traylor's complaint which opened the door to the defendant's filing of a motion to dismiss. If his lawyer had not amended the complaint, the defendants could not procedurally have sought a motion to dismiss under the rules. It was the filing of the amended complaint that actually invited the filing of the motion to dismiss that ultimately ended up getting granted. This was an especially egregious mistake given that Mr. Traylor's lawyer did not review the file. Had Mr. Traylor's lawyer reviewed the file, he would have been easily alerted to why amending the complaint would ultimately prove fatal to the case. In order to fully understand this, it is important to look at the early events of the case.

#### **(a) The "First" Motion to Dismiss Was Denied by Judge Hurley**

At the initial filing of the case, Mr. Traylor did not have a certificate of merit attached to the case. He later filed one on October 19, 2006 (See *Traylor v. Awwa, et al*, No. CV-06-5001159-S, Docket Entry #132.00). The defendants did not file a motion to dismiss that raised the issue of the certificate of merit until January 8, 2007 (*Id.*, Docket Entry #146.00). The defendant's motion to dismiss claimed that the absence of the certificate of merit at the time the case was filed deprived the court of subject matter jurisdiction. Despite the express rule of Practice Book 10-30, which allows the filing of a motion to dismiss, challenging subject matter jurisdiction, to be filed at any time, Judge Hurley denied the motion to dismiss that was filed on May 31, 2007 (*Id.* Docket Entry #157.00)(See Ex. D, 05/31/2007 Memo. Dec.).

Judge Hurley reasoned that the defendants did not object to the certificate of merit when it was filed by the plaintiff on October 19, 2006. This formed the basis for why he denied the motion to dismiss filed by the defendants. As a result, he noted that he did not have to determine the subject matter jurisdiction for which there was then a split of authority as to whether the absence of a certificate of merit impacted subject matter jurisdiction. In essence, Judge Hurley sidestepped the subject matter jurisdiction issue for which there was no clear authority on it anyway (*Id.*).

**(b) A Procedural Hurdle Existed Which Precluded Revisiting the Motion to Dismiss**

Judge Hurley's decision could not procedurally be revisited by the defendants. In other words, his ruling on the motion to dismiss meant that the case was moving forward regardless of when the certificate of merit was filed. *The defendants could not file another motion to dismiss aimed at the same complaint.* As a result, the case proceeded forward and Judge Hurley passed away during that time. It is not unreasonable to ask how the defendants were able to file another motion to dismiss after Judge Parker came into the case. They were able to do this because Mr. Traylor's secured an attorney, James Hall, IV, Esq., who decided to file an amended complaint (See *Traylor v. Awwa, et al*, No. CV06-5001159-S, Docket Entry #362.00).<sup>1</sup>

I was working at the Clerk's Office at the time that Mr. Traylor's attorney was seeking to amend the complaint. I recall seeing a letter from the defendant's attorney, Don Leone, Esq., in which he stated that he would consent to allowing the amendment to the complaint. However, Leone stated that he would not waive his right to plead to that amended complaint. I do not have this document, but even in the absence of the document, it is important to note that Attorney Leone did not object to the amended complaint. As a result of obtaining Attorney Leone's consent, Attorney Hall amended the plaintiff's complaint on July 12, 2010 (*Id.* Docket Entry #362.00). This time, Attorney Leone was prepared to plead a response quickly and timely. He filed his motion to dismiss on July 16, 2010 (*Id.* Docket Entry #366.00). It is reasonable to conclude that he did not object to the amended complaint specifically so he could file a motion to dismiss aimed at it by taking advantage of Attorney Hall's mistake to revisit the certificate of merit issue.

**(c) Mr. Traylor's Attorney Invited the Filing of What Appears to be a "Second" Motion to Dismiss**

The motion to dismiss would ultimately be granted, but for now it is important precisely how what appears to be a second motion to dismiss could procedurally be heard given that the issue was already determined by Judge Hurley. Mr. Traylor would raise this specific issue in a motion to reargue the dismissal (*Id.* Docket Entry #392.00). Judge Parker's memorandum denying that motion stated precisely how the defendants were procedurally given what seemingly appears to be a second bite at a motion to dismiss. Judge Parker wrote that the plaintiff was totally unaware of the consequence of filing an amended complaint. He then recited Practice Book § 10-61 and § 10-8 which allow a defendant to plead, as of right to each amended complaint (See *Ex. D, 08/24/2010 Memo of Dec.*, pp. 1-2). In short, an amended complaint is procedurally treated as though it is a new complaint in terms of pleading in response to it. So, the defendants filing of what appeared to be a second motion to dismiss was, in fact, under the rules, actually the first motion to dismiss aimed at that particular amended complaint that became the operative complaint of the case because it was filed by consent of all parties, including Attorney Leone. This is a significant point, because but for amending the complaint, the defendants would have had no procedural option to revisit the motion to dismiss.

**(d) The Mistake of Mr. Traylor's Attorney Was Compounded by New Developments in the Law Regarding Certificates of Merit**

That mistake by Attorney Hall was compounded by new developments in the case law relating to certificates of merit that laid to rest the split of authority that Judge Hurley sidestepped. In other words, a series of cases decided by the Appellate Court in the intervening time since Judge Hurley issued his ruling on the defendant's "first" motion to dismiss clearly held that the absence of a certificate of merit at the time of the filing of the case was fatal to jurisdiction. The cases are set forth in Judge Parker's memorandum which set forth the new developments in detail. Judge Parker states, "There is no need to tarry on Judge Hurley's decisions. There is compelling authority decided since Judge Hurley's renderings which show conclusively Judge Hurley's June 1, 2007 decision cannot stand (See *Ex. E, 08/11/2010 Memo. of Decision*, p. 14). I will not labor those cases here, but Judge Parker's memorandum is attached. Suffice it to say, that when the defendants were able to get past the procedural hurdle of filing a "second" motion to

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<sup>1</sup> *While the defendants could not file another motion to dismiss aimed at the same complaint, they were allowed to file a motion to dismiss aimed at an amended complaint because that is not the same complaint as the one that was challenged by the first motion to dismiss.* This is a very significant point. Had Mr. Traylor's attorney not filed the amended complaint, the defendants would have been procedurally precluded from revising the issue. In other words, Mr. Traylor's own attorney opened the door to another motion to dismiss by filing an amended complaint. That door would have been shut had that attorney not amended the complaint. Under the circumstances, it was an error that proved fatal to Mr. Traylor's case.

dismiss, by way of the filing of Mr. Traylor's amended complaint, there was no split of authority on the issue. It was clear that the absence of a certificate of merit at the filing of the case was fatal to jurisdiction.

**(e) This is a Key Point Because Mr. Traylor Was Not Deprived of Access to the Court Because He Could Not Afford a Certificate of Merit, His Case Was Dismissed Because a Mistake By His Attorney Opened a Procedural Door that Would have Been Otherwise Shut.**

This is a key point because Mr. Traylor claims that he was deprived access to the court because he could not afford a certificate of merit. In fact, it would not have been an issue if his attorney did not amend the complaint. The earlier ruling would have stood and the case would have proceeded. It is important to note that Mr. Traylor never questioned why his attorney amended the complaint under the circumstances. There is very good reason to suggest that Mr. Traylor's attorney was negligent. In order to understand why it is fair to conclude that Attorney Hall was negligent in amending the complaint, we will touch on the next issue which is that Mr. Traylor's file was kept in Judge Parker's chambers "under lock and key." The fact that the file was kept in Judge Parker's chambers is, in fact, what shows that Attorney Hall never bothered to read through Mr. Traylor's file at all. In other words, Attorney Hall never came in to view this extensive file. Since Attorney Hall was not diligent, he made a bad decision in filing the amended complaint. In order to understand this issue, let us review briefly why the file was kept in Judge Parker's chambers which will lead to showing precisely how we know that Attorney Hall never reviewed the file which turned out to be a critical mistake.

**THE REAL REASON WHY THE FILE WAS KEPT IN JUDGE PARKER'S CHAMBERS**

Mr. Traylor claims that his file was kept under "lock and key" in Judge Parker's chambers. On the surface this seems to fit in with his claims that he was somehow targeted by Judge Parker. However, a close examination of the facts will reveal that, quite the contrary, there was a both reasonable and practical explanation as to why Mr. Traylor's file was kept in Judge Parker's chambers. Mr. Traylor's file was simple huge and was contained in several boxes. The total pleadings filed in that case was 512. Many of the pleadings in Mr. Traylor's case were very lengthy. And, there were regular filings in that case which required constant vigilance from Judge Parker. It was simply practical to keep the file in Judge Parker's chambers by virtue of its sheer volume which numbered thousands of pages, if not in excess of ten-thousand pages. Judge Parker was constantly working on this file because of the amount of filings in the case necessitated constant vigilance to it.

**(a) Judge Parker Was Almost Continuously Working on the Mr. Traylor's File**

I never discussed Mr. Traylor's case with Judge Parker, but everytime I brought something in for Judge Parker to review, in other unrelated matters such as restraining order applications, I would always see numerous of Mr. Traylor's case documents spread out over Judge Parker's desk with notepads of his handwritten notes. I saw this myself because I would usually have to sit down in front of Judge Parker's desk while he read what I brought him. I recall on several occasions thinking that case must literally be a nightmare to work on. I knew that the file was in his chambers because it was voluminous and because it was constantly being worked on.

**(b) There was Always Access to the File Even Though It Was Located in Judge Parker's Chambers**

I was instructed, by the Chief Clerk to make sure that Mr. Traylor had continuous access to the file. That meant having to go to Judge Parker's chambers to get anything that was needed from it by Mr. Traylor. On the rare occasion that Judge Parker was not in his chambers, I was instructed to ask the Chief Clerk for a key and to retrieve what was needed for Mr. Traylor. As a courtesy, I understood the Chief Clerk would notify Judge Parker if a clerk entered his chambers on the rare occasions he was not there. I recall this happened to me once when Judge Parker was not there. Entering a judge's chambers with a key, when they were not there, was ordinarily discouraged because usually if someone came in for a file, other than Mr. Traylor, they would be told it was not available because it was in chambers and to come in the next day when that Judge was there. Judge Parker's chambers was the only chambers I ever accessed with a key during the time I was there. I understood from the Chief Clerk that the reason this exception was made was to ensure that Mr. Traylor always had access to his file. This was not routinely done for other litigants, but I expect that an exception was made for Mr. Traylor due to the complexity of his case.

Mr. Traylor would often come in to look at portions of his file. Judge Parker was usually there most of the time. I would simply go to his chambers and tell him that Mr. Traylor was looking for a specific date range or a specific document(s). Since the pleadings were in order by date in several accordion files, it was easier

to find what was needed because each accordion file contained a specific date range. As a result, Mr. Traylor would often come in and say he need to see, for example, a specific date range or a set of specific documents. Sometimes, he would only require what was in one specific accordion file or he would require a box that contained several of those accordion files which different date ranges. No matter when he wanted to view documents, they were always retrieved for him. There were very few occasions that I recall in which Judge Parker was not in his chambers. If he was not, either myself or another clerk, would be given the key. There was nothing underhanded about keeping the file in Judge Parker's chambers. It was reasonably practical under the circumstances. It was the biggest case, at least by virtue of its sheer volume, that I was aware of. It was also the most active file in the sense of the regularity of the filings. Keeping up with that file must have been a daunting task in and of itself.

**(c) How It Is Known that Attorney Hall Never Reviewed the File**

It is known that Attorney Hall never reviewed Mr. Traylor's file after he filed his appearance on Mr. Traylor's behalf on April 21, 2010. I never saw Attorney Hall come in and ask to review the file or any parts of the file. However, I did go to lunch and on breaks. Since the file was kept in Judge Parker's chambers, he is likely the most reliable source because if someone wanted something from the file they would have told Judge Parker who was requesting it to justify going through the boxes containing it that were located in his chambers. On the occasion I remember going in for such a purpose, early on in my employment there, Judge Parker simply asked, "Who is here." I remember saying, Mr. Traylor and he would ask what I needed and point to me which specific box to look in so I could get the documents requested. I trust this was done with other clerks as well. It was practical and reasonable to keep the file in Judge Parker's chambers, but as an unintended consequence, he knew if someone came in to look at the file simply because whichever clerk was retrieving it for someone would be near for him to ask who was requesting it. As it turned out, this unintended consequence actually benefitted Mr. Traylor because it exposed the legal malpractice of his own attorney.

Judge Parker noted in his February 15, 2011 memorandum of decision that "No one from Hall Johnson LLC ever looked at the file before, on, or since April 21, 2010, and even to this date. The file has been in the undersigned's chambers throughout. Thus, Hall Johnson LLC's knowledge of the file is limited to what Mr. Traylor wants them to see (*Id.*, Docket Entry #469.00) (See Also Exhibit A, 02/15/2011 Memo. of Dec., p. 7)." This statement in Judge Parker's memorandum gave Mr. Traylor something very significant. Effectively, it gave Mr. Traylor proof that a legal malpractice occurred. It was a statement from a Superior Court judge that expressly confirmed legal malpractice by specifically identifying that Mr. Traylor's attorney had not done due diligence. This statement was pretty much a gift to Mr. Traylor under the circumstances. He could very easily have filed a complaint against his attorney in which he might have prevailed on the issue of legal malpractice. It would have been very persuasive to claim that Attorney Hall should have reviewed such an extensive file before amended the complaint because such a review would have alerted Attorney Hall as to why amending the complaint would prove fatal to the case. Mr. Traylor chose to do absolutely nothing with this information even though Judge Parker's memorandum of decision laid a solid foundation for just such a legal malpractice claim. Instead, Mr. Traylor decided to publicly assign all the blame to Judge Parker. Privately, it is known that Mr. Traylor did fire his attorney (See Ex. C, 09/07/2010 Mot. to Withdraw). Having established the direct cause of the dismissal of Mr. Traylor's case, which was due to legal malpractice, it is important to briefly address some of the issues of lesser significance that Mr. Traylor raised before the Judiciary Committee with respect to Judge Parker's handling of Mr. Traylor's case.

**THE ISSUE OF THE SUPPOSED VIOLATIONS OF JUDGE HURLEY'S DISCOVERY ORDERS HAS ALREADY BEEN REVIEWED**

Mr. Traylor has argued that Judge Hurley's discovery orders were violated during the course of the case. This argument was already made by Mr. Traylor in his case in which he sought a Writ of Mandamus to enforce those orders that he perceived were violated. Mr. Traylor actually filed an entirely separate case, *Traylor v. State of Connecticut, et al*, Docket No. CV-094009523-S, to pursue a Writ of Mandamus on the issue. The trial court denied Mr. Traylor's petition for a Writ of Mandamus. The judge presiding over that Writ of Mandamus case was Judge Parker.

Mr. Traylor then appealed to the Appellate Court, in *Traylor v. State of Connecticut, et al*, A.C. 31988. The Appellate Court upheld the trial court's decision denying a Writ of Mandamus in written opinion (See Ex. F, Appellate Decision). Mr. Traylor then filed an petition for certification, to review that decision, with the Connecticut Supreme Court which was denied on June 23, 2011 (See *Petition Order Cite 301 c 927*

(2011)). Then, Mr. Traylor filed a new lawsuit on this issue in U.S. District Court which ultimately reached the U.S. Court of Appeals. The U.S. Court of Appeals also upheld Judge Parker's decision with respect to Judge Hurley's discovery orders (See Ex. G, U.S. Court of Appeals Decision).

The significance of Mr. Traylor's litigation with respect to the perceived violations of Judge Hurley's discovery orders was that both the Appellate Court and the Connecticut Supreme Court reviewed the issue and rejected Mr. Traylor's arguments. The U.S. Court of appeals also reviewed the issue. None of these forums reversed Judge Parker's holding in the Writ of Mandamus case, but instead his decision was twice upheld after review in both the Connecticut Appellate Court and the U.S. Court of Appeals. The Judiciary Committee should not second-guess the U.S. Court of Appeals, Appellate Court or the Connecticut Supreme Court. Each of these forums had access to a complete picture of the case in which each reviewed. They had the transcripts, the pleadings and the perspectives of all the parties to that litigation. The Judiciary Committee should not be an alternative forum to litigate. The Distribution of Powers in this state does not contemplate that kind of role for the Connecticut General Assembly. Even if it did, the political nature of the legislature makes it ill-suited for such a role.

### **THE ISSUE OF HOLDING ATTORNEY BERDICK IN CONTEMPT**

The issue of Judge Parker's holding of Mr. Traylor's attorney in contempt should also not be second-guessed by the Judiciary Committee. As it was noted during the Judiciary Committee's hearing, that attorney never filed a complaint on his own behalf. Mr. Traylor is raising the issue even though the lawyer who was directly impacted never did. Nevertheless, it is important to review the issue since it has been raised before the Judiciary Committee.

I was not in court on the day that Attorney Berdick was held in contempt. However, a review of the record of the case shows that appearances in the case were a significant issue which lends some credibility to Judge Parker's holding of Attorney Berdick in contempt because it might tend to support the notion that Judge Parker's action was necessary under the circumstances.

Mr. Traylor is not a lawyer. This has particular significance under the circumstances where an estate is a party. Judge Parker held a hearing to determine whether Mr. Traylor could represent the Estate of Roberta Traylor. Judge Parker concluded that he could not (See Ex. H, 02/05/2009 Memo. of Orders, p. 2). Judge Parker's conclusion is supported by the holding in *Sophie Ellis, Executrix v. Jeffrey Jacobs, et al*, 118 Conn. App. 211 (2009)(See Ex. L). Judge Parker actually gave Mr. Traylor four months to find a lawyer to represent the Estate (Id.). The deadline for Mr. Traylor to find a lawyer to represent the estate was April 21, 2010. Attorney Hall's eleventh hour appearance was filed exactly on that date at 4:21 p.m. This was the only significant decision that Judge Parker made in the case up to that point.

Mr. Traylor tried to file an appearance in addition to Attorney Hall's appearance (See Ex. I). This created an issue of "hybrid" representation which Judge Parker had the discretion not to allow. Given that the case was stagnant, despite the filing of a lot of pleadings, before Mr. Traylor secured an attorney, Judge Parker was acting reasonably in denying "hybrid" representation. In other words, a return to Mr. Traylor representing himself or the estate would have likely returned the case to the state of chaos it was in before Judge Parker presided over the case.

Mr. Traylor would indeed have returned the case to a state of chaos if he represented himself or the estate. This is apparent from numerous vexing pleadings that Mr. Traylor filed not only in this case, but in a whole series of cases that he has subsequently filed. The most significant person that the Judiciary Committee could easily contact for a confirmation that Mr. Traylor files vexatious pleadings is Assistant State's Attorney Jane Rosenberg, who has represented the state in several voluminous lawsuits that Mr. Traylor has subsequently filed. Her experience with Mr. Traylor should be sought out if the Judiciary Committee seeks someone with firsthand knowledge as to the chaos that Mr. Traylor can bring to a case with his vexing pleadings. I will discuss Mr. Traylor's vexatious filings later in this submission, but suffice it for now to say that Judge Parker was reasonably justified in any concern about Mr. Traylor representing himself or the estate.

After all, many nearly a year after Attorney Hall fatally amended the complaint, and several months after much of the case had already been dismissed, Mr. Traylor attempted to file new revised complaints in the case and to add new parties. One such attempt, was on August 30, 2010 (See *Traylor v. Awwa, et al*, No.

CV-06-5001159-S, Docket Entry #404.00). This attempt came at a time when Attorney Hall still represented Mr. Traylor and Judge Parker had already barred hybrid representation in the case. Judge Parker rightfully restrained this proposed revision to the complaint because it came four years into the case (See Ex. J). Mr. Traylor would again try unsuccessfully revise his complaint (See *Id.*, Docket Entries #446.00, #447.00 and #448.00). In summary, Mr. Traylor was trying to evade finality after much of his complaint was dismissed by simply trying to file new complaints four years into the case and adding new parties. As a result, it must have been reasonably preferable for an attorney to have an appearance to avoid the case drifting off so there would never be any finality to it.

In any event, attorneys were drifting in and out of the case. Attorney Hall did severe damage to the case and then simply bowed out by filing a motion to withdraw on September 7, 2010 (See *Id.* Docket Entry #412.00) which was granted by Judge Parker on September 22, 2010 (See *Id.* Docket Entry #412.20). This left the estate unrepresented. The defendants tried to use this as a reason to non-suit the estate, but Judge Parker denied this stating that his order did not explicitly state that the estate must have representation by counsel at all times (See Ex K, Memo. of Decision, p. 3). Nevertheless, since there appeared to be no end in sight to the lack of representation for the estate, Judge Parker, on October 6, 2010, ordered a show cause hearing to be scheduled to determine why the estate should not be non-suited. Initially, this order to show cause was scheduled for a hearing on October 18, 2010 and was postponed to October 26, 2010. This order served its purpose which was to prompt the estate into finding representation. Attorney Edward C. Berdick filed an appearance on behalf of both the Estate of Roberta Traylor and Mr. Traylor individually on October 19, 2010 (See Ex. A, 02/15/2011 Memo. of Decision, pp. 12-15).

Given all the difficulty with the attorneys coming in and out of the case, particularly at crucial times, it is difficult to second-guess Judge Parker's decision to hold Attorney Berdick on contempt. Moreover, in Mr. Traylor's specific case, there is good reason to be concerned if Mr. Traylor were to represent the estate because that would have violated the holding in *Sophie Ellis, Executrix v. Jeffrey Jacobs, et al*, 118 Conn. App. 211 (2009). Moreover, Mr. Traylor representing himself would also throw the case back into the state of chaos it was in before Judge Parker presided over it. Having said that, it is important to consider precisely why Mr. Traylor's representation of himself would have been problematic.

#### **MR. TRAYLOR HAS A WELL-DOCUMENTED HISTORY OF QUESTIONABLE CONDUCT IN PURSUING HIS LITIGATION**

Since Mr. Traylor is pro se, he does not have to follow the same rules or ethics that bind attorneys. This concept was recently recognized by the court in the case, *In Re Judith Fusari*. In that case, the court held that "Pro se petitioners have a greater capacity than most to disrupt the fair allocation of judicial resources, because they are not subject to the financial considerations-filing fees and attorney's fees – that deter other litigants from filing frivolous petitions (See Ex M., *In Re Judith Fusari*, Memo. of Dec., p. 6). Mr. Traylor may claim that he does not file frivolous submissions in court. However, there is a wealth of documentation to suggest otherwise.

The U.S. Court of Appeals has had experience with Mr. Traylor's filings in that court. That court issued a warning to Mr. Traylor stating that, "Traylor is hereby warned that the continued filing of duplicative, vexatious, or frivolous appeals, mandamus petitions, or motions may result in the imposition of sanctions, including a leave-to-file sanction requiring Traylor to obtain permission from the Court prior to filing further submissions in this Court (See Ex N, U.S. Court of Appeals Mandate).

The state court issued a decision in *Traylor v. Gerratana, et al* in which it actually suggested that an injunction against Mr. Traylor might become appropriate. In that case, the Court stated, in a footnote, that "In any event, the plaintiff's litigious fervor is perhaps understandable, but it has clearly reached the point of becoming unnecessarily costly, wasteful and fruitless. The state defendants do not seek an injunction against the plaintiff from filing further lawsuits, but such a request might become appropriate if the plaintiff does not refrain from filing suit against government officials and entities with immunities (Se Ex. O, *Traylor v. Gerratana, et al*, Memo of Dec., p. 3, FN 2).

Also, it should be noted that Mr. Traylor is subject to a leave to file order in U. S. District Court. I do not have the actual order, but I am attaching the pleading in which all of the defendants in Mr. Traylor's litigation sought that order. That pleading discusses precisely how burdensome Mr. Traylor's filings were in that case (See Ex. P, 09/06/2011 Motion to Restrain).

**(a) The Single Best Resource for the Judiciary to Contact is Assistant Attorney General Jane Rosenberg**

If the Judiciary Committee needs further information to support any contention that Mr. Traylor is a vexatious filer, it should contact Assistant Attorney General Jane Rosenberg. She has significant experience with Mr. Traylor's litigation having represented the state in several of Mr. Traylor's lawsuits. She also has been the one individual who has had to respond to Mr. Traylor's allegations with respect to Judge Parker and the State of Connecticut. I would suggest that you cannot make an informed decision as to Mr. Traylor's allegations against Judge Parker without speaking to her. Her office tel. is (860) 808-5020 and her e-mail is [jane.rosenberg@ct.gov](mailto:jane.rosenberg@ct.gov).

**(b) Another Key Resource is to Review Mr. Traylor's Extensive Litigation**

Another key resource to make a complete assessment on whether Mr. Traylor is a vexatious filer is to review the totality of the cases that Mr. Traylor has filed.<sup>2</sup> I would suggest that a cursory review of Mr. Traylor's filings will demonstrate that he has exhaustively litigated his issues with the State of Connecticut. I would also argue that Mr. Traylor's vexatious filings have led to protracted litigation which has come at a significant expenditure in resources for both the State of Connecticut and the private defendants he has continuously sued. These resources are scarce and when they are allocated to defending Mr. Traylor's litigation, that is less that can be had for other priorities in a climate where those resources are in short supply. For example, if a private defendant has to pay a lawyer \$40,000 to defend one of Mr. Traylor's lawsuits, that is \$40,000 less that the private defendant has to hire an employee. That money is instead drained by defending against wasteful litigation. The same logic applies to the State of Connecticut. The state has limited resources as well. Allocating it to defend wasteful litigation takes it from other priorities it could have been directed at. Having provided all of this information, it is important to close by considering Mr. Traylor's personal allegations he directs at Judge Parker and to view them in an appropriate context.

**PEOPLE WHO LIVE IN GLASS HOUSES SHOULD NOT THROW STONES**

Mr. Traylor claims that Judge Parker belonged to a golf club that would not admit people of color or certain religious backgrounds. Even if this unsubstantiated allegation were true, there is no indication that Judge Parker was responsible for any such policies. Fairly recently, women were precluded from sitting at a bar in a drinking establishment. Does that mean that every man that drank at such an establishment should be regarded as a misogynist? Mr. Traylor put forth this allegation to call into question Judge Parker's

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<sup>2</sup> See the following cases from Connecticut Superior Court: *Traylor v. Gerratana, et al*, Docket No. CV11-5035895; *Traylor v. Cosgrove, et al*, Docket No. CV13-5008251-S; *Traylor v. Awwa, et al*, Docket No. CV06-5001159-S; *Traylor v. Connecticut, et al*, Docket No. CV09-4009523; *Traylor v. Connecticut*, Docket No. CV09-4009849-S; *Traylor v. Steward, et al*, Docket No. CV10-5013979-S; *Traylor v. Awwa, et al*; Docket No. 11-5014139-S; *Traylor v. Connecticut, et al*; Docket No. 13-5014624-S; *Traylor v. Waterford, et al*, Docket No. 13-5014559-S. See the following appeals and petitions for certification in the Connecticut Appellate and Supreme Courts: *Traylor v. Connecticut, et al*, A.C. 31988, cert. denied, 301 C 927 (2011); *Traylor v. Awwa, et al*, A.C. 32641; *Traylor v. Awwa, et al*, A.C. 33038, cert dismissed and denied 302 C 937 (2011) and 303 C 931 (2012); *Traylor v. Awwa, et al*, A.C. 33039; *Traylor v. Awwa, et al*, S.C. 18754, *PHH Mortgage Corp. v. Traylor, et al*, A.C. 36357, *Traylor v. Gerratana, et al*, A.C. 35242, petition for cert. filed, SC13091 (presently pending); See also the following cases from the U.S. District Court: *Traylor v. Parker, et al*, Case No. 3:313-CV-1544 and *Traylor v. Connecticut, et al*, Case No. 3:2013cv00663, See also 2<sup>nd</sup> Cir. Court of Appeals; *In re Sylvester Traylor*, Case No. 12-547-op; *In re Sylvester Traylor*, Case No. 12-672-op and *Sylvester Traylor v. Awwa, et al*, Case No. 12-881-cv. See also the following case filed with the Freedom of Information Commission: *Traylor v. Commissioner*, FIC#2010-250. See also the following cases filed with the Equal Employment Opportunity Commission: *Traylor v. Dept. of the Navy*, No. 01A31450. See also the following cases filed with the CHRO: *Traylor v. East Lyme PD*, Case No. 0940163; *Traylor v. Waterford Police*, Case No. 0940432; *Traylor v. Waterford Police*, Case No. 1040133; *Traylor v. Daniel Steward*, Case No. 1040134; *Traylor v. Ryan, Ryan & Deluca*, Case No. 1040135; *Traylor v. CT Behavioral Health*, Case No. 1040332; *Traylor v. Chinago, Leone & Maruzo*, Case No. 1040333; *Traylor v. Richard Blumental*, Case No. 1040334; *Traylor v. New London PD*, Case No. 1040335; *Traylor v. Div. of Criminal Justice*, Case No. 1040336; *Traylor v. Dept. Public Health*, Case No. 1040337; *Traylor v. Chief Court Administrator*, Case No. 1040338, *Traylor v. City of New London*, Case No. 1140014 and *Traylor v. Advanced Telemessaging*, Case No. 1140015.

character. However, Mr. Traylor's own background indicates that he is living in a glass house from which he should not cast stones at others.

If Judge Parker's character is to be called into question, based on unsubstantiated allegations, then it is not unfair to view Mr. Traylor's background as well to assess his credibility. Mr. Traylor is permanently barred from Foxwood's Resort Casino and all Mashantucket Tribal Land (See Ex Q). He is also permanently barred from entering the campus of Connecticut College (See Ex R). Additionally, there was at least an attempt to bar him from the U.S Submarine Base (See Ex. S). If the Judiciary Committee is to assess Judge Parker's credibility based on Mr. Traylor's allegations with respect to his character, then it is not unreasonable to examine Mr. Traylor's background as well and draw conclusions from that examination.

#### **A FINAL WORD ON MR. TRAYLOR'S MEDICAL MALPRACTICE CASE**

Finally, it could be reasonably argued that Mr. Traylor's case was defective from the very beginning which caused him a great deal of difficulty in finding consistent legal representation. I have reviewed Mr. Traylor's deceased wife's New London probate file. There is correspondence in that file from Lois Andrews, Esq., who represented Mr. Traylor, stating that the lack of support from Mr. Traylor's step-children created an obstacle in his civil litigation. In fact, a review of the documents in that file shows that Mr. Traylor's deceased wife had three children from a prior marriage. Mr. Traylor sought their cooperation in his litigation, but they refused. In fact, they stated their intention to testify against the estate of the deceased mother in Mr. Traylor's litigation. I am attaching an email from Mr. Traylor to his attorney which I copied from that file which supports the notion that the children of his deceased wife did not support his litigation (See Ex. T). This is a significant point because this could reasonably explain Mr. Traylor's difficulty in finding quality representation.

#### **CONCLUSION**

Mr. Traylor's own attorney directly caused the dismissal of his case under circumstances in which the defendants would have been procedurally barred from revising the issue, but for the legal malpractice of Attorney Hall. Ever since, Mr. Traylor has been on a campaign to impugn Judge Parker's character. In fact, the blame for what happened in Mr. Traylor's case lies squarely on the shoulders of Attorney Hall. A review of the case clearly demonstrates that to be a fact. Judge Parker's decisions were well-reasoned and justified as shown throughout this document and a review of the attached exhibits. Judge Parker has had to endure years and years of Mr. Traylor's constant assault on his character and his decision making in Mr. Traylor's effort to chip away at the decision in his case. Mr. Traylor's wife died in 2004. There should be finality to that guess. The Judiciary Committee should not second guess Judge Parker. Mr. Traylor has filed several appeals and related lawsuits. Every other forum that has reviewed the case has upheld Judge Parker's decisions. My submission is designed to simply give the members more information than it previously had. I do this at great risk to myself given Mr. Traylor's litigiousness. Nonetheless, I cannot sit idly by as Judge Parker is unjustifiably blamed in an area for which he is blameless. I urge you to approve Judge Parker's re-nomination and send it to the floor for a vote.

Very truly yours,

Wyatt W. Kopp

# EXHIBIT A

CV 06 5001159  
SYLVESTER TRAYLOR, ADMINISTRATOR:  
OF THE ESTATE OF ROBERTA MAE  
TRAYLOR, ET AL.

SUPERIOR COURT

V.

JUDICIAL DISTRICT  
OF NEW LONDON

BASSAM AWWAM, M.D., ET AL.

AT NEW LONDON

FEBRUARY 15, 2011

**MEMORANDUM OF DECISION**

In the main, this is a medical (psychiatric) malpractice wrongful death action. It arises from the psychiatric treatment and eventual death of the late Roberta Mae Traylor. It is claimed she committed suicide on March 1, 2004.

This case is contained in a very large file. There are close to 500 file entries. Confusion abounds.

There are two plaintiffs. The first is Sylvester Traylor as Administrator of the Estate of his late wife, Roberta Mae

**FILED**

FEB 15 2011

**SUPERIOR COURT**  
New London Judicial District

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Copies mailed to all parties of record on 2/15/11

Traylor. Sylvester Traylor, in his individual and/or personal capacity, is also a plaintiff asserting loss of consortium claims.

The defendants are Bassam Awwa, M. D., a psychiatrist, and his professional corporation, Connecticut Behavioral Health Associates, P.C. It is alleged that Roberta Mae Traylor was a patient of the defendants.

The original Complaint, dated June 1, 2006 was signed by Sylvester Traylor. Sylvester Traylor is not licensed to practice law. That original Complaint did not have, as required by General Statutes § 52-190(a), a signed opinion of a similar health care provider stating that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. The Return Date was July 3, 2006

When the original June 1, 2006 Complaint was returned to court and filed with the court clerk, the Complaint had attached to it a copy of a document entitled "PETITION TO THE CLERK OF THIS COURT FOR AN AUTOMATIC 90-DAY EXTENSION OF THE STATUTE OF LIMITATIONS" dated February 23, 2006. The copy of the "Petition"

indicated the original bore file stamps showing the "Petition had been filed with the court clerk on February 23, 2006. This "Petition" was signed on behalf of the plaintiffs by Attorney Andrew J. Pianka of the law firm of Grady & Riley LLP. The clerk had granted the "Petition" on February 23, 2006. The authority for the Petition and the time extension sought is contained in C.G.S. § 52-190a(b). The whole justification for the 90-day extension is to obtain the good faith certificate the essential ingredient thereof being the written and signed opinion of a similar health care provider. Plaintiffs (i.e., Sylvester Traylor in both his capacities) were well aware of the procedure for obtaining the extension of the statutes of limitations, and having obtained same, surely knew of the requirement of having a signed opinion of similar health care provider attached to the original complaint.

Between early July 2006 (when this case was returned) and early July 2010, pleading wise , there was no evident progress. The case was stuck. In July 2006 there was only the original complaint. In early July 2010, 4 years into the case, there was only a complaint but no progress pleading wise beyond the

complaint stage. Although plaintiffs had filed amended or revised complaints, causing some skirmishes, no practical advancement of the pleadings occurred. Throughout, plaintiffs' complaints seem largely whim-driven.

On December 1, 2009, this court issued an Order to Show Cause [348]<sup>1</sup> premised on the then brand new case, *Sophie Ellis, Executrix v. Jeffrey Jacobs, et al.*, 118 Conn. App. 211 (December 1, 2009). Primarily, the Order to Show Cause required Sylvester Traylor to show why he, a non-lawyer, should not be barred from representing himself as Administrator of the Estate, and, in effect, from representing the Estate. See Order to Show Cause, December 1, 2009. [348] A hearing on the Order to Show Cause was held on December 21, 2009.

The facts recited in the December 1, 2009 Order to Show Cause were not disputed and indeed they could not be.

On December 21, 2009, the court, in open court, on the

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Bracketed three digit number indicates the file entry number of a document filed in a case. The file entry numbers for each case file begin with the number 101.

record, and in the presence of Sylvester Traylor, entered several orders. Transcript of Proceedings, December 21, 2009. The orders were:

"On December 21, 2009, the court entered orders effective immediately as follows:

"Mr. Sylvester Traylor cannot appear or represent the Estate of his late wife, Roberta Mae Traylor. Transcript of Proceedings, December 21, 2009, p. 32.

"Parties and counsel are to take no further action pending the court's specifically lifting this order. Parties and counsel are not to submit anything for filing with the clerk until such time as an appearance by an attorney is filed on behalf of the Estate of Roberta Mae Traylor. Anything submitted for filing with or by the clerk before an appearance is filed by an attorney for the Estate will be returned without its being filed.

"The no-filing order applies to Mr. Traylor in both his individual capacity regarding his loss of consortium claims and also in his capacity as administrator of the Estate. Transcript of Proceedings, December 21, 2009, p. 42.

"Mr. Traylor as administrator of the Estate of Robert Mae Taylor is allowed four months, until April 21, 2010, to have an attorney appear on behalf of the Estate. If an attorney does not file an appearance by that date, case number CV 06 5001159 will be dismissed. Transcript of Proceedings, December 21, 2009, p. 43."

Memorandum of Orders, February 5, 2010 [354]

As time went on, despite the clarity of the order barring

him from representing himself as Administrator and the Estate, Sylvester Traylor often filed papers purportedly on behalf of the Estate and, in court proceedings, tried to speak on behalf of the Estate, thus trying to represent himself as Administrator (i.e., the Estate). His statements regarding *Sophie Ellis, Executrix v. Jeffrey Jacobs, et al.*, demonstrate he has no understanding of the facts and holding thereof. The court has treated papers he has filed for the Estate as having no force or effect. Similarly, the court has not allowed him to speak on behalf of himself as Administrator or on behalf of the Estate during court proceedings.

The court allowed Sylvester Traylor, Administrator, four months, that is until April 21, 2010 to have an attorney enter an appearance for Sylvester Traylor, Administrator and upon failure of such an appearance, risk dismissal of the Estate's cause of action.<sup>2</sup>

On April 21, 2010, at 4:21 pm, the law firm, Hall Johnson

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"Sylvester Traylor, Administrator" and the "Estate" are used interchangeably herein.

LLC, entered appearances for both plaintiffs, namely, Sylvester Traylor as Administrator of the Estate of Roberta Mae Traylor, and for Sylvester Traylor in his individual and personal capacity for his claimed loss of consortium.

No one from Hall Johnson LLC ever looked at the court file before, on, or since April 21, 2010, and even to this date. The file has been in the undersigned's chambers throughout. Thus, Hall Johnson LLC's knowledge of the file is limited, only what Sylvester Traylor wants them to see.

After Hall Johnson LLC's appearance on April 21, 2010, there was no activity or word from Hall Johnson LLC for several weeks.

On May 18, 2010, the court ordered a scheduling conference for June 15, 2010. See Order, May 18, 2010. [355]

The scheduling conference was held on June 15, 2010. At that proceeding, Hall Johnson LLC, plaintiffs' counsel indicated they were preparing a new complaint which they believed would alleviate the conditions which had, for four years obstructed the progress of this case. On June 21, 2010, this court issued an

order which, among other things, provided: "The plaintiff(s) may file an amended/revised complaint by no later than June 30, 2010." Scheduling Order, June 21, 2010 [357], p. 1. ¶ 1.

On July 12, 2010, the plaintiffs filed their "Second Amended Complaint" dated July 12, 2010. [362]<sup>3</sup>

"The Second Amended Complaint had eight counts. The first six counts sounded in medical malpractice and wrongful death. Two of the six counts were for loss of consortium on behalf of Sylvester Traylor in his individual or personal capacity. The Seventh Count purports to be a spoliation of evidence cause of action. The Eighth Count alleged a CUTPA violation, based on evidence spoliation set forth in the Seventh Count. See Second Amended Complaint, July 12, 2010. [362]

On July 16, 2010, a Motion to Dismiss [366] the first six counts (the malpractice counts) was filed by defendants. The Motion to Dismiss was based on the failure of the plaintiffs to

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<sup>3</sup> The use of "Second" in the title of this version of the complaint is puzzling. This new "Second" Amended Complaint is at least the sixth complaint the plaintiffs filed or attempted to file.

have had attached to their the original June 1, 2006 Complaint a letter of a similar health care provider stating there appeared to be medical negligence. See Motion to Dismiss, July 16, 2010. [366].

Oral argument was held on July 28, 2010. On July 29, 2010 the court granted the Motion to Dismiss without a memorandum. [366.03] The court dismissed counts 1 - 6, the malpractice, loss of consortium and wrongful death causes of action. On August 11, 2010, the court issued a Memorandum of Decision regarding the Motion to Dismiss. See Memorandum of Decision, August 11, 2010. [366.04]

The Supreme Court very recently affirmed the rationale upon which this court dismissed the six malpractice counts. See *Bennett v. New Milford Hospital*, 300 Conn. 1 (January 5, 2011).

With the dismissal of Counts 1 through 6, only Counts Seven and Eight remained, the spoliation and CUTPA counts.

Defendants filed a Motion to Strike Count Seven which inadequately alleged the spoliation of evidence. Motion to

Strike Count Seven of Second Amended Complaint, August 10, 2010.

[383] The court granted the Motion to Strike. Order, August 16, 2010. [383.01]

After (a) false start(s), Count Seven was amended to cure the deficiencies found by the court when granting the Motion to Dismiss. See Revised Complaint, September 8, 2010. [416]

Defendants filed an Answer and Special Defense on September 13, 2010. See Defendants' Answer to Plaintiffs' Second Revised Complaint (# 416) Dated September 8, 2010, September 13, 2010, p. 11. [421]

The Special Defense reads:

"Counts Seven and Eight of the plaintiffs' Revised Complaint dated September 8, 2010 is barred by the time limitations set forth in Connecticut General Statutes § 52-577, §52-584 or both." See Defendants' Answer to Plaintiffs' Second Revised Complaint (# 416) Dated September 8, 2010, September 13, 2010, p. 11. [421]

The court ordered the Estate to file its Reply by 3 pm on September 21, 2010. See Order, September 14, 2010. [423]

However, on September 7, 2010, Hall Johnson LLC had moved to withdraw its appearances for the plaintiffs. See Motion to Withdraw, September 7, 2010. [412] Hall Johnson LLC also filed An Addendum to Motion to Withdraw, September 8, 2010 [419.05] Sylvester Traylor then filed Plaintiff's Reply to Motion to Withdraw, September 9, 2010 [419] and Affidavit, September 9, 2010. [419.50]

Hall Johnson LLC's Motion to Withdraw was to be heard at 2 pm on September 20, 2010. The court had ordered the Estate to file its Reply by 3 pm on September 21, 2010. See Order, September 14, 2010. [423]

Hall Johnson LLC had a dilemma.

Literally, on the way out the door to attend the proceedings on Hall Johnson LLC's withdrawal of appearance motion, Hall Johnson LLC, actually Attorney James Hall, e-filed a Reply for the Estate. See Plaintiff, Sylvester Traylor Administrator of Estate of Roberta Mae Traylor's Reply to Special Defenses, September 20, 2010. [427] Court records show the Reply was e-filed on September 20, 2010 at 11:37 am.

The September 20, 2010 court proceeding began at 2 pm. At Sylvester Traylor's bidding, Attorney Hall asked the court to have the Reply that had been filed just over 2 hours previously be withdrawn. Transcript of Proceedings, September 20, 2010, pp. 2-4. The court granted the request. Since the Reply had been on file for at most 2½ hours and was, according to Sylvester Traylor, filed without his approval, the court has treated the Reply as though it was never filed and has no force or effect as a pleading herein. See Order, September 21, 2010. [432] Thus, the Estate did not file its Reply by September 21, 2010 as ordered. In fact, no Reply has been filed by the Estate to this date.

Largely based on the Estate's non-appearing status after September 20, 2010, its failure to file a Reply by September 21, 2010, and the rules regarding the advancement of pleadings, the court issued an Order to Show Cause on October 6, 2010 [436] to show the court why Sylvester Traylor, Administrator of the Estate and/or the Estate should not be nonsuited or the case dismissed. This Order to Show Cause was scheduled for hearing on October 18, 2010. That Order to Show Cause included this paragraph:

"3. The parties may file pre-hearing briefs addressing the issues raised herein provided such non-mandatory briefs are filed by October 15, 2010." See p. 5, ¶ 2.

The hearing on the October 6, 2010 Order to Show was postponed to October 26, 2010.

On October 14, 2010, the court issued another Order to Show Cause, [437]. Order to Show Cause, October 14, 2010. [437] Perhaps over-distilling, this Order to Show Cause was premised on the defendants' apparent and probable ability to overcome the rebuttable presumption critical to the spoliation of evidence cause of action set forth in Count Seven. For amplification, see discussion below. The Order to Show Cause also invited plaintiffs to dissuade the court from taking action suggested in the Order to Show Cause. Paragraph 24, p. 6, provided:

"24. The parties may file pre-hearing briefs addressing the factual statements herein and also addressing the conclusions of law stated herein. Such non-mandatory briefs, if any, must be filed by October 22, 2010. Order to Show Cause, October 14, 2010, p. 6, ¶ 24. [437]

The hearing on the October 14, 2010 Order to Show Cause was scheduled for October 26, 2010. P. 6, ¶ 23.

On October 19, 2010, Attorney Edward C. Berdick entered two appearances: one for "Pty# 01 Sylvester Traylor," and the second for "Pty# 02 Sylvester Traylor Adm.Est. of Robert M." It is noteworthy that Attorney Berdick had never looked at the file before filing his appearances. He has not looked at he court file since. Thus his knowledge of same is restricted to what Sylvester Traylor wants him to know.

Attorney Berdick, roughly concurrent with his appearances, filed two motions. See Motion to Transfer Action to the Judicial District of Fairfield at Bridgeport, October 18, 2010 [439]. The second motion is Motion to Strike Defendant's Special Defenses, October 18, 2010. [440] The Motion to Strike was accompanied by an extended memorandum. Memorandum of Law in Support of Motion to Strike Defendants Special Defenses, October 18, 2010. [441]

On October 26, 2010, the date upon which the October 6 and October 14, 2011 Orders to Show Cause were to be heard, plaintiffs, via Attorney Berdick, filed a Motion to Recuse [Disqualify]. See Motion to Recuse [Disqualify], October 25,

2010. [444]

When the hearing scheduled for the two Orders to Show Cause opened, Attorney Berdick informed the court he was not ready to proceed on the October 6<sup>th</sup> Order to Show Cause. He informed that he had filed a Motion to Recuse [Disqualification] and asked to be heard on the Motion. He informed the court he was not prepared on the October 6<sup>th</sup> Order to Show Cause "because I want to make an argument that I had filed a motion for recusal (sic) for disqualification . . . the reason is I'm a new attorney to the case. There's been over 400 motions. I'd like to have 30 days to get up to speed." Transcript of Proceedings, October 26, 2010, p. 2.

The court heard Attorney Berdict on the disqualification motion. Transcript of Proceedings, October 26, 2010, pp. 2 - 16.

The court then returned to the October 6 Order to Show Cause. Although invited to do so, plaintiffs had not filed any brief regarding the factual statements and legal precedents upon which the October 6 Order to Show Cause were premised. See Order to Show Cause, October 6, 2010, p. 5, ¶ 3. [436] And, during the

in court proceedings, Attorney Berdick offered no cogent argument, instead, claiming he needed more time to prepare. Transcript of Proceedings, October 26, 2010, pp. 16-22.

The court then turned to the October 14 Order to Show Cause.

Again, the court had explicitly invited and solicited guidance from the parties regarding the factual statements and conclusions of law set forth in the Order to Show Cause. Order to Show Cause, October 14, 2011, p. 6, ¶ 24. Attorney Berdick objected to going forward: "I object to going forward because I'm prepared adequately." "I would like to do for any further substantive procedural arguments on any motions until I get up to speeds on the file." Transcript of Proceedings, October 26, 2010, p. 22. At one point, Attorney Berdick stated: "I object. I have stuff prepared, but I'm not going to submit it." P. 25. Throughout, Attorney Berdick spoke of his not being prepared and to the extent he did address the issues at hand, his arguments confirm he was not prepared. Transcript of Proceedings, October 26, 2010, pp. 37.

The court first discusses the October 6, 2010 Order to Show Cause based on the non-appearing status of the Estate and the Estate's not replying to the Special Defense.

As of October 6, 2010, the Estate had been non-appearing since September 20, when Hall Johnson LLC was allowed to withdraw. Attorney Berdick appeared on October 19, 2010. That non-appearing status lasted 28 days. In view of the overall history of this case, the other extended times when the Estate was not represented by a licensed attorney, Attorney Berdick's appearance does not persuade the court that a nonsuit of the Estate or the dismissal of its case is not warranted.

Nor did the Estate comply with the order that a Reply be filed by September 21. Although Attorney Berdick appeared for the Estate on October 19, the Estate has yet to file a Reply.

The unassailable and unassailed facts upon which the October 6, 2010 Order to Show Cause regarding the pleading deficiency are:

1. The defendants' Special Defense was filed on September 13, 2010.

2. The Rules of Practice require that pleadings advance every 15 days. P.B. § 10-8.
3. The court had ordered the Estate to file its Reply by September 21, 2010. See Order, September 14, 2010, ¶ 12. [423]
4. The Estate had not Replied as of October 14, 2010.
5. As of October 26, 2010, the Estate was tardy by some 35 days in filing a Reply.

In fact, the Estate has not filed a Reply as of this February 15, 2011.

Although warranted, the court **does not** nonsuit the Estate or dismiss its action pursuant to the October 6 Order to Show Cause.

The court now turns to the substantive issues presaged in the October 14, 2010 Order to Show Cause. They are encompassed in the October 14, 2010 Order to Show Cause. [437]

In the Seventh Count of the Second Amended Complaint, July 12, 2010 [362], the plaintiff Estate alleges the intentional spoliation of evidence. In 2006, Connecticut recognized this as a viable tort. *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225 (2006).

Since *Rizzuto* is much the focus herein, the court sets forth the facts thereof.

In December 1996, while shopping at a Home Depot store, plaintiff Rizzuto climbed a ladder made by defendant Davidson Ladders, Inc. The ladder collapsed and Rizzuto fell to the floor receiving serious injuries. In August, 1997 Rizzuto filed a products liability action against Davidson and Home Depot. Rizzuto repeatedly asked these defendants to preserve the ladder so he could have it examined professionally. In 1998, the defendants' expert examined the ladder and concluded it was not defective. Thereafter defendants destroyed the ladder without the plaintiff having an opportunity to inspect it.

In May 2001, Rizzuto amended his complaint to add a claim for intentional spoliation of evidence (the destruction of the ladder). *Rizzuto*, 227-8.

The Supreme Court identified the essential elements of the new tort:

"(1) the defendant's knowledge of a pending or impending civil action involving the plaintiff; (2) the defendant's destruction of evidence; (3) in bad faith, that is, with

intent to deprive the plaintiff of his cause of action; (4) the plaintiff's inability to establish a prima facie case without the spoliated evidence; and (5) damages." *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225, 244-5 (2006).

The Supreme Court explained the plaintiff's burden of proof:

"To establish proximate causation, the plaintiff must prove that the defendants' intentional, bad faith destruction of evidence rendered the plaintiff unable to establish a prima facie case in the underlying litigation. Cf. *Smith v. Atkinson*, 771 So. 2d 429, 434 (Ala. 2000) (in order for a plaintiff to show proximate cause, the trier of fact must determine that the lost or destroyed evidence was so important to the plaintiff's claim in the underlying action that without that evidence the claim did not survive or would not have survived a motion for summary judgment); *Hannah v. Heeter*, supra, 213 W. Va. 714 (same). Once the plaintiff satisfies this burden, there arises a rebuttable presumption that but for the fact of the spoliation of evidence the plaintiff would have recovered in the pending or potential litigation. . . . *Smith v. Atkinson*, supra, 432-33; see also *Hannah v. Heeter*, supra, 717 ([o]nce the [elements of the tort of intentional spoliation of evidence] are established, there arises a rebuttable presumption that but for the fact of the spoliation of evidence the party injured by the spoliation would have prevailed in the pending or potential litigation); cf. *Welsh v. United States*, 844 F.2d 1239, 1248 (6th Cir. 1988) (When, as here, a plaintiff is unable to prove an essential element of her case due to the negligent loss or destruction of evidence by an opposing party, and the proof would otherwise be sufficient to survive a directed verdict, it is proper for the trial court to create a rebuttable presumption that establishes the missing elements of the plaintiff's case that could only have been proved by the availability of the missing evidence. The burden

thus shifts to the defendant- spoliator to rebut the presumption and disprove the inferred element of [the] plaintiff's prima facie case.). The defendant may rebut this presumption by producing evidence showing that the plaintiff would not have prevailed in the underlying action even if the lost or destroyed evidence had been available. *Smith v. Atkinson*, supra, 435. The [defendant] spoliator must overcome the rebuttable presumption or else be liable for damages. *Hannah v. Heeter*, supra, 717. (Internal quotation marks omitted, and footnotes omitted.) *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225, 246-8 (2006).

For the purposes of discussion in this case, the court assumes (but does not find or hold) that the plaintiff here could establish the elements of the tort of intentional spoliation of evidence. If this be so, there is a rebuttable presumption that but for the fact of the spoliation of evidence, the plaintiff could have prevailed in the underlying litigation, here the six counts alleging medical malpractice, loss of consortium and wrongful death.

But the presumption is rebuttable. How can the presumption be rebutted? For this, our Supreme Court in *Rizzuto* looked to *Smith v. Atkinson*, 771 So.2d 429, 435-6 (Ala. 2000). In *Smith v. Atkinson*, the Alabama Supreme Court employed a hypothetical case to illustrate a rebuttal of the presumption. That illustration

is particularly instructive.

In *Smith v. Atkinson*, the plaintiff Smith and his wife were traveling in a Chrysler minivan and were struck by another vehicle driven by Ferguson. As a result of the collision, Smith's wife died. At the time of the collision, Smith was insured by Metropolitan Property and Casualty Insurance Company and had underinsured-motorist coverage. He filed an underinsured-motorist coverage claim with Metropolitan. Atkinson, a claims adjuster, handled the claim for Metropolitan. Metropolitan obtained possession of the minivan and stored it in Metropolitan's storage facility. Later Smith investigated a potential liability action against Chrysler theorizing the minivan was defective. On several occasions Smith informed Atkinson and Metropolitan that he intended to bring a products liability action against Chrysler and requested the minivan be preserved for inspection. Atkinson, and Metropolitan through Atkinson, agreed to keep the minivan at Metropolitan's facility for Smith's use and inspection. Smith transferred the minivan title to Metropolitan. At some time, Metropolitan allowed the minivan to be destroyed before it could be inspected by Smith or

his expert. Smith thereafter brought an action against Atkinson for spoliation of evidence.

The Alabama Supreme Court used the following example:

"To illustrate further, assume that the plaintiff in a products-liability action alleges that the front wheel of an automobile separated from the vehicle during operation and that the separation caused a serious accident. Further assume that the garage to which the vehicle was towed was given notice of a pending products-liability action against the manufacturer of the vehicle and voluntarily assumed responsibility for the vehicle, as well as for the separated wheel; and that before the vehicle could be inspected the garage, through inadvertence, sold the vehicle and the wheel for salvage, destroying all relevant evidence and making it certain that the products-liability claim could not survive a summary-judgment motion. In a negligent- spoliation action against the garage, the jury would be instructed to presume that the plaintiff would have prevailed on his products-liability claim against the manufacturer of the vehicle. However, if, for example, the garage produced an eyewitness who testified that the wheel did not separate from the vehicle until after the impact, or that the plaintiff had been driving recklessly before the accident and through his own recklessness had caused the accident, then that testimony would absolve the defendant garage from liability for its spoliation of the evidence if the jury determined that on his products- liability claim the plaintiff would not have prevailed even if the evidence had not been lost or destroyed." *Smith V. Atkinson*, 771 So.2d 429, 435-6 (Ala. 2000).

Repeating, this court has assumed (but does not find or hold) herein plaintiffs could establish the elements of the tort of intentional spoliation of evidence. Thus, plaintiff is the

beneficiary of a rebuttable presumption that plaintiff could have recovered in the basic six counts alleging medical malpractice.

With this, Our Supreme Court says:

" . . . The burden thus shifts to the defendant-spoliator to rebut the presumption and disprove the inferred element of [the] plaintiff's prima facie case. *Rizzuto*, 248.

It follows: "The [defendant] spoliator must overcome the rebuttable presumption or else be liable for damages." *Hannah v. Heeter, supra*, 717." *Rizzuto*, 248.

Our Supreme Court instructs:

"The defendant may rebut this presumption by 'producing evidence showing that the plaintiff would not have prevailed in the underlying action even if the lost or destroyed evidence had been available.'" *Smith v. Atkinson, supra*, 435." *Rizzuto*, 247-8.

In this case, the alleged spoliators, the defendants, Dr. Awa and Connecticut Behavioral, have overcome the rebuttable presumption. The basic medical malpractice and wrongful death counts (the first six counts alleging medical malpractice, loss of consortium, and wrongful death) have been dismissed because the plaintiffs' original complaint dated June 1, 2006,

did not have attached to it the opinion of a similar health care provider regarding medical malpractice as required by § 52-198a of the General Statutes. See prior Memorandum of Decision, August 11, 2010. [366.04] This conclusively establishes "that the plaintiff would not have prevailed in the underlying action even if the lost or destroyed evidence had been available." In fact, the instant case is even stronger than the example set forth in *Smith v. Atkinson*. The underlying malpractice, wrongful death, and loss of consortium causes of action have all been dismissed.

With that dismissal, all the king's horses and all the king's men could not vitalize the basic and/or underlying malpractice case.

The Seventh Count alleging the intentional spoliation of evidence must therefore fail and must be dismissed.

Although not necessary, there is an additional ground for dismissal of the Seventh Count at least as to Sylvester Traylor in his individual or personal capacity. The Seventh Count of the

standing complaint<sup>4</sup> states solely a cause of action for Sylvester Traylor, Administrator , the Estate. Defendants had filed a Motion to Strike the Seventh Count. Defendants' Motion to Strike, August 10, 2010. [383] The court granted same. Memorandum of Decision Motion to Strike, August 16, 2010.

[383.01] The authority for filing the September 8, 2010 Revised Complaint is P.B. § 10-44 which allows plaintiff to plead over on granting of a motion to strike. Paragraphs 1 through 26 of Count Seven of the Revised Complaint should be and are verbatim repetitions of their antecedents, namely the 26 paragraphs of First Count of the Second Revised Complaint, July 12, 2010. [362] There is no allegation regarding Sylvester Traylor in his personal capacity nor any mention of loss of consortium in Count Seven. Count Seven, states a cause of action for the Estate only. Count Seven does not allege a cause of action for Sylvester Traylor in his personal or individual capacity. In fact, the first pleading of an intentional spoliation of evidence cause of action surfaced in the Amended Complaint, June 4, 2009. [310] It was drafted and signed by Sylvester Traylor. See

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<sup>4</sup> Revised Complaint, September 8, 2011. [416]

Seventh Count, pp. 14-18. There is no mention of a loss of consortium. Sylvester Traylor, in his personal and/or individual capacity does not appear as plaintiff in the Seventh Count of the June 4, 2009 Amended Complaint. [310]

Even if Sylvester Traylor in his personal and individual capacity had plead a spoliation of evidence cause of action, it would fail.

Sylvester Traylor's loss of consortium causes of action, if plead, are solely derivative of the Estate's malpractice and wrongful death action as set forth in the first six counts Of the Second Revised Complaint. These six counts have been dismissed. Two counts brought by Sylvester Traylor in his personal capacity for loss of consortium were among the six counts dismissed. Initially therefore, Sylvester Traylor personally would appear to have a basis for a spoliation of evidence cause of action regarding his loss of consortium claim.

However, "Loss of consortium, although a separate cause of action, is not truly independent, but rather derivative and inextricably attached to the claim of the injured spouse." *Izzo*

v. *Colonial Penn Insurance Co.*, 203 Conn. 305, 312 (1987). Here, Sylvester Traylor's personal loss of consortium case fails upon termination of the injured spouse's case, here the Estate's malpractice wrongful death case. *Swanson v. City of Groton*, 116 Conn. App. 849, 864-5 (2009) See also *Jacoby v. Brinckerhoff*, 250 Conn. 86 (1999) and cases cited therein.

The Seventh Count, alleging the intentional spoliation of evidence must therefore be dismissed.

The Eighth Count, claiming a CUTPA violation, is predicated upon a successful prosecution of the spoliation of evidence claim in the Seventh Count. That has not happened. The Seventh Count has been dismissed. It follows the Eighth Count must be dismissed.

Counts Seven and Eight are dismissed.

Judgment shall enter for the defendants and against the plaintiffs.

  
Parker, J.T.R.

# EXHIBIT B

**FILED**

OCT 05 2010

SUPERIOR COURT - NEW LONDON  
JUDICIAL DISTRICT AT NEW LONDON

CV 06 5001159

SYLVESTER TRAYLOR, ADMINISTRATOR:  
OF THE ESTATE OF ROBERTA MAE  
TRAYLOR, ET AL.

SUPERIOR COURT

V.

:

JUDICIAL DISTRICT  
OF NEW LONDON

BASSAM AWWAM, M.D., ET AL.

:

AT NEW LONDON

OCTOBER 5, 2010

**MEMORANDUM OF DECISION**

**MOTIONS FOR NONSUIT**

[429, 431]

Now before the court are two motions for nonsuit filed by the defendants. Defendants' Motion for Nonsuit, September 20, 2010 [429]; Defendants' Motion for Nonsuit, September 21, 2010 [431]. Both motions are directed against the Estate only.

In the September 20 Motion for Nonsuit [429], the basis for the nonsuit is the Estate's "failure to comply with the order of this court to have representation by counsel." Defendants' Motion for Nonsuit, September 20, 2010 [429], p. 1.

429.50

Copies mailed including Rptr JD 10/06/10

Defendant's state that on December 21, 2009 the court ordered that "the pro se plaintiff [Sylvester Traylor] was not permitted to represent the estate. The court further ordered that the Estate's case would be dismissed unless an attorney entered an appearance for the Estate on or before April 21, 2010." (#354 .00).

Defendants go on:

"At approximately 4:30 p.m. on April 21, 2010, the law firm of Hall and the Johnson filed an appearance on behalf of both the Estate and Mr. Traylor, individually. Attorney Hall recently filed a Motion to Withdraw (motion #412.00) as counsel for the Estate. Prior to that motion being filed, Mr. Traylor in filings with this court (motion #403.00) represented that he discharged Attorney Hall as of August 11, 2010. He filed with the court an affidavit to evidence the firing of counsel. Mr. Traylor has also requested that the court extend time parameters to plead to accommodate his new attorney that would be filing an appearance on September 5, 2010 (#395.00)." Defendants' Motion for Nonsuit, September 20, 2010 [429], pp. 1-2.

Hall Johnson LLC's eleventh hour appearance on April 21, 2010 saved the Estate's case from dismissal at that time.

Apparently, the relationship between Sylvester Traylor and Hall Johnson LLC since April 21, 2010, has been less than harmonious.

Hall Johnson LLC's September 7 Motion to Withdraw [412] was granted on September 20, 2010. Sylvester Traylor did not object. [412.20]

As of September 20, 2010 and since, Sylvester Traylor, Administrator of the Estate of Robert Mae Traylor and the Estate of Robert Mae Traylor are non-appearing due to the fact that they are unrepresented in this matter.

What defendants are asking for is a disciplinary nonsuit for the Administrator's and the Estate's violation of a court order. The court has not issued any order explicitly stating that the Estate must "have representation by counsel at all times." Defendants have not cited any such order. It is true the Estate's case is ripe for dismissal. But this is because of the law and not any court order or orders. It is certainly implicit in the proceedings that dismissal is warranted because of the non-appearing status of the Administrator and the Estate.

"An order of the court must be sufficiently clear and specific to allow a party to determine with reasonable certainty what it is required to do." *Millbrook Owners Association, Inc. v. Hamilton Standard et al.*, 257 Conn. 1, 38 (Vertefeuille, J., dissenting) (2001).

What defendants suggest is that the court ordered that the Estate be represented at all times. This may be implicit in the court's orders. But the court entered no such order. The September 20 Motion for Nonsuit [429] cannot be granted.

The September 21 Motion for Nonsuit [431] is functionally the same as the September 20 Motion for Nonsuit [429] and for the same reason cannot be granted.

The defendants' Motions for Nonsuit [429, 431] are denied.

  
Parker, J.T.R.

# EXHIBIT C

DOCKET NO.: KNL-CV-06-5001159S : SUPERIOR COURT  
SYLVESTER TRAYLOR, ET AL : J.D. OF NEW LONDON  
V. : NEW LONDON  
BASSAM AWWA, M.D., ET AL : SEPTEMBER 7, 2010

**MOTION TO WITHDRAW**

Pursuant to Connecticut Practice Book §3-9 and Rule of Professional Conduct §1.16, James A. Hall, IV, on behalf of Hall Johnson, LLC, attorneys of record for the Plaintiffs in the above-entitled action moves the court for permission to withdraw his appearance. This motion is based upon Rules of Professional Conduct §1.16(a). Specifically, a lawyer shall not represent a client and shall withdraw from the representation of the client if; (1) the representation shall result in violation of the Rules of Professional Conduct or other law, (attorneys are no longer able to zealously represent the plaintiffs' interests.); (3) the lawyer is discharged. For both these reasons this office must withdraw its appearance.

Rule §1.16 further states that a lawyer may withdraw from representing a client if “the client persists in a course of action involving the lawyers services that the lawyer reasonably believes is criminal or fraudulent. Subsection (3) further allows a lawyer to withdraw when the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement. Recent filings with this Court and the Plaintiff’s behavior in open court evidence the vast disagreement between current counsel and the plaintiffs. Subsections (6)

and (7) allow a lawyer to withdraw if representation “has been rendered unreasonably difficult by the client; or other good cause for withdrawal exists.” Some or all of these conditions have been met and, as evidence, the counsel of record attaches various exhibits.

Most importantly, the plaintiffs have been given ample notice of the attorney of record’s intent to withdraw and have been afforded reasonable time to find alternative counsel. In open court, this issue was brought up and the plaintiffs stated that an In Lieu Of Appearance would be filed by the week of September 5<sup>th</sup>. Additionally, the plaintiffs have expressly terminated the attorney-client relationship and instructed the attorney of record cease and desist any further action in this case. (See attached emails).

In the interim, the plaintiffs have become increasingly hostile and threatening to various attorneys and paralegals at the attorney of record’s office. (See attached affidavit).

Pursuant to CPB 3-10(b) a notice to the plaintiffs is attached hereto stating that the attorneys of record are seeking the court’s permission to no longer represent the plaintiffs; that on September 7, 2010, the court will consider this motion; that the plaintiffs may appear in court and address the court concerning the motion; that if the motion to withdraw is granted the party should obtain another attorney or file an appearance on his or her own behalf with the court and that if the party does neither the party will not receive notice of court proceedings in the case and a nonsuit judgment may be rendered against the plaintiff.

WHEREFORE, because the attorney-client relationship has irretrievably broken down, and for the above reasons, the counsel of record, Hall Johnson, LLC, hereby moves to withdraw from the above captioned case.

Counsel's withdrawal on this matter does not prejudice the Plaintiff in obtaining new representation and this case has not been assigned for Trial.

RESPECTFULLY SUBMITTED,

By \_\_\_\_\_/s/\_\_\_\_\_  
James A. Hall, IV, Esq.  
Of Hall Johnson, LLC  
PO Box 1774  
Pawcatuck, CT 06379  
Juris No.: 426890

**ORDER**

The foregoing Motion to Withdraw having been heard, it is hereby **ORDERED:**  
GRANTED/DENIED.

BY THE COURT

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge/Clerk

**CERTIFICATION**

I hereby certify that a copy of the foregoing **Motion to Withdraw** was hand delivered  
this 7<sup>th</sup> day of September, 2007, to:

Sylvester Traylor  
881 Vauxhall Street Ext.  
Quaker Hill, CT 06375

Donald Leone, Esq.  
Chinigo, Leone & Maruzo  
141 Broadway  
Norwich, CT 06360

\_\_\_\_\_  
/s/  
James A. Hall, IV  
Commissioner of the Superior Court

**NOTICE OF INTENT TO WITHDRAW**

- (1) The attorneys of record are seeking the court's permission to no longer represent the plaintiffs;
- (2) On September 7, 2010, the court will consider this motion;
- (3) You may appear in court and address the court concerning the motion;
- (4) If the motion to withdraw is granted you should obtain another attorney or file an appearance on your own behalf with the court
- (5) If you do neither you will not receive notice of court proceedings in the case and a nonsuit judgment may be rendered against you.

# EXHIBIT D

Traylor v. Awwa, 060107 CTSUP, 5001159

**Sylvester Traylor**

v.

**Bassam Awwa, M.D. et al.**

**5001159**

**Superior Court of Connecticut, New London**

**June 1, 2007**

Caption Date: May 31, 2007

Judge (with first initial, no space for Sullivan, Dorsey, and Walsh): Hurley, D. Michael, J.T.R.

Opinion Title: MEMORANDUM OF DECISION

This medical malpractice action was brought by the plaintiff, Sylvester Traylor, in his own capacity and as administrator of the estate of Roberta Traylor ("the decedent"). Presently before the court is a motion to dismiss filed by the defendants, Bassam Awwa and Connecticut Behavioral Health Associates, on the ground that the plaintiff failed to comply with General Statutes §52-190a.<sup>[1]</sup>

The defendants contend that the court is without subject matter jurisdiction because the original complaint did not contain a good faith certificate and written opinion of a similar health care provider. The defendants further argue that since this court has previously denied a request to amend the complaint, which sought to attach the documents, the amended complaint may not now be considered. The plaintiff counters that noncompliance with §52-190a does not implicate the court's subject matter jurisdiction. The plaintiff maintains that the court may consider the good faith certificate and written opinion of a similar health care professional in evaluating the motion to dismiss.

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court . . . A motion to dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *Filippi v. Sullivan*, 273 Conn. 1, 8, 866 A.2d 599 (2005). "The grounds which may be asserted in a [motion to dismiss] are: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; and (5) insufficiency of service of process." *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985), citing Practice Book §10-31.

The facts and procedural history relevant to the pending motion are as follows. The plaintiff, proceeding pro se, commenced this action on June 2, 2006. In a complaint filed on the same date, the plaintiff alleges that the defendants were negligent in prescribing certain medications to the decedent; failing to provide adequate warnings regarding those medications; and failing to refer the decedent to appropriate psychiatric treatment. The plaintiff further alleges that he contacted the defendants and informed them that the decedent was suicidal and a danger to herself. The plaintiff alleges that he "received no return calls, and he was unable to convince the defendants of the imminent danger." Subsequently, the decedent committed suicide.

The plaintiff did not attach to the complaint either a good faith certificate or a written opinion of a similar health care provider as required by §52-190a. On October 19, 2006, the

plaintiff, still proceeding pro se, filed a certificate of reasonable inquiry and good faith along with a signed written statement by a health care provider. The defendants did not file any pleading in response to the plaintiff's October 19, 2006 filing.

On December 26, 2006, the plaintiff, now represented by counsel,<sup>[2]</sup> filed a request to amend the complaint pursuant to Practice Book §10-60. On December 29, 2006, the defendants filed an objection to the request to amend the complaint. Said objection was sustained by this court on January 16, 2007. On January 8, 2007, the defendants filed the present motion to dismiss.

### *DISCUSSION*

This court need not take a position on the split of authority that currently exists in the Superior Court on the issue of whether failure to comply with §52-190a implicates the court's subject matter jurisdiction. Compare *Donovan v. Sowell*, Superior Court, judicial district of Waterbury, Docket No. CV 06 5000596 (June 21, 2006, Matasavage, J.) (41 Conn. L. Rptr. 609), with *Fyffe-Redman v. Rossi*, Superior Court, judicial district of Hartford, Docket No. CV 05 6000010 (June 7, 2006, Miller J.) (41 Conn. L. Rptr. 504). Based on the October 19, 2006 filing of the good faith certificate and written opinion;<sup>[3]</sup> which was filed well before the issue was raised by the defendant; this court concludes that the plaintiff has satisfied the requirements of §52-190a.

It is certainly true that a party proceeding pro se does not have a license to disregard procedural and substantive laws. *Solomon v. Connecticut Medical Examining Board*, 85 Conn.App. 854, 861, 859 A.2d 932 (2004), cert. denied, 273 Conn. 906, 868 A.2d 748 (2005). However, "[i]t is the established policy of the Connecticut courts to be solicitous of pro se litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the pro se party." *Id.* "The courts adhere to this rule to ensure that pro se litigants receive a full and fair opportunity to be heard, regardless of their lack of legal education and experience . . ." (Citation omitted.) *DuBois v. William W. Backus Hospital*, 92 Conn.App. 743, 752, 887 A.2d 407 (2005).

While the certificate and accompanying written opinion were not presented in the form of a request to amend the complaint pursuant to Practice Book §10-60, this court finds the plaintiff's pleading to be clear in its substance and intention. It was not objected to or challenged in any way by the defendants. Given the plaintiff's pro se status at the time, this court finds it to be in the interests of justice to overlook the plaintiff's noncompliance as to the form of his pleading.<sup>[4]</sup> The court may take into account the good faith certificate and written opinion since they were filed over two months prior to the defendants raising the issue of noncompliance with §52-190a. Given this, the court finds that the plaintiff has satisfied the requirements of §52-190a.

Accordingly, the motion to dismiss is denied.

D. Michael Hurley, JTR

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#### Footnotes:

<sup>[1]</sup>. Section 52-190a provides in relevant part: "(a) No civil action . . . shall be filed to recover damages resulting from personal injury or wrongful death . . . whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care

provider, unless the attorney or party filing the action . . . has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint, initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant . . . To show the existence of such good faith, the claimant or the claimant's attorney . . . shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion . . . (c) The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action."

[2]. The law firm of Grady & Riley, LLP, entered an appearance on behalf of the plaintiff on October 20, 2006.

[3]. It is emphasized that this filing is separate and distinct from the December 26, 2006 request to amend the complaint, which the defendants correctly note that the court may not consider.

[4]. This is particularly true where the defendants, while emphasizing the plaintiff's delay in filing the necessary documents, have themselves been less than diligent in raising the issue of noncompliance with §52-190a.

# EXHIBIT E

**FILED**

**AUG 11 2010**

**SUPERIOR COURT - NEW LONDON**

CV 06 5001159

SYLVESTER TRAYLOR, ADMINISTRATOR:  
OF THE ESTATE OF ROBERTA MAE  
TRAYLOR, ET AL.

SUPERIOR COURT

V. :

JUDICIAL DISTRICT  
OF NEW LONDON

BASSAM AWWAM, M.D., ET AL. :

AT NEW LONDON

AUGUST 11, 2010

**MEMORANDUM OF DECISION**  
**MOTION TO DISMISS**  
[366]

This case, now an immense file [close to 290 file entries] and rife with confusion, began with a writ of summons and a Complaint dated June 1, 2006. The Complaint was signed by the pro se plaintiffs here Sylvester Traylor, individually, and as Administrator of the Estate of Roberta Mae Traylor. The writ of summons was signed by the clerk of the court on June 1, 2006. The Return Date on the writ is July 3, 2006.

Copy to pro se + Rptr JD + JPDW 8/11/10

In the main, this case is a medical (psychiatric) malpractice wrongful death action. It arises from the psychiatric treatment and eventual death of the late Roberta Mae Traylor. It is claimed she committed suicide on March 1, 2004.

When the original June 1, 2006 Complaint was returned to court and filed with the court clerk, the Complaint had attached to it a copy of a document entitled "PETITION TO THE CLERK OF THIS COURT FOR AN AUTOMATIC 90-DAY EXTENSION OF THE STATUTE OF LIMITATIONS" dated February 23, 2006. The copy of the "Petition" indicated the original bore file stamps showing the "Petition had been filed with the court clerk on February 23, 2006. This "Petition" was signed on behalf of the plaintiffs by Attorney Andrew J. Pianka of the law firm of Grady & Riley LLP. The clerk had granted the "Petition" on February 23, 2006. The authority for the Petition and the time extension sought is contained in C.G.S. § 52-190a(b).

The original June 1, 2006 Complaint did not have attached to it a copy of a signed opinion of a similar health care provider stating that there appears to be evidence of medical negligence

and includes a detailed basis for the formation of such opinion as required by § 52-190a.

On July 12, 2010, with new counsel, the plaintiffs filed their "Second Amended Complaint" dated July 12, 2010. [362]<sup>1</sup> It is now the operative complaint.<sup>2</sup>

Now before the court is the defendants' Motion to Dismiss

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1

The use of "Second" in the title of this version of the complaint is puzzling. This new "Second" Amended Complaint is at least the sixth complaint the plaintiffs have filed or attempted to file.

2

In their Objection to the Motion to Dismiss [371], plaintiffs say their new July 12, 2010, "Second Amended Complaint" [362] was "pursuant to the courts direction." This is misleading. The court met with counsel on June 15, 2010 to work on scheduling for this much delayed case. A fact issue arose so the court scheduled an evidentiary hearing for June 17th. Apparently, counsel further conferred on June 15. The court was informed: "The parties have agreed that the plaintiff will amend the Complaint in its entirety" thereby mooting the fact dispute which was to be heard on the June 17<sup>th</sup>. See e-mails between Hall Johnson, LLC and Linda Grelotti, case flow coordinator. Court Exhibits 1 and Defendants Exhibit 1, Transcript of Proceedings, July 28, 2010, p. 26-28. The court cancelled the June 17 hearing. The court subsequently issued a scheduling order setting July 12, 2010 as the time by which the plaintiffs' amended complaint was to be filed. Thus, it is hardly correct to say the plaintiffs amended their complaint "pursuant to the courts direction."

dated July 16, 2010. [366]<sup>3</sup> The defendants seek dismissal of Counts 1 - 6 (the medical malpractice Counts) of the Second Amended Complaint dated and filed July 12, 2010. [362] The principal grounds for dismissal are the plaintiffs' "failure to comply with Connecticut General Statutes Section 52-190a's requirement that **prior to filing suit** a plaintiff obtain a written and signed opinion of a similar health care provider that there appears to be evidence of medical malpractice and attach the opinion to the complaint." Motion to Dismiss, July 16, 2010. [366] A comprehensive memorandum of law accompanied the motion. Memorandum of Law, July 16, 2010. [366.01]

The issues raised by the Motion to Dismiss and determinative thereof are centered on C.S.S. § 52-190a. Its pertinent parts are set forth here:

Sec. 52-190a. Prior reasonable inquiry and certificate of good faith required in negligence action against a health care provider. Ninety-day extension of statute of limitations.

(a) No civil action . . . shall be filed to recover damages resulting from personal injury or wrongful death .

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<sup>3</sup>

The bracketed numbers, e.g., [362], indicate the number of the file entry herein.

. . . in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action . . . has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint. . . shall contain a certificate of the attorney or party filing the action . . . that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant . . . To show the existence of such good faith, the claimant or the claimant's attorney . . . shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. . . . The claimant or the claimant's attorney . . . shall retain the original written opinion and shall attach a copy of such written opinion, with the name and signature of the similar health care provider expunged, to such certificate.

(b) . . .

(c) The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action.

C.G.S. §52-190a

The hard, unassailable facts are straight forward. This action began on June 1, 2006 by a Complaint dated June 1, 2006. The Complaint did not have a certificate of good faith or a medical opinion attached to it. The medical opinion dated October 18, 2006 upon which plaintiffs rely was not obtained by

plaintiffs until October 18, 2006.

The statute, C.G.S. § 52-190a, is clear. Its purpose

"is to inhibit a plaintiff from bringing an inadequately investigated cause of action, whether in tort or in contract, claiming negligence by a health care provider. Section 52-190a requires a certificate of good faith that the health care provider had been negligent in the care and treatment of the plaintiff." *Bruttomesso v. Northeastern Connecticut Sexual Assault Crisis Services, Inc.* 242 Conn. 1, 15-16 (1997).

It is plainly evident that the purpose of the statute was not met here.

Ten years later, the Appellate Court wrote:

"In 2005, the General Assembly, by enacting Public Acts 2005, No. 05-275, § 2 (P.A. 05-275), required that persons filing legal actions claiming medical negligence, filed on or after October 1, 2005, must annex to the complaint a written and signed opinion of a similar health care provider stating that there appears to be evidence of medical negligence." *Rios v. CCMC Corporation, et al.* 106 Conn. App. 810811 (2008).

In *Rios*, plaintiffs "had not obtained an opinion of a similar health-care provider prior to filing the action in court." 106 Conn. App. @ 814.

The Appellate Court is quoted extensively from *Rios*:

"[T]he defendants filed a motion to dismiss the plaintiffs' complaint due to the plaintiffs' failure to include the opinion of a similar health care provider with the complaint, as required by § 52-190a. The plaintiffs objected to the motion to dismiss, and oral argument was heard by the court on January 3, 2006. The plaintiffs' attorney informed the court that he had not obtained an opinion of a similar health care provider prior to filing the action in court." *Rios*, 106 Conn. App. @ 814.

The trial court dismissed the plaintiffs' action concluding plaintiffs "had not complied with the requirements of [§ 52-190a]." *Rios*, 106 Conn. App. @ 815.

On appeal of *Rios*, the Appellate Court spelled out in some detail the importance of the medical opinion and the necessity that it be obtained prior to filing of the suit papers with the court.

"Section 52-190a (a) provides that before filing a personal injury action against a health care provider, a potential plaintiff must make 'a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. . . ." In order to show good faith, the complaint, initial pleading or apportionment complaint is required to contain a certificate of the attorney or party filing the action stating that "such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant. . . ." General Statutes (Rev. to 2005) § 52-190a (a), as amended by P.A. 05-275, § 2. Prior to the

2005 amendments, the statute provided that good faith may be shown if the plaintiffs or their counsel obtained a written opinion, not subject to discovery, from a similar health care provider that there appeared to be evidence of medical negligence. General Statutes (Rev. to 2005) § 52-190a (a). [fn5] Prior to the amendment, the statute did not require plaintiffs to include with the complaint an opinion of a similar health care provider attesting to a good faith basis for an action.

"Effective October 1, 2005, the statute was amended to require that in order to show the existence of good faith, claimants or their counsel, prior to filing suit, "shall obtain a written and signed opinion of a similar health care provider . . . that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. . . ." General Statutes § 52-190a (a). The amended statute also provides that claimants or their counsel "shall attach a copy of such written opinion, with the name and signature of the similar health

care provider expunged, to such certificate. . . ." General Statutes § 52-190a (a). Subsection (c), which was added by P.A. 05-275, § 2, provides that "[t]he failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action." P.A. 05275 was "[e]ffective October 1, 2005, and applicable to actions filed on or after said date. . . ."

"In this case, the complaint did not include an opinion of a similar health care provider attesting to a good faith basis for the action, as required by the 2005 amendment to § 52-190a (a). The writ of summons and complaint were delivered to a marshal for service of process on September 30, 2005, and were filed with the clerk of the Superior Court on November 4, 2005. The plaintiffs claim that the 2005 amendment to § 52-190a, as set forth in P.A. 05-275, does not apply to the present case because the action was filed before October 1, 2005, the effective date of the public act. Specifically, the plaintiffs contend that the action was 'filed' within the meaning of P.A. 05-275 when

the writ of summons and complaint were delivered to a marshal for service of process on September 30, 2005, one day before the effective date of the 2005 amendment to § 52-190a. We disagree." *Rios*, 106 Conn. App. @ 815-18

The Appellate Court affirmed, summarizing its holding:

"Because the plaintiffs failed to comply with the provision of the public act, requiring that an opinion of a similar health care provider attesting to a good faith basis for the action be included with the complaint, we conclude that the defendants' motion to dismiss properly was granted. *Rios v. CCMC Corporation, et al.* 106 Conn. App. 810, 820 (2008).

The teaching of *Rios* is clear. Plaintiffs' failure to obtain the medical opinion prior to filing the original complaint and not attaching such a medical opinion to the original complaint when filing the complaint with the court clerk requires dismissal.

More recently, the Appellate Court confirmed what it had held in *Rios*. *Votre v. County Obstetrics and & Gynecology Group, P.C.*, 113 Conn. App. 569 (2009).

Plaintiff *Votre* brought an action sounding in medical malpractice. "The complaint did not include a good-faith certificate and written opinion of a similar health care provider

. . . ." *Votre*, 113 Conn. App. @ 574. The defendants moved for dismissal based on the absence of a medical opinion with the complaint. Accordingly, the trial court dismissed. On appeal, the Appellate Court stated:

"We conclude that the action was dismissed properly by the court pursuant to the specific authorization of the governing statute due to the plaintiff's failure to file a written opinion of a similar health care provider. See General Statutes § 52a-190a (c)." *Votre v. County Obstetrics and & Gynecology Group, P.C.*, 113 Conn. App. 569, 581 (2009).

The Appellate Court construed section § 52-190a stating:

"The plaintiff must attach to her initial pleading both 'a certificate of the attorney or party filing the action . . . that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant' and a 'written and signed opinion of a similar health care provider . . . that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. . . .' General Statutes § 52-190a (a). Subsection (c) provides that '[t]he failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action.'" *Votre v. County Obstetrics and & Gynecology Group, P.C.*, 113 Conn. App. 569, 581 (2009).

The plaintiffs here "fail[ed] to obtain and file the written opinion required by subsection (a) of this section [§52-190a(a)]." This is "grounds for the dismissal of the action."

*Votre*, 113 Conn. App. 581.

Plaintiffs have objected to this Motion to Dismiss. Plaintiff's Objection to the Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, July 26, 2010. [371] The Objection was accompanied by a Memorandum of Law [372] and an affidavit of the plaintiff, Sylvester Traylor. [373]

The primary and principal bases for the objection are "collateral estoppel" and "law of the case." An understanding of the fact basis for these contentions is important.

On December 26, 2006, the plaintiffs filed a REQUEST FOR LEAVE TO AMEND COMPLAINT dated December 22, 2006. [143] An AMENDED COMPLAINT dated December 22, 2006 was filed at the same time. [143.50]

The defendants filed an OBJECTION TO PLAINTIFF'S REQUEST FOR LEAVE TO AMEND COMPLAINT dated December 29, 2006 also December 29, 2006. [144] The Objection was mainly because the proposed Amended Complaint "seeks to include a good faith certificate and medical opinion." In the Objection, defendants pointed out that

the medical opinion was dated October 18, 2006, over five months after the original Complaint. Defendants' Objection stated: "The original complaint dated June 1, 2006 as well as the an amended complaint dated August 2, 2006 do not contain a good faith certificate or medical opinion of a similar health care provider as required by Connecticut General Statutes §52-190a."

Defendants also stated: "The defendants intend to file a Motion to Dismiss to address this issue." [144]

Defendants' Objection was sustained on January 16, 2007.

No elaboration of the reasons for the court's sustaining the objection appears. The order page for the Objection has the word "Sustained" circled and "By the Court" "Hurley 1/16/07." [144]

The court infers the Objection was sustained for the reasons advanced in the Objection, especially the fact that the complaints to date did "not contain a good faith certificate or medical opinion of a similar health care provider as required by Connecticut General Statutes §52-190a."

This left the Amended Complaint dated July 31, 2006, which was filed August 2, 2006, as the operative complaint. [109]

On January 8, 2007, the defendants filed a Motion to Dismiss dated January 4, 2007 moving "that the plaintiffs' claims be dismissed." [146] The specific grounds for the motion was that "plaintiff's complaint [dated June 1, 2006] and amended complaint [dated July 31, 2006 {filed August 2, 2006}] fail to contain a good faith certificate and written opinion of a similar health care provider as required by Connecticut General Statutes 52-190a, as amended by Public Act 05-275." Motion to Dismiss, January 4, 2007, p. 1. [146] The Motion to Dismiss was denied. [146] The Order page on the Motion contained the handwritten notation: "6-1-07 Order Denied & see memo of Decision filed this date. By the Court, Hurley, J. /s/ Jeffrey Feldman Clerk." [146]

The June 1, 2007 denial [157] of the Motion to Dismiss gave plaintiffs a dispensation from the requirements of § 52-190a mainly because plaintiffs were *pro se*.

Judge Hurley's June 1, 2007 Memorandum of Decision denying defendants' Motion to Dismiss [157] and his earlier January 16, 2007 order sustaining defendants' objection to plaintiffs'

REQUEST FOR LEAVE TO AMEND COMPLAINT dated December 22, 2006

[143] are inconsistent.

In his June 1, 2007 Memorandum of Decision, Judge Hurley was clearly smitten by plaintiffs' being pro se. While Judge Hurley found the "plaintiffs did not attach to the complaint either a good faith certificate or a written opinion of a similar health-care provider as required by § 52-190a," Judge Hurley held he needn't "take a position on the split of authority that currently exists in the Superior Court on the issue of whether failure to comply with § 52-190a implicates the court's subject matter jurisdiction." Memorandum of Decision, June 1, 2007, p. 3. [157]

Judge Hurley held: "Given the plaintiff's pro se status at the time, this court finds it in the interests of justice to overlook the plaintiff's noncompliance" and found "that the plaintiff has satisfied the requirements of § 52-190a." *Id.*, 4, 5.

There is no need to tarry on Judge Hurley's decisions. There is compelling authority decided since Judge Hurley's renderings which show conclusively Judge Hurley's June 1, 2007 decision cannot stand. See e.g., *Rios and Votre*.

With this fact basis in mind, plaintiffs' arguments based on collateral estoppel and law of the case principles are not persuasive.

Plaintiffs say Judge Hurley's June 1, 2007 denial of a previous Motion to Dismiss dated January 4, 2007 [146] collaterally estops defendants' present dismissal effort. [157]

Collateral estoppel, or issue preclusion, principles are well established. "Collateral estoppel means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. . . ." *Chadha v. Charlotte Hungerford Hospital*, 97 Conn. App. 527, 534 (2006) "[I]ssue preclusion [collateral estoppel] prevents a party from the relitigating an issue that has been determined in a prior suit." *Id.*

For the doctrine to be applied, there must have been a judgment in a previous action. Judge Hurley's June 1, 2007 decision was not a final judgment in a previous lawsuit. Judge Hurley's June 1, 2007 decision was an interlocutory order in this

very same action. It was not a final judgment. Collateral estoppel cannot be invoked here.

Judge Hurley's June 1, 2007 denial of defendants' Motion to Dismiss [157] "was not final, but was merely interlocutory, [therefore] it falls within the doctrine of the law of the case." *CFM of Connecticut, Inc. v. Chowdhury*, 239 Conn. 375, 403 (1996).

The general rule is that the "law of the case" does not apply where there have been "new or overriding circumstances." *Breen v. Phelps*, 186 Conn. 86, 99 (1982). Superior Courts have noted, without citing appellate authority, that new development in the law constitutes a "new or overriding circumstance." See, e.g., *Estate of Larry Robinshaw v. New England Central Railroad*, Superior Court, complex litigation docket at Tolland, Docket No. X07 CV 99 0071617 (September 20, 2001, Bishop, J.)

Of greater impression, the Supreme Court has stated:

"[W]here views of the law expressed by a judge at one stage of the proceedings differ from those of another at a different stage, 'the important question is not whether there was a difference but which view was right.'" *Breen v. Phelps*, 186 Conn. 86, 100 (1982).

Binding appellate authority is discussed above. In short, these cases and the procedural posture of this case militate strongly against the invocation of the claims of collateral estoppel and law of the case. The Court holds that in the face of these cases application of collateral estoppel and law of the case claims are totally undermined and have no vitality here.

Plaintiffs rely to some extent on *Ward v. Ramsey*, Superior Court, Judicial District of New Haven, Docket No. CV 09 5028840, (April 12, 2010, Corradino, J.T.R.).

Plaintiffs contend "[t]here is Connecticut precedent [for the situation presented in this Traylor case ] in keeping with the spirit of 52-190(a)." Memorandum in Support of Plaintiff's Objection, July 26, 2010, p. 11. [372] Plaintiffs read *Ward* to say *Ward* "had made a proper substantiation of a malpractice claim by obtaining [an] opinion , but inadvertently failed to attach it" to his complaint. Memorandum in Support of Plaintiff's Objection, July 26, 2010, p. 11. [372] But this is incorrect. In *Ward*, a medical opinion letter had been obtained before suit and a copy of it was attached to the original complaint.

Therefore, plaintiffs' contentions based on *Ward v. Ramsey* are fallacious and must be disregarded.

Totally germane to this case where plaintiffs belatedly filed a good faith certificate and medical opinion of a similar health care provider written long after the date of the original complaint are these observations of the Appellate Court:

"[I]t is clear that no opinion existed at the time the action was commenced, and, therefore, there was no room for discretion to be employed. . . . The plaintiff could not turn back the clock and attach by amendment an opinion of a similar health care provider that did not exist at the commencement of the action." *Votre v. County Obstetrics & Gynecology Group*, 113 Conn. App. 569, 585-6 (2009).

Since the *Votre* decision, our appellate courts have decided four cases on the merits involving § 52-190a and its opinion of a similar health care provider requirement.

*Dias v. Grady*, 292 Conn. 350 (July 7, 2009) holds that the written opinion of a similar health care provider need not contain the writer's opinion regarding causation. The opinion does not have to say the injury alleged in the complaint resulted from the breach of the standard of care.

In a case against a physician specializing in emergency medicine, the plaintiff attached to his complaint the medical opinion of a physician who stated in his opinion letter:

"'As a practicing and [b]oard certified [g]eneral [s]urgeon with added qualifications in [s]urgical [c]ritical [c]are, and engaged in the practice of trauma surgery, I believe that I am qualified to review the contents of these records for adherence to the existing standard of care. One should note that I regularly evaluate and treat injured patients in the [e]mergency [d]epartment including those who are discharged from the [emergency department] as well as those who require inpatient care. The overwhelming majority of my time at work is spent providing clinical care in the [emergency department], general ward, intensive care unit and operating room over the last [twelve] years.'" [Footnote omitted.] *Bennett v. New Milford Hospital, Inc.*, 117 Conn. 535, 539-540 (October 13, 2009); cert granted, 294 Conn. 916 (December 1, 2009).<sup>4</sup>

The trial court granted the defendant physician's motion to dismiss. That dismissal was affirmed on appeal. The basis for same was that the opining physician was not board certified in emergency medicine and therefore the requirement of the statute was not fulfilled. The Appellate Court relied upon the plain language of the statute.

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4

The certified question is: "Did the Appellate Court properly affirm the trial court's dismissal of the present case for failure to comply with General Statutes § 52-190a?"

In *Wilcox v. Schwartz*, 119 Conn. App. 808 (March 16, 2010), certification granted, 296 Conn. 908 (May 5, 2010),<sup>5</sup> "the complaint alleges only one specification of negligence . . . . That Schwartz 'failed to prevent injury to [Wilcox's] biliary structures during the laparoscopic cholecystectomy.'" *Id.*, 817. The medical opinion relied upon by plaintiff recited the standard of care and stated: "Specifically, Daniel S. Schwartz, M.D., failed to prevent injury to Kristy Wilcox's biliary structures during laparoscopic [gallbladder] surgery." *Id.*, 815.

"The ultimate purpose of this requirement [the written opinion] is to demonstrate the existence of the claimant's good faith in bringing the the complaint by having a witness, qualified under General Statutes § 52-184c, state in written form that there appears to be evidence of a breach of the applicable standard of care. So long as the good faith opinion sufficiently addresses the allegations of negligence pleaded in the complaint, as this opinion does, the basis of the opinion is detailed enough to satisfy the statute and the statute's purpose." *Wilcox v. Schwartz*, 119 Conn. App. 808, 816 (March 16, 2010).

Similarly, in an action against a physician, a board certified anesthesiologist, the court dismissed the action where

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The certified question is: "Did the Appellate Court properly reverse the trial court's dismissal of the present case for failure to comply with the 'detailed basis' requirement of General Statutes § 52-190a(a)?"

the complaint had attached to it two opinion letters, one by a board certified neurologist and the other by a board certified internist. The action was properly dismissed. The Appellate Court, in a per curiam opinion, affirmed the dismissal on the immediate authority of *Bennett v. New Milford Hospital, Inc.* See *Williams v. Hartford Hospital*, 122 Conn. App. 597 (July 20, 2010).

The lesson of these cases collectively is that the plain language of the statute is to be adhered to, there is no wiggle room. No words will be added to the statute and none ignored.

Count Four of the Second Amended Complaint dated July 12, 2010 [362] bears the heading "NEGLIGENCE as to Connecticut Behavioral Health Assoc, PC." See Second Amended Complaint dated July 12, 2010 [362], p. 10. Count Four is solely against Connecticut Behavioral Health Associates, P.C.

Most of Count Four is based upon *respondeat superior* alleging Connecticut Behavioral is responsible for the delicts of Dr. Awwa.

The defendants have moved to dismiss a part of Count Four because it is barred by the statute of limitations. Specifically, defendants contend that subparagraphs (a) - (f) of paragraph 19 of Count Four are time barred as they are entirely new allegations stating a new cause of action not previously plead.

Count Four is also a wrongful death action. Such an action was unknown to our common law. It is solely a creature of statute.

Ordinarily, the statute of limitations must be raised as a special defense. Practice Book § 1-50. However,

"[w]here a statute gives a right of action which did not exist at common law, [however] and fixes the time within which the right must be enforced, the time fixed is a limitation or condition attached to the right - it is a limitation of the liability itself as created, and not of the remedy alone." (Internal quotation marks omitted.) *Diamond National Corp. v. Dwelle*, 164 Conn. 540, 543, 325 A.2d 259 (1973). "In such cases, the time limitation is not to be treated as an ordinary statute of limitation. . . . The courts of Connecticut have repeatedly held that, under such circumstances, the time limitation is a substantive and jurisdictional prerequisite." (Citation omitted; internal quotation marks omitted.) *Lostritto v. Community Action Agency of New Haven, Inc.*, 269 Conn. 10, 22-23 (2004).

As this is a wrongful death action, a cause of action unknown at common law and created by statute, § 52-555(a), which statute provides that such an action must be brought "within two years from the date of death," the statute of limitations is properly raised by a motion to dismiss. See below.

Defendants contend that Count Four's allegations of corporate negligence "involve negligence based upon the corporation's actions as a business entity, i.e. its failure to employ competent personnel (19a), its failure to properly supervise its employees (19b) its failure to insure proper competent physicians (19c), its failure to insure its staff were reasonably competent to provide care and assistance (19d), its negligence in employing Dr. Awwa (19(e), and, finally, its failure to have adequate procedures to review physician credentials (19(f))." Defendants' Memorandum of Law, July 16, 2010 [366], pp. 14-15. According to defendants these allegations are brand new to this case as of the Second Amended Complaint dated July 12, 2010. [362]

Section 52-190a provides in part:

"No civil action . . . shall be filed to recover damages resulting from personal injury or wrongful death . . . whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider . . . ."

Count Four clearly states a cause of action coming within the foregoing definition. Count Four is, first and foremost, a wrongful death action.

For a wrongful death action, the applicable statute of limitations is § 52-555(a). It provides that such an action "must be brought within two years from the date of death." C.G.S. § 52-555(a).

Section 52-555(a) is the governing statute of limitation.

Mrs. Traylor died on March 1, 2004. Therefore, this action had to be brought within two years thereof, i.e., by no later than March 1, 2006.

However, § 52-190a which applies to actions "to recover damages resulting from injury or death" also provides:

"(b) Upon petition to the clerk of the court where the civil action will be filed to recover damages resulting from personal injury or wrongful death, an automatic ninety-day

extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods." C.G.S. § 52-190a(b).

Plaintiffs petitioned for the ninety-day extension and the court clerk granted the petition on February 23, 2006.

Since Mrs. Traylor died on March 1, 2004, the applicable statute of limitation stated, in the first instance, that this action had to be brought "within two years" of March 1, 2004. That would be by March 1, 2006. But plaintiffs were granted a ninety-day extension. This extended the limitation period to May 30, 2005.

The State Marshal's Return states service was made on Connecticut Behavioral Health Associates, LLC on June 2, 2006. "Legal actions in Connecticut are commenced by service of process." (Internal quotation marks omitted.) *Rios v. CCMC Corp.*, 106 Conn. App. 810, 820 (2008). " *Rosenfield v. David Marder & Associates, LLC, et al.*, 110 Conn. App. 679, 692, n. 11 (2008).

There is no legitimate claim here, nor could there be, that

the statute of limitations period was extended by the grace of § 52-593a. That statute provides:

(a) Except in the case of an appeal from an administrative agency governed by section 4-183, a cause or right of action shall not be lost because of the passage of the time limited by law within which the action may be brought, if the process to be served is personally delivered to a state marshal authorized to serve the process and the process is served, as provided by law, within thirty days of the delivery.

(b) In any such case, the state marshal making service shall endorse under oath on such state marshal's return the date of delivery of the process to such state marshal for service in accordance with this section.

Connecticut General Statutes § 52-593a.

The State Marshal's Return says the Marshal received the writ of summons and the Complaint on June 1, 2006. This was after the time limited by law.

Both parties recognize that the bar of the statute of limitations would not apply if the negligence cause of action in paragraph 19 (a) - (f) of Count Four of the July 12, 2010 Second Amended Complaint [362] had been plead in a prior viable complaint. Plaintiffs' Memorandum In Support of Plaintiff's Objection to the Defendant's Motion to Dismiss Plaintiff's Second

Amended Complaint, July 26, 2010 [372], pp. 12-13. Defendants' Memorandum of Law, July 16, 2010 [366], pp. 13-14.

Plaintiffs contend: "Count Four of the July 2010 complaint is simply a restatement of the 2009 count five." Plaintiff's Objection Memorandum, July 26, 2010 [372], p. 12.

A comparison of the two does not show the negligence cause of action plead in paragraph 19 (a) - (f) of Count Four of the July 12, 2010 Second Amended Complaint [362] was present or even previewed in Count Five of the June 4, 2009 Amended Complaint. [310].

But, even if it was, it would not avail the plaintiffs. For "relation back" to overcome the bar of the statute of limitations, the challenged allegations of the complaint must relate back to a complaint which was viable within the statute of limitations.

The Amended Complaint filed on June 4, 2009 [310] certainly was not viable vis-a-vis § 52-555(a) as extended by the 90-day extension afforded by § 52-190a(c). The applicable statute of

limitations as extended by 90-days expired on May 29, 2006.

The truth is, no complaint in this action satisfies the statute of limitations period which ended on May 30, 2006; again service was not made on Connecticut Behavioral Health Associates, LLC until June 2, 2006.

Therefore, the cause of action alleged in paragraph 19 (a) - (f) of Count Four is barred by the statute limitations, C.G.S. § 52-555(a).

Count Four of the Second Amended Complaint is barred by the statute of limitations.

Count Four is dismissed.

The Motion to Dismiss is granted, Counts 1 - 6 are dismissed.<sup>6</sup>

  
Parker, J.T.R.

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<sup>6</sup>

On July 29, 2010, the court granted the Motion to Dismiss. [366.03] This Memorandum of Decision sets forth the basis for the July 29, 2010 decision.

# EXHIBIT F

**SYLVESTER TRAYLOR ET AL.**

**v.**

**STATE OF CONNECTICUT SUPERIOR COURT**

**No. AC 31988**

**Court of Appeal of Connecticut**

**April 19, 2011**

Argued February 7, 2011.

Appeal from Superior Court, judicial district of New London, Hon. Thomas F. Parker, judge trial referee.

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Sylvester Traylor, pro se, the appellant (plaintiff).

Michael K. Skold, assistant attorney general, for the appellee (named defendant).

John B. Farley, for the appellees (defendant Bassam Awwa et al.)

Gruendel, Robinson and Peters, Js.

**OPINION**

PER CURIAM.

The pro se plaintiff, Sylvester Traylor, <sup>[1]</sup> appeals from the judgment of the trial court in favor of the defendants, the state of Connecticut Superior Court (state), Bassam Awwa and Connecticut Behavioral Health Associates, P.C., dismissing his mandamus action. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. In 2006, the plaintiff, individually and as administrator of the estate of his late wife, commenced an action against Awwa and Connecticut Behavioral Health Associates, P.C. (malpractice defendants), alleging claims of medical malpractice and loss of consortium. In that action, the plaintiff served the malpractice defendants with various discovery requests. The malpractice defendants

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objected to some of the requests and, because the parties were unable to resolve all of their differences regarding the objections, they appeared before the court, *Hon. D. Michael Hurley*, judge trial referee, on August 20, 2007. On that date, the court heard argument from both sides and issued several discovery orders requiring compliance by the malpractice defendants. Thereafter, on April 24, 2008, the plaintiff filed a motion to default the malpractice defendants, alleging that they failed to comply with the discovery orders. The court, *Abrams, J.*, granted the motion. On June 17, 2008, the malpractice defendants filed a motion to open the judgment of default and on July 1, 2008, the court granted the motion explaining that it “entered the default order without reviewing [the] defendants’ objection, which was not in the file.” Subsequently, the

plaintiff filed several motions contending that the malpractice defendants had not complied with the discovery orders. The judges that heard the motions denied them, concluding that the malpractice defendants had not violated the discovery orders. Judgment was rendered for the malpractice defendants in the malpractice action on February 15, 2011, and the plaintiff appealed from that judgment to this court on February 24, 2011.

On August 12, 2009, the plaintiff filed an amended application for a writ of mandamus ordering Judge Barbara Quinn, the chief court administrator of the state of Connecticut, to “compel the New London [Superior] Court to enforce the [discovery orders], and [to] reinstate a default judgment.” The state and the malpractice defendants both filed motions to dismiss the mandamus action, claiming that a writ of mandamus could not lie where the plaintiff had a right of appeal regarding the trial court’s decisions in the separate action. On February 3, 2010, the court, *Hon. Thomas F. Parker*, judge trial referee, granted the motions to dismiss because the plaintiff did not claim that any of the discovery

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orders could not be subject to an appeal once the malpractice action had concluded. The plaintiff appeals from this decision.

On appeal, the plaintiff claims that the court abused its discretion in denying his application for a writ of mandamus. <sup>[2]</sup> We disagree.

“The requirements for the issuance of a writ of mandamus are well settled. Mandamus is an extraordinary remedy, available in limited circumstances for limited purposes. . . . It is fundamental that the issuance of the writ rests in the discretion of the court, not an arbitrary discretion exercised as a result of caprice but a sound discretion exercised in accordance with recognized principles of law. . . . That discretion will be exercised in favor of issuing the writ only where the plaintiff has a clear legal right to have done that which he seeks. . . . The writ is proper only when (1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy. . . . Even satisfaction of this demanding [three-pronged] test does not, however, automatically compel issuance of the requested writ of mandamus. . . . In deciding the propriety of a writ of mandamus, the trial court exercises discretion rooted in the principles of equity.

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. . . We review the trial court’s decision, therefore, to determine whether it abused its discretion in denying the writ.” (Citations omitted; internal quotation marks omitted.) *Avalon Bay Communities, Inc. v. Sewer Commission*, 270 Conn. 409, 416–17, 853 A.2d 497 (2004).

On the basis of our review of the record, and the briefs and arguments of the parties, we conclude that the court properly denied the plaintiff’s application for a writ of mandamus because the plaintiff has failed to demonstrate that there is no other specific adequate remedy available to review the court’s actions. Moreover, because the actions of the court that are complained of here may be made an issue in the plaintiff’s appeal from the final judgment of the medical malpractice action, mandamus is not warranted. See *Huggins v. Mulvey*, 160 Conn. 559, 561, 280 A.2d 364 (1971) (mandamus not warranted in situations in which right of appeal from action complained of

exists). Accordingly, we conclude that the court did not abuse its discretion in denying the plaintiff's application for a writ of mandamus.

The judgment is affirmed.

In this opinion the other judges concurred.

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Notes:

[1] Although the mandamus action was filed on behalf of Sylvester Traylor individually and as administrator of the estate of Roberta Mae Traylor, only Sylvester Traylor in his individual capacity has appealed. We therefore refer to Sylvester Traylor in his individual capacity as the plaintiff in this opinion.

[2] The plaintiff also makes several claims based on the premise that the court, in denying his application for a writ of mandamus, deprived him of various constitutional rights. We decline to review these claims because they are inadequately briefed. "Although we are solicitous of the rights of pro se litigants . . . [s]uch a litigant is bound by the same rules . . . and procedure as those qualified to practice law. . . . [W]e are not required to review claims that are inadequately briefed. . . . We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Citation omitted; internal quotation marks omitted.) *Thompson v. Rhodes*, 125 Conn.App. 649, 651, 10 A.3d 537 (2010).

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# EXHIBIT G

127 Conn.App. 182 (Conn.App. 2011), 31988, Traylor v. State Superior Court

**Page 182**

**127 Conn.App. 182 (Conn.App. 2011)**

**15 A.3d 1173**

**Sylvester TRAYLOR et al.**

**v.**

**STATE of Connecticut SUPERIOR COURT.**

**No. 31988.**

**Court of Appeals of Connecticut.**

**April 19, 2011**

Argued Feb. 7, 2011.

**[15 A.3d 1174]** Sylvester Traylor, pro se, the appellant (plaintiff).

Michael K. Skold, assistant attorney general, for the appellee (named defendant).

John B. Farley, Hartford, for the appellees (defendant Bassam Awwa et al.).

GRUENDEL, ROBINSON and PETERS, Js.

PER CURIAM.

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The pro se plaintiff, Sylvester Traylor,<sup>[1]</sup> appeals from the judgment of the trial court in favor of the defendants, the state of Connecticut Superior Court (state), Bassam Awwa and Connecticut Behavioral Health Associates, P.C., dismissing his mandamus action. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. In 2006, the plaintiff, individually and as administrator of the estate of his late wife, commenced an action against Awwa and Connecticut Behavioral Health Associates, P.C. (malpractice defendants), alleging claims of medical malpractice and loss of consortium. In that action, the plaintiff served the malpractice defendants with various discovery requests. The malpractice defendants

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objected to some of the requests and, because the parties were unable to resolve all of their differences regarding the objections, they appeared before the court, *Hon. D. Michael Hurley*, judge trial referee, on August 20, 2007. On that date, the court heard argument from both sides and issued several discovery orders requiring compliance by the malpractice defendants. Thereafter, on April 24, 2008, the plaintiff filed a motion **[15 A.3d 1175]** to default the malpractice defendants, alleging that they failed to comply with the discovery orders. The court, *Abrams, J.*, granted the motion. On June 17, 2008, the malpractice defendants filed a motion to open the judgment of default and on July 1, 2008, the court granted the motion explaining that it " entered the default order without reviewing [the] defendants' objection, which was not in the file." Subsequently, the plaintiff filed several motions contending that the malpractice defendants had not complied with the discovery orders. The judges that heard the motions denied them, concluding that the malpractice defendants had not violated the discovery orders. Judgment was rendered for the malpractice defendants in the malpractice action on February 15, 2011, and the

plaintiff appealed from that judgment to this court on February 24, 2011.

On August 12, 2009, the plaintiff filed an amended application for a writ of mandamus ordering Judge Barbara Quinn, the chief court administrator of the state of Connecticut, to "compel the New London [Superior] Court to enforce the [discovery orders], and [to] reinstate a default judgment." The state and the malpractice defendants both filed motions to dismiss the mandamus action, claiming that a writ of mandamus could not lie where the plaintiff had a right of appeal regarding the trial court's decisions in the separate action. On February 3, 2010, the court, *Hon. Thomas F. Parker*, judge trial referee, granted the motions to dismiss because the plaintiff did not claim that any of the discovery

Page 185

orders could not be subject to an appeal once the malpractice action had concluded. The plaintiff appeals from this decision.

On appeal, the plaintiff claims that the court abused its discretion in denying his application for a writ of mandamus.<sup>[2]</sup> We disagree.

" The requirements for the issuance of a writ of mandamus are well settled. Mandamus is an extraordinary remedy, available in limited circumstances for limited purposes.... It is fundamental that the issuance of the writ rests in the discretion of the court, not an arbitrary discretion exercised as a result of caprice but a sound discretion exercised in accordance with recognized principles of law.... That discretion will be exercised in favor of issuing the writ only where the plaintiff has a clear legal right to have done that which he seeks.... The writ is proper only when (1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy.... Even satisfaction of this demanding [three-pronged] test does not, however, automatically compel issuance of the requested writ of mandamus.... In deciding the propriety of a writ of mandamus, the trial court exercises discretion rooted in the principles of equity.

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... We review the trial court's decision, therefore, to determine whether it abused its discretion in denying **[15 A.3d 1176]** the writ." (Citations omitted; internal quotation marks omitted.) *AvalonBay Communities, Inc. v. Sewer Commission*, 270 Conn. 409, 416– 17, 853 A.2d 497 (2004).

On the basis of our review of the record, and the briefs and arguments of the parties, we conclude that the court properly denied the plaintiff's application for a writ of mandamus because the plaintiff has failed to demonstrate that there is no other specific adequate remedy available to review the court's actions. Moreover, because the actions of the court that are complained of here may be made an issue in the plaintiff's appeal from the final judgment of the medical malpractice action, mandamus is not warranted. See *Huggins v. Mulvey*, 160 Conn. 559, 561, 280 A.2d 364 (1971) (mandamus not warranted in situations in which right of appeal from action complained of exists). Accordingly, we conclude that the court did not abuse its discretion in denying the plaintiff's application for a writ of mandamus.

The judgment is affirmed.

In this opinion the other judges concurred.

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Notes:

[1] Although the mandamus action was filed on behalf of Sylvester Traylor individually and as administrator of the estate of Roberta Mae Traylor, only Sylvester Traylor in his individual capacity has appealed. We therefore refer to Sylvester Traylor in his individual capacity as the plaintiff in this opinion.

[2] The plaintiff also makes several claims based on the premise that the court, in denying his application for a writ of mandamus, deprived him of various constitutional rights. We decline to review these claims because they are inadequately briefed. " Although we are solicitous of the rights of pro se litigants ... [s]uch a litigant is bound by the same rules ... and procedure as those qualified to practice law.... [W]e are not required to review claims that are inadequately briefed.... We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Citation omitted; internal quotation marks omitted.) *Thompson v. Rhodes*, 125 Conn.App. 649, 651, 10 A.3d 537 (2010).

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# EXHIBIT H

CV 06 5001159

SYLVESTER TRAYLOR, ADMINISTRATOR:  
OF THE ESTATE OF ROBERTA MAE  
TRAYLOR, ET AL.

SUPERIOR COURT

V. :

JUDICIAL DISTRICT  
OF NEW LONDON

BASSAM AWWAM, M.D., ET AL. :

AT NEW LONDON

CV 09 4009523

SYLVESTER TRAYLOR, PETITIONER :

SUPERIOR COURT

V. :

JUDICIAL DISTRICT  
OF NEW LONDON

STATE OF CONNECTICUT :

AT NEW LONDON

FEBRUARY 5, 2009

**MEMORANDUM OF ORDERS**

On December 21, 2009, the court entered orders effective  
immediately as follows:

**FILED**

FEB 05 2010

**SUPERIOR COURT**  
New London Judicial District

**SUPERIOR COURT**  
New London Judicial District

FEB 05 2010

**FILED**

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Mr. Sylvester Traylor cannot appear or represent the Estate of his late wife, Roberta Mae Traylor. Transcript of Proceedings, December 21, 2009, p. 32.

Parties and counsel are to take no further action pending the court's specifically lifting this order. Parties and counsel are not to submit anything for filing with the clerk until such time as an appearance by an attorney is filed on behalf of the Estate of Roberta Mae Traylor. Anything submitted for filing with or by the clerk before an appearance is filed by an attorney for the Estate will be returned without its being filed.

The no-filing order applies to Mr. Traylor in both his individual capacity regarding his loss of consortium claims and also in his capacity as administrator of the Estate. Transcript of Proceedings, December 21, 2009, p. 42.

Mr. Traylor as administrator of the Estate of Robert Mae Taylor is allowed four months, until April 21, 2010, to have an attorney appear on behalf of the Estate. If an attorney does not file an appearance by that date, case number CV 06 5001159 will be dismissed. Transcript of Proceedings, December 21, 2009, p. 43.

Parker, J.T.R.

Parker, J.T.R.

# EXHIBIT I

DOCKET NO: KNLCV065001159S

SUPERIOR COURT

TRAYLOR, SYLVESTER ET AL  
V.  
AWWA, BASSAM ET ALJUDICIAL DISTRICT OF NORWICH/NEW  
LONDON  
AT NEW LONDON

7/15/2010

ORDER

The following order is entered in the above matter:

ORDER:

ORDER July 15, 2010  
Hybrid Representation

1. Since April 21, 2010, the plaintiffs herein have been represented by Hall Johnson LLC.
2. The appearance of Hall Johnson LLC for Sylvester Traylor, Administrator of the Estate of Roberta Mae Traylor, resulted from a December 21, 2009 order of this court barring Sylvester Traylor from representing himself as the Administrator of the Estate of Robert Mae Traylor. The appearance of Hall Johnson LLC for Sylvester Traylor individually is in accordance with Sylvester Traylor's voluntary representation made to the court. Transcript of Proceedings, December 21, 2009, p. 32.
3. On July 6, 2010, Sylvester Traylor individually filed a pro se appearance "in addition to an appearance already on file." [i.e. of Hall Johnson LLC.]
4. This is known as "hybrid representation" which may be permitted in the discretion of the trial court when the court acquiesces or specifically allows the hybrid representation.
5. The plaintiff, Sylvester Traylor, may move through Hall Johnson LLC for permission to have hybrid representation.
6. The defendants may move to bar hybrid representation.
7. Until the court rules on any such motion regarding hybrid representation, the plaintiff, Sylvester Traylor, shall not represent himself in this case.

WHEREFORE, the plaintiff, Sylvester Traylor, is barred from representing himself until further order of this court.

Parker, J.T.R. (403770)

403770

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Judge: THOMAS F PARKER

# EXHIBIT J

CV 06 5001159

SYLVESTER TRAYLOR, ADMINISTRATOR:  
OF THE ESTATE OF ROBERTA MAE  
TRAYLOR, ET AL.

SUPERIOR COURT

V. :

JUDICIAL DISTRICT  
OF NEW LONDON

BASSAM AWWA, M.D., ET AL. :

AT NEW LONDON

SEPTEMBER 13, 2010

**MEMORANDUM re ORDER**  
**Revised Complaint, August 30, 2010**  
[404]

During a proceeding herein held on September 7, 2010, the court entered an order as follows:

"The submittal entitled 'Revised Complaint' dated and filed on August 30, 2010, file entry 404 which was signed by the plaintiff, Sylvester Traylor, is a nullity and will not receive any consideration by the Court; the defendants need not plead to it. It will remain physically in the file as a part of the record available for appellate purposes. It purports to be filed pursuant to section 10-44 of the Practice Book. Its content readily shows it is not authorized by that section.

FILED

SEP 13 2010

SUPERIOR COURT - NEW LONDON

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"It is in direct contravention of the Court's July 15, 2010, order barring Sylvester Traylor from representing himself. That's file entry 364.

"The August 30, 2010, Revised Complaint names a new defendant not previously a defendant herein. The 'new defendant' has never been served and is not a defendant herein.

"Plaintiff Traylor had filed, via his counsel, Hall Johnson, a 'valid' § 10-44 Revised Complaint on the preceding court day, August 27, 2010.

"The Court will not allow the Revised Complaint dated August 30, 2010, under the authority of § 10-60(b) which provides in pertinent part:

"'The judicial authority may restrain such amendments so far as may be necessary to compel the parties to join issue in a reasonable time for trial.' Practice Book § 10-60(b).

"The Court finds from the history of this case and the plaintiff Sylvester Traylor's conduct herein that the Court must restrain the amendment(s) contained in the August 30, 2010 Revised Complaint as it is necessary to have the parties join issue in a reasonable time for trial, mindful that this case was returnable to this Court in early July 2006, over 4 years ago, and the pleadings are not closed.

"The August 30, 2010, Revised Complaint is not allowed as a pleading and is to be afforded no standing herein.

"That is an order of the Court effective immediately."

Transcript of Proceedings, September 7, 2010, pp.22-23

September 13, 2010

Parker, J.T.R.  
Parker, J.T.R.

# EXHIBIT K

**FILED**

OCT 05 2010

SUPERIOR COURT - NEW LONDON  
JUDICIAL DISTRICT AT NEW LONDON

CV 06 5001159

SYLVESTER TRAYLOR, ADMINISTRATOR:  
OF THE ESTATE OF ROBERTA MAE  
TRAYLOR, ET AL.

SUPERIOR COURT

V.

:

JUDICIAL DISTRICT  
OF NEW LONDON

BASSAM AWWAM, M.D., ET AL.

:

AT NEW LONDON

OCTOBER 5, 2010

**MEMORANDUM OF DECISION**

**MOTIONS FOR NONSUIT**

[429, 431]

Now before the court are two motions for nonsuit filed by the defendants. Defendants' Motion for Nonsuit, September 20, 2010 [429]; Defendants' Motion for Nonsuit, September 21, 2010 [431]. Both motions are directed against the Estate only.

In the September 20 Motion for Nonsuit [429], the basis for the nonsuit is the Estate's "failure to comply with the order of this court to have representation by counsel." Defendants' Motion for Nonsuit, September 20, 2010 [429], p. 1.

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Defendant's state that on December 21, 2009 the court ordered that "the pro se plaintiff [Sylvester Traylor] was not permitted to represent the estate. The court further ordered that the Estate's case would be dismissed unless an attorney entered an appearance for the Estate on or before April 21, 2010." (#354 .00).

Defendants go on:

"At approximately 4:30 p.m. on April 21, 2010, the law firm of Hall and the Johnson filed an appearance on behalf of both the Estate and Mr. Traylor, individually. Attorney Hall recently filed a Motion to Withdraw (motion #412.00) as counsel for the Estate. Prior to that motion being filed, Mr. Traylor in filings with this court (motion #403.00) represented that he discharged Attorney Hall as of August 11, 2010. He filed with the court an affidavit to evidence the firing of counsel. Mr. Traylor has also requested that the court extend time parameters to plead to accommodate his new attorney that would be filing an appearance on September 5, 2010 (#395.00)." Defendants' Motion for Nonsuit, September 20, 2010 [429], pp. 1-2.

Hall Johnson LLC's eleventh hour appearance on April 21, 2010 saved the Estate's case from dismissal at that time.

Apparently, the relationship between Sylvester Traylor and Hall Johnson LLC since April 21, 2010, has been less than harmonious.

Hall Johnson LLC's September 7 Motion to Withdraw [412] was granted on September 20, 2010. Sylvester Traylor did not object. [412.20]

As of September 20, 2010 and since, Sylvester Traylor, Administrator of the Estate of Robert Mae Traylor and the Estate of Robert Mae Traylor are non-appearing due to the fact that they are unrepresented in this matter.

What defendants are asking for is a disciplinary nonsuit for the Administrator's and the Estate's violation of a court order. The court has not issued any order explicitly stating that the Estate must "have representation by counsel at all times." Defendants have not cited any such order. It is true the Estate's case is ripe for dismissal. But this is because of the law and not any court order or orders. It is certainly implicit in the proceedings that dismissal is warranted because of the non-appearing status of the Administrator and the Estate.

"An order of the court must be sufficiently clear and specific to allow a party to determine with reasonable certainty what it is required to do." *Millbrook Owners Association, Inc. v. Hamilton Standard et al.*, 257 Conn. 1, 38 (Vertefeuille, J., dissenting) (2001).

What defendants suggest is that the court ordered that the Estate be represented at all times. This may be implicit in the court's orders. But the court entered no such order. The September 20 Motion for Nonsuit [429] cannot be granted.

The September 21 Motion for Nonsuit [431] is functionally the same as the September 20 Motion for Nonsuit [429] and for the same reason cannot be granted.

The defendants' Motions for Nonsuit [429, 431] are denied.

  
Parker, J.T.R.

# EXHIBIT L

118 Conn.App. 211 (Conn.App. 2009), 30326, Ellis v. Cohen

**Page 211**

**118 Conn.App. 211 (Conn.App. 2009)**

**982 A.2d 1130**

**Sophie ELLIS, Executrix (Estate of Jane Huberman)**

**v.**

**Jeffrey COHEN et al.**

**No. 30326.**

**Court of Appeals of Connecticut.**

**December 1, 2009**

Argued Sept. 23, 2009.

**[982 A.2d 1131]** Michael Huberman, pro se, the appellant (plaintiff Michael Huberman, executor of the estate of Jane Huberman).

James M. Tanski, with whom was Amy F. Goodusky, Hartford, for the appellee (named defendant et al.).

Andrew S. Wildstein, with whom, on the brief, was Frank H. Santoro, Hartford, for the appellee (defendant Hartford Hospital).

HARPER, ALVORD and FOTI, Js.

ALVORD J.

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In this medical malpractice action, the plaintiff Michael Huberman, coexecutor of the estate of Jane Huberman, appeals from the trial court's denial of his motion **[982 A.2d 1132]** to vacate a judgment of nonsuit rendered in favor of the defendants. We dismiss the appeal.

The following facts and procedural history are relevant to our decision. In March, 2003, the plaintiff Sophie Ellis, as executrix of the estate of the decedent, Jane Huberman, brought this medical malpractice action against the defendants, Jeffrey Cohen and Scott Fecteau, the decedent's physicians, Hartford Hospital and

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Connecticut Surgical Group, Inc., alleging wrongful death in violation of General Statutes § 52-555.<sup>[1]</sup> Michael Huberman, the son of the decedent and the brother of Ellis, was later made coexecutor of the estate and joined in the present action as a plaintiff.<sup>[2]</sup> During pretrial litigation the estate was represented by three successive attorneys until January, 2008, when coexecutor Huberman sought to provide exclusive representation to the estate.<sup>[3]</sup> Huberman is not a lawyer.

On April 17, 2008, Huberman attempted to appear on behalf of the estate at a trial management conference. The court, *McWeeny, J.*, sua sponte questioned the propriety of his appearance and, on April 21, 2008, prohibited Huberman from representing the estate.<sup>[4]</sup> The court ordered a licensed attorney to appear for the estate by the next trial management conference scheduled for June 25, 2008. Huberman, however, continued to act without counsel, and, on June 27, 2008, the defendants moved for a judgment of nonsuit.<sup>[5]</sup> The court granted the defendants' motion on July 7, 2008.<sup>[6]</sup>

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On August 7, 2008, Huberman filed a motion to vacate the court's April 21, 2008 order prohibiting him from representing the estate and the July 7, 2008 judgment of nonsuit. The motion was denied on August 25, 2008. Thereafter, on September 15, 2008, Huberman filed this appeal.<sup>[7]</sup>

**[982 A.2d 1133]** He claims that Judge McWeeny's April 21, 2008 order and July 7, 2008 judgment violated his due process rights. We conclude that Huberman, as a nonlawyer, does not have authority to maintain an appeal on behalf of the estate. Consequently, we dismiss his appeal.<sup>[8]</sup>

General Statutes § 51-88(a) provides in relevant part that "[a] person who has not been admitted as an attorney under the provisions of section 51-80 shall not ... [p]ractice law or appear as an attorney-at-law for another, in any court of record in this state...." Subsection (d), however, provides an exception for pro se litigants. It states that "[t]he provisions of this section shall not be construed as prohibiting ... any person from practicing law or pleading at the bar of any court

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of this state in his own cause...." General Statutes § 51-88(d)(2). Huberman argues that this exception applies to his case. He contends that because General Statutes § 52-555<sup>[9]</sup> authorizes an executor to bring an action on behalf of an estate, it necessarily also authorizes the executor to self-represent the estate. Much like the plaintiff in *Expressway Associates II v. Friendly Ice Cream Corp. of Connecticut*, 34 Conn.App. 543, 551, 642 A.2d 62, cert. denied, 230 Conn. 915, 645 A.2d 1018 (1994),<sup>[10]</sup> Huberman claims that he is the only real party in interest. He argues that the resignation of Ellis as coexecutrix<sup>[11]</sup> eliminated any possible violation of § 51-88(a) and, in effect, made the estate's wrongful death action his own. We disagree.

"The authorization to appear pro se is limited to representing one's own cause, and does not permit individuals to appear pro se in a representative capacity." *Expressway Associates II v. Friendly Ice Cream Corp. of Connecticut*, *supra*, 34 Conn.App. at 546, 642 A.2d 62. An estate is not a legal entity. *Isaac v. Mount Sinai Hospital*, 3 Conn.App. 598, 600, 490 A.2d 1024, cert. denied, 196 Conn. 807, 494 A.2d 904 (1985). It can neither sue nor be sued. *Id.* Like a corporation, it "speaks only by virtue of personification." (Internal quotation marks omitted.)

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*Expressway Associates II v. Friendly Ice Cream Corp. of Connecticut*, *supra*, at 547, 642 A.2d 62. Thus, § 52-555 creates a cause of action for wrongful death that is **[982 A.2d 1134]** maintainable on behalf of the estate only by an executor or administrator. Although the statute vests standing to bring such action exclusively in the administrator or the executor, it does not create an individual right of action.<sup>[12]</sup> Thus, an executor who brings an action pursuant to § 52-555 does so in his representative, fiduciary capacity, not as an individual plaintiff. Because the executor's "own cause" is not before the court, he has no right of self-representation.<sup>[13]</sup> Accordingly, Huberman's "pro se" appearance before this court constitutes the unauthorized practice of law in violation of § 51-88.

The appeal is dismissed.

In this opinion the other Judges concurred.

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Notes:

[1] Summary judgment was rendered in favor of Fecteau on January 8, 2008, and he is not a party to this appeal. References in this opinion to the defendants are to Cohen, Hartford Hospital and Connecticut Surgical Group, Inc.

[2] Huberman was named coexecutor in September, 2003, and was joined in his representative capacity as a plaintiff on November 10, 2003.

[3] The original complaint was filed by attorney Marjorie Drake. Drake was replaced on August 4, 2003, by Michael Walsh of Moukawsher & Walsh, LLC. Walsh withdrew as counsel on March 28, 2007. On the same day, Huberman filed his first "pro se" appearance. Although the record also reflects an additional, albeit brief, appearance by the Gallagher Law Firm from October 18, 2007, until January 28, 2008, Huberman has attempted to represent the estate without the assistance of a licensed attorney since the Gallagher Law Firm's withdrawal.

[4] Cohen and the Connecticut Surgical Group, Inc., previously had moved to strike the appearance of Huberman, but their motion was denied on February 11, 2008, by the court, *Bentivegna, J.*

[5] The motion for nonsuit was filed by Cohen and the Connecticut Surgical Group, Inc., on June 27, 2008, and was joined by Hartford Hospital on June 30, 2008.

[6] Notice of the judgment of nonsuit issued on July 14, 2008.

[7] The defendants moved to dismiss Huberman's appeal as untimely. They claimed that the court's April 21, 2008 order was not an appealable final judgment. They also noted that Huberman's August 7, 2008 motion to vacate was filed more than twenty days after notice of the court's July 7, 2008 judgment issued. As a result, they claimed that Huberman's motion to vacate did not extend the appeal period and that the Huberman's September 15, 2008 appeal is untimely as to the merits of the July 7, 2008 decision. We agreed and granted the defendants' motion to dismiss as to the April 21, 2008 order and the July 7, 2008 judgment.

Thus, the only possible issue that could be raised on its merits by Huberman's September 15, 2008 appeal is whether the court abused its discretion when it denied his motion to vacate. See *Flater v. Grace*, 291 Conn. 410, 419, 969 A.2d 157 (2009) (" [w]hen a motion to open is filed more than twenty days after the judgment ... the appeal from the denial of that motion can test only whether the trial court abused its discretion in failing to open the judgment and not the propriety of the merits of the underlying judgment" [internal quotation marks omitted] ).

[8] This court sua sponte questioned whether Huberman's attempted representation of the estate constituted the unauthorized practice of law and, if so, whether his appeal should be dismissed. The parties were notified to be prepared to address this issue at argument and were given additional time to brief the matter.

[9] General Statutes § 52-555(a) provides in relevant part: " In any action surviving to or brought by an executor or administrator for injuries resulting in death ... such executor or administrator may recover from the party legally at fault for such injuries just damages together with the cost of reasonably necessary medical, hospital and nursing services, and including funeral expenses...."

[10] In *Expressway Associates II*, this court held that " an individual who is not an attorney and who is a general partner of a partnership may not appear and participate, pro se, in an appeal on

behalf of a general partnership." *Expressway Associates II v. Friendly Ice Cream Corp. of Connecticut*, *supra*, 34 Conn.App. at 551, 642 A.2d 62.

[11] On June 29, 2008, Ellis resigned as coexecutrix of the estate and disclaimed any property interest she may have had in the present action. Following Ellis' resignation, Huberman became the sole executor of the estate.

[12] See *Isaac v. Mount Sinai Hospital*, *supra*, 3 Conn.App. at 600-601, 490 A.2d 1024 (" Death, at common law, is not a recoverable element of damage.... It is only by reason of statute that a death action is maintainable in Connecticut. [General Statutes § 52-555] provides for the bringing of such an action by either an executor or an administrator; it does not confer on anyone else, including the parents of a decedent, any right to bring such an action individually." [Citations omitted; internal quotation marks omitted.] ).

[13] To the extent that Huberman argues that his pro se appearance should be allowed because he is really representing himself as a beneficiary of the estate, he is misguided. An executor has a fiduciary duty to maintain undivided loyalty to the estate including its heirs, distributees and creditors. *Hall v. Schoenwetter*, 239 Conn. 553, 559, 686 A.2d 980 (1996). He cannot act in self-interest or use his position as executor to vindicate his personal interests as a beneficiary and skirt the narrow standing requirements of § 52-555.

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# EXHIBIT M

NO. CV 12 5036039 : SUPERIOR COURT  
IN RE JUDITH FUSARI : JUDICIAL DISTRICT OF HARTFORD  
: AT HARTFORD  
: MARCH 16, 2012

MEMORANDUM OF DECISION

I

Judith Fusari has filed applications for waiver of fees to initiate at least three cases in the judicial district of Hartford. Of these cases, two purport to be against “Blackeyed Sally’s Bar.” Fusari alleges that two friends of her daughter became ill as a result of poisoned drinks served at the bar and that Fusari’s daughter had to take care of the friends overnight while they were ill. In two complaints, she asserts causes of action labeled “pre-meditated drugging,” coercion, force, mental cruelty, “pre-meditated possible murder,” ethics, reckless endangerment, negligence, threatening and drug use and abuse. She alleges that the injuries sustained were temporary insanity, vomiting, inability to stay awake all night, confusion, mental and emotional dysfunction, among other things. Nevertheless, Fusari seeks damages for herself.

In another proposed complaint, Fusari attempts to bring an action against the claims commissioner. From her attached pleadings, it seems that Fusari sought to bring an action in New Britain on behalf of Gary Liebler who was allegedly denied a

OFFICE OF THE CLERK  
HARTFORD, CT  
JUDICIAL DISTRICT OF HARTFORD

2012 MAR 16 P 4:10

FILED

Mailed to Fusari, proposed defendants + OCR 3/16/12. ab/cc  
@ addresses according  
to Summons

102.00

scooter chair from the Scooter Store. The proposed pleadings were returned to Fusari pursuant to a permanent injunction that the court, *Pittman, J.*, entered against Fusari on May 17, 2011.<sup>1</sup> See *In re Judith Fusari*, Superior Court, judicial district of New Britain, Docket No. CV 11 5015339 (May 17, 2011, *Pittman, J.*). Fusari then sought to initiate an action against Judge Pittman. The claims commissioner's office returned Fusari's proposed pleadings stating that she cannot represent Liebler. These two proposed sets of pleadings are attached to a complaint against the claims commissioner for returning the proposed complaint against Judge Pittman. Fusari labels the causes of action as negligence, "breach of the Hippocratic oath," obstruction of justice, aiding and abetting, discrimination, force, coercion, incompetence, risk of endangerment, risk of injury, abandonment and mental cruelty. She seeks \$50 million, tax free, in damages — a third of which would be allotted to her — for mental, physical, emotional, physiological and psychological dysfunction, depression, post-traumatic stress, loss of enjoyment and physical injury, among other things.

On February 3, 2012, this court issued an order to show cause why these actions should not be dismissed because they are frivolous, because Fusari lacks standing to assert them and because Fusari may be engaged in the unauthorized practice of law in violation of General Statutes § 51-88. This court scheduled a hearing for February 27, 2012. Fusari received notice of this hearing by certified

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<sup>1</sup> The injunction states that the court will review any proposed filing and not open a court file if the court deems the proposed filings frivolous or if the action obviously fails to state a claim upon which relief may be granted.

mail, return receipt requested. The court received the return receipt signed by her on or around February 8, 2012. She did not appear in court.

## II

As to the first two actions against “Blackeyed Sally’s Bar,” the complaints obviously fail to state claims upon which relief may be granted. Fusari’s alleged damages are based on events that allegedly impacted third parties<sup>2</sup> who are not named as plaintiffs. Through her pleadings, it is evident that Fusari mistakenly believes that she can represent third parties pursuant to General Statutes § 51-88 (b).

“Any person who is not an attorney is prohibited from practicing law, except that any person may practice law, or plead in any court of this state in his own cause. General Statutes § 51-88 (d) (2). The authorization to appear pro se is limited to representing one’s own cause, and *does not permit individuals to appear pro se in a representative capacity.*” (Emphasis in original; internal quotation marks omitted.) *Lowe v. Shelton*, 83 Conn. App. 750, 756, 851 A.2d 1183, cert. denied, 271 Conn. 915, 859 A.2d 568 (2004). “The purpose of § 51-88 is, presumably, to protect members of the public from having their rights prejudiced by relying on the legal advice of persons who are untrained and unskilled in the law and are not bound by any professional code of ethics. See *In re Application of R.G.S.*, 312 Md. 626, 638, 541 A.2d 977 (1988) ([t]he goal of the prohibition against unauthorized practice

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<sup>2</sup> Insofar as Fusari may be trying to assert causes of action on behalf of her daughter, there are no facts to indicate that her daughter is a minor. Indeed, Fusari alleges that her daughter was drinking with her two friends in the bar. Regardless of age, Fusari may not represent her daughter. See *Lowe v. Shelton*, 83 Conn. App. 750, 756-59, 851 A.2d 1183, cert. denied, 271 Conn. 915, 859 A.2d 568 (2004).

is to protect the public from being preyed upon by those not competent to practice law — from incompetent, unethical, or irresponsible representation’). Because the public policy underlying § 51-88 is implicated if a nonattorney provides legal advice or represents another person in court on a single occasion, such conduct may constitute the practice of law under § 51-88.” *Bysiewicz v. Dinardo*, 298 Conn. 748, 777 n.25, 6 A.3d 726 (2010).

Section 51-88 (b) provides an exception for “any employee in this state of a stock or nonstock corporation, partnership, limited liability company or other business entity who, within the scope of his employment, renders legal advice to his employer or its corporate affiliate and who is admitted to practice law before the highest court of original jurisdiction in any state, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States or in a district court of the United States and is a member in good standing of such bar. . . .” It would appear from her applications for waiver of fees that Fusari is not employed as her only source of income is social security disability.<sup>3</sup> She had the opportunity to come to court and prove otherwise, but she did not show.

“[I]t is the established policy of the Connecticut courts to be solicitous of pro se litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the pro se party. . . . Although we allow pro se litigants some latitude, the right of self-representation provides no attendant license

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<sup>3</sup> Additionally, she is not an attorney in Connecticut and she does not appear, and does not allege, to be one from any other jurisdiction. Moreover, she seeks to do more than render advice; she seeks to represent others — something that attorneys in other jurisdictions could not do without local counsel. See Practice Book § 2-16.

not to comply with relevant rules of procedural and substantive law.” (Internal quotation marks omitted.) *Solomon v. Connecticut Medical Examining Board*, 85 Conn. App. 854, 861, 859 A.2d 934 (2004), cert. denied, 273 Conn. 906, 868 A.2d 748 (2005). Because the cases that Fusari attempts to file fail to state causes of action upon which relief may be granted and do not comply with the relevant rules of procedural and substantive law, they are dismissed.

### III

As part of the order to show cause, Fusari was ordered to show why she should not be enjoined from filing any further frivolous civil actions in the judicial district of Hartford against any and all defendants for money damages or injunctive relief. She has initiated dozens of cases in Hartford and well over 100 cases in New Britain since 2008. Because Fusari is indigent, each proposed action has been initiated through an application for waiver of fees that this court is compelled to grant pursuant to General Statutes § 52-259b.<sup>4</sup>

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<sup>4</sup> Section 52-259b provides: “(a) In any civil or criminal matter, if the court finds that a party is indigent and unable to pay a fee or fees payable to the court or to pay the cost of service of process, the court shall waive such fee or fees and the cost of service of process shall be paid by the state.

“(b) There shall be a rebuttable presumption that a person is indigent and unable to pay a fee or fees or the cost of service of process if (1) such person receives public assistance, or (2) such person’s income after taxes, mandatory wage deductions and child care expenses is one hundred twenty-five per cent or less of the federal poverty level. For purposes of this subsection, ‘public assistance’ includes, but is not limited to, state-administered general assistance, temporary family assistance, aid to the aged, blind and disabled, supplemental nutrition assistance and Supplemental Security Income.

“(c) Nothing in this section shall preclude the court from finding that a person whose income does not meet the criteria of subsection (b) of this section is indigent and unable to pay a fee or fees or the cost of service of process. If an application for the waiver of the payment of a fee or fees or the cost of service of process is denied,

Most actions have been dismissed as frivolous. See, e.g., *Fusari v. Goodusky*, Superior Court, judicial district of Hartford, Docket No. CV 11 5035355 (March 17, 2011). After her actions are dismissed, Fusari often attempts to initiate yet another action alleging that she previously won a judgment against the proposed defendant. See, e.g., *Fusari v. Middletown Area Transit*, Superior Court, judicial district of Hartford, Docket No. CV 11 5035400 (April 18, 2011). Despite the dismissal of her actions, the findings that her actions are frivolous and the observation that her multiple filings create an onerous burden on scarce judicial resources, her filings continue and now expand to include actions purported to be brought on behalf of others. As stated above, this is impermissible.

“The power of a court to manage its dockets and cases by the imposition of sanctions to prevent undue delays in the disposition of pending cases is of ancient origin.” (Internal quotation marks omitted.) *In the Matter of Presnick*, 19 Conn. App. 340, 347, 563 A.2d 299, cert. denied, 213 Conn. 801, 567 A.2d 833 (1989). “[T]he Court waives filing fees and costs for indigent individuals in order to promote the interests of justice. The goal of fairly dispensing justice, however, is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous requests. Pro se petitioners have a greater capacity than most to disrupt the fair allocation of judicial resources, because they are not subject to the financial considerations—filing fees and attorney’s fees – that deter

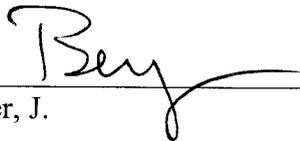
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the court clerk shall, upon the request of the applicant, schedule a hearing on the application.”

other litigants from filing frivolous petitions.” *In re Sindram*, 498 U.S. 177, 180, 111 S. Ct. 596, 112 L. Ed. 2d 599 (1991).

Based upon the court’s inherent authority to manage its docket, this court adopts the order of the court in *In re Judith Fusari*, supra, Superior Court, Docket No. CV 11 5015339. This court will continue to review Fusari’s proposed filings. If the court deems them to contain frivolous allegations or they obviously fail to state claims upon which relief can be granted, any proposed actions will be rejected by the clerk at the direction of the court and returned to Fusari. The court will not open a file as an official record within the judicial branch as it has been done in the past. In the event that the proposed filing is not frivolous and states a claim upon which relief may be granted, the court will process the filings in the usual manner.

It is so ordered.

  
\_\_\_\_\_  
Berger, J.

# EXHIBIT N

# MANDATE

D. Conn.  
11-cv-132  
Thompson, C.J.

D. Conn.  
11-cv-1990  
Bryant, J.

## United States Court of Appeals FOR THE SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 8<sup>th</sup> day of May, two thousand twelve.

Present:

Robert D. Sack,  
Reena Raggi,  
*Circuit Judges,*  
John G. Koeltl,\*  
*District Judge.*

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In re Sylvester Traylor, 12-547-op  
*Petitioner.*

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In re Sylvester Traylor, 12-672-op  
*Petitioner.*

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Sylvester Traylor, 12-881-cv  
*Plaintiff-Appellant,*  
v.

Bassam Awwa, M.D., *et al.*,  
*Defendants-Appellees,*  
v.

Halloran & Sage LLP, *et al.*,  
*Defendants.*

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\*Judge John G. Koeltl, of the United States District Court for the Southern District of New York, sitting by designation.

**MANDATE ISSUED ON 07/26/2012**

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The above-captioned cases are hereby CONSOLIDATED for purposes of this order.

In No. 12-547-op, Sylvester Traylor has filed a petition for a writ of mandamus directing state court judges and state legislators to take certain actions in connection with a number of state statutes, and moves for leave to proceed *in forma pauperis* and for declaratory and injunctive relief. In No. 12-672-op, Traylor has filed a petition for a writ of mandamus directing the State of Connecticut and its courts to cease application of certain state statutes, and moves: (1) for leave to proceed *in forma pauperis*; (2) for a notice of removal and trial *de novo*; (3) for declaratory and injunctive relief; and (4) "for admission," which this Court construes as a request to supplement the record on appeal and for the Court to impose sanctions. In No. 12-881-cv, Traylor moves for this Court to take judicial notice of certain matters and several Appellees move to dismiss the appeal.

Upon due consideration, it is hereby ORDERED that the appeal in No. 12-881-cv is CONSTRUED as a petition for a writ of mandamus directing the state courts to enforce certain discovery orders issued by a state court judge, and as a motion for leave to proceed *in forma pauperis*.

It is further ORDERED that leave to proceed *in forma pauperis* is GRANTED in all three cases for the limited purpose of filing the mandamus petitions, and that the three mandamus petitions are DISMISSED for lack of mandamus jurisdiction, as this Court does not have the authority "to compel action by state officials," *Davis v. Lansing*, 851 F.2d 72, 74 (2d Cir. 1988); *see also* All Writs Act, 28 U.S.C § 1651(a) ("[Federal courts] may issue all writs necessary or appropriate in aid of their respective jurisdictions."), or to decide claims in the first instance, *see* 28 U.S.C. §§ 1291, 1292. Finally, it is ORDERED that the other pending motions in the above-captioned cases are DENIED as moot.

Traylor is hereby warned that the continued filing of duplicative, vexatious, or frivolous appeals, mandamus petitions, or motions may result in the imposition of sanctions, including a leave-to-file sanction requiring Traylor to obtain permission from this Court prior to filing further submissions in this Court. *See In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993); *Sassower v. Sansverie*, 885 F.2d 9, 10-11 (2d Cir. 1989).

FOR THE COURT:

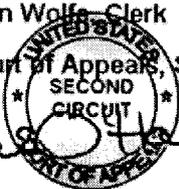
Catherine O'Hagan Wolfe, Clerk of Court


A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

# EXHIBIT O

NO. HHD CV 11-5035895S : STATE OF CONNECTICUT  
SYLVESTER TRAYLOR : SUPERIOR COURT  
v. : JUDICIAL DISTRICT OF HARTFORD  
TERRY GERRATANA, ET AL. : NOVEMBER 29, 2012

**Ruling on Motion to Dismiss**

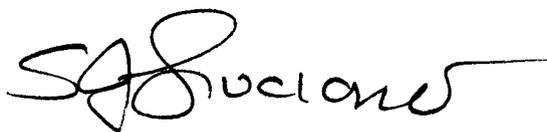
The self-represented plaintiff has filed this lawsuit seeking a writ of mandamus, damages, and declaratory and injunctive relief against twelve state legislators, several judicial officials and state courts, the state of Connecticut (collectively, the state defendants), and one private defendant, the Connecticut Medical Insurance Company (CMIC). All defendants move to dismiss on the grounds of immunity and other jurisdictional doctrines. The court grants the motions to dismiss.

I

The record reveals that the plaintiff has filed at least three prior lawsuits arising from his wife's death in 2004. The superior court dismissed the first suit, which sounded in medical malpractice, primarily because the plaintiff failed to submit a medical opinion letter as required in such actions by General Statutes § 52-190a. See *Traylor v. State*, 128 Conn. App. 82, 183-84, 15 A.3d 1173, cert. denied, 301 Conn. 927, 22 A.3d 1276 (2011).<sup>1</sup> The court dismissed a second

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<sup>1</sup>Section 52-190a provides: "a) No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint, initial pleading or



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action, which sought mandamus relief to enforce claims made in the first action, primarily because mandamus is not the proper remedy to challenge judicial rulings. *Id.*, 184-85. The plaintiff appealed both judgments. The Appellate Court dismissed the first appeal and affirmed the judgment in the second appeal. *Traylor v. Awwa*, A.C. 33038 (dismissed December 14, 2011), cert. denied, 303 Conn. 931, 36 A.3d 242 (2012); *Traylor v. State*, supra, 128 Conn. App.

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apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant or for an apportionment complaint against each named apportionment defendant. To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant's attorney, shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. Such written opinion shall not be subject to discovery by any party except for questioning the validity of the certificate. The claimant or the claimant's attorney, and any apportionment complainant or apportionment complainant's attorney, shall retain the original written opinion and shall attach a copy of such written opinion, with the name and signature of the similar health care provider expunged, to such certificate. The similar health care provider who provides such written opinion shall not, without a showing of malice, be personally liable for any damages to the defendant health care provider by reason of having provided such written opinion. In addition to such written opinion, the court may consider other factors with regard to the existence of good faith. If the court determines, after the completion of discovery, that such certificate was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court upon motion or upon its own initiative shall impose upon the person who signed such certificate or a represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. The court may also submit the matter to the appropriate authority for disciplinary review of the attorney if the claimant's attorney or the apportionment complainant's attorney submitted the certificate.

“(b) Upon petition to the clerk of the court where the civil action will be filed to recover damages resulting from personal injury or wrongful death, an automatic ninety-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods.

“(c) The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action.”

182. In January, 2011, the plaintiff brought a third suit against various state officials and private defendants arising out of rulings in these two earlier suits. The defendants removed this suit to federal court, where it remains pending. See *Traylor v. Awwa*, Superior Court, judicial district of New London, Docket No. KNL CV11-5014139S; *Traylor v. Awwa*, 3:11-CV-00132 (AWT) (D. Conn.).<sup>2</sup>

## II

In November, 2011, the plaintiff filed this fourth suit challenging rulings made in the prior suits, the constitutionality of § 52-190a, and the legislature's failure to enact an amendment to 52-190a. The initial dispute centers on identifying the operative complaint. The defendants' motions, filed on January 5, 2012, seek to dismiss an amended 77 page complaint filed by the plaintiff on December 21, 2011 (# 106). On August 27, 2012, over seven months after the defendants moved to dismiss, the plaintiff submitted a request to amend and a proposed 100 page amended complaint. (#s 156, 157). All defendants objected to the request to amend (#s 162, 164), but the court has never ruled specifically on those objections.

The plaintiff claims that the August, 2012 complaint is the operative one. His position is incorrect. The governing rule is that "[w]henver the absence of jurisdiction is brought to the notice of the court or tribunal, recognizance of it must be taken and the matter passed upon

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<sup>2</sup>CMIC alleges that the plaintiff also unsuccessfully filed suit in 2004 against town of Waterford officials for ignoring concerns regarding his wife's suicidal tendencies. The court could not confirm the existence of this suit. In any event, the plaintiff's litigious fervor is perhaps understandable, but it has clearly reached the point of becoming unnecessarily costly, wasteful, and fruitless. The state defendants do not seek an injunction against the plaintiff from filing further lawsuits, but such a request may become appropriate if the plaintiff does not refrain from filing suit against government officials and entities with immunities. See *Adgers v. Keller*, Superior Court, judicial district of New London, Docket No. CV05-4004154 (February 21, 2006, *Jones, J.*).

before it can move one further step in the cause, as any movement is necessarily the exercise of jurisdiction.” (Internal quotation marks omitted.) *FDIC v. Peabody, N.E. Inc.*, 239 Conn. 93, 99, 680 A.2d 1321 (1996). Thus, it is inappropriate to consider a proposed amended complaint when, as here, there is a motion to dismiss the existing complaint. *Id.*, 99-100; *Gurliacci v. Mayer*, 218 Conn. 531, 545, 590 A.2d 914 (1991). Therefore, the December 2011 complaint is the operative one.<sup>3</sup>

### III

In ruling on a motion to dismiss, the court must “take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” (Internal quotation marks omitted.) *DaimlerChrysler Corp. v. Law*, 284 Conn. 701, 711, 937 A.2d 635 (2007). Even doing so, the motions to dismiss are well taken. The court lacks jurisdiction over the state defendants sued in their individual capacities because the plaintiff has not served them individually as required by General Statutes §§ 52-54 and 52-57. See *Edelman v. Page*, 123 Conn. App. 233, 243-244, 1 A.3d 1188, cert. denied, 299 Conn. 908, 10 A.3d 525 (2010). Moreover, the individual state defendants have immunity from state law money damage claims under General Statutes § 4-165 because the plaintiff has not alleged any conduct that was outside the scope of their employment or “wanton, reckless, or malicious.” See *Martin v. Brady*, 261 Conn. 372, 376-81, 802 A.2d 814 (2002). With regard to money damage claims based on federal law, the individual state officials can invoke qualified immunity because the plaintiff has not alleged facts showing “(1) that the

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<sup>3</sup>In view of the fact that the proposed August, 2012 complaint does not appear to avoid the defects of the December, 2011 complaint, as discussed herein, it is likely that the court would reach the same result even if it considered the August, 2012 complaint as operative.

official violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged conduct.” *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 2080 (2011). See also *Sullins v. Rodriguez*, 281 Conn. 128, 133-34, 913 A.2d 415 (2007) (§ 4-165 immunity limited to state law claims).

The legislators and judicial officials sued in their individual capacities for damages have absolute immunity from suit based on the nature of their office. Because the plaintiff has sued state legislators for decisions they made in their legislative capacity, the legislators have absolute immunity from suit regardless of the propriety of those decisions. See *Office of the Governor v. Select Committee of Inquiry*, 271 Conn. 540, 559-63, 567, 858 A.2d 709 (2004). Similarly, absolute judicial immunity prevents a plaintiff from obtaining any relief against judges and judicial officials for decisions made in their judicial capacity, such as those challenged here. See *Carruba v. Moskowitz*, 274 Conn. 533, 540-41, 877 A.2d 733 (2005).

With regard to the plaintiff’s attempt to seek money damages from state defendants in their official capacities, the doctrine of sovereign immunity bars all relief given the absence of a statutory waiver or permission from the claims commissioner. See *Columbia Air Services v. Dept. of Transportation*, 293 Conn. 342, 351, 977 A.2d 636 (2009). Sovereign immunity also prevents the plaintiff from obtaining any injunctive and declaratory relief from the state defendants because the plaintiff has not made any “substantial claim that the state or one of its officers has violated the plaintiff’s constitutional rights [or] . . . a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer’s statutory authority.” *Id.*, 349. Indeed, the Appellate Court has recently concluded that § 52-190a does not violate the open courts provision of our state constitution and a superior court has held that the statute does

not violate the separation of powers doctrine. See *Lohnes v. Hospital of Saint Raphael*, 132 Conn. App. 68, 80-81, 31 A.3d 810 (2011), cert. denied, 303 Conn. 921, 34 A.3d 397 (2012); *Torres v. Carrese*, Superior Court, judicial district of Fairfield, Docket No. CV06-5011368 (March 14, 2011, *Levin, J.*).

CMIC asserts in its motion to dismiss that the plaintiff's mandamus allegations do not identify any duty "the performance of which is mandatory and not discretionary" or establish that the plaintiff has a "clear legal right to have the duty performed." (Internal quotation marks omitted.) *Traylor v State*, supra, 128 Conn. App. 185. The court agrees because it appears that the plaintiff claims that CMIC failed to disclose records that it had no statutory obligation to disclose to the plaintiff. Accordingly, the court grants CMIC's motion to dismiss. See *Traylor v. State*, supra, 184-85 (affirming the granting of a motion to dismiss mandamus complaint based on the plaintiff's failure to claim that there was no other specific adequate remedy).

Finally, as mentioned, some ten months before filing the present action, the plaintiff filed a virtually identical suit in state court. *Traylor v. Awwa*, Superior Court, judicial district of New London, Docket No. KNL CV11-5014139S. The defendants removed this case to federal court, where it currently remains pending. *Traylor v. Awwa*, 3:11-CV-00132 (AWT) (D. Conn.) The prior pending action doctrine, which is appropriately raised on a motion to dismiss, bars such duplicative litigation. See *Bayer v. Showmotion*, 292 Conn. 381, 395-96, 973 A.2d 1229 (2009); *Gaudio v. Gaudio*, 23 Conn. App. 287, 294, 580 A.2d 212, cert. denied, 217 Conn. 803, 584 A.2d 471 (1990). Accordingly, for all these reasons, the court grants the motions to dismiss of

both the state and the private defendants.<sup>4</sup>

IV

The court grants the motions to dismiss.

It is so ordered.

  
Carl J. Schuman  
Judge, Superior Court

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<sup>4</sup>In view of the conclusions reached here, the court does not reach the other grounds for dismissal raised by the parties.

## Checklist for Clerk

Docket Number: HHD CV 11-5035895-S

Case Name: Traylor v. Gerratana

Memorandum of Decision dated: 11/29/12

File Sealed:            Yes                            No X

Memo Sealed:        Yes                            No X

This Memorandum of Decision may be released to the Reporter of Judicial Decisions for Publication    Yes

This Memorandum of Decision may NOT be released to the Reporter of Judicial Decisions for Publication

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State of Connecticut  
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**HHD-CV11-5035895-S TRAYLOR, SYLVESTER v. GERRATANA, TERRY Et Al**

**Prefix/Suffix:** [none]    **Case Type:** M20    **File Date:** 11/22/2011    **Return Date:** 12/06/2011

[Case Detail](#)   [Notices](#)   [History](#)   [Scheduled Court Dates](#)   [E-Services Login](#)   [Screen Section Help](#) ▶

Data Updated as of: 11/29/2012

**Case Information**

**Case Type:** M20 - MISC - MANDAMUS  
**Court Location:** HARTFORD  
**List Type:** No List Type  
**Trial List Claim:**  
**Referral Judge or Magistrate:**  
**Last Action Date:** 11/29/2012 (Last Action Date is a data entry date, not actual date)

**Disposition Information**

**Disposition Date:**  
**Disposition:**  
**Judge or Magistrate:**

**Parties & Appearances**

Party	No Fee Party
<b>P-01 SYLVESTER TRAYLOR</b> Self-Rep: 881 VAUXHALL ST EXT QUAKER HILL, CT 06375	File Date: 11/22/2011
<b>D-50 TERRY GERRATANA STATE SENATOR</b> Attorney: AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-51 ROBERT KANE STATE SENATOR</b> Attorney: AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-52 TONY GUGLUEMO STATE SENATOR</b> Attorney: AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-53 LEN FASANO STATE SENATOR</b> Attorney: AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-54 TINI BOUCHER STATE SENATOR</b> Attorney: AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-55 JASON WELCH STATE SENATOR</b> Attorney: AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-56 TONI N HARP STATE SENATOR</b>	

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 HARTFORD, CT  
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	<b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-57</b>	<b>KEVIN WITKOS STATE SENATOR</b> <b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-58</b>	<b>MICHAEL MCLACHLAN STATE SENATOR</b> <b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-59</b>	<b>ANTHONY MUSTO STATE SENATOR</b> <b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-60</b>	<b>LEN SUZIO STATE SENATOR</b> <b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-61</b>	<b>PRASAD SRONIVASAN STATE REPRESENTATIVE</b> <b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-62</b>	<b>THOMAS PARKER JUDGE</b> <b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-63</b>	<b>NEW LONDON SUPERIOR COURT</b> <b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-64</b>	<b>CONNECTICUT STATE OF</b> <b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-65</b>	<b>CONNECTICUT COURT OF APPEALS</b> <b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-66</b>	<b>ALAN M GANNUSCIO</b> <b>Attorney:</b> AAG JANE R ROSENBERG (085141) AG-SPECIAL LITIGATION 55 ELM ST PO BPX 120 HARTFORD, CT 061410120	File Date: 12/07/2011
<b>D-67</b>	<b>CONNECTICUT MEDICAL INSURANCE COMPANY</b> <b>Attorney:</b> MORRISON MAHONEY LLP (404459) ONE CONSTITUTION PLAZA 10TH FLOOR HARTFORD, CT 06103	File Date: 12/06/2011

Viewing Documents on Civil Cases: Order Documents and Judicial Notices that are **electronic** on this case can be accessed on this website.\* Pleadings and other documents that are **electronic** can be viewed at any Judicial District courthouse and at

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SUPERIOR COURT  
HARTFORD, CT

# EXHIBIT P

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

SYLVESTER TRAYLOR, Plaintiff	:	CASE NO.: 3:11 cv 00132 (CFD)
	:	
	:	
V.	:	
	:	
BASSAM AWWA, M.D. and	:	
CONNECTICUT BEHAVIORAL HEALTH	:	
ASSOCIATES, P.C., ATTORNEY DONALD	:	
LEONE OF CHINIGO LEONE & MARUZO	:	
LLP, RICHARD BLUMENTHAL,	:	
CONNECTICUT ATTORNEY GENERAL,	:	
CITY OF NEW LONDON, JOSEPH D'ALESIO	:	
OF THE CONNECTICUT COURT OF	:	
OPERATIONS, THE NEW LONDON	:	
CRIMINAL DIVISION FOR THE STATE OF	:	
CONNECTICUT ATTORNEY'S OFFICE, DR.	:	
ROBERT GALVIN, COMMISSIONER FOR	:	
THE CONNECTICUT DEPARTMENT OF	:	
PUBLIC HEALTH, CONNECTICUT	:	
MEDICAL INSURANCE COMPANY,	:	
ADVANCED TELEMESSAGING,	:	
HALLORAN & SAGE LLP, ATTORNEY	:	
RICHARD BLUMENTHAL (on behalf of	:	
Connecticut Superior Court	:	September 6, 2011
Defendants	:	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDER  
RE: COURT APPROVAL REQUIRED FOR PLAINTIFF'S FILINGS**

**I. Facts and Background**

This case, along with many others, arises out of the sad situation of the apparent suicide of Mr. Traylor's wife on March 1, 2004. Since her death, Mr. Traylor has filed numerous court

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actions against those who treated his wife, those who he believes share some responsibility for her death, those who had the temerity to resist or reject one of Mr. Traylor's claims, and those who have been involved in his unsuccessful litigation attempts. He has sued attorneys who have represented parties to this matter, and judges who have been involved in his litigation.

Mr. Traylor has filed at least seven actions either in court or with agencies:

*Traylor v. Town of Waterford*, CV-05-4002241, filed December 15, 2004;

*Traylor v Awwa et al*, CV-06-5001159, filed June 2, 2006;

*Traylor v. State of Connecticut et al*, CV-09-4009523, filed May 7, 2009;

*Traylor v. Steward, et al*, CV-10-5013979, filed April 5, 2010;

*Traylor v. Awwa et al*, CV-11-5014139, filed January 11, 2011;

Complaint with Department of Public Health, Petition # 2006-1115-001-197; and

Complaint with Commission on Human Rights and Opportunities, Case # 1040332.

After his wife's death, but prior to filing a civil lawsuit against Dr. Awwa and Connecticut Behavioral Health, Mr. Traylor filed suit in state court against the Town of Waterford. Docket No. CV-05-4002241. In that case, it is believed that he accused the Town of ignoring his concerns about his wife's suicidal tendencies. The case detail list shows that the case was dismissed. **Court Case Detail List, Exhibit 1.**

In 2006, Mr. Traylor filed a six count medical malpractice claim against Dr. Awwa and the group that he practices with, Connecticut Behavioral Health Associates, P.C. ("CBHA").

Docket No. CV-06-5001159. He subsequently added counts alleging spoliation of evidence and violation of CUTPA. The original six counts were dismissed on July 29, 2010 and a Memorandum of Decision was issued on August 11, 2010. *See Decision of Judge Parker, 8/11/10, Exhibit 2.* The claim for intentional spoliation of evidence, Count Seven, was struck on August 16, 2010. *See Decision of Judge Parker, 8/16/10, Exhibit 3.* Although Count Seven was amended to cure the prior deficiencies, it was later dismissed along with the eighth and final count on February 15, 2011. *See Decision of Judge Parker, 2/15/11, Exhibit 4.* In this matter, the defendants were represented by Attorney Donald Leone, of Chinigo, Leone & Maruzo, LLP. It is this lawsuit that Mr. Traylor refers to in numerous paragraphs of his complaint.

The litigation was extremely contentious. There have been over 400 filings. *See Traylor v. Awwa et al. Docket List, Exhibit 5.* It appears that Judgment has entered for the defendants and all appeals by Mr. Traylor dismissed.

In May 2009, Mr. Traylor filed a mandamus action against the State of Connecticut, Dr. Awwa and CBHA. Docket No. CV-09-4009523. In the mandamus action, Mr. Traylor sought a court order against the Chief Court Administrator, Judge Barbara Quinn, to compel the New London Superior Court to enforce discovery orders issued by the late Judge Hurley in the malpractice action and to reinstate a default judgment. The mandamus action was dismissed by Judge Parker on February 3, 2010, and the decision affirmed by the Appellate Court on April

19, 2011. *See Decision of Judge Parker 2/3/10 and Appellate Court Decision 4/19/11, Exhibits 6 and 7.*

In 2010, Mr. Traylor filed a civil action against Daniel Steward, the First Selectman of Waterford, the Town of Waterford Police Department, the Law Offices of Ryan, Ryan and Deluca (counsel for Mr. Steward and the Town of Waterford Police Department), Attorney Donald Leone, (the attorney for Dr. Awwa and CBHA), psychologist, Dr. Candice Weigle-Spier, and Tonilynn Wood, apparently a relative of the late Mrs. Traylor. Docket No. CV-10-5013979. The essence of the action was defamation and conspiracy by whites against him, because he is black. The claims filed against Ryan, Ryan and Deluca, LLP resulted from the firm's defense of the Waterford defendants, and the claims against Mr. Leone were a result of his defense of Dr. Awwa and CBHA in the malpractice action. This case was removed to federal court in 2010 and the federal court docket now has over 100 entries.

Mr. Traylor also filed a complaint against Dr. Awwa with the Department of Public Health. In doing so, he complained about Dr. Awwa's treatment of his wife.

In April 2010, Mr. Traylor filed a complaint with the Commission on Human Rights and Opportunities against Dr. Awwa, CBHA, Attorney Don Leone, and various state defendants. Mr. Traylor received a right to sue letter and those claims are incorporated into the current lawsuit. The present action, which was removed to federal court January 2011, already has 113 docket entries through the month of August.

Of particular note to the attorneys who represent defendants in this case is that Mr. Traylor has sued three sets of attorneys who have somehow been involved in this matter.

The defendants are well aware of the plaintiff's right to file a lawsuit. They are also aware that the plaintiff is pro-se, but Mr. Traylor's excessive filings are abusive and expose the defendants to unnecessary costs and burdens. He is filing motion on motion while the defendants' motions to dismiss remain pending.

The defendants believe that at this point they have a strong argument to seek monetary sanctions pursuant to FRCP 11. Without waiving their rights to file a subsequent motion should Mr. Traylor's abusive filings continue, the undersigned defendants feel that the entry of an order, requiring Mr. Traylor to seek prior approval from the court before filing any motions, protects their interests, yet does not put unnecessary or difficult hurdles in Mr. Traylor's way that would prevent him from pursuing his litigation.

## II. Argument

This court has the ability, either pursuant to FRCP 11 or its inherent powers, to issue orders to prevent abusive and onerous actions by one party against another. A court "may resort to restrictive measures that except from normally available procedures litigants who have abused their litigation opportunities." *In re Martin-Trigona*, 9 F3d 226, 228 (2d Cir. 1993). If a litigant has a history of filing vexatious, harassing or duplicative lawsuits, courts may impose sanctions, which can include restricting access to the court. *Johnson v. Chairman New York*.

*City Transit Authority*, 377 Fed. Appx 46, (2d Cir. 2010). As the Supreme Court has indicated, “the right of access may be counterbalanced by the traditional right of court to manage their dockets and limit abusive filings. *In re McDonald*, 489 U.S. 180, 184 (1989). Courts have both the power and the obligation to protect their jurisdiction. This includes preventing single litigants from taking up limited court time with abusive and unnecessary motions. *Smith v. U.S.*, 386 Fed. Appx 853, 857 (11<sup>th</sup> Cir. 2010).

The defendants recognize that the court cannot bar Mr. Traylor from litigating, but it can adopt measures that recognize Mr. Traylor’s right to file motions, yet protect the defendants from an unnecessary and abusive constant stream of motions, filings and lawsuits. To date, there are over 100 filings in the above-entitled matter. In the original malpractice action, involving some of the same parties, there are over 400 filings. In Mr. Traylor’s other pending federal court action, there are also over 100 entries. Mr. Traylor should not be allowed to continue his abusive motion practice without restraint.

### **III. Conclusion**

For the reasons stated herein, the undersigned defendants respectfully request that the court enter an order requiring Mr. Traylor to seek and obtain approval from the court before filing any further motions.

DEFENDANTS,

BASSAM AWWA, M.D., and  
CONNECTICUT BEHAVIORAL  
HEALTH ASSOCIATES P.C.,

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Kay A. Williams (ct27748)  
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CONNECTICUT MEDICAL  
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E-mail:  
[ghall@morrisonmahoney.com](mailto:ghall@morrisonmahoney.com)

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ATTORNEY DONALD LEONE,

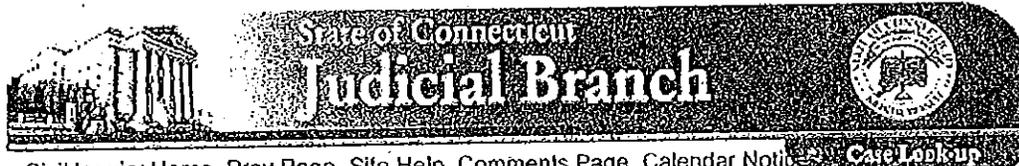
BY: /s/ Angel Peterson  
Angel Peterson (ct27897)  
Updike, Kelly & Spellacy  
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P.O. Box 231277  
Hartford, CT 06123-1277  
Telephone: (860) 548-2600  
Fax: (860) 548-2680

**CERTIFICATION**

I hereby certify that on September 6, 2011, a copy of the foregoing “Memorandum of Law in Support of Motion for Order Re: Court Approval Required for Plaintiff’s Filings” was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court’s electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court’s CM/ECF System.

/s/ Kay A. Williams  
Kay A. Williams

# Exhibit 1



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## Case Detail

[View Scheduled Court Dates](#)

Data Updated as of: 6/8/2006

Plaintiff Name VS Defendant Name	
TRAYLOR, SYLVESTER v. TOWN OF WATERFORD	
Docket Number: TTD-CV-05-4002241-S	Court Location: Tolland
File Date: Dec 15 2004	Return Date: Jan 11 2005
* Last Action Date: Oct 17 2005	ADR Status: Not Applicable
Case Type: TORT, OTHER - ALL OTHER	
List Type: JURY	
Disposition Date: Aug 30 2005	Trial List Claim: Jan 27 2005
Judge/Magistrate: Hon. S. SFERRAZZA	
Disposition: JUDGMENT OF DISMISSAL	

\* 'Last Action Date' is a data entry date, not actual date

Parties / Attorneys					
Party Name & Address	Pty No.	Pltf / Def	Pro Se	Non Appear	No Fee Party
SYLVESTER TRAYLOR 881 VAUXHALL STREET EXT QUAKER HILL CT 06375	01	P	Y		
SYLVESTER TRAYLOR 881 VAUXHALL STREET EXT QUAKER HILL CT 06375	02	P	Y		
TOWN OF WATERFORD	50	D			
Attorney: HOWD & LUDORF (Juris No. 028228) 65 WETHERSFIELD AVENUE HARTFORD, CT 06114 1190					
Attorney: KEPPE MORGAN & AVENA PC (Juris No. 409171) BOX 3A ANGUILLA PARK 20 SOUTH ANGUILLA ROAD PAWCATUCK, CT 06379					

Motions / Pleadings / Objections							
Entry No	Entry Date	Description	Initiated By	Arguable	Result	Result Date	Ordered By
101.00	Jan 24 2005	MOT FOR DEFAULT- PLEADING	P	No	Denied	Jan 25 2005	BY THE CLERK

102.00	Jan 24 2005	CLAIM FOR JURY OF 6	D	No			
103.00	Jan 24 2005	ANS AND SPECIAL DEFENSE	D	No			
104.00	Jan 26 2005	REPLY TO SPECIAL DEFENSE	P	No			
105.00	Jan 26 2005	TRIAL LIST		Yes			
106.00	Jan 28 2005	MOT EXTEND TIME- DISCOVERY	P	No	Granted	Feb 16 2005	Hon. D HURLEY
107.00	Mar 15 2005	COMPLEX LITIGATION APPL.	D	No	Granted	Apr 18 2005	BY THE COURT
108.00	Apr 19 2005	OFFER OF JUDGMENT	P	No			
109.33	Mar 18 2005	FM NEW LONDON JD	Court	No			
110.33	Mar 18 2005	TO TOLLAND JD	Court	No			
111.00	Apr 19 2005	OBJECTION TRANSFER CLD	P	No	OVERRULED	Apr 25 2005	Hon. SAMUEL SFERRAZZA
112.00	Apr 27 2005	REQ TO AMEND COMPLAINT	P	No			
113.00	May 06 2005	OBJECTION TO MOTION	D	No	Sustained	Jun 22 2005	Hon. SAMUEL SFERRAZZA
114.00	May 23 2005	REQ TO AMEND COMPLAINT	P	No			
115.00	Aug 30 2005	JUDGMENT OF DISMISSAL		Yes		Aug 30 2005	Hon. SAMUEL SFERRAZZA

## TRAYLOR, SYLVESTER v. TOWN OF WATERFORD

The following table lists events that have been individually scheduled for this case for today, or for a date in the future\*. Other court activity may be separately scheduled on short calendars or assignment lists.

This table was last updated on 6/8/2006.

Individually Scheduled Court Dates				
#	Date	Time	Event Description	Status
No Events Found				

\*Note: Individually scheduled events for the Regional Family Trial Docket in Middletown and Complex Litigation Dockets may not be included.

Periodic changes to terminology may be made which do not affect the status of the case.

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## Exhibit 2

Traylor v. Awwam, Not Reported in A.2d (2010)

2010 WL 3584285

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.

Superior Court of Connecticut,  
Judicial District of New London.

Sylvester TRAYLOR, Administrator of  
the Estate of Roberta Mae Traylor et al.

v.

Bassam AWWAM, M.D. et al.

No. CV065001159. Aug. 11, 2010.

### Opinion

PARKER, J.T.R.

*\*/* This case, now an immense file [close to 290 file entries] and rife with confusion, began with a writ of summons and a Complaint dated June 1, 2006. The Complaint was signed by the pro se plaintiffs here Sylvester Traylor, individually, and as Administrator of the Estate of Roberta Mae Traylor. The writ of summons was signed by the clerk of the court on June 1, 2006. The Return Date on the writ is July 3, 2006.

In the main, this case is a medical (psychiatric) malpractice wrongful death action. It arises from the psychiatric treatment and eventual death of the late Roberta Mae Traylor. It is claimed she committed suicide on March 1, 2004.

When the original June 1, 2006 Complaint was returned to court and filed with the court clerk, the Complaint had attached to it a copy of a document entitled "PETITION TO THE CLERK OF THIS COURT FOR AN AUTOMATIC 90-DAY EXTENSION OF THE STATUTE OF LIMITATIONS" dated February 23, 2006. The copy of the "Petition" indicated the original bore file stamps showing the "Petition" had been filed with the court clerk on February 23, 2006. This "Petition" was signed on behalf of the plaintiffs by Attorney Andrew J. Pianka of the law firm of Grady & Riley LLP. The clerk had granted the "Petition" on February 23, 2006. The authority for the Petition and the time extension sought is contained in C.G.S. § 52-190a(b).

The original June 1, 2006 Complaint did not have attached to it a copy of a signed opinion of a similar health care provider stating that there appears to be evidence of medical

negligence and includes a detailed basis for the formation of such opinion as required by § 52-190a.

On July 12, 2010 with new counsel, the plaintiffs filed their "Second Amended Complaint" dated July 12, 2010[362].<sup>1</sup> It is now the operative complaint.<sup>2</sup>

Now before the court is the defendants' Motion to Dismiss dated July 16, 2010 [366].<sup>3</sup> The defendants seek dismissal of Counts 1-6 (the medical malpractice Counts) of the Second Amended Complaint dated and filed July 12, 2010[362]. The principal grounds for dismissal are the plaintiffs' "failure to comply with Connecticut General Statutes Section 52-190a's requirement that prior to filing suit a plaintiff obtain a written and signed opinion of a similar health care provider that there appears to be evidence of medical malpractice and attach the opinion to the complaint." Motion to Dismiss, July 16, 2010[366]. A comprehensive memorandum of law accompanied the motion. Memorandum of Law, July 16, 2010 [366.01].

The issues raised by the Motion to Dismiss and determinative thereof are centered on C.G.S. § 52-190a. Its pertinent parts are set forth here:

Sec. 52-190a. Prior reasonable inquiry and certificate of good faith required in negligence action against a health care provider. Ninety-day extension of statute of limitations.

(a) No civil action ... shall be filed to recover damages resulting from personal injury or wrongful death ... in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action ... has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint ... shall contain a certificate of the attorney or party filing the action ... that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant ... To show the existence of such good faith, the claimant or the claimant's attorney ... shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion ... The claimant

## Traylor v. Awwam, Not Reported in A.2d (2010)

or the claimant's attorney ... shall retain the original written opinion and shall attach a copy of such written opinion, with the name and signature of the similar health care provider expunged, to such certificate.

\*2 (b) ...

(c) The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action.

C.G.S. § 52-190a.

The hard, unassailable facts are straight forward. This action began on June 1, 2006 by a Complaint dated June 1, 2006. The Complaint did not have a certificate of good faith or a medical opinion attached to it. The medical opinion dated October 18, 2006 upon which plaintiffs rely was not obtained by plaintiffs until October 18, 2006.

The statute, C.G.S. § 52-190a, is clear. Its purpose

is to inhibit a plaintiff from bringing an inadequately investigated cause of action, whether in tort or in contract, claiming negligence by a health care provider. Section 52-190a requires a certificate of good faith that the health care provider had been negligent in the care and treatment of the plaintiff. *Bruttomesso v. Northeastern Connecticut Sexual Assault Crisis Services, Inc.* 242 Conn. 1, 15-16, 698 A.2d 795 (1997).

It is plainly evident that the purpose of the statute was not met here.

Ten years later, the Appellate Court wrote:

In 2005, the General Assembly, by enacting Public Acts 2005, No. 05-275, § 2 (P.A. 05-275), required that persons filing legal actions claiming medical negligence, filed on or after October 1, 2005, must annex to the complaint a written and signed opinion of a similar health care provider stating that there appears to be evidence of medical negligence. *Rios v. CCMC Corporation et al.*, 106 Conn.App. 810-11, 943 A.2d 544 (2008).

In *Rios*, plaintiffs "had not obtained an opinion of a similar health-care provider prior to filing the action in court." 106 Conn.App. @ 814, 943 A.2d 544.

The Appellate Court is quoted extensively from *Rios*:

[T]he defendants filed a motion to dismiss the plaintiffs' complaint due to the plaintiffs' failure to include the

opinion of a similar health care provider with the complaint, as required by § 52-190a. The plaintiffs objected to the motion to dismiss, and oral argument was heard by the court on January 3, 2006. The plaintiffs' attorney informed the court that he had not obtained an opinion of a similar health care provider prior to filing the action in court. *Rios*, 106 Conn.App. @ 814, 943 A.2d 544.

The trial court dismissed the plaintiffs' action concluding plaintiffs "had not complied with the requirements of [§ 52-190a]." *Rios*, 106 Conn.App. @ 815, 943 A.2d 544.

On appeal of *Rios*, the Appellate Court spelled out in some detail the importance of the medical opinion and the necessity that it be obtained prior to filing of the suit papers with the court.

Section 52-190a(a) provides that before filing a personal injury action against a health care provider, a potential plaintiff must make "a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant ..." In order to show good faith, the complaint, initial pleading or apportionment complaint is required to contain a certificate of the attorney or party filing the action stating that "such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant ..." General Statutes (Rev. to 2005) § 52-190a(a), as amended by P.A. 05-275, § 2. Prior to the 2005 amendments, the statute provided that good faith may be shown if the plaintiffs or their counsel obtained a written opinion, not subject to discovery, from a similar health care provider that there appeared to be evidence of medical negligence. General Statutes (Rev. to 2005) § 52-190a (a). [fn5] Prior to the amendment, the statute did not require plaintiffs to include with the complaint an opinion of a similar health care provider attesting to a good faith basis for an action.

\*3 Effective October 1, 2005, the statute was amended to require that in order to show the existence of good faith, claimants or their counsel, prior to filing suit, 'shall obtain a written and signed opinion of a similar health care provider ... that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion ...' General Statutes § 52-190a(a). The amended statute also provides that claimants or their counsel "shall attach a copy of such written opinion, with the name and signature of the similar health care provider expunged, to such certificate ..." General Statutes § 52-

**Traylor v. Awwam, Not Reported in A.2d (2010)**

190a(a). Subsection (c), which was added by P.A. 05-275, § 2, provides that “[t]he failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action.” P.A. 05-275 was “[e]ffective October 1, 2005, and applicable to actions filed on or after said date ...”

In this case, the complaint did not include an opinion of a similar health care provider attesting to a good faith basis for the action, as required by the 2005 amendment to § 52-190a(a). The writ of summons and complaint were delivered to a marshal for service of process on September 30, 2005, and were filed with the clerk of the Superior Court on November 4, 2005. The plaintiffs claim that the 2005 amendment to § 52-190a, as set forth in P.A. 05-275, does not apply to the present case because the action was filed before October 1, 2005, the effective date of the public act. Specifically, the plaintiffs contend that the action was “filed” within the meaning of P.A. 05-275 when the writ of summons and complaint were delivered to a marshal for service of process on September 30, 2005; one day before the effective date of the 2005 amendment to § 52-190a. We disagree. *Rios*, 106 Conn.App. @ 815-18, 943 A.2d 544.

The Appellate Court affirmed, summarizing its holding:

Because the plaintiffs failed to comply with the provision of the public act, requiring that an opinion of a similar health care provider attesting to a good faith basis for the action be included with the complaint, we conclude that the defendants' motion to dismiss properly was granted. *Rios v. CCMC Corporation et al.*, 106 Conn.App. 810, 820, 943 A.2d 544 (2008).

The teaching of *Rios* is clear. Plaintiffs' failure to obtain the medical opinion prior to filing the original complaint and not attaching such a medical opinion to the original complaint when filing the complaint with the court clerk requires dismissal.

More recently, the Appellate Court confirmed what it had held in *Rios*. *Vote v. County Obstetrics and & Gynecology Group, P.C.*, 113 Conn.App. 569, 966 A.2d 813 (2009).

Plaintiff *Vote* brought an action sounding in medical malpractice. “The complaint did not include a good-faith certificate and written opinion of a similar health care provider ...” *Vote*, 113 Conn.App. @ 574, 966 A.2d 813. The defendants moved for dismissal based on the absence of a medical opinion with the complaint. Accordingly, the trial court dismissed. On appeal, the Appellate Court stated:

\*4 We conclude that the action was dismissed properly by the court pursuant to the specific authorization of the governing statute due to the plaintiff's failure to file a written opinion of a similar health care provider. See General Statutes § 52a-190a(c). *Vote v. County Obstetrics and & Gynecology Group, P.C.*, 113 Conn.App. 569, 581, 966 A.2d 813 (2009).

The Appellate Court construed section § 52-190a stating:

The plaintiff must attach to her initial pleading both “a certificate of the attorney or party filing the action ... that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant” and a “written and signed opinion of a similar health care provider ... that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion ...” General Statutes § 52-190a(a). Subsection (c) provides that “[t]he failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action.” *Vote v. County Obstetrics and & Gynecology Group, P.C.*, 113 Conn.App. 569, 581, 966 A.2d 813 (2009).

The plaintiffs here “fail[ed] to obtain and file the written opinion required by subsection (a) of this section [§ 52-190a(a)].” This is “grounds for the dismissal of the action.” *Vote*, 113 Conn.App. 581.

Plaintiffs have objected to this Motion to Dismiss. Plaintiff's Objection to the Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, July 26, 2010[371]. The Objection was accompanied by a Memorandum of Law [372] and an affidavit of the plaintiff, Sylvester Traylor [373].

The primary and principal bases for the objection are “collateral estoppel” and “law of the case.” An understanding of the fact basis for these contentions is important.

On December 26, 2006, the plaintiffs filed a REQUEST FOR LEAVE TO AMEND COMPLAINT dated December 22, 2006[143]. An AMENDED COMPLAINT dated December 22, 2006 was filed at the same time [143.50].

The defendants filed an OBJECTION TO PLAINTIFF'S REQUEST FOR LEAVE TO AMEND COMPLAINT dated December 29, 2006 also December 29, 2006[144]. The Objection was mainly because the proposed Amended Complaint “seeks to include a good faith certificate and

**Traylor v. Awwam, Not Reported in A.2d (2010)**

medical opinion.” In the Objection, defendants pointed out that the medical opinion was dated October 18, 2006, over five months after the original Complaint. Defendants' Objection stated: “The original complaint dated June 1, 2006 as well as the an amended complaint dated August 2, 2006 do not contain a good faith certificate or medical opinion of a similar health care provider as required by Connecticut General Statutes § 52-190a.” Defendants also stated: “The defendants intend to file a Motion to Dismiss to address this issue” [144].

Defendants' Objection was sustained on January 16, 2007.

No elaboration of the reasons for the court's sustaining the objection appears. The order page for the Objection has the word “Sustained” circled and “By the Court” “Hurley 1/16/07” [144]. The court infers the Objection was sustained for the reasons advanced in the Objection, especially the fact that the complaints to date did “not contain a good faith certificate or medical opinion of a similar health care provider, as required by Connecticut General Statutes § 52-190a.”

\*5 This left the Amended Complaint dated July 31, 2006, which was filed August 2, 2006, as the operative complaint [109].

On January 8, 2007, the defendants filed a Motion to Dismiss dated January 4, 2007 moving “that the plaintiffs' claims be dismissed” [146]. The specific grounds for the motion was that “plaintiff's complaint [dated June 1, 2006] and amended complaint [dated July 31, 2006 {filed August 2, 2006}] fail to contain a good faith certificate and written opinion of a similar health care provider as required by Connecticut General Statutes 52-190a, as amended by Public Act 05-275.” Motion to Dismiss, January 4, 2007, p. 1[146]. The Motion to Dismiss was denied [146]. The Order page on the Motion contained the handwritten notation: “6-1-07 Order Denied & see memo of Decision filed this date. By the Court, Hurley, J. /s/ Jeffrey Feldman Clerk” [146].

The June 1, 2007 denial [157] of the Motion to Dismiss gave plaintiffs a dispensation from the requirements of § 52-190a mainly because plaintiffs were pro se.

Judge Hurley's June 1, 2007 Memorandum of Decision denying defendants' Motion to Dismiss [157] and his earlier January 16, 2007 order sustaining defendants' objection to plaintiffs' REQUEST FOR LEAVE TO AMEND COMPLAINT dated December 22, 2006[143] are inconsistent.

In his June 1, 2007 Memorandum of Decision, Judge Hurley was clearly smitten by plaintiffs' being pro se. While Judge Hurley found the “plaintiffs did not attach to the complaint either a good faith certificate or a written opinion of a similar health-care provider as required by § 52-190a,” Judge Hurley held he needn't “take a position on the split of authority that currently exists in the Superior Court on the issue of whether failure comply with § 52-190a implicates the courts subject matter jurisdiction.” Memorandum of Decision, June 1, 2007, p. 3[157].

Judge Hurley held: “Given the plaintiff's pro se status at the time, this court finds it in the interests of justice to overlook the plaintiff's noncompliance” and found “that the plaintiff has satisfied the requirements § 52-190a.” *Id.*, at 4, 5.

There is no need to tarry on Judge Hurley' decisions. There is compelling authority decided since Judge Hurley's renderings which show conclusively Judge Hurley's June 1, 2007 decision cannot stand. See e.g., *Rios and Votre*.

With this fact basis in mind, plaintiffs' arguments based on collateral estoppel and law of the case principles are not persuasive.

Plaintiffs say Judge Hurley's June 1, 2007 denial of a previous Motion to Dismiss dated January 4, 2007[146] collaterally estops defendants' present dismissal effort [157].

Collateral estoppel, or issue preclusion, principles are well established. “Collateral estoppel means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit ...” *Chadha v. Charlotte Hungerford Hospital*, 97 Conn.App. 527, 534, 906 A.2d 14 (2006). “[I]ssue preclusion [collateral estoppel] prevents a party from the relitigating an issue that has been determined in a prior suit.” *Id.*

\*6 For the doctrine to be applied, there must have been a judgment in a previous action. Judge Hurley's June 1, 2007 decision was not a final judgment in a previous lawsuit. Judge Hurley's June 1, 2007 decision was an interlocutory order in this very same action. It was not a final judgment. Collateral estoppel cannot be invoked here.

Judge Hurley's June 1, 2007 denial of defendants' Motion to Dismiss [157] “was not final, but was merely interlocutory, [therefore] it falls within the doctrine of the law of the case.”

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*CFM of Connecticut, Inc. v. Chowdhury*, 239 Conn. 375, 403, 685 A.2d 1108 (1996).

The general rule is that the “law of the case” does not apply where there have been “new or overriding circumstances.” *Breen v. Phelps*, 186 Conn. 86, 99, 439 A.2d 1066 (1982). Superior Courts have noted, without citing appellate authority, that new development in the law constitutes a “new or overriding circumstance.” See, e.g., *Estate of Larry Robishaw v. New England Central Railroad*, Superior Court, complex litigation docket at Tolland, Docket No. X07 CV 99 0071617 (September 20, 2001, Bishop, J.).

Of greater impression, the Supreme Court has stated:

[W]here views of the law expressed by a judge at one stage of the proceedings differ from those of another at a different stage, ‘the important question is not whether there was a difference but which view was right.’ *Breen v. Phelps*, 186 Conn. 86, 100, 439 A.2d 1066 (1982).

Binding appellate authority is discussed above. In short, these cases and the procedural posture of this case militate strongly against the invocation of the claims of collateral estoppel and law of the case. The Court holds that in the face of these cases application of collateral estoppel and law of the case claims are totally undermined and have no vitality here.

Plaintiffs rely to some extent on *Ward v. Ramsey*, Superior Court, Judicial District of New Haven, Docket No. CV 09 5028840, 2010 WL 1886556 (April 12, 2010, Corradino, J.T.R.).

Plaintiffs contend “[t]here is Connecticut precedent [for the situation presented in this Traylor case] in keeping with the spirit of 52–190(a).” Memorandum in Support of Plaintiff’s Objection, July 26, 2010, p. 11[372]. Plaintiffs read *Ward* to say *Ward* “had made a proper substantiation of a malpractice claim by obtaining [an] opinion but inadvertently failed to attach it” to his complaint. Memorandum in Support of Plaintiff’s Objection, July 26, 2010, p. 11[372]. But this is incorrect. In *Ward*, a medical opinion letter had been obtained before suit and a copy of it was attached to the original complaint. Therefore, plaintiffs’ contentions based on *Ward v. Ramsey* are fallacious and must be disregarded.

Totally germane to this case where plaintiffs belatedly filed a good faith certificate and medical opinion of a similar health care provider written long after the date of the original complaint are these observations of the Appellate Court:

[I]t is clear that no opinion existed at the time the action was commenced, and, therefore, there was no room for discretion to be employed ... The plaintiff could not turn back the clock and attach by amendment an opinion of a similar health care provider that did not exist at the commencement of the action. *Votre v. County Obstetrics & Gynecology Group*, 113 Conn.App. 569, 585–86, 966 A.2d 813 (2009).

\*7 Since the *Votre* decision, our appellate courts have decided four cases on the merits involving § 52–190a and its opinion of a similar health care provider requirement.

*Dias v. Grady*, 292 Conn. 350, 972 A.2d 715 (July 7, 2009), holds that the written opinion of a similar health care provider need not contain the writer’s opinion regarding causation. The opinion does not have to say the injury alleged in the complaint resulted from the breach of the standard of care.

In a case against a physician specializing in emergency medicine, the plaintiff attached to his complaint the medical opinion of a physician who stated in his opinion letter:

‘As a practicing and [b]oard certified [g]eneral [s]urgeon with added qualifications in [s]urgical [c]ritical [c]are, and engaged in the practice of trauma surgery, I believe that I am qualified to review the contents of these records for adherence to the existing standard of care. One should note that I regularly evaluate and treat injured patients in the [e]mergency [d]epartment including those who are discharged from the [emergency department] as well as those who require inpatient care. The overwhelming majority of my time at work is spent providing clinical care in the [emergency department], general ward, intensive care unit and operating room over the last [twelve] years.’ [Footnote omitted.] *Bennett v. New Milford Hospital, Inc.*, 117 Conn. 535, 539–40 (October 13, 2009); cert granted, 294 Conn. 916 (December 1, 2009).<sup>4</sup>

The trial court granted the defendant physician’s motion to dismiss. That dismissal was affirmed on appeal. The basis for same was that the opining physician was not board certified in emergency medicine and therefore the requirement of the statute was not fulfilled. The Appellate Court relied upon the plain language of the statute.

In *Wilcox v. Schwartz*, 119 Conn.App. 808, 990 A.2d 366 (March 16, 2010) certification granted, 296 Conn. 908, 993 A.2d 469 (May 5, 2010),<sup>5</sup> “the complaint alleges only one specification of negligence ... That Schwartz ‘failed to prevent

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injury to [Wilcox's] biliary structures during the laparoscopic cholecystectomy." *Id.* at 817, 990 A.2d 366. The medical opinion relied upon by plaintiff recited the standard of care and stated: "Specifically, Daniel S. Schwartz, M.D., failed to prevent injury to Kristy Wilcox's biliary structures during laparoscopic [gallbladder] surgery." *Id.*, at 815, 990 A.2d 366.

The ultimate purpose of this requirement [the written opinion] is to demonstrate the existence of the claimant's good faith in bringing the complaint by having a witness, qualified under General Statutes § 52-184c, state in written form that there appears to be evidence of a breach of the applicable standard of care. So long as the good faith opinion sufficiently addresses the allegations of negligence pleaded in the complaint, as this opinion does, the basis of the opinion is detailed enough to satisfy the statute and the statute's purpose. *Wilcox v. Schwartz*, 119 Conn.App. 808, 816, 990 A.2d 366 (March 16, 2010).

\*8 Similarly, in an action against a physician, a board certified anesthesiologist, the court dismissed the action where the complaint had attached to it two opinion letters, one by a board certified neurologist and the other by a board certified internist. The action was properly dismissed. The Appellate Court, in a per curiam opinion, affirmed the dismissal on the immediate authority of *Bennett v. New Milford Hospital, Inc.* See *Williams v. Hartford Hospital*, 122 Conn.App. 597 (July 20, 2010).

The lesson of these cases collectively is that the plain language of the statute is to be adhered to, there is no wiggle room. No words will be added to the statute and none ignored.

Count Four of the Second Amended Complaint dated July 12, 2010[362] bears the heading "NEGLIGENCE as to Connecticut Behavioral Health Assoc, PC." See Second Amended Complaint dated July 12, 2010[362], p. 10. Count Four is solely against Connecticut Behavioral Health Associates, P.C.

Most of Count Four is based upon respondeat superior alleging Connecticut Behavioral is responsible for the delicts of Dr. Awwa.

The defendants have moved to dismiss a part of Count Four because it is barred by the statute of limitations. Specifically, defendants contend that subparagraphs (a)-(f) of paragraph 19 of Count Four are time barred as they are entirely new allegations stating a new cause of action not previously plead.

Count Four is also a wrongful death action. Such an action was unknown to our common law. It is solely a creature of statute.

Ordinarily, the statute of limitations must be raised as a special defense. Practice Book § 1-50. However,

[w]here a statute gives a right of action which did not exist at common law, [however] and fixes the time within which the right must be enforced, the time fixed is a limitation or condition attached to the right-it is a limitation of the liability itself as created, and not of the remedy alone." (Internal quotation marks omitted.) *Diamond National Corp. v. Dwelle*, 164 Conn. 540, 543, 325 A.2d 259, 164 Conn. 540, 325 A.2d 259 (1973). "In such cases, the time limitation is not to be treated as an ordinary statute of limitation ... The courts of Connecticut have repeatedly held that, under such circumstances, the time limitation is a substantive and jurisdictional prerequisite. (Citation omitted; internal quotation marks omitted.) *Lostritto v. Community Action Agency of New Haven, Inc.*, 269 Conn. 10, 22-23, 848 A.2d 418 (2004).

As this is a wrongful death action, a cause of action unknown at common law and created by statute, § 52-555(a), which statute provides that such an action must be brought "within two years from the date of death," the statute of limitations is properly raised by a motion to dismiss. See below.

Defendants contend that Count Four's allegations of corporate negligence "involve negligence based upon the corporation's actions as a business entity, i.e. its failure to employ competent personnel (19a), its failure to properly supervise its employees (19b) its failure to insure proper competent physicians (19c), its failure to insure its staff were reasonably competent to provide care and assistance (19d), its negligence in employing Dr. Awwa (19e), and, finally, its failure to have adequate procedures to review physician credentials (19f)." Defendants' Memorandum of Law, July 16, 2010[366], pp. 14-15. According to defendants these allegations are brand new to this case as of the Second Amended Complaint dated July 12, 2010[362].

\*9 Section 52-190a provides in part:

No civil action ... shall be filed to recover damages resulting from personal injury or wrongful death ... whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider ...

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Count Four clearly states a cause of action coming within the foregoing definition. Count Four is, first and foremost, a wrongful death action.

For a wrongful death action, the applicable statute of limitations is § 52-555(a). It provides that such an action "must be brought within two years from the date of death." C.G.S. § 52-555(a).

Section 52-555(a) is the governing statute of limitation.

Mrs. Traylor died on March 1, 2004. Therefore, this action had to be brought within two years thereof, i.e., by no later than March 1, 2006.

However, § 52-190a which applies to actions "to recover damages resulting from injury or death" also provides:

(b) Upon petition to the clerk of the court where the civil action will be filed to recover damages resulting from personal injury or wrongful death, an automatic ninety-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods. C.G.S. § 52-190a(b)

Plaintiffs petitioned for the ninety-day extension and the court clerk granted the petition on February 23, 2006.

Since Mrs. Traylor died on March 1, 2004, the applicable statute of limitation stated, in the first instance, that this action had to be brought "within two years" of March 1, 2004. That would be by March 1, 2006. But plaintiffs were granted a ninety-day extension. This extended the limitation period to May 30, 2006.

The State Marshal's Return states service was made on Connecticut Behavioral Health Associates, LLC on June 2, 2006. " 'Legal actions in Connecticut are commenced by service of process.' (Internal quotation marks omitted.) *Rios v. CCMC Corp.*, 106 Conn.App. 810, 820, 943 A.2d 544 (2008)." *Rosenfield v. David Marder & Associates, LLC et al.*, 110 Conn.App. 679, 692, n. 11, 956 A.2d 581 (2008).

There is no legitimate claim here, nor could there be, that the statute of limitations period was extended by the grace of § 52-593a. That statute provides:

(a) Except in the case of an appeal from an administrative agency governed by section 4-183, a cause or right of action shall not be lost because of the passage of the time

limited by law within which the action may be brought, if the process to be served is personally delivered to a state marshal authorized to serve the process and the process is served, as provided by law, within thirty days of the delivery.

(b) In any such case, the state marshal making service shall endorse under oath on such state marshal's return the date of delivery of the process to such state marshal for service in accordance with this section.

Connecticut General Statutes § 52-593a.

\*10 The State Marshal's Return says the Marshal received the writ of summons and the Complaint on June 1, 2006. This was after the time limited by law.

Both parties recognize that the bar of the statute of limitations would not apply if the negligence cause of action in paragraph 19(a)-(f) of Count Four of the July 12, 2010 Second Amended Complaint [362] had been plead in a prior viable complaint. Plaintiffs' Memorandum In Support of Plaintiffs' Objection to the Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint, July 26, 2010[372], pp. 12-13. Defendants' Memorandum of Law, July 16, 2010[366], pp. 13-14.

Plaintiffs contend: "Count Four of the July 2010 complaint is simply a restatement of the 2009 count five." Plaintiff's Objection Memorandum, July 26, 2010[372], p. 12.

A comparison of the two does not show the negligence cause of action plead in paragraph 19(a)-(f) of Count Four of the July 12, 2010 Second Amended Complaint [362] was present or even previewed in Count Five of the June 4, 2009 Amended Complaint [310].

But, even if it was, it would not avail the plaintiffs. For "relation back" to overcome the bar of the statute of limitations, the challenged allegations of the complaint must relate back to a complaint which was viable within the statute of limitations.

The Amended Complaint filed on June 4, 2009[310] certainly was not viable vis-a-vis § 52-555(a) as extended by the 90-day extension afforded by § 52-190a(c). The applicable statute of limitations as extended by 90-days expired on May 29, 2006.

The truth is, no complaint in this action satisfies the statute of limitations period which ended on May 30, 2006; again

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service was not made on Connecticut Behavioral Health Associates, LLC until June 2, 2006.

Therefore, the cause of action alleged in paragraph 19(a)-(f) of Count Four is barred by the statute limitations, C.G.S. § 52-555(a).

Count Four of the Second Amended Complaint is barred by the statute of limitations.

Count Four is dismissed.

The Motion to Dismiss is granted, Counts 1-6 are dismissed.<sup>6</sup>

**Footnotes**

- 1 The use of "Second" in the title of this version of the complaint is puzzling. This new "Second" Amended Complaint is at least the sixth complaint the plaintiffs have filed or attempted to file.
- 2 In their Objection to the Motion to Dismiss [371], plaintiffs say their new July 12, 2010, "Second Amended Complaint" [362] was "pursuant to the court's direction." This is misleading. The court met with counsel on June 15, 2010 to work on scheduling for this much delayed case. A fact issue arose so the court scheduled an evidentiary hearing for June 17th. Apparently, counsel further conferred on June 15. The court was informed: "The parties have agreed that the plaintiff will amend the Complaint in its entirety" thereby mooting the fact dispute which was to be heard on June 17th. See e-mails between Hall Johnson, LLC and Linda Grelotti, case flow coordinator. Court Exhibits 1 and Defendant's Exhibit 1, Transcript of Proceedings, July 28, 2010, p. 26-28. The court cancelled the June 17 hearing. The court subsequently issued a scheduling order setting July 12, 2010 as the time by which the plaintiffs' amended complaint was to be filed. Thus, it is hardly correct to say the plaintiffs amended their complaint "pursuant to the court's direction."
- 3 The bracketed numbers, e.g., [362], indicate the number of the file entry herein.
- 4 The certified question is: "Did the Appellate Court properly affirm the trial court's dismissal of the present case for failure to comply with General Statutes § 52-190a?"
- 5 The certified question is: "Did the Appellate Court properly reverse the trial court's dismissal of the present case for failure to comply with the 'detailed basis' requirement of General Statutes § 52-190a(a)?"
- 6 On July 29, 2010, the court granted the Motion to Dismiss [366.03]. This Memorandum of Decision sets forth the basis for the July 29, 2010 decision.

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## Exhibit 3

Traylor v. Awwam, Not Reported in A.2d (2010)

2010 WL 3584873

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UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.

Superior Court of Connecticut,  
Judicial District of New London.

Sylvester TRAYLOR, Administrator of  
the Estate of Roberta Mae Traylor et al

v.

Bassam AWWAM, M.D. et al.

No. CV065001159. Aug. 16, 2010.

#### Opinion

PARKER, J.T.R.

\*1 In the main, this case was a medical (psychiatric) malpractice wrongful death action. It arises from the psychiatric treatment and eventual death of the late Roberta Mae Traylor. It is claimed she committed suicide on March 1, 2004.

The original June 1, 2006 Complaint did not have attached to it a copy of a signed opinion of a similar health care provider stating that there appears to be evidence of medical negligence and including a detailed basis for the formation of such opinion as required by General Statutes § 52-190a.

On July 12, 2010, with new counsel, the plaintiffs filed their "Second Amended Complaint" dated July 12, 2010.[362] It is now the operative complaint.

The Second Amended Complaint has eight counts. The first six counts are a medical (psychiatric) malpractice wrongful death action. The court dismissed these six counts on July 29, 2010 [366.03] without a memorandum. The court since has issued a Memorandum of Decision. See Memorandum of Decision dated August 11, 2010 [366.04]. The basis of the dismissal of the six malpractice counts was the failure to annex a copy of an opinion of a similar health care provider as required by C.G.S. § 52-190a.

The new Second Amended Complaint dated July 12, 2010[362] also had a Seventh Count alleging spoliation of evidence and an Eighth Count alleging the inevitable violation of CUTPA.

Now before the court is the defendants' Motion to Strike dated August 10, 2010 [383]. It is directed solely to the intentional spoliation of evidence cause of action in the Seventh Count.

Our Connecticut jurisprudence on the intentional spoliation of evidence tort is hardly long-standing. There have not been any cases decided at the appellate level other than the case wherein it was decided to have Connecticut recognize this cause of action. *Rizzuto v. Davidson Ladders, Inc. et al.*, 280 Conn. 225, 905 A.2d 1165 (2006).

In *Rizzuto*, the Supreme Court set forth the elements of the newly recognized cause of action:

"[T]he tort of intentional spoliation of evidence consists of the following essential elements: (1) the defendant's knowledge of a pending or impending civil action involving the plaintiff; (2) the defendant's destruction of evidence; (3) in bad faith, that is, with intent to deprive the plaintiff of his cause of action; (4) the plaintiff's inability to establish a prima facie case without the spoliated evidence; and (5) damages." *Rizzuto v. Davidson Ladders, Inc. et al.* 280 Conn. 225, 244-45, 905 A.2d 1165 (2006).

Defendants here claim the plaintiffs' Count Seven does not satisfy elements three and four which are repeated here:

(3) in bad faith, that is, with intent to deprive the plaintiff of his cause of action

(4) the plaintiff's inability to establish a prima facie case without the spoliated evidence

Count Seven contains the following paragraphs which are germane to the inquiry here:

30. Based upon information and belief, the defendants have intentionally spoliated medical records and/or telephone communication records and correspondence regarding Roberta's care and treatment that, if retained and disclosed, would likely provide the plaintiffs with substantial evidence supporting their claims. And the same includes third party correspondence on or around February 14, 2006, wherein defendant Awwa writes "no more correspondence unless court ordered," signifying that he likely expected a lawsuit to be filed.

\*2 31. Such destruction of evidence as aforesaid has unfairly prejudiced the plaintiffs and deprived them of the ability to examine vital records central to the facts of the case.

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32. The plaintiff cannot reasonably obtain access to the same aforesaid evidence from another source and, as such, the plaintiffs are directly and proximately damaged in the underlying action and cost the plaintiff additional expenses.

Plaintiffs have filed an Objection to the Motion to Strike. Plaintiff's Objection to Motion to Strike, dated August 10, 2010, August 12, 2010.[389]

Plaintiffs also submitted a Memorandum in support of their Objection. Plaintiff's Memorandum in Support of Objection to Motion to Strike dated August 10, 2010.[390] Only two paragraphs of the Memorandum are relevant. They are set forth in full:

"First, defendant claims plaintiffs' complaint fails to state that Dr. Awwam acted in "bad faith, that is, with intent to deprive the plaintiff of his cause of action." See page 2 of Defendant's Memorandum in Support of Motion to Strike.) This element has been alleged by the plaintiffs in Count Seven, paragraph 30 ("Defendants have intentionally spoliated medical records ..."); paragraph 27 (... defendant "had knowledge of a pending civil action" ... and paragraph 28 (... defendant "had a legal obligation" ... to preserve records). Construed in the light most favorable to the plaintiffs, these paragraphs support the allegation that the defendants acted in bad faith or with intent to deprive the plaintiffs of their cause of action. (See *Amodio v. Cunningham*, 182 Conn. 80, 438 A.2d 6 (1980). Paragraphs 30 and 31 expressly use words such as "intentionally" and "deprived." Therefore, Defendant's Motion to Strike should be denied.

Secondly, the defendants argue that the plaintiffs have failed to allege that they would be unable "to establish a prima facie case without the spoliated evidence." This has, in fact, been alleged in Count Seven, paragraphs 30-32. In paragraph 30, the plaintiffs have alleged that "if retained and disclosed, (the records) would likely provide the plaintiffs with substantial evidence supporting their claims." Paragraph 31 alleges the "destruction of evidence as aforementioned has unfairly prejudiced the plaintiffs and deprived them of the ability to examine vital records central to the case." Wording such as "vital," "central," "unfairly prejudiced" and "substantial evidence" should all be viewed under *Amodio* to sufficiently allege that a prima facie case has been interrupted by the defendants' actions.

Plaintiff's Memorandum in Support of Objection to Motion to Strike dated August 10, 2010, pp. 1-2[390].

First with respect to element # 3, there is no allegation which reasonably could be interpreted as saying that defendants' spoliation of evidence was done "in bad faith, with intent to deprive the plaintiff[s] of [their] cause of action."

The allegations that (1) "that defendants have intentionally spoliated medical records ..." [¶ 30], "had knowledge of a pending civil action ..." [¶ 27] and "had [a] legal obligation to preserve [records]" [¶ 28] do not, even together meet the element 3 requirement; namely, that defendants acted "in bad faith, that is with the intent to deprive the plaintiff[s] of [their] cause of action. As to "intention," plaintiffs allege that "spoliated medical records and/or telephone communication records and correspondence ..." if retained and disclosed, would likely provide the plaintiffs with substantial evidence supporting their claims." "Likely to provide evidence supporting plaintiff's claim" is a far cry from "in bad faith, that is with the intent to deprive plaintiff[s] of [their] cause of action." The "intentional" factor in element 3 means "in the sense that it was purposeful, and not inadvertent." (Footnote omitted.) *Rizzuto*, 280 Conn. at 237, 905 A.2d 1165.

\*3 It is clear that plaintiffs have not plead "bad faith" or that the intentional spoliation was purposeful and done so as to deprive plaintiffs' of their cause of action.

As to element # 4, none of plaintiffs' language comes anywhere near saying defendants' intentional spoliation of the records has resulted in the plaintiffs being unable to establish a prima facie case in their medical malpractice case.

Plaintiffs argue that the inclusion of the words "vital," "unfairly prejudiced" and "substantial evidence" "sufficiently allege that a prima facie case has been interrupted by the Defendants' actions." Plaintiff's Memorandum in Support of Objection to Motion to Strike dated August 10, 2010, p. 2[390]. But if one looks at the sentences within which these words were used, a different picture appears: "[T]he defendants have intentionally spoliated medical records and/or telephone communication records and correspondence regarding Roberta's care and treatment that, if retained and disclosed, would likely provide the plaintiffs with substantial evidence supporting their claims." ¶ 30. "Such destruction of evidence as aforestated has unfairly prejudiced the plaintiffs and deprived them of the ability to examine vital records central to the facts of the case." ¶ 31. These sentences, alone or

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in combination, fail to allege the crucial “inability to establish a prima facie case without the spoliated evidence.”

Plaintiffs conclude that if the ample license is given plaintiffs under *Amodio*, Count Seven “sufficiently allege[s] that a prima facie case has been interrupted by the Defendants’ actions.” *Id.* “Interrupted” implies and connotes a temporary situation, not an outright inability to establish a prima facie case without the spoliated evidence as element 4 demands.

The Supreme Court emphasized the difficulty in establishing this cause of action, particularly the proximate causation which is at the heart of element four:

In light of the difficulties of proof inherent in the tort of intentional spoliation of evidence, we next clarify the plaintiff’s burden of proof with respect to causation and damages. *To establish proximate causation, the plaintiff must prove that the defendants’ intentional, bad faith destruction of evidence rendered the plaintiff unable to establish a prima facie case in the underlying litigation.* (Emphasis added, footnote omitted.) *Rizzuto*, 225 Conn. 246-47.

Since plaintiffs will have the burden of proving “defendants’ intentional, bad faith destruction of evidence rendered the plaintiff[s] unable to establish a prima facie case in the underlying litigation” at trial, they must allege same in their Complaint.

The Supreme Court pointed out in *Rizzuto*:

In the present case, the plaintiff alleges that the defendants’ intentional, bad faith destruction of the ladder deprived him of the evidence he needed to establish a prima facie case of product liability against the defendants. *Rizzuto*, 225 Conn. 238, 622 A.2d 555.

\*J The court realizes that when evaluating plaintiffs’ allegations at the motion to strike stage, every reasonable presumption must be given the plaintiffs. Even with this generous standard, plaintiffs’ allegations fall short. There is not a hint in Count Seven that the loss of the spoliated evidence rendered plaintiffs unable to establish a prima facie malpractice cause of action.

The Motion to Strike Count Seven is granted.

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## Exhibit 4

Traylor v. Awwam, Not Reported in A.3d (2011)

2011 WL 1025029

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UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.Superior Court of Connecticut,  
Judicial District of New London.Sylvester TRAYLOR Administrator of  
the Estate of Roberta Mae Traylor et al.

v.

Bassam AWWAM, M.D. et al.

No. CV065001159. Feb. 15, 2011.

## Opinion

PARKER, J.T.R.

\*1 In the main, this is a medical (psychiatric) malpractice wrongful death action. It arises from the psychiatric treatment and eventual death of the late Roberta Mae Traylor. It is claimed she committed suicide on March 1, 2004.

This case is contained in a very large file. There are close to 500 file entries. Confusion abounds.

There are two plaintiffs. The first is Sylvester Traylor as Administrator of the Estate of his late wife, Roberta Mae Traylor. Sylvester Traylor, in his individual and/or personal capacity, is also a plaintiff asserting loss of consortium claims.

The defendants are Bassam Awwa, M.D., a psychiatrist, and his professional corporation, Connecticut Behavioral Health Associates, P.C. It is alleged that Roberta Mae Traylor was a patient of the defendants.

The original Complaint, dated June 1, 2006 was signed by Sylvester Traylor. Sylvester Traylor is not licensed to practice law. That original Complaint did not have, as required by General Statutes § 52-190(a), a signed opinion of a similar health care provider stating that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. The Return Date was July 3, 2006.

When the original June 1, 2006 Complaint was returned to court and filed with the court clerk, the Complaint had attached to it a copy of a document entitled "PETITION TO THE CLERK OF THIS COURT FOR AN

AUTOMATIC 90-DAY EXTENSION OF THE STATUTE OF LIMITATIONS" dated February 23, 2006. The copy of the "Petition" indicated the original bore file stamps showing the "Petition had been filed with the court clerk on February 23, 2006. This "Petition" was signed on behalf of the plaintiffs by Attorney Andrew J. Pianka of the law firm of Grady & Riley LLP. The clerk had granted the "Petition" on February 23, 2006. The authority for the Petition and the time extension sought is contained in C.G.S. § 52-190a(b). The whole justification for the 90-day extension is to obtain the good faith certificate the essential ingredient thereof being the written and signed opinion of a similar health care provider. Plaintiffs (i.e., Sylvester Traylor in both his capacities) were well aware of the procedure for obtaining the extension of the statutes of limitations, and having obtained same, surely knew of the requirement of having a signed opinion of similar health care provider attached to the original complaint.

Between early July 2006 (when this case was returned) and early July 2010, pleading wise, there was no evident progress. The case was stuck. In July 2006 there was only the original complaint. In early July 2010, 4 years into the case, there was only a complaint but no progress pleading wise beyond the complaint stage. Although plaintiffs had filed amended or revised complaints, causing some skirmishes, no practical advancement of the pleadings occurred. Throughout, plaintiffs' complaints seem largely whim-driven.

On December 1, 2009, this court issued an Order to Show Cause [348]<sup>1</sup> premised on the then brand new case, *Sophie Ellis, Executrix v. Jeffrey Jacobs, et al.*, 118 Conn.App. 211 (December 1, 2009). Primarily, the Order to Show Cause required Sylvester Traylor to show why he, a non-lawyer, should not be barred from representing himself as Administrator of the Estate, and, in effect, from representing the Estate. See Order to Show Cause, December 1, 2009.[348] A hearing on the Order to Show Cause was held on December 21, 2009.

\*2 The facts recited in the December 1, 2009 Order to Show Cause were not disputed and indeed they could not be.

On December 21, 2009, the court, in open court, on the record, and in the presence of Sylvester Traylor, entered several orders. Transcript of Proceedings, December 21, 2009. The orders were:

On December 21, 2009, the court entered orders effective immediately as follows:

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Mr. Sylvester Traylor cannot appear or represent the Estate of his late wife, Roberta Mae Traylor. Transcript of Proceedings, December 21, 2009, p. 32.

Parties and counsel are to take no further action pending the court's specifically lifting this order. Parties and counsel are not to submit anything for filing with the clerk until such time as an appearance by an attorney is filed on behalf of the Estate of Roberta Mae Traylor. Anything submitted for filing with or by the clerk before an appearance is filed by an attorney for the Estate will be returned without its being filed.

The no-filing order applies to Mr. Traylor in both his individual capacity regarding his loss of consortium claims and also in his capacity as administrator of the Estate. Transcript of Proceedings, December 21, 2009, p. 42.

Mr. Traylor as administrator of the Estate of Roberta Mae Taylor is allowed four months, until April 21, 2010, to have an attorney appear on behalf of the Estate. If an attorney does not file an appearance by that date, case number CV 06 5001159 will be dismissed. Transcript of Proceedings, December 21, 2009, p. 43.

Memorandum of Orders, February 5, 2010[354].

As time went on, despite the clarity of the order barring him from representing himself as Administrator and the Estate, Sylvester Traylor often filed papers purportedly on behalf of the Estate and, in court proceedings, tried to speak on behalf of the Estate, thus trying to represent himself as Administrator (i.e., the Estate). His statements regarding *Sophie Ellis, Executrix v. Jeffrey Jacobs, et al.*, demonstrate he has no understanding of the facts and holding thereof. The court has treated papers he has filed for the Estate as having no force or effect. Similarly, the court has not allowed him to speak on behalf of himself as Administrator or on behalf of the Estate during court proceedings.

The court allowed Sylvester Traylor, Administrator, four months, that is until April 21, 2010 to have an attorney enter an appearance for Sylvester Traylor, Administrator and upon failure of such an appearance, risk dismissal of the Estate's cause of action.<sup>2</sup>

On April 21, 2010, at 4:21 pm, the law firm, Hall Johnson LLC, entered appearances for both plaintiffs, namely, Sylvester Traylor as Administrator of the Estate of Roberta

Mae Traylor, and for Sylvester Traylor in his individual and personal capacity for his claimed loss of consortium.

No one from Hall Johnson LLC ever looked at the court file before, on, or since April 21, 2010, and even to this date. The file has been in the undersigned's chambers throughout. Thus, Hall Johnson LLC's knowledge of the file is limited, only what Sylvester Traylor wants them to see.

\*3 After Hall Johnson LLC's appearance on April 21, 2010, there was no activity or word from Hall Johnson LLC for several weeks.

On May 18, 2010, the court ordered a scheduling conference for June 15, 2010. See Order, May 18, 2010.[355]

The scheduling conference was held on June 15, 2010. At that proceeding, Hall Johnson LLC, plaintiffs' counsel indicated they were preparing a new complaint which they believed would alleviate the conditions which had, for four years obstructed the progress of this case. On June 21, 2010, this court issued an order which, among other things, provided: "The plaintiff(s) may file an amended/revised complaint by no later than June 30, 2010." Scheduling Order, June 21, 2010[357], p. 1, ¶ 1.

On July 12, 2010, the plaintiffs filed their "Second Amended Complaint" dated July 12, 2010.[362]<sup>3</sup>

"The Second Amended Complaint had eight counts. The first six counts sounded in medical malpractice and wrongful death. Two of the six counts were for loss of consortium on behalf of Sylvester Traylor in his individual or personal capacity. The Seventh Count purports to be a spoliation of evidence cause of action. The Eighth Count alleged a CUTPA violation, based on evidence spoliation set forth in the Seventh Count. See Second Amended Complaint, July 12, 2010.[362]

On July 16, 2010, a Motion to Dismiss [366] the first six counts (the malpractice counts) was filed by defendants. The Motion to Dismiss was based on the failure of the plaintiffs to have had attached to their original June 1, 2006 Complaint a letter of a similar health care provider stating there appeared to be medical negligence. See Motion to Dismiss, July 16, 2010.[366]

Oral argument was held on July 28, 2010. On July 29, 2010 the court granted the Motion to Dismiss without a memorandum. [366.03] The court dismissed counts 1-6, the malpractice, loss of consortium and wrongful death

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causes of action. On August 11, 2010, the court issued a Memorandum of Decision regarding the Motion to Dismiss. See Memorandum of Decision, August 11, 2010. [366.04]

The Supreme Court very recently affirmed the rationale upon which this court dismissed the six malpractice counts. See *Bennett v. New Milford Hospital*, 300 Conn. 1 (January 5, 2011).

With the dismissal of Counts 1 through 6, only Counts Seven and Eight remained, the spoliation and CUTPA counts.

Defendants filed a Motion to Strike Count Seven which inadequately alleged the spoliation of evidence. Motion to Strike Count Seven of Second Amended Complaint, August 10, 2010.[383] The court granted the Motion to Strike. Order, August 16, 2010. [383.01].

After (a) false start(s), Count Seven was amended to cure the deficiencies found by the court when granting the Motion to Dismiss. See Revised Complaint, September 8, 2010.[416].

Defendants filed an Answer and Special Defense on September 13, 2010. See Defendants' Answer to Plaintiffs' Second Revised Complaint (# 416) Dated September 8, 2010, September 13, 2010, p. 11.[421].

\*4 The Special Defense reads:

"Counts Seven and Eight of the plaintiffs' Revised Complaint dated September 8, 2010 is barred by the time limitations set forth in Connecticut General Statutes § 52-577, § 52-584 or both." See Defendants' Answer to Plaintiffs' Second Revised Complaint (# 416) Dated September 8, 2010, September 13, 2010, p. 11.[421].

The court ordered the Estate to file its Reply by 3 pm on September 21, 2010. See Order, September 14, 2010.[423].

However, on September 7, 2010, Hall Johnson LLC had moved to withdraw its appearances for the plaintiffs. See Motion to Withdraw, September 7, 2010. [412]. Hall Johnson LLC also filed an Addendum to Motion to Withdraw, September 8, 2010 [419.05]. Sylvester Traylor then filed Plaintiff's Reply to Motion to Withdraw, September 9, 2010[419] and Affidavit, September 9, 2010. [419.50].

Hall Johnson LLC's Motion to Withdraw was to be heard at 2 pm on September 20, 2010. The court had ordered the Estate to file its Reply by 3 pm on September 21, 2010. See Order, September 14, 2010.[423].

Hall Johnson LLC had a dilemma.

Literally, on the way out the door to attend the proceedings on Hall Johnson LLC's withdrawal of appearance motion, Hall Johnson LLC, actually Attorney James Hall, c-filed a Reply for the Estate. See Plaintiff, Sylvester Traylor Administrator of Estate of Roberta Mac Traylor's Reply to Special Defenses, September 20, 2010.[427]. Court records show the Reply was e-filed on September 20, 2010 at 11:37 am.

The September 20, 2010 court proceeding began at 2 pm. At Sylvester Traylor's bidding, Attorney Hall asked the court to have the Reply that had been filed just over 2 hours previously be withdrawn. Transcript of Proceedings, September 20, 2010, pp. 2-4. The court granted the request. Since the Reply had been on file for at most 2 1/2 hours and was, according to Sylvester Traylor, filed without his approval, the court has treated the Reply as though it was never filed and has no force or effect as a pleading herein. See Order, September 21, 2010. [432]. Thus, the Estate did not file its Reply by September 21, 2010 as ordered. In fact, no Reply has been filed by the Estate to this date.

Largely based on the Estate's non-appearing status after September 20, 2010, its failure to file a Reply by September 21, 2010, and the rules regarding the advancement of pleadings, the court issued an Order to Show Cause on October 6, 2010[436] to show the court why Sylvester Traylor, Administrator of the Estate and/or the Estate should not be nonsuited or the case dismissed. This Order to Show Cause was scheduled for hearing on October 18, 2010. That Order to Show Cause included this paragraph:

3. The parties may file pre-hearing briefs addressing the issues raised herein provided such non-mandatory briefs are filed by October 15, 2010. See p. 5, ¶ 2.

The hearing on the October 6, 2010 Order to Show was postponed to October 26, 2010.

On October 14, 2010, the court issued another Order to Show Cause, [437]. Order to Show Cause, October 14, 2010. [437]. Perhaps over-distilling, this Order to Show Cause was premised on the defendants' apparent and probable ability to overcome the rebuttable presumption critical to the spoliation of evidence cause of action set forth in Count Seven. For amplification, see discussion below. The Order to Show Cause also invited plaintiffs to dissuade the court from taking action suggested in the Order to Show Cause. Paragraph 24, p. 6, provided:

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\*5 24. The parties may file pre-hearing briefs addressing the factual statements herein and also addressing the conclusions of law stated herein. Such non-mandatory briefs, if any, must be filed by October 22, 2010. Order to Show Cause, October 14, 2010, p. 6, ¶ 24.[437].

The hearing on the October 14, 2010 Order to Show Cause was scheduled for October 26, 2010. P. 6, ¶ 23.

On October 19, 2010, Attorney Edward C. Berdick entered two appearances: one for "Pty #01 Sylvester Traylor," and the second for "Pty # 02 Sylvester Traylor Adm. Est. of Robert M." It is noteworthy that Attorney Berdick had never looked at the file before filing his appearances. He has not looked at the court file since. Thus his knowledge of same is restricted to what Sylvester Traylor wants him to know.

Attorney Berdick, roughly concurrent with his appearances, filed two motions. See Motion to Transfer Action to the Judicial District of Fairfield at Bridgeport, October 18, 2010. [439]. The second motion is Motion to Strike Defendant's Special Defenses, October 18, 2010.[440]. The Motion to Strike was accompanied by an extended memorandum. Memorandum of Law in Support of Motion to Strike Defendants Special Defenses, October 18, 2010.[441].

On October 26, 2010, the date upon which the October 6 and October 14, 2011 Orders to Show Cause were to be heard, plaintiffs, via Attorney Berdick, filed a Motion to Recuse [Disqualify]. See Motion to Recuse [Disqualify], October 25, 2010.[444].

When the hearing scheduled for the two Orders to Show Cause opened, Attorney Berdick informed the court he was not ready to proceed on the October 6th Order to Show Cause. He informed that he had filed a Motion to Recuse [Disqualification] and asked to be heard on the Motion. He informed the court he was not prepared on the October 6th Order to Show Cause "because I want to make an argument that I had filed a motion for recusal (sic) for disqualification ... the reason is I'm a new attorney to the case. There's been over 400 motions. I'd like to have 30 days to get up to speed." Transcript of Proceedings, October 26, 2010, p. 2.

The court heard Attorney Berdick on the disqualification motion. Transcript of Proceedings, October 26, 2010, pp. 2-16.

The court then returned to the October 6 Order to Show Cause. Although invited to do so, plaintiffs had not filed any brief regarding the factual statements and legal precedents upon which the October 6 Order to Show Cause were premised. See Order to Show Cause, October 6, 2010, p. 5, ¶ 3.[436]. And, during the in court proceedings, Attorney Berdick offered no cogent argument, instead, claiming he needed more time to prepare. Transcript of Proceedings, October 26, 2010, pp. 16-22.

The court then turned to the October 14 Order to Show Cause.

Again, the court had explicitly invited and solicited guidance from the parties regarding the factual statements and conclusions of law set forth in the Order to Show Cause. Order to Show Cause, October 14, 2011, p. 6, ¶ 24. Attorney Berdick objected to going forward: "I object to going forward because I'm prepared adequately ." "I would like to do for any further substantive procedural arguments on any motions until I get up to speeds on the file." Transcript of Proceedings, October 26, 2010, p. 22. At one point, Attorney Berdick stated: "I object. I have stuff prepared, but I'm not going to submit it." P. 25. Throughout, Attorney Berdick spoke of his not being prepared and to the extent he did address the issues at hand, his arguments confirm he was not prepared. Transcript of Proceedings, October 26, 2010, pp. 37.

\*6 The court first discusses the October 6, 2010 Order to Show Cause based on the non-appearing status of the Estate and the Estate's not replying to the Special Defense.

As of October 6, 2010, the Estate had been non-appearing since September 20, when Hall Johnson LLC was allowed to withdraw. Attorney Berdick appeared on October 19, 2010. That non-appearing status lasted 28 days. In view of the overall history of this case, the other extended times when the Estate was not represented by a licensed attorney, Attorney Berdick's appearance does not persuade the court that, a nonsuit of the Estate or the dismissal of its case is not warranted.

Nor did the Estate comply with the order that a Reply be filed by September 21. Although Attorney Berdick appeared for the Estate on October 19, the Estate has yet to file a Reply.

The unassailable and unassailed facts upon which the October 6, 2010 Order to Show Cause regarding the pleading deficiency are.

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1. The defendants' Special Defense was filed on September 13, 2010.
2. The Rules of Practice require that pleadings advance every 15 days. P.B. § 10-8.
3. The court had ordered the Estate to file its Reply by September 21, 2010. See Order, September 14, 2010, ¶ 12. [423].
4. The Estate had not Replied as of October 14, 2010.
5. As of October 26, 2010, the Estate was tardy by some 35 days in filing a Reply.

In fact, the Estate has not filed a Reply as of this February 15, 2011.

Although warranted, the court *does not* nonsuit the Estate or dismiss its action pursuant to the October 6 Order to Show Cause.

The court now turns to the substantive issues presaged in the October 14, 2010 Order to Show Cause. They are encompassed in the October 14, 2010 Order to Show Cause. [437].

In the Seventh Count of the Second Amended Complaint, July 12, 2010[362], the plaintiff Estate alleges the intentional spoliation of evidence. In 2006, Connecticut recognized this as a viable tort. *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225 (2006).

Since *Rizzuto* is much the focus herein, the court sets forth the facts thereof.

In December 1996, while shopping at a Home Depot store, plaintiff Rizzuto climbed a ladder made by defendant Davidson Ladders, Inc. The ladder collapsed and Rizzuto fell to the floor receiving serious injuries. In August 1997 Rizzuto filed a products liability action against Davidson and Home Depot. Rizzuto repeatedly asked these defendants to preserve the ladder so he could have it examined professionally. In 1998, the defendants' expert examined the ladder and concluded it was not defective. Thereafter defendants destroyed the ladder without the plaintiff having an opportunity to inspect it.

In May 2001, Rizzuto amended his complaint to add a claim for intentional spoliation of evidence (the destruction of the ladder). *Rizzuto*, 227-8.

The Supreme Court identified the essential elements of the new tort.

“(1) the defendant's knowledge of a pending or impending civil action involving the plaintiff; (2) the defendant's destruction of evidence; (3) in bad faith, that is, with intent to deprive the plaintiff of his cause of action; (4) the plaintiff's inability to establish a prima facie case without the spoliated evidence; and (5) damages.” *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225, 244-5 (2006).

\*7 The Supreme Court explained the plaintiff's burden of proof.

To establish proximate causation, the plaintiff must prove that the defendants' intentional, bad faith, destruction of evidence rendered the plaintiff unable to establish a prima facie case in the underlying litigation. Cf. *Smith v. Atkinson*, 771 So.2d 429, 434 (Ala.2000) (in order for a plaintiff to show proximate cause, the trier of fact must determine that the lost or destroyed evidence was so important to the plaintiff's claim in the underlying action that without that evidence the claim did not survive or would not have survived a motion for summary judgment); *Hannah v. Heeter, supra*, 213 W.Va. at 714 (same). Once the plaintiff satisfies this burden, there arises a rebuttable presumption that but for the fact of the spoliation of evidence the plaintiff would have recovered in the pending or potential litigation ... *Smith v. Atkinson, supra*, at 432-33; see also *Hannah v. Heeter, supra*, at 717 ( [o]nce the [elements of the tort of intentional spoliation of evidence] are established, there arises a rebuttable presumption that but for the fact of the spoliation of evidence the party injured by the spoliation would have prevailed in the pending or potential litigation); cf. *Welsh v. United States*, 844 F.2d 1239, 1248 (6th Cir.1988) (When, as here, a plaintiff is unable to prove an essential element, of her case due to the negligent loss or destruction of evidence by an opposing party, and the proof would otherwise be sufficient to survive a directed verdict, it is proper for the trial court to create a rebuttable presumption that establishes the missing elements of the plaintiff's case that could only have been proved by the availability of the missing evidence. The burden thus shifts to the defendant-spoliator to rebut the presumption and disprove the inferred element of [the] plaintiff's prima facie case.). The defendant may rebut this presumption by producing evidence showing that the plaintiff would not have prevailed in the underlying action even if the lost or destroyed evidence had been available.

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*Smith v. Atkinson, supra*, at 435. The [defendant] spoliator must overcome the rebuttable presumption or else be liable for damages. *Hannah v. Heeter, supra*, at 717. (Internal quotation marks omitted, and footnotes omitted.) *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225, 246-8 (2006).

For the purposes of discussion in this case, the court assumes (but does not find or hold) that the plaintiff here could establish the elements of the tort of intentional spoliation of evidence. If this be so, there is a rebuttable presumption that but for the fact of the spoliation of evidence, the plaintiff could have prevailed in the underlying litigation, here the six counts alleging medical malpractice, loss of consortium and wrongful death.

But the presumption is rebuttable. How can the presumption be rebutted? For this, our Supreme Court in *Rizzuto* looked to *Smith v. Atkinson*, 771 So.2d 429, 435-6 (Ala.2000). In *Smith v. Atkinson*, the Alabama Supreme Court employed a hypothetical case to illustrate a rebuttal of the presumption. That illustration is particularly instructive.

\*8 In *Smith v. Atkinson*, the plaintiff Smith and his wife were traveling in a Chrysler minivan and were struck by another vehicle driven by Ferguson. As a result of the collision, Smith's wife died. At the time of the collision, Smith was insured by Metropolitan Property and Casualty Insurance Company and had underinsured-motorist coverage. He filed an underinsured-motorist coverage claim with Metropolitan. Atkinson, a claims adjuster, handled the claim for Metropolitan. Metropolitan obtained possession of the minivan and stored it in Metropolitan's storage facility. Later Smith investigated a potential liability action against Chrysler theorizing the minivan was defective. On several occasions Smith informed Atkinson and Metropolitan that he intended to bring a products liability action against Chrysler and requested the minivan be preserved for inspection. Atkinson, and Metropolitan through Atkinson, agreed to keep the minivan at Metropolitan's facility for Smith's use and inspection. Smith transferred the minivan title to Metropolitan. At some time, Metropolitan allowed the minivan to be destroyed before it could be inspected by Smith or his expert. Smith thereafter brought an action against Atkinson for spoliation of evidence.

The Alabama Supreme Court used the following example.

To illustrate further, assume that the plaintiff in a products-liability action alleges that the front wheel of an automobile separated from the vehicle during operation and that the separation caused a serious accident. Further assume

that the garage to which the vehicle was towed was given notice of a pending products-liability action against the manufacturer of the vehicle and voluntarily assumed responsibility for the vehicle, as well as for the separated wheel; and that before the vehicle could be inspected the garage, through inadvertence, sold the vehicle and the wheel for salvage, destroying all relevant evidence and making it certain that the products-liability claim could not survive a summary-judgment motion. In a negligent-spoliation action against the garage, the jury would be instructed to presume that the plaintiff would have prevailed on his products-liability claim against the manufacturer of the vehicle. However, if, for example, the garage produced an eyewitness who testified that the wheel did not separate from the vehicle until after the impact, or that the plaintiff had been driving recklessly before the accident and through his own recklessness had caused the accident, then that testimony would absolve the defendant garage from liability for its spoliation of the evidence if the jury determined that on his products-liability claim the plaintiff would not have prevailed even if the evidence had not been lost or destroyed." *Smith V. Atkinson*, 771 So.2d 429, 435-6 (Ala.2000)

Repeating, this court has assumed (but does not find or hold) herein plaintiffs could establish the elements of the tort of intentional spoliation of evidence. Thus, plaintiff is the beneficiary of a rebuttable presumption that plaintiff could have recovered in the basic six counts alleging medical malpractice.

\*9 With this, Our Supreme Court says:

"... The burden thus shifts to the defendant-spoliator to rebut the presumption and disprove the inferred element of [the] plaintiff's prima facie case. *Rizzuto*, 248.

It follows: "The [defendant] spoliator must overcome the rebuttable presumption or else be liable for damages." *Hannah v. Heeter, supra*, at 717." *Rizzuto*, 248.

Our Supreme Court instructs.

The defendant may rebut this presumption by 'producing evidence showing that the plaintiff would not have prevailed in the underlying action even if the lost or destroyed evidence had been available.' *Smith v. Atkinson, supra*, at 435. *Rizzuto*, 247-8.

In this case, the alleged spoliators, the defendants, Dr. Awwa and Connecticut Behavioral, have overcome the rebuttable

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presumption. The basic medical malpractice and wrongful death counts (the first six counts alleging medical malpractice, loss of consortium, and wrongful death) have been dismissed because the plaintiffs' original complaint dated June 1, 2006, did not have attached to it the opinion of a similar health care provider regarding medical malpractice as required by § 52-198a of the General Statutes. See prior Memorandum of Decision, August 11, 2010. [366.04]. This conclusively establishes "that the plaintiff would not have prevailed in the underlying action even if the lost or destroyed evidence had been available." In fact, the instant case is even stronger than the example set forth in *Smith v. Atkinson*. The underlying malpractice, wrongful death, and loss of consortium causes of action have all been dismissed.

With that dismissal, all the king's horses and all the king's men could not vitalize the basic and/or underlying malpractice case.

The Seventh Count alleging the intentional spoliation of evidence must therefore fail and must be dismissed.

Although not necessary, there is an additional ground for dismissal of the Seventh Count at least as to Sylvester Traylor in his individual or personal capacity. The Seventh Count of the standing complaint<sup>4</sup> states solely a cause of action for Sylvester Traylor, Administrator, the Estate. Defendants had filed a Motion to Strike the Seventh Count. Defendants' Motion to Strike, August 10, 2010.[383]. The court granted same. Memorandum of Decision Motion to Strike, August 16, 2010. [383.01]. The authority for filing the September 8, 2010 Revised Complaint is P.B. § 10-44 which allows plaintiff to plead over on granting of a motion to strike. Paragraphs 1 through 26 of Count Seven of the Revised Complaint should be and are verbatim repetitions of their antecedents, namely the 26 paragraphs of First Count of the Second Revised Complaint, July 12, 2010.[362]. There is no allegation regarding Sylvester Traylor in his personal capacity nor any mention of loss of consortium in Count Seven. Count Seven, states a cause of action for the Estate only. Count Seven does not allege a cause of action for Sylvester Traylor in his personal or individual capacity. In fact, the first pleading of an intentional spoliation of evidence

cause of action surfaced in the Amended Complaint, June 4, 2009. [310]. It was drafted and signed by Sylvester Traylor. See Seventh Count, pp. 14-18. There is no mention of a loss of consortium. Sylvester Traylor, in his personal and/or individual capacity does not appear as plaintiff in the Seventh Count of the June 4, 2009 Amended Complaint. [310].

\*// Even if Sylvester Traylor in his personal and individual capacity had plead a spoliation of evidence cause of action, it would fail.

Sylvester Traylor's loss of consortium causes of action, if pled, are solely derivative of the Estate's malpractice and wrongful death action as set forth in the first six counts of the Second Revised Complaint. These six counts have been dismissed. Two counts brought by Sylvester Traylor in his personal capacity for loss of consortium were among the six counts dismissed. Initially therefore, Sylvester Traylor personally would appear to have a basis for a spoliation of evidence cause of action regarding his loss of consortium claim.

However, "Loss of consortium, although a separate cause of action, is not truly independent, but rather derivative and inextricably attached to the claim of the injured spouse." *Izzo v. Colonial Penn Insurance Co.*, 203 Conn. 305, 312 (1987). Here, Sylvester Traylor's personal loss of consortium case fails upon termination of the injured spouse's case, here the Estate's malpractice wrongful death case. *Swanson v. City of Groton*, 116 Conn.App. 849, 864-65 (2009). See also *Jacoby v. Brinckerhoff*, 250 Conn. 86 (1999), and cases cited therein.

The Seventh Count, alleging the intentional spoliation of evidence must therefore be dismissed.

The Eighth Count, claiming a CUTPA violation, is predicated upon a successful prosecution of the spoliation of evidence claim in the Seventh Count. That has not happened. The Seventh Count has been dismissed. It follows the Eighth Count must be dismissed.

Counts Seven and Eight are dismissed.

Judgment shall enter for the defendants and against the plaintiffs.

**Footnotes**

- 1 Bracketed three digit number indicates the file entry number of a document filed in a case. The file entry numbers for each case file begin with the number 101.
- 2 "Sylvester Traylor, Administrator" and the "Estate" are used interchangeably herein.
- 3 The use of "Second" in the title of this version of the complaint is puzzling. This new "Second" Amended Complaint is at least the sixth complaint the plaintiffs filed or attempted to file.

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4 Revised Complaint, September 8, 2011.[416].

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## Exhibit 5



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 Attorney/Firm: COONEY SCULLY & DOWLING(010872) E-Mail: bgustafson@csd-law.com

KNL-CV06-5001159-S TRAYLOR, SYLVESTER ET AL v. AWWA, BASSAM ET AL  
 Prefix/Suffix: [none] Case Type: T28 File Date: 06/02/2006 Return Date: 07/03/2006

Case Detail Notices History Processing Scheduled Court Dates Attorney Help Manual

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Data Updated as of: 09/02/2011

**Case Information**

Case Type: T28 - TORTS - MALPRACTICE - MEDICAL  
 Court Location: NEW LONDON  
 List Type: JURY  
 Trial List Claim: 09/17/2010  
 Last Action Date: 08/08/2011 (Last Action Date is a data entry date, not actual date)

**Disposition Information**

Disposition Date: 02/15/2011  
 Disposition: JUDGMENT WITHOUT TRIAL  
 Judge or Magistrate: HON THOMAS PARKER, JTR

**Parties & Appearances**

Party Number	Plaintiff/Defendant	No Fee Party
01	P SYLVESTER TRAYLOR Self-Rep: 881 VAUXHALL STREET EXT. QUAKER HILL, CT 06375	Appear Date: 02/03/2011
02	P SYLVESTER TRAYLOR ADM. EST. OF ROBERTA MAE TRAYLOR Attorney: c EDWARD C BERDICK(302441) 764 VOLUNTOWN ROAD GRISWOLD, CT 06351	Appear Date: 10/19/2010
50	D BASSAM AWWA MD Attorney: CHINIGO LEONE & MARUZO LLP(106188) 141 BROADWAY PO BOX 510 NORWICH, CT 06360	Appear Date: 07/07/2006
51	D CONNECTICUT BEHAVIORIAL HEALTH ASSOCIATES Attorney: CHINIGO LEONE & MARUZO LLP(106188) 141 BROADWAY PO BOX 510 NORWICH, CT 06360	Appear Date: 07/07/2006

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**Motions / Pleadings / Documents / Case Status**

Entry No	File Date	Filed By	Description	Arguable
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	06/02/2006	P	SUMMONS	
	06/02/2006	P	COMPLAINT	
	06/02/2006	P	RETURN OF SERVICE	
	03/03/2008		CLAIM/RECLAIM Claim/Reclaim	
	02/27/2009		CLAIM/RECLAIM Claim/Reclaim	
	04/21/2010	P	APPEARANCE Appearance	
	04/21/2010	P	APPEARANCE Appearance	
	07/06/2010		APPEARANCE	
	08/30/2010		APPEARANCE	
	09/16/2010		CERTIFICATE OF CLOSED PLEADINGS (SCANNED)	
	09/16/2010		CERTIFICATE OF CLOSED PLEADINGS (SCANNED)	
	09/17/2010		CLAIM/RECLAIM Claim/Reclaim	
	10/12/2010		CLAIM/RECLAIM Claim/Reclaim	
	10/15/2010		RECORD CORRECTION Attorney not exempt from efilng;must be efiled Last Correction: Document Type Description - 10/18/2010	
	10/19/2010	P	APPEARANCE Appearance	
	10/19/2010	P	APPEARANCE Appearance	
	01/19/2011		APPEARANCE	
	02/03/2011		APPEARANCE	
101.00	07/05/2006	P	MOTION FOR DEFAULT-FAILURE TO APPEAR <i>RESULT: Denied 7/7/2006 BY THE CLERK</i>	No
102.00	07/05/2006	P	MOTION FOR DEFAULT-FAILURE TO PLEAD <i>RESULT: Denied 7/7/2006 BY THE CLERK</i>	No
103.00	07/05/2006		CLAIM FOR TRIAL LIST	
104.00	07/07/2006	D	MOTION FOR EXTENSION OF TIME <i>RESULT: Granted 7/20/2006 HON D HURLEY, JTR</i>	No
105.00	07/27/2006	D	MOTION TO DISMISS <i>RESULT: Denied 12/14/2006 HON D HURLEY, JTR</i>	Yes
106.00	07/27/2006	D	MEMORANDUM IN SUPPORT OF MOTION	Yes
107.00	07/26/2006	P	MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13 <i>RESULT: Granted 8/17/2006 HON D HURLEY, JTR</i>	No
108.00	08/02/2006	P	NOTICE TO ALL PARTIES	No
109.01	08/02/2006	P	REQUEST TO AMEND COMPLAINT/AMENDMENT	No
110.01	08/02/2006	P	AMENDMENT	No
111.00	08/02/2006		AMENDED RETURN	No
112.00	08/04/2006	D	MEMORANDUM IN SUPPORT OF MOTION	No
113.00	08/07/2006	P	OBJECTION TO MOTION TO DISMISS	Yes
114.00	08/09/2006	P	AFFIDAVIT	No
115.00	08/10/2006	P	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No

116.00	08/22/2006	D	MOTION TO STRIKE <i>RESULT: Granted 8/23/2006 HON JAMES DEVINE, J</i>	Yes
117.00	08/23/2006	P	OFFER OF JUDGMENT ON CAUSES OF ACTION PRIOR TO OCTOBER 1, 2005 IN ACCORDANCE WITH CGS '52-192B	No
117.01	08/23/2006	Court	REPLACE RECORD TO TRIAL LIST STATUS (KEYPOINT 3) AND ERASE ALL HIGHER KEYPOINT DATES	No
118.00	08/23/2006	Court	REPLACE RECORD TO PLEADING STATUS (KEYPOINT 2) AND ERASE ALL HIGHER KEYPOINT DATES	No
119.00	08/29/2006	P	AMENDMENT	No
120.00	08/29/2006	P	NOTICE	No
121.00	09/22/2006	P	NOTICE OF APPLICATION FOR PREJUDGMENT REMEDY / HEARING (JD-CV-53)	Yes
122.00	09/22/2006	P	MOTION FOR DISCLOSURE OF ASSETS	Yes
122.50	10/05/2006	D	OBJECTION	Yes
123.00	09/28/2006	P	OBJECTION TO MOTION FOR NONSUIT	No
124.00	09/27/2006	D	MOTION FOR NONSUIT - GENERAL	No
125.00	10/05/2006	P	NOTICE TO ALL PARTIES	No
126.00	10/05/2006	D	MOTION FOR STAY	No
126.50	10/06/2006	P	OBJECTION TO MOTION	No
127.00	10/06/2006	D	OBJECTION TO MOTION OR REQUEST FOR DISCOVERY PB CH13	No
128.00	10/16/2006	P	LIS PENDENS	No
129.00	10/16/2006	P	LIS PENDENS	No
130.00	10/19/2006	P	MOTION FOR ORDER	No
131.00	10/19/2006	P	COMPLIANCE	No
132.00	10/19/2006	P	CERTIFICATE	No
133.00	11/13/2006	D	MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13	No
134.00	11/13/2006	D	MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13	No
135.00	11/15/2006	P	OBJECTION TO MOTION	No
136.00	11/15/2006	P	OBJECTION TO EXTENSION OF TIME MOTION	No
137.00	11/21/2006	D	OBJECTION TO MOTION OR REQUEST FOR DISCOVERY PB CH13	Yes
138.00	11/21/2006	D	OBJECTION TO MOTION OR REQUEST FOR DISCOVERY PB CH13	Yes
139.00	11/21/2006	D	OBJECTION TO MOTION OR REQUEST FOR DISCOVERY PB CH13	Yes
140.00	11/21/2006	D	OBJECTION TO MOTION OR REQUEST FOR DISCOVERY PB CH13	Yes
141.00	12/08/2006	P	REQUEST FOR ADJUDICATION COMPLEX LITIGATION	No
142.00	12/14/2006	Court	MEMORANDUM OF DECISION	No
143.00	12/26/2006	P	REQUEST	No
143.50	12/26/2006	P	AMENDED COMPLAINT	No
144.00	12/29/2006	D	OBJECTION TO REQUEST <i>RESULT: Sustained 1/16/2007 HON D HURLEY, JTR</i>	No
145.00	01/10/2007	D	MOTION FOR STAY	No
146.00	01/08/2007	D	MOTION TO DISMISS <i>RESULT: Denied 6/1/2007 HON D HURLEY, JTR</i>	Yes
147.00	01/17/2007	P	REPLY	Yes
148.00	01/18/2007	D	MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13 <i>RESULT: Granted 1/30/2007 HON D HURLEY, JTR</i>	No
149.00	01/19/2007	P	OBJECTION TO EXTENSION OF TIME MOTION	No
150.00	01/26/2007	P	OBJECTION TO MOTION TO DISMISS	Yes

151.00	02/06/2007	D	OBJECTION TO INTERROGATORIES <i>RESULT: Order 8/20/2007 HON D HURLEY, JTR</i>	No
152.00	02/06/2007	D	OBJECTION TO INTERROGATORIES	No
153.00	03/05/2007	D	OBJECTION TO REQUEST	No
154.00	04/12/2007	P	MOTION TO REARGUE/RECONSIDER	No
155.00	04/16/2007	D	OBJECTION TO MOTION	No
156.00	05/02/2007	D	REPLY	No
157.00	06/01/2007	Court	MEMORANDUM OF DECISION	No
158.00	06/11/2007	D	MOTION TO REARGUE/RECONSIDER <i>RESULT: Denied 7/17/2007 HON D HURLEY, JTR</i>	Yes
159.00	06/18/2007	P	OBJECTION TO MOTION <i>RESULT: Sustained 7/2/2007 HON D HURLEY, JTR</i>	No
160.00	06/18/2007	P	MOTION FOR ORDER OF COMPLIANCE - PB SEC 13-14 <i>RESULT: Granted 7/2/2007 HON D HURLEY, JTR</i>	No
161.00	06/18/2007	P	MOTION FOR ORDER OF COMPLIANCE - PB SEC 13-14 <i>RESULT: Granted 7/2/2007 HON D HURLEY, JTR</i>	No
162.00	06/18/2007	P	REPLY	No
163.00	06/25/2007	D	OBJECTION TO MOTION <i>RESULT: Overruled 7/17/2007 HON D HURLEY, JTR</i>	No
164.00	06/25/2007	D	OBJECTION TO MOTION <i>RESULT: Order 7/17/2007 HON D HURLEY, JTR</i>	No
165.00	06/26/2007	P	REPLY	No
166.00	07/23/2007	P	MOTION FOR DEFAULT-FAILURE TO PLEAD <i>RESULT: Granted 8/14/2007 BY THE CLERK</i>	No
167.00	07/23/2007	P	MOTION FOR DEFAULT (NON- PB 17-23 FILINGS)	No
168.00	08/02/2007	D	MOTION TO QUASH	No
169.00	08/02/2007	D	MEMORANDUM IN SUPPORT OF MOTION	No
170.00	08/16/2007	D	OBJECTION TO MOTION <i>RESULT: Order 8/29/2007 HON D HURLEY, JTR</i>	No
171.00	08/16/2007	D	MOTION FOR EXTENSION OF TIME <i>RESULT: Granted 11/20/2007 HON A PECK, J</i>	No
172.00	08/17/2007	D	MOTION TO REARGUE/RECONSIDER	No
173.00	08/17/2007	D	MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13	No
174.00	08/17/2007	D	MOTION TO OPEN DEFAULT	No
175.00	08/21/2007	P	REPLY	No
176.00	08/22/2007	P	COMPLIANCE	No
177.00	08/22/2007	P	OBJECTION TO MOTION	No
178.00	08/22/2007	P	OBJECTION TO MOTION	No
179.00	08/22/2007	P	OBJECTION TO MOTION	No
180.00	09/06/2007	P	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No
181.00	09/06/2007	P	OBJECTION TO MOTION	No
182.00	09/06/2007		CLAIM FOR TRIAL LIST	
183.00	09/07/2007	D	MOTION TO STRIKE	Yes
184.00	09/10/2007	P	MOTION FOR EXTENSION OF TIME <i>RESULT: Granted 11/20/2007 HON A PECK, J</i>	No
185.00	09/19/2007	D	OBJECTION TO EXTENSION OF TIME MOTION	No
186.00	09/20/2007	D	COMPLIANCE	No

187.00	09/26/2007	P	REQUEST TO AMEND AND AMENDMENT	No
188.00	10/01/2007	D	MOTION TO COMPEL <i>RESULT: Order 1/7/2008 HON A PECK, J</i>	No
189.00	10/23/2007	D	REQUEST TO REVISE	No
190.00	11/13/2007	P	OBJECTION TO REQUEST TO REVISE <i>RESULT: Sustained 12/18/2007 HON A PECK, J</i>	No
191.00	12/12/2007	P	MOTION FOR ORDER <i>RESULT: Denied 1/23/2008 HON ROBERT MARTIN, J</i>	No
192.00	12/20/2007	P	OBJECTION TO MOTION OR REQUEST FOR DISCOVERY PB CH13	No
193.00	12/20/2007	P	OBJECTION TO MOTION	No
194.00	12/20/2007	P	MOTION FOR EXTENSION OF TIME RE SCHEDULING ORDER <i>RESULT: Denied 1/23/2008 HON ROBERT MARTIN, J</i>	No
195.00	01/09/2008	Court	REPLACE RECORD TO TRIAL LIST STATUS (KEYPOINT 3) AND ERASE ALL HIGHER KEYPOINT DATES	No
196.00	01/10/2008	Court	REPLACE RECORD TO TRIAL LIST STATUS (KEYPOINT 3) AND ERASE ALL HIGHER KEYPOINT DATES	No
197.00	01/08/2008	P	MOTION FOR DEFAULT-FAILURE TO PLEAD <i>RESULT: Denied 1/31/2008 BY THE CLERK</i>	No
198.00	01/10/2008	D	MOTION FOR NONSUIT - GENERAL	No
199.00	01/14/2008	D	OBJECTION TO MOTION FOR DEFAULT	No
200.00	01/14/2008	D	ANSWER	No
201.00	01/22/2008	P	REQUEST TO REVISE	No
202.00	01/22/2008	P	OBJECTION TO MOTION FOR NONSUIT <i>RESULT: Sustained 2/13/2008 HON A PECK, J</i>	No
203.00	01/16/2008	P	COMPLIANCE	No
204.00	01/28/2008	P	CLAIM FOR JURY OF 6	No
205.00	02/07/2008	D	OBJECTION TO REQUEST TO REVISE <i>RESULT: Sustained 3/11/2008 HON A PECK, J</i>	No
206.00	02/07/2008	D	MOTION TO COMPEL <i>RESULT: Denied 3/11/2008 HON JAMES ABRAMS, J</i>	No
207.00	03/05/2008	P	OBJECTION TO MOTION	No
208.00	03/05/2008	P	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No
209.00	03/18/2008	P	NOTICE	No
210.00	04/24/2008	P	COMPLIANCE	No
211.00	04/24/2008	P	MOTION FOR JUDGMENT <i>RESULT: Granted 5/27/2008 HON JAMES ABRAMS, J</i>	No
212.00	05/09/2008	D	OBJECTION TO MOTION	No
213.00	06/10/2008	Court	REPLACE RECORD TO PLEADING STATUS (KEYPOINT 2) AND ERASE ALL HIGHER KEYPOINT DATES	No
214.00	06/10/2008		CLAIM FOR TRIAL LIST	
215.00	06/16/2008	D	MOTION TO STRIKE FROM ASSIGNMENT LIST <i>RESULT: Granted 7/1/2008 HON JAMES ABRAMS, J</i>	No
216.00	06/16/2008	D	MOTION TO REARGUE/RECONSIDER	No
217.00	06/16/2008	D	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No
218.00	06/17/2008	D	MOTION TO OPEN DEFAULT <i>RESULT: Granted 7/1/2008 HON JAMES ABRAMS, J</i>	No
219.00	06/20/2008	P	MOTION TO REARGUE/RECONSIDER <i>RESULT: Denied 6/25/2008 HON JOSEPH PURTILL, JTR</i>	No
220.00	06/24/2008	P	NOTICE	No

221.00	06/25/2008	P	OBJECTION TO MOTION <i>RESULT: Overruled 7/7/2008 HON JAMES ABRAMS, J</i>	No
222.00	07/16/2008	P	MOTION TO REARGUE/RECONSIDER	No
223.00	07/16/2008	P	MOTION FOR SANCTIONS <i>RESULT: Denied 9/29/2008 HON ROBERT MARTIN, J</i>	Yes
224.00	07/21/2008	D	MEMORANDUM	No
225.00	07/25/2008	P	REPLY	No
226.00	07/29/2008	P	OBJECTION TO MOTION	No
227.00	07/28/2008	Court	ORDER	No
228.00	07/31/2008	P	MOTION FOR CLARIFICATION-COURT ORDER	No
229.00	08/01/2008	D	COMPLIANCE	No
230.00	08/06/2008	D	NOTICE	No
231.00	08/06/2008	D	NOTICE	No
232.00	08/06/2008	D	COMPLIANCE	No
233.00	08/18/2008	P	MOTION FOR PERMISSION TO WITHDRAW APPEARANCE	Yes
234.00	08/18/2008	P	OBJECTION TO MOTION	No
235.00	08/22/2008	P	DISCLOSURE OF EXPERT WITNESS	No
236.00	09/03/2008	P	NOTICE	No
237.00	09/04/2008	Court	REPLACE RECORD TO PLEADING STATUS (KEYPOINT 2) AND ERASE ALL HIGHER KEYPOINT DATES	No
238.00	09/17/2008	P	MOTION FOR SANCTIONS <i>RESULT: Denied 9/29/2008 HON ROBERT MARTIN, J</i>	No
239.00	09/29/2008	P	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No
240.00	10/15/2008	P	MOTION TO REARGUE/RECONSIDER <i>RESULT: Denied 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
241.00	10/23/2008	P	MOTION FOR ORDER <i>RESULT: Granted 10/29/2008 HON ROBERT MARTIN, J</i>	No
242.00	11/10/2008	P	MOTION FOR JUDGMENT <i>RESULT: Denied 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
243.00	11/20/2008	P	NOTICE	No
244.00	11/20/2008	Court	ORDER	No
245.00	11/21/2008	P	MOTION FOR ORDER	No
246.00	11/20/2008	P	MOTION FOR JUDGMENT <i>RESULT: Denied 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
247.00	11/20/2008	P	MOTION FOR JUDGMENT <i>RESULT: Denied 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
248.00	11/24/2008	P	NOTICE	No
249.00	11/13/2008	P	LETTER	No
250.00	11/26/2008	D	OBJECTION TO MOTION <i>RESULT: Sustained 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
251.00	12/01/2008	P	REPLY <i>RESULT: Denied 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
252.00	12/04/2008	D	OBJECTION TO MOTION	No
253.00	12/05/2008	P	REPLY	No
254.00	12/05/2008	P	NOTICE	No
255.00	12/12/2008	P	MOTION FOR ORDER	No
256.00	12/15/2008	D	OBJECTION	No

257.00	12/19/2008		STATEMENT	No
258.00	12/22/2008	P	MOTION - SEE FILE <i>RESULT: Denied 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
259.00	01/05/2009	P	COMPLIANCE	No
260.00	01/05/2009	D	MOTION FOR NONSUIT - GENERAL	No
261.00	01/05/2009	P	OBJECTION TO MOTION	No
262.00	02/10/2009	Court	DEFAULT AGAINST DEFENDANT-GENERAL	No
262.01	02/10/2009	Court	ORDER	No
263.00	01/08/2009	P	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No
264.00	01/29/2009	D	OBJECTION	No
265.00	02/04/2009	P	MOTION FOR ORDER <i>RESULT: Denied 3/2/2009 HON ROBERT MARTIN, J</i>	No
266.00	02/17/2009	P	MOTION FOR WAIVER <i>RESULT: Granted 2/18/2009 HON ROBERT MARTIN, J</i>	No
267.00	02/18/2009	D	MOTION TO OPEN DEFAULT <i>RESULT: Granted 3/2/2009 HON ROBERT MARTIN, J</i>	No
268.00	02/19/2009	P	OBJECTION TO MOTION <i>RESULT: Overruled 3/2/2009 HON ROBERT MARTIN, J</i>	No
269.00	02/23/2009	P	OBJECTION TO MOTION <i>RESULT: Overruled 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
270.00	02/25/2009	P	MOTION FOR ORDER <i>RESULT: Denied 2/26/2009 HON ROBERT MARTIN, J</i>	No
271.00	02/26/2009	D	OBJECTION TO MOTION	No
272.00	02/26/2009	P	LETTER	No
273.00	02/27/2009	P	NOTICE	No
274.00	02/27/2009	P	NOTICE	No
275.00	03/02/2009	P	LETTER	No
276.00	03/02/2009	P	NOTICE	No
277.00	03/04/2009	P	MOTION TO REARGUE/RECONSIDER <i>RESULT: Denied 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
278.00	03/04/2009	P	MOTION TO REARGUE/RECONSIDER <i>RESULT: Denied 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
279.00	03/06/2009	P	MOTION TO REARGUE/RECONSIDER <i>RESULT: Denied 6/3/2009 HON ROBERT LEUBA, JTR</i>	No
280.00	03/12/2009	P	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No
281.00	03/12/2009	P	LETTER	No
282.00	03/23/2009	P	MOTION FOR WAIVER <i>RESULT: Granted 3/23/2009 HON SUSAN HANDY, J</i>	No
283.00	03/13/2009	P	LETTER	No
284.00	03/13/2009	P	LETTER	No
285.00	03/24/2009	P	MOTION FOR ORDER	No
286.00	04/13/2009	P	MOTION FOR DEFAULT (NON- PB 17-23 FILINGS)	No
287.00	03/16/2009	D	LETTER	No
288.00	03/18/2009	P	NOTICE	No
289.00	04/16/2009	P	NOTICE	No
290.00	04/16/2009	P	MOTION FOR CONTINUANCE	No
291.00	04/20/2009	P	LETTER	No

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292.00	04/20/2009	D	LETTER	No
293.00	04/23/2009	P	LETTER	No
294.00	05/13/2009	P	OBJECTION	No
294.50	05/13/2009	P	MOTION FOR ORDER	No
295.00	05/13/2009	P	MOTION FOR WAIVER RESULT: Granted 5/13/2009 HON SUSAN HANDY, J	No
296.00	05/13/2009	P	NOTICE	No
297.00	05/19/2009	D	COMPLIANCE	No
298.00	05/19/2009	D	MEMORANDUM IN SUPPORT OF MOTION	No
299.00	05/19/2009	P	BRIEF	No
300.00	05/12/2009	P	BRIEF	No
301.00	05/20/2009	P	MOTION FOR ORDER RESULT: Denied 6/9/2009 HON JOSEPH GOLDBERG, JTR	No
302.00	05/12/2009	P	LETTER	No
303.00	05/12/2009	P	LETTER	No
304.00	05/21/2009	P	MOTION FOR JUDGMENT ON DEFAULT RESULT: Denied 6/9/2009 HON JOSEPH GOLDBERG, JTR	No
305.00	05/26/2009	P	LETTER	No
306.00	05/27/2009	P	REPLY	No
307.00	06/03/2009	P	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No
308.00	06/03/2009	Court	MEMORANDUM OF DECISION	No
309.00	06/03/2009	Court	MEMORANDUM OF DECISION	No
310.00	06/04/2009	P	REQUEST TO AMEND COMPLAINT/AMENDMENT	No
311.00	06/04/2009	P	MOTION FOR ORDER RESULT: Denied 7/9/2009 HON THOMAS PARKER, JTR	No
312.00	06/05/2009	P	NOTICE	Yes
313.00	06/12/2009	P	MOTION FOR NONSUIT - GENERAL	No
313.50	06/15/2009	Court	COMPLEX LITIGATION APPLICATION	No
314.00	06/16/2009	D	MOTION FOR EXTENSION OF TIME	No
315.00	06/16/2009	D	MOTION FOR EXTENSION OF TIME	No
316.00	06/16/2009	P	MOTION TO REARGUE/RECONSIDER RESULT: Denied 11/19/2009 HON ROBERT LEUBA, JTR	No
317.00	06/18/2009	D	OBJECTION TO REQUEST	No
317.50	06/18/2009	D	OBJECTION TO REQUEST	No
318.00	06/18/2009	P	OBJECTION TO MOTION	No
319.00	06/19/2009	P	MOTION FOR ORDER OF COMPLIANCE - PB SEC 13-14 RESULT: Denied 7/20/2009 HON ROBERT YOUNG, J	No
320.00	06/25/2009	P	LETTER	No
321.00	06/26/2009	D	OBJECTION RESULT: Sustained 7/20/2009 HON ROBERT YOUNG, J	No
321.50	06/26/2009	D	REQUEST RESULT: Denied 7/20/2009 HON ROBERT YOUNG, J	No
322.00	06/29/2009	P	MOTION FOR SANCTIONS RESULT: Denied 7/20/2009 HON ROBERT YOUNG, J	No
323.00	06/29/2009	P	MEMORANDUM IN SUPPORT OF MOTION	No
324.00	06/29/2009	P	OBJECTION TO REQUEST RESULT: Sustained 7/20/2009 HON ROBERT YOUNG, J	No

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325.00	06/30/2009	P	REPLY	No
326.00	07/07/2009	P	MOTION FOR DEFAULT-FAILURE TO PLEAD RESULT: Denied 7/8/2009 BY THE CLERK	No
327.00	07/09/2009	D	REQUEST TO REVISE	No
328.00	07/14/2009	D	OBJECTION TO TRANSFER TO COMPLEX LITIGATION To Hartford Instead of Waterbury/Stamford	No
329.00	07/13/2009	P	OBJECTION TO REQUEST	No
330.00	07/13/2009	P	NOTICE	No
331.00	07/14/2009	D	OBJECTION	No
332.00	07/15/2009	P	OBJECTION TO TRANSFER TO COMPLEX LITIGATION	No
333.00	07/15/2009	P	OBJECTION TO REQUEST	No
334.00	07/20/2009	P	MOTION TO REARGUE/RECONSIDER RESULT: Denied 8/12/2009 HON JOSEPH GOLDBERG, JTR	Yes
334.50	07/17/2009	D	MOTION FOR SANCTIONS	No
335.00	07/20/2009	P	OBJECTION TO MOTION	No
336.00	07/21/2009	P	MOTION FOR NONSUIT - GENERAL	Yes
336.50	08/06/2009	D	OBJECTION TO MOTION	Yes
337.00	07/31/2009	P	MOTION FOR IMMEDIATE HEARING RESULT: Denied 11/19/2009 HON JAMES DEVINE, J	Yes
338.00	08/03/2009	P	MOTION FOR IMMEDIATE HEARING RESULT: Denied 11/19/2009 HON JAMES DEVINE, J	Yes
339.00	08/07/2009	D	OBJECTION TO MOTION Objection to Plaintiffs' Motions #337 and #338 RESULT: Sustained 11/19/2009 HON JAMES DEVINE, J	No
340.00	08/07/2009	P	REPLY	No
341.00	10/07/2009	P	MOTION FOR WAIVER RESULT: Denied 10/7/2009 HON STUART SCHIMELMAN, SJ	No
342.00	10/09/2009	P	MOTION FOR WAIVER RESULT: Denied 10/9/2009 HON EMMET COSGROVE, J	No
342.50	11/03/2009	P	APPLICATION FOR ISSUANCE OF SUBPOENA BY SELF-REP PARTY - PB SEC 7-19	No
343.00	11/09/2009	D	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No
344.00	11/09/2009	P	OBJECTION	No
344.50	11/09/2009	P	REPLY	No
344.60	11/13/2009	D	OBJECTION	No
344.70	11/16/2009	P	REPLY	No
345.00	11/18/2009	P	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No
346.00	11/19/2009	Court	ORDER	No
346.50	11/20/2009	P	MOTION FOR CLARIFICATION-COURT ORDER RESULT: Denied 12/16/2009 HON JAMES DEVINE, J	No
346.51	12/16/2009	Court	ORDER RESULT: Denied 12/16/2009 HON JAMES DEVINE, J	No
347.00	11/27/2009	P	MOTION FOR CLARIFICATION-COURT ORDER RESULT: Order 12/15/2009 BY THE CLERK	No
347.10	12/17/2009	Court	ORDER RESULT: Denied 12/17/2009 HON ROBERT LEUBA, JTR	Yes
348.00	12/01/2009	Court	ORDER TO SHOW CAUSE	No
349.00	12/03/2009	Court	ORDER	No

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349.50	12/15/2009	Court	ORDER	No
			<i>RESULT: Order 12/15/2009 HON JAMES DEVINE, J</i>	
350.00	12/14/2009	D	OBJECTION TO MOTION FOR NONSUIT	No
351.00	12/14/2009	P	NOTICE	No
352.00	12/15/2009	P	NOTICE	No
353.00	12/17/2009	Court	MEMORANDUM OF DECISION	No
354.00	02/05/2010	Court	ORDER	No
355.00	05/18/2010	Court	ORDER Re: scheduling conference <i>RESULT: Order 5/18/2010 HON THOMAS PARKER, JTR</i>	No
355.20	06/21/2010	Court	ORDER <i>RESULT: Order 6/21/2010 HON THOMAS PARKER, JTR</i>	No
356.00	06/21/2010	D	LIST OF WITNESSES	No
357.00	06/21/2010	Court	ORDER	No
358.00	06/22/2010	P	LIST List of Non-Expert Witnesses	No
359.00	06/30/2010	Court	ORDER <i>RESULT: Order 6/30/2010 HON THOMAS PARKER, JTR</i>	No
360.00	06/29/2010	P	MOTION FOR WAIVER <i>RESULT: Denied 6/29/2010 HON EMMET COSGROVE, J</i>	No
361.00	07/08/2010	P	DISCLOSURE OF EXPERT WITNESS	No
362.00	07/12/2010	P	AMENDED COMPLAINT Plaintiffs' Second Amended Complaint	No
363.00	07/12/2010	P	AMENDMENT Addendum	No
364.00	07/15/2010	Court	ORDER <i>RESULT: Order 7/15/2010 HON THOMAS PARKER, JTR</i>	No
365.00	07/15/2010	Court	ORDER <i>RESULT: Order 7/15/2010 HON THOMAS PARKER, JTR</i>	Yes
366.00	07/16/2010	D	MOTION TO DISMISS WITH MEMORANDUM OF LAW	No
366.01	07/16/2010	P	MEMORANDUM	No
366.03	07/29/2010	Court	MEMORANDUM OF DECISION	No
366.04	08/11/2010	Court	MEMORANDUM OF DECISION	No
367.00	07/20/2010	Court	ORDER <i>RESULT: Order 7/20/2010 HON THOMAS PARKER, JTR</i>	No
368.00	07/21/2010	Court	ORDER <i>RESULT: Order 7/21/2010 HON THOMAS PARKER, JTR</i>	No
369.00	07/26/2010	D	MOTION FOR MODIFICATION RE SCHEDULING ORDER AND/OR REQUEST FOR STATUS CONFERENCE	No
370.00	07/26/2010	Court	ORDER <i>RESULT: Order 7/26/2010 HON THOMAS PARKER, JTR</i>	No
371.00	07/26/2010	P	OBJECTION to Defendants Motion to Dismiss	No

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372.00	07/26/2010	P	MEMORANDUM IN SUPPORT OF MOTION Plaintiff's Objection to Defendants Motion to Dism	No
373.00	07/26/2010	P	AFFIDAVIT of Plaintiff re Defendants Motion to Dismiss	No
374.00	07/28/2010	D	REPLY TO PLAINTIFF'S OBJECTION TO MOTION TO DISMISS	No
375.00	07/30/2010	Court	ORDER  RESULT: Order 7/30/2010 HON THOMAS PARKER, JTR	No
376.00	08/02/2010	D	MOTION FOR EXTENSION OF TIME TO PLEAD TO COUNTS 7 & 8 OF 2ND AMENDED COMPLAINT RESULT: Denied 8/3/2010 HON THOMAS PARKER, JTR	No
376.01	08/03/2010	Court	ORDER  RESULT: Denied 8/3/2010 HON THOMAS PARKER, JTR	No
377.00	08/02/2010	D	MOTION TO REARGUE/RECONSIDER JUDGE PARKER'S ORDER DATED 7/30/2010 RESULT: Denied 8/3/2010 HON THOMAS PARKER, JTR	No
377.01	08/03/2010	Court	ORDER  RESULT: Denied 8/3/2010 HON THOMAS PARKER, JTR	No
378.00	08/03/2010	D	REQUEST TO REVISE PLAINTIFF'S SECOND AMENDED COMPLAINT DTD 7/12/2010	No
378.01	08/06/2010	Court	ORDER  RESULT: Order 8/6/2010 HON THOMAS PARKER, JTR	No
379.00	08/06/2010	P	OBJECTION TO REQUEST TO REVISE	No
380.00	08/06/2010	P	MEMORANDUM IN SUPPORT OF MOTION	No
380.90	08/06/2010	Court	DOCUMENT SUBSTITUTION	No
381.00	08/06/2010	P	MOTION FOR DEFAULT-FAILURE TO PLEAD RESULT: Denied 8/25/2010 HON THOMAS PARKER, JTR	No
381.10	08/25/2010	Court	ORDER  RESULT: Denied 8/25/2010 HON THOMAS PARKER, JTR	No
382.00	08/06/2010	D	MOTION FOR CONTINUANCE	No
382.01	08/06/2010	Court	ORDER  RESULT: Off 8/6/2010 HON THOMAS PARKER, JTR	Yes
383.00	08/10/2010	D	MOTION TO STRIKE Count Seven of Plaintiff's 2nd Amended Complaint RESULT: Granted 8/16/2010 HON THOMAS PARKER, JTR	No
383.01	08/16/2010	Court	MEMORANDUM OF DECISION	No
383.02	08/16/2010	Court	NOTICE	No
384.00	08/10/2010	D	MEMORANDUM IN SUPPORT OF MOTION	No
385.00	08/11/2010	D	OBJECTION TO MOTION FOR DEFAULT FOR FAILURE TO PLEAD RESULT: Sustained 8/25/2010 HON THOMAS PARKER, JTR	No
385.10	08/25/2010	Court	ORDER  RESULT: Order 8/25/2010 HON THOMAS PARKER, JTR	No
386.00	08/11/2010	Court	ORDER  RESULT: Order 8/11/2010 HON THOMAS PARKER, JTR	No
387.00	08/12/2010	P	MOTION FOR ARTICULATION RESULT: Denied 8/12/2010 HON THOMAS PARKER, JTR	No

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387.01	08/12/2010	Court	ORDER	No
			<i>RESULT: Denied 8/12/2010 HON THOMAS PARKER, JTR</i>	
388.00	08/12/2010	P	MOTION FOR STAY <i>RESULT: Denied 8/12/2010 HON THOMAS PARKER, JTR</i>	No
388.01	08/12/2010	Court	ORDER <i>RESULT: Denied 8/12/2010 HON THOMAS PARKER, JTR</i>	No
389.00	08/12/2010	P	OBJECTION TO MOTION	No
390.00	08/12/2010	P	MEMORANDUM Memo in Support of Objection to Motion to Strike	No
391.00	08/13/2010	Court	ORDER <i>RESULT: Order 8/13/2010 HON THOMAS PARKER, JTR</i>	No
392.00	08/17/2010	P	MOTION TO REARGUE/RECONSIDER <i>RESULT: Denied 8/24/2010 HON THOMAS PARKER, JTR</i>	No
393.00	08/17/2010	P	NOTICE OF INTENTION TO APPEAL Court's Ruling on Motion to Dismiss Counts 1-6	No
394.00	08/23/2010	D	OBJECTION to Plaintiff's Motion for Reconsideration to #388	No
395.00	08/18/2010	P	MOTION TO REARGUE/RECONSIDER	No
396.00	08/20/2010	P	AFFIDAVIT	No
397.00	08/24/2010	Court	MEMORANDUM OF DECISION In regards to motion #392 Last Correction: Additional Description - 08/26/2010	No
398.00	08/27/2010	P	NOTICE of Substitute Pleading	No
399.00	08/27/2010	P	COMPLAINT	No
400.00	08/30/2010	Court	ORDER <i>RESULT: Order 8/30/2010 HON THOMAS PARKER, JTR</i>	No
401.00	08/27/2010	P	MOTION FOR WAIVER <i>RESULT: Granted 8/27/2010 HON JAMES DEVINE, J</i>	No
402.00	08/27/2010	P	APPEAL TO APPELLATE COURT	No
403.00	08/30/2010	P	NOTICE	No
404.00	08/30/2010	P	AMENDED COMPLAINT	No
405.00	08/30/2010	P	CERTIFICATION OF NOTICE P.B. 4-5	No
406.00	09/02/2010	Court	ORDER <i>RESULT: Order 9/2/2010 HON THOMAS PARKER, JTR</i>	No
407.00	09/02/2010	D	MOTION FOR EXTENSION OF TIME TO RESPOND TO PRO SE PLAINTIFF'S 8/30/10 FILINGS	No
408.00	09/02/2010	D	OBJECTION TO PLAINTIFF'S REVISED COMPLAINT DTD 8/27/10	No
409.00	09/03/2010	P	OBJECTION TO MOTION Last Correction: Party Type - 09/07/2010	No
410.00	09/03/2010	P	AFFIDAVIT	No
411.00	09/03/2010	P	REPLY	No
411.50	09/03/2010	Court	JUDGMENT FILE	Yes
412.00	09/07/2010	P	MOTION FOR PERMISSION TO WITHDRAW APPEARANCE <i>RESULT: Granted 9/20/2010 HON THOMAS PARKER, JTR</i>	

412.10	09/22/2010	Court	ORDER	No
<i>RESULT: Granted 9/22/2010 HON THOMAS PARKER, JTR</i>				
412.20	09/20/2010	Court	ORDER	No
<i>RESULT: Granted 9/20/2010 HON THOMAS PARKER, JTR</i>				
413.00	09/08/2010	P	NOTICE Notice of Substitute Pleading	No
414.00	09/08/2010	P	REVISED COMPLAINT	No
415.00	09/08/2010	P	NOTICE Notice of Substitute Pleading	No
416.00	09/08/2010	P	REVISED COMPLAINT	No
417.00	09/08/2010	P	MOTION FOR PERMISSION TO WITHDRAW APPEARANCE Addendum to Motion to Withdraw	Yes
418.00	09/08/2010	Court	MOTION FOR PERMISSION TO WITHDRAW APPEARANCE	Yes
419.00	09/09/2010	P	REPLY	No
419.50	09/09/2010	P	AFFIDAVIT	No
420.00	09/10/2010	Court	ORDER	No
<i>RESULT: Order 9/10/2010 HON THOMAS PARKER, JTR</i>				
421.00	09/13/2010	D	ANSWER AND SPECIAL DEFENSE	No
422.00	09/13/2010	Court	ORDER Last Correction: Legend Code - 09/14/2010	No
423.00	09/14/2010	Court	ORDER	No
<i>RESULT: Order 9/14/2010 HON THOMAS PARKER, JTR</i>				
424.00	09/15/2010	P	REPLY TO SPECIAL DEFENSE	No
425.00	09/15/2010	P	RETURN OF SERVICE	No
425.61	09/16/2010		CLAIM FOR TRIAL LIST	
426.00	09/17/2010	D	MOTION TO MODIFY - GENERAL	No
427.00	09/20/2010	P	REPLY TO SPECIAL DEFENSE	No
428.00	09/20/2010	D	REQUEST TO REVISE REGARDING PLAINTIFFS' REPLY TO SPECIAL DEFENSES	No
429.00	09/20/2010	D	MOTION FOR NONSUIT - GENERAL <i>RESULT: Denied 10/5/2010 HON THOMAS PARKER, JTR</i>	No
429.01	10/05/2010	Court	ORDER	No
<i>RESULT: Denied 10/5/2010 HON THOMAS PARKER, JTR</i>				
429.50	10/05/2010	Court	MEMORANDUM OF DECISION	No
430.00	09/20/2010	P	OBJECTION TO MOTION <i>RESULT: Continuance 10/1/2010 HON JAMES DEVINE, J</i>	No
431.00	09/21/2010	D	MOTION FOR NONSUIT FOR FAILURE TO COMPLY WITH ORDER <i>RESULT: Denied 10/5/2010 HON THOMAS PARKER, JTR</i>	No
431.01	10/05/2010	Court	ORDER	No
<i>RESULT: Denied 10/5/2010 HON THOMAS PARKER, JTR</i>				
432.00	09/21/2010	Court	ORDER	No
<i>RESULT: Order 9/21/2010 HON THOMAS PARKER, JTR</i>				
433.00	09/28/2010	P	MOTION FOR EXTENSION OF TIME	No
434.00	09/30/2010	P	MOTION FOR CONTINUANCE <i>RESULT: Granted 10/1/2010 HON JAMES DEVINE, J</i>	No

434.01	10/01/2010	Court	ORDER	No
			<i>RESULT: Granted 10/1/2010 HON JAMES DEVINE, J</i>	
435.00	10/01/2010	D	OBJECTION TO EXTENSION OF TIME MOTION	No
436.00	10/06/2010	Court	ORDER TO SHOW CAUSE	Yes
437.00	10/14/2010	Court	ORDER TO SHOW CAUSE	Yes
438.00	10/15/2010	P	ENTRY ERASED TO CORRECT ERROR Attorney not exempt from efilings; Must be efiled Last Correction: Additional Description - 10/18/2010	No
439.00	10/18/2010	P	MOTION TO TRANSFER <i>RESULT: Denied 11/10/2010 HON THOMAS PARKER, JTR</i>	No
439.01	11/10/2010	Court	ORDER	No
			<i>RESULT: Denied 11/10/2010 HON THOMAS PARKER, JTR</i>	
440.00	10/18/2010	P	MOTION TO STRIKE	Yes
441.00	10/18/2010	P	MEMORANDUM IN SUPPORT OF MOTION	No
442.00	10/20/2010	P	MOTION FOR WAIVER <i>RESULT: Denied 10/20/2010 HON EMMET COSGROVE, J</i>	No
443.00	10/22/2010	D	BRIEF DEFENDANTS' PREHEARING BRIEF	No
444.00	10/26/2010	P	MOTION TO DISQUALIFY <i>RESULT: Denied 11/10/2010 HON THOMAS PARKER, JTR</i>	No
444.01	11/10/2010	Court	ORDER	No
			<i>RESULT: Denied 11/10/2010 HON THOMAS PARKER, JTR</i>	
445.00	10/29/2010	D	OBJECTION TO PLAINTIFF'S MOTION TO TRANSFER <i>RESULT: Sustained 11/10/2010 HON THOMAS PARKER, JTR</i>	No
445.01	11/10/2010	Court	ORDER	No
			<i>RESULT: Sustained 11/10/2010 HON THOMAS PARKER, JTR</i>	
446.00	12/02/2010	P	REQUEST TO AMEND COMPLAINT/AMENDMENT	No
447.00	12/02/2010	P	REQUEST TO AMEND COMPLAINT/AMENDMENT	No
448.00	12/02/2010	P	AMENDED COMPLAINT	No
449.00	12/02/2010	P	EXHIBITS Exhibits for Leave to Amend	No
450.00	12/02/2010	P	EXHIBITS Exhibits for Amended Complaint	No
451.00	12/02/2010	P	MOTION TO REARGUE/RECONSIDER	No
451.10	02/15/2011	Court	ORDER	No
			<i>RESULT: Denied 2/15/2011 HON THOMAS PARKER, JTR</i>	
452.00	12/02/2010	P	MOTION TO REARGUE/RECONSIDER	No
452.10	02/15/2011	Court	ORDER	No
			<i>RESULT: Denied 2/15/2011 HON THOMAS PARKER, JTR</i>	
453.00	12/09/2010	D	OBJECTION TO MOTION for. Reconsideration to Motion to Transfer	No
454.00	12/09/2010	D	OBJECTION TO MOTION to Reargue Motion to Disqualify	No
455.00	12/13/2010	Court	ORDER	No
			<i>RESULT: Order 12/13/2010 HON THOMAS PARKER, JTR</i>	

456.00	12/15/2010	D	OBJECTION TO REQUEST TO AMEND COMPLAINT #446.00	No
457.00	12/17/2010	P	MOTION FOR CONTINUANCE RESULT: Order 12/20/2010 HON THOMAS PARKER, JTR	No
457.01	12/20/2010	Court	ORDER RESULT: Order 12/20/2010 HON THOMAS PARKER, JTR	No
458.00	01/05/2011	P	MOTION FOR WAIVER RESULT: Granted 1/6/2011 HON JAMES DEVINE, J	No
459.00	01/07/2011	Court	ORDER	No
460.00	01/11/2011	Court	ORDER RESULT: Order 1/11/2011 HON THOMAS PARKER, JTR	No
461.00	01/20/2011	P	MOTION FOR WAIVER RESULT: Denied 1/21/2011 HON PATRICK CLIFFORD, J	No
462.00	01/25/2011	Court	ORDER RESULT: Order 1/25/2011 HON THOMAS PARKER, JTR	No
463.00	01/28/2011	Court	ORDER RESULT: Order 1/28/2011 HON THOMAS PARKER, JTR	No
464.00	01/25/2011	Court	ORDER RESULT: Order 1/25/2011 HON THOMAS PARKER, JTR	No
465.00	02/03/2011	Court	ORDER RESULT: Order 2/3/2011 HON THOMAS PARKER, JTR	No
466.00	02/03/2011	P	MOTION FOR ORDER Last Correction: Legend Code - 03/02/2011	No
467.00	02/14/2011	P	COMPLEX LITIGATION APPLICATION Last Correction: Legend Code - 02/16/2011	No
468.00	02/14/2011	P	ORDER TO SHOW CAUSE	Yes
468.50	02/14/2011	P	ORDER TO SHOW CAUSE	Yes
468.90	02/14/2011	Court	DOCUMENT REPAIRED	No
469.00	02/15/2011	Court	MEMORANDUM OF DECISION	No
470.00	02/15/2011	Court	JUDGMENT WITHOUT TRIAL-GENERAL RESULT: 2/15/2011 HON THOMAS PARKER, JTR	No
471.00	02/17/2011	P	MOTION TO REARGUE/RECONSIDER RESULT: Denied 2/18/2011 HON THOMAS PARKER, JTR	No
471.01	02/18/2011	Court	ORDER RESULT: Denied 2/18/2011 HON THOMAS PARKER, JTR	No
471.50	02/17/2011	P	MEMORANDUM IN SUPPORT OF MOTION	No
472.00	02/18/2011	P	MOTION TO REARGUE/RECONSIDER RESULT: Denied 2/18/2011 HON THOMAS PARKER, JTR	No
472.01	02/18/2011	Court	ORDER RESULT: Denied 2/18/2011 HON THOMAS PARKER, JTR	No
473.00	02/18/2011	P	MEMORANDUM IN SUPPORT OF MOTION	No
474.00	02/18/2011	P	EXHIBITS A	No
475.00	02/18/2011	P	EXHIBITS B	No

476.00	02/18/2011	P	EXHIBITS C	No
477.00	02/18/2011	P	EXHIBITS D	No
478.00	02/18/2011	P	EXHIBITS E	No
479.00	02/18/2011	P	EXHIBITS F	No
480.00	02/18/2011	P	EXHIBITS G	No
481.00	02/18/2011	P	EXHIBITS H	No
482.00	02/22/2011	P	NOTICE OF INTENTION TO APPEAL Last Correction: Legend Code - 03/02/2011	No
483.00	02/23/2011	P	MOTION FOR WAIVER	No
484.00	02/23/2011	P	APPEAL TO SUPREME COURT ALL FEES PAID Last Correction: Legend Code - 02/23/2011	No
485.00	02/23/2011	P	APPEAL TO SUPREME COURT	No
486.00	02/24/2011	P	NOTICE	No
487.00	02/24/2011	P	APPEAL TO APPELLATE COURT	No
488.00	02/24/2011	P	CERTIFICATION OF SERVICE	No
489.00	02/24/2011	P	AMENDED APPEAL	No
489.50	03/01/2011	P	MOTION FOR IMMEDIATE HEARING Last Correction: No Cal - 03/02/2011	No
490.00	03/01/2011	P	MOTION FOR IMMEDIATE HEARING	No
491.00	03/01/2011	Court	NOTICE	No
492.00	03/07/2011	P	BRIEF	No
493.00	03/11/2011	Court	ORDER  RESULT: Order 3/11/2011 HON EMMET COSGROVE, J	No
494.00	03/17/2011	Court	NOTICE	No
495.00	04/11/2011	Court	JUDGMENT FILE	No
496.00	04/12/2011	Court	ORDER  RESULT: Order 4/12/2011 HON THOMAS PARKER, JTR	No
497.00	04/18/2011	Court	MEMORANDUM OF DECISION	No
498.00	05/13/2011	Court	ORDER	No
499.00	05/16/2011	P	NOTICE	No
500.00	06/02/2011	P	MOTION TO CORRECT RESULT: Order 6/13/2011 HON THOMAS PARKER, JTR	No
500.01	06/13/2011	Court	MEMORANDUM OF DECISION ON MOTION	No
501.00	08/03/2011	Court	ORDER	No
502.00	08/04/2011	P	PETITION FOR CERTIFICATION	No
503.00	08/04/2011	Court	ORDER	No

Individually Scheduled Court Dates as of 09/02/2011				
KNL-CV06-5001159-S - TRAYLOR, SYLVESTER ET AL v. AWWA, BASSAM ET AL				
#	Date	Time	Event Description	Status
No Events Scheduled				

Note: Other court activity may be separately scheduled on short calendars.

Periodic changes to terminology may be made which do not affect the status of the case.

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Exhibit 6

Traylor v. State, Not Reported in A.2d (2010)

2010 WL 816938

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.

Superior Court of Connecticut,  
Judicial District of New London.

Sylvester TRAYLOR et al.

v.

STATE of Connecticut et al.

No. CV094009523. Feb. 3, 2010.

Attorneys and Law Firms

Kirsten Rigney, Hartford, CT, Chinigo Leone & Maruzo LLP,  
Norwich, CT, for State of Connecticut et. al.

Opinion

PARKER, J.T.R.

\*1 The petitioner, Sylvester Traylor, seeks a writ of mandamus. Mr. Traylor is the plaintiff in a medical malpractice action pending in this court. See *Sylvester Traylor, Administrator of the Estate of Roberta Mae Traylor v. Bassam Awwa, M.D. et al.*, CV 06 5001159S. In the medical malpractice action, Mr. Traylor is a plaintiff as the administrator of the estate of his late wife. He is also a plaintiff in his individual capacity; he claims a loss of consortium.

In this mandamus action, the respondent is "The Honorable Chief Court Administrator Justice Barbara Quinn, on behalf of the New London District Superior Court of Connecticut, located at 231 Capitol Ave Hartford, CT 06106."<sup>1</sup> Amended Writ of Mandamus, August 12, 2009, ¶ 4.

In his complaint herein, which he captioned "Amended Writ of Mandamus," petitioner Traylor states: "... the Petitioner, Sylvester Traylor, in case number # CV-06-50011595, at all times hereinafter mentioned, has been the duly appointed and qualified administrator of the estate of the late, Roberta Roberta Mae Traylor, the Petitioner's wife." Amended Writ of Mandamus, August 12, 2009, ¶ 1.<sup>2</sup>

The respondent Awwa is a psychiatrist practicing at the respondent Connecticut Behavioral Health Associates P.C. in New London. Petitioner's wife, Roberta Mac Traylor, was a

patient of Dr. Awwa. Amended Writ of Mandamus, August 12, 2009, ¶ s 6-8.

In his complaint in this mandamus action, petitioner alleges in part:

9. The Petitioner has a legal interest in the act of the Second Respondents in case number CV-06-50011595, to perform duty of the late Honorable Judge Hurley's discovery orders hereto attached marked *Exhibit "A."* (In the table of contents hereto attached the Petitioner has outlined each of Judge Hurley's outstanding orders.) The petitioner does hereby move the above First Respondent, The Honorable Chief Court Administrator Justice Barbara Quinn, to compel the New London District Court to enforce the late Honorable Judge Hurley's Orders, and *reinstate* a Default Judgment against the Second Respondents, for the following reasons:

10. The New London District Court judges continue to reopen defaults and ignore the Second Respondent's, counsel continual failure to appear for scheduled hearings while the Second Respondents remains in default for failure to file an answer to Judge Hurley's Orders. The Pro Se, Petitioner contention is that he has been substantially prejudiced against because of his Pro Se status as a litigant which is a violation of his Equal Protection Rights, under the 14th Amendment of the U.S. Constitution (Due Process). As a Pro Se litigant, the Petitioner would not have been given ten 10 unprecedented opportunities to file an answer to any order of court.

Amended Writ of Mandamus, August 12, 2009, ¶ s 9-10, p. 2.

In his Prayer for Relief, petitioner Traylor asks, among other things-

2. The Petitioner does hereby moves the above First Respondent, The Honorable Chief Court Administrator Justice Barbara Quinn, to compel the New London District Court to enforce the late Honorable Judge Hurley's Orders, and *reinstate* a default judgment. See entry 211.

\*2 3. The Petitioner does hereby request, a hearing on damages to be rescheduled, so that the Petitioner may resume his due process rights and seeking judicial remedies to the medical malpractice upon the Petitioner's deceased wife, Roberta Mac Traylor.

Amended Writ of Mandamus, August 12, 2009, Prayer for Relief, ¶ s 2-3, p. 11.

Traylor v. State, Not Reported in A.2d (2010)

Now before the court, are the respondents' motions to dismiss. Defendant's Motion to Dismiss, July 17, 2009, [103] and Defendants' Connecticut Behavioral Health Associates, P.C. And Bassam Awwa, M.D.'s Motion to Dismiss, October 2, 2009.[122].

In each of their motions to dismiss, the respondents claim that mandamus does not lie where there is a right of appeal regarding the complained of actions.

The nature of mandamus is unusual:

"Mandamus is an extraordinary remedy, available in limited circumstances for limited purposes ... It is fundamental that the issuance of the writ rests in the discretion of the court, not an arbitrary discretion exercised as a result of caprice but a sound discretion exercised in accordance with recognized principles of law ... That discretion will be exercised in favor of issuing the writ only where the plaintiff has a clear legal right to have done that which he seeks ... The writ is proper only when (1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy." (Citations omitted; internal quotation marks omitted.) *Miles v. Foley*, *supra*, 54 Conn.App. [645.] 653, 736 A.2d 180 [ (1999) ]. *Miles v. Foley*, 253 Conn. 381, 391, 752 A.2d 503 (2000).

Petitioner Traylor asks this court to issue a writ of mandamus against the Chief Court Administrator requiring the Chief Court Administrator to require New London judges to change decisions those judges have made in the malpractice case. As the court understands the issue, Judge Hurley entered discovery orders requiring the malpractice defendants to disclose certain materials and information to the plaintiff. Plaintiff maintains the defendants have not complied with Judge Hurley's orders. Plaintiff moved in the malpractice case to have Judge Hurley's orders enforced. One or more New London judges have held that the malpractice defendants were not in violation of the Judge Hurley's orders. What petitioner Traylor seeks in this mandamus action is to have this court order the Chief Court Administrator to order the New London judges to change their decisions and find that the malpractice defendants are in violation of Judge Hurley's orders.

The Chief Court Administrator does not have the authority to do what the Petitioner seeks. *Hartford Courant Company v.*

*Pellegrino*. 380 F.3d 83 (2 Cir.2004), involved judicial orders sealing court files. The Second Circuit held that the Chief Court Administrator did not have the authority to unseal files which had been sealed judicially, i.e., by judges.

\*3 It is true, however, that neither the Chief Court Administrator nor the Chief Justice are vested, in their administrative capacity, with the authority to overturn orders issued by other judges or to open statutorily sealed files. They are, therefore, not able to provide relief to the plaintiffs insofar as that relief would require them to grant access to documents that are sealed by statute or judicial order.

*Hartford Courant Company v. Pellegrino*, 380 F.3d 83, 97 (2 Cir.2004).

Our Supreme Court has said the discretionary authority of the Chief Court Administrator "although broad, is not unbridled." *Pamela B. v. Ment*, 244 Conn. 296, 318, 709 A.2d 1089 (1998). That case involved the lengthy delays occurring when children were removed from their parents' custody by the defendant commissioner of children and families. It was claimed that the parents were being denied their right to a timely evidentiary hearing to challenge the state's basis for the removal orders. The delays, it was claimed, were caused by the inadequate number of judges assigned to hear Juvenile Matters. Among other claims for relief, plaintiff sought an order directing the Chief Court Administrator to allocate sufficient resources to the Superior Court for Juvenile Matters so as to eliminate the lengthy delays. The Supreme Court agreed with the plaintiff that the Chief Court Administrator "cannot formulate or interfere with the rules of practice and procedure that directly control the conduct of particular litigation." *Pamela B. v. Ment*, 244 Conn. 296, 326, 709 A.2d 1089 (1988).

*Hartford Courant Company* and *Pamela B.* inform that the Chief Court Administrator cannot, and does not have the power to, interfere with judicially imposed orders. No law imposes on the Chief Court Administrator a mandatory and non-discretionary duty to order the New London Superior Court judges to take certain actions in Petitioner's malpractice action.

What petitioner seeks from the Chief Court Administrator calls upon the exercise of her discretion. The need for her to exercise her discretion negates issuance of a writ of mandamus. Mandamus may be invoked only when the officer to whom the writ would run has failed to take action mandated by law.

## Traylor v. State, Not Reported in A.2d (2010)

Finally, both motions to dismiss now before the court are primarily based on the proposition that mandamus does not lie in this case because the questioned judicial orders in the malpractice case are reviewable on appeal. Respondents correctly rely upon *Huggins v. Mulvey*, 160 Conn. 559, 280 A.2d 364 (1971). The Supreme Court stated in *Huggins-*

of the court in all of the matters which are complained of could properly be made an issue in an appeal from the final judgment. The plaintiffs' rights are fully protected by the remedy of appeal which is open to them at the conclusion of the case now pending in the Superior Court./f *Huggins v. Mulvey*, 160 Conn. 559, 561, 280 A.2d 364 (1971).

Nor is mandamus a proper remedy where, in regular course, a lower court's decision may be reviewed upon appeal. See *Maryland v. Soper*, 270 U.S. 9, 29, 46 S.Ct. 185, 70 L.Ed. 456. Neither mandamus nor a writ of prohibition is warranted in situations in which the right of appeal from the action complained of exists. *Ex parte United States*, 263 U.S. 389, 393, 44 S.Ct. 130, 68 L.Ed. 351; *Ex parte Tiffany*, 252 U.S. 32, 37, 40 S.Ct. 239, 64 L.Ed. 443; see *Ex parte Muir*, 254 U.S. 522, 534, 41 S.Ct. 185, 65 L.Ed. 383.

Petitioner Traylor does not claim that any of the orders in the malpractice action cannot be the subject of an appeal once the malpractice action has been concluded. Those orders may be reviewed upon appeal. Therefore, mandamus does not lie.

For the foregoing reasons, the motions to dismiss are granted.

\*4 The petition which the plaintiffs seek permission to file makes no allegation whatever that the Superior Court lacks jurisdiction in any of the matters complained of nor, indeed, is there any basis for such an allegation. The action

On December 21, 2009, the court ordered that the parties and counsel were to take no further action in these cases until counsel appeared for the estate. The court ordered that no filings be made in these cases and, if anything was submitted for filing the clerk would return it without filing same.

If any party desires to appeal the decision made herein, that party may do so and the no filing restriction shall not apply with respect to filings for the appeal.

## Footnotes

- 1 231 Capitol Ave., Hartford is the location of the Chief Court Administrator's office.
- 2 Mr. Traylor is not an attorney. Nevertheless, he has been representing the estate of his late wife in the malpractice case. However, on December 21, 2009, the court ordered that Mr. Traylor may no longer represent the estate. *Sophie Ellis (Executrix of the Estate of Jane Huberman) v. Jeffrey Cohen*, 118 Conn.App. 211, 982 A.2d 1130 (December 1, 2009). Mr. Traylor was given until April 21, 2010 to have an attorney enter an appearance for the estate. If an attorney does not appear on behalf of the estate by that date, the action on behalf of the estate will be dismissed.

End of Document

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Exhibit 7

Traylor v. State Superior Court, 128 Conn.App. 182 (2011)

15 A.3d 1173

15 A.3d 1173  
Appellate Court of Connecticut.

Sylvester TRAYLOR et al.

v.

STATE of Connecticut SUPERIOR COURT.

No. 31988. Argued Feb. 7,  
2011. Decided April 19, 2011.

### Synopsis

**Background:** Petitioner sought mandamus relief, ordering the Superior Court to enforce discovery orders and reinstate a default judgment against defendants in medical malpractice action. The Superior Court, Judicial District of New London, Thomas F. Parker, Judge Trial Referee, dismissed mandamus action. Petitioner appealed.

**Holding:** The Appellate Court held that mandamus relief was not available, where petitioner had a remedy by appeal from final judgment in medical malpractice action.

Affirmed.

### Attorneys and Law Firms

\*\*1174 Sylvester Traylor, pro se, the appellant (plaintiff).  
Michael K. Skold, assistant attorney general, for the appellee (named defendant).  
John B. Farley, Hartford, for the appellees (defendant Bassam Awwa et al.).

GRUENDEL, ROBINSON and PETERS, Js.

### Opinion

PER CURIAM.

\*183 The pro se plaintiff, Sylvester Traylor,<sup>1</sup> appeals from the judgment of the trial court in favor of the defendants, the state of Connecticut Superior Court (state), Bassam Awwa and Connecticut Behavioral Health Associates, P.C., dismissing his mandamus action. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. In 2006, the plaintiff, individually and as administrator of the estate of his late wife, commenced an action against Awwa and Connecticut Behavioral Health

Associates, P.C. (malpractice defendants), alleging claims of medical malpractice and loss of consortium. In that action, the plaintiff served the malpractice defendants with various discovery requests. The malpractice defendants \*184 objected to some of the requests and, because the parties were unable to resolve all of their differences regarding the objections, they appeared before the court, *Hon. D. Michael Hurley*, judge trial referee, on August 20, 2007. On that date, the court heard argument from both sides and issued several discovery orders requiring compliance by the malpractice defendants. Thereafter, on April 24, 2008, the plaintiff filed a motion \*\*1175 to default the malpractice defendants, alleging that they failed to comply with the discovery orders. The court, *Abrams, J.*, granted the motion. On June 17, 2008, the malpractice defendants filed a motion to open the judgment of default and on July 1, 2008, the court granted the motion explaining that it “entered the default order without reviewing [the] defendants’ objection, which was not in the file.” Subsequently, the plaintiff filed several motions contending that the malpractice defendants had not complied with the discovery orders. The judges that heard the motions denied them, concluding that the malpractice defendants had not violated the discovery orders. Judgment was rendered for the malpractice defendants in the malpractice action on February 15, 2011, and the plaintiff appealed from that judgment to this court on February 24, 2011.

On August 12, 2009, the plaintiff filed an amended application for a writ of mandamus ordering Judge Barbara Quinn, the chief court administrator of the state of Connecticut, to “compel the New London [Superior] Court to enforce the [discovery orders], and [to] reinstate a default judgment.” The state and the malpractice defendants both filed motions to dismiss the mandamus action, claiming that a writ of mandamus could not lie where the plaintiff had a right of appeal regarding the trial court’s decisions in the separate action. On February 3, 2010, the court, *Hon. Thomas F. Parker*, judge trial referee, granted the motions to dismiss because the plaintiff did not claim that any of the discovery \*185 orders could not be subject to an appeal once the malpractice action had concluded. The plaintiff appeals from this decision.

1 2 3 On appeal, the plaintiff claims that the court abused its discretion in denying his application for a writ of mandamus.<sup>2</sup> We disagree.

4 5 6 7 8 “The requirements for the issuance of a writ of mandamus are well settled. Mandamus is an

Traylor v. State Superior Court, 128 Conn.App. 182 (2011)

15 A.3d 1173

extraordinary remedy, available in limited circumstances for limited purposes.... It is fundamental that the issuance of the writ rests in the discretion of the court, not an arbitrary discretion exercised as a result of caprice but a sound discretion exercised in accordance with recognized principles of law.... That discretion will be exercised in favor of issuing the writ only where the plaintiff has a clear legal right to have done that which he seeks.... The writ is proper only when (1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy.... Even satisfaction of this demanding [three-pronged] test does not, however, automatically compel issuance of the requested writ of mandamus.... In deciding the propriety of a writ of mandamus, the trial court exercises discretion rooted in the principles of equity. \*186 ... We review the trial court's decision, therefore, to determine whether it abused its discretion in denying \*\*1176 the writ." (Citations omitted; internal quotation marks omitted.) *AvalonBay Communities, Inc. v. Sewer Commission*, 270 Conn. 409, 416–17, 853 A.2d 497 (2004).

#### Footnotes

- 1 Although the mandamus action was filed on behalf of Sylvester Traylor individually and as administrator of the estate of Roberta Mae Traylor, only Sylvester Traylor in his individual capacity has appealed. We therefore refer to Sylvester Traylor in his individual capacity as the plaintiff in this opinion.
- 2 The plaintiff also makes several claims based on the premise that the court, in denying his application for a writ of mandamus, deprived him of various constitutional rights. We decline to review these claims because they are inadequately briefed. "Although we are solicitous of the rights of pro se litigants ... [s]uch a litigant is bound by the same rules ... and procedure as those qualified to practice law.... [W]e are not required to review claims that are inadequately briefed.... We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Citation omitted; internal quotation marks omitted.) *Thompson v. Rhodes*, 125 Conn.App. 649, 651, 10 A.3d 537 (2010).

9 On the basis of our review of the record, and the briefs and arguments of the parties, we conclude that the court properly denied the plaintiff's application for a writ of mandamus because the plaintiff has failed to demonstrate that there is no other specific adequate remedy available to review the court's actions. Moreover, because the actions of the court that are complained of here may be made an issue in the plaintiff's appeal from the final judgment of the medical malpractice action, mandamus is not warranted. See *Huggins v. Mulvey*, 160 Conn. 559, 561, 280 A.2d 364 (1971) (mandamus not warranted in situations in which right of appeal from action complained of exists). Accordingly, we conclude that the court did not abuse its discretion in denying the plaintiff's application for a writ of mandamus.

The judgment is affirmed.

In this opinion the other judges concurred.

Parallel Citations

15 A.3d 1173

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# EXHIBIT Q

Exhibit "C"

MASHANTUCKET PEQUOT GAMING

AND ATHLETIC COMMISSION



BY HAND DELIVERY &  
CERTIFIED U.S. MAIL

December 23, 1997

Mr. Sylvester Traylor  
389B Wyassup Road  
North Stonington, CT 06379

Dear Mr. Traylor:

The Investigations Division of the Mashantucket Pequot Gaming and Athletic Commission has completed an investigation related to your activities at the Foxwoods Resort Casino. Based upon this investigation and in compliance with the Mashantucket Pequot Gaming Ordinance, this office regrets to inform you that you are hereby immediately EXCLUDED from attendance at any Tribal gaming facility and the Reservation of the Tribe for the following reason(s):

Your repeated threatening, harassing and disruptive conduct toward numerous employees of the Mashantucket Pequot Gaming Enterprise; your admitted theft of meals from the Enterprise employee cafeterias; and, your repeated misrepresentation of yourself as a member of the Mashantucket Pequot Tribe.

Should you hereafter appear at Foxwood's Resort and Casino or on the Mashantucket Pequot Reservation you will be subject to arrest for criminal trespass.

Should you desire a formal hearing on your EXCLUSION, a written request for the same should be directed to John B. Meskill Executive Director of the Commission, and must be received by the Gaming and Athletic Commission office located at P.O. Box 3250, Route 2, Mashantucket, Connecticut 06339-3250, within seven (7) days of the receipt of this Notice of Exclusion.

Sincerely,

Joseph W. Butchka  
Chief of Investigations and Licensing  
Mashantucket Pequot Gaming &  
Athletic Commission

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

JWB:ms

cc: Roy Butler, William Hickey, John B. Meskill

P.O. Box 3250/Route 2/Mashantucket, Connecticut 06339-3250/860-885-4553/Fax 860-885-3093

# EXHIBIT R

Date: 6/18/14  
Time: 7:54:29

NEW LONDON POLICE DEPARTMENT  
Incident Report

Page: 1  
Program: CMS301L

Incident Number: 1-11-001732 Classification : Trespassing  
Case Status : Arrest Made Report Officer : KARASUK, PETER  
Assisting : KEATING, LAWRENCE Occur From Date: 4/14/11 18:28  
Occur To Date : 4/14/11 18:28 Report Date : 4/14/11 21:54  
Day Of Week : Thursday  
Common Name : CONNECTICUT COLLEGE, 240 MOHEGAN AV  
City : NEW LONDON,  
Supervisor : KEATING, LAWRENCE Entry Employee : KARASUK, PETER

\*\*\*\*\* ADDITIONAL TIMES \*\*\*\*\*

Date Dispatched: 4/14/11 18:30 Date Arrived : 4/14/11 18:32  
Date Cleared : 4/14/11 19:20

\*\*\*\*\* RELATED INCIDENTS \*\*\*\*\*

Incident #	Incident #	Source
1-11-001536		CITA Criminal Infraction

\*\*\*\*\* OFFENSE REPORT # 1 \*\*\*\*\*

Classification : Trespassing Attempted ? : Committed  
Statute Number : 53A-110A Statute Name : SIMPLE TRESPASS  
Weapon : Offe: None Family Violence: No  
Gang Related : No UCR Clearance : Not Cleared

\*\*\*\*\* OFFENSE PRIMARY RELATIONSHIPS \*\*\*\*\*

Offense #: 001 Trespassing / / 53A-110A  
Name #...: 001 (SUSP) TRAYLOR, SYLVESTER  
Name #...: 001 (VICT) CONNECTICUT COLLEGE

\*\*\*\*\* NAME PRIMARY RELATIONSHIPS \*\*\*\*\*

Name #...: 001 (VICT) CONNECTICUT COLLEGE  
Name #...: 001 (SUSP) TRAYLOR, SYLVESTER / Not Applicable to Crime Type

\*\*\*\*\* PERSON REPORTING INFO - # 1 \*\*\*\*\*

Name : SECURITY, MR HOME : 860/442-0000  
WORK : 000/000-0000 OTHER : 000/000-0000

\*\*\*\*\* SUSPECT / ARRESTEE INFORMATION - # 1 \*\*

Name : TRAYLOR, SYLVESTER  
Address : 881 VAUXHALL EXT ST  
City : QUAKER HILL, CT  
Race : Black Sex : Male  
Hispanic ? : Non-Hispanic Date of Birth : 11/25/1961 49  
Maximum Age : 49 Minimum Height : 511  
Build : Medium Eye Color : Brown  
HAT : BASEBALL HAT SHIRT : TSHIRT  
PANT : JEANS SHOE : SNEAKERS  
Adult / Juvenil: Adult Oper Lic No. : 117312935 CT

\*\*\*\*\* WITNESSES INFORMATION - # 1 \*\*\*\*\*

Date: 6/18/14

NEW LONDON POLICE DEPARTMENT

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Time: 7:54:29

NEW LONDON POLICE DEPARTMENT  
Incident Report

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Program: CMS301L

1-11-001732 (Continued)

per s3a mr sylvester has been banned from ct college they wi

\*\*\*\*\* N A R R A T I V E # 2 \*\*\*\*\*

ORIGINAL  
Reported By: KARASUK, PETER 4/14/11  
Entered By.: KARASUK, PETER 4/14/11  
Reviewed By: KEATING, LAWRENCE M. 4/14/11

Type of Incident: Trespassing

Date and Time: 4/14/11 at 1828hrs

Location: Connecticut College  
240 Mohegan Ave, New London, CT 06320

Accused: Traylor, Sylvester DOB 11/25/61  
881 Vauxhall St Ext, Quaker Hill, CT 06375

Charge: 53a-110a Simple Trespass

Narrative:

On 4/14/11 at 1828hrs I was on uniformed patrol in a clearly marked New London Police cruiser (#176) when I was dispatched to a suspicious event at Connecticut College (240 Mohegan Ave, New London, CT 06320). Prior to my arrival Sgt LM Keating called out that he was with a subject in front of the Cummings Art Center. Upon my arrival Sgt LM Keating had one male detained. Sgt LM Keating and I spoke with Sylvester Traylor (DOB 11/25/61) who was detained. Sgt LM Keating never raised his voice to Traylor and officers were professional during the entire incident. Campus Security located Traylor trespassing on the campus at the Cummings Art Center. Traylor stated he was at the campus because he was trying to locate a sketch artist. Traylor stated he had talked to a few professors at the campus. Traylor changed his story numerous times and seemed to be confused when Sgt LM Keating was asking him questions.

Sgt LM Keating went inside the art center to speak with the callers while I stayed with Traylor. Traylor remained quiet except to ask if he could answer his cell phone and I did not let Traylor answer the phone at that time. Sgt LM Keating removed the handcuffs off of Traylor. Traylor was issued an infraction for Simple Trespass (53a-110a). Traylor was informed by Connecticut College security that he is banned from Connecticut College and will be sent a formal letter. See Sgt LM Keating's supplemental report for further information.

\*\*\*\*\* N A R R A T I V E # 3 \*\*\*\*\*

\*\*\* SUPPLEMENT DETAILS \*\*\*

Entry Emp/Date/Time. : KEATING, LAWRENCE 4/14/11  
Review Emp/Dte/Time. : BASKETT, TYRONE 4/14/11  
Report Emp/Dte/Time. : KEATING, LAWRENCE 4/14/11 21:54

Date: 6/18/14  
Time: 7:54:29

NEW LONDON POLICE DEPARTMENT  
Incident Report

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Program: CMS301L

1-11-001732 (Continued)

SUPPLEMENTAL

Reported By: KEATING, LAWRENCE M. 4/14/11  
Entered By.: KEATING, LAWRENCE M. 4/14/11  
Reviewed By: BASKETT, TYRONE 4/14/11

On 04-14-2011 at 1828 hrs Officers were dispatched to Connecticut College for a report of a suspicious black male who was watching artists. I was near by and responded to the scene. New London Police Dispatch stated that the problem was at the Cummings Art Center.

Upon arrival to the Cummins Art Center I observed a Campus Safety Officer standing on the side of the road near a college vehicle. I exited my New London Police vehicle #172 and began walking toward him. I then realized that the black male sitting in the vehicle in front of him was the suspicious person. Before I could return to my vehicle to get my microphone and turn the camera on, the black male began exiting his vehicle. The black male was later identified as Sylvester Traylor, hereinafter referred to as the accused. I told the accused to get back in the vehicle and he continued to exit the vehicle and question why he was being told to stay in the vehicle. As I was instructing him, again, to stay in the vehicle, he placed his right hand into his right front pants pocket. I told the accused to remove his hand from his right pocket and he pushed it in farther and appeared to be trying to find something with his hand. At this time I took hold of his arm at the wrist and pulled it from his pocket. Initially, I could feel the accused resisting my effort, but he began to comply quickly. I turned the accused around and placed him up against the side of the vehicle. The accused continually stated that he wasn't doing anything wrong and was questioning my actions. I explained to him what I was doing and why. The accused continued to argue, so I placed both of his hands behind his back and placed handcuffs on him. The handcuffs were checked for proper application and I told the accused he was not under arrest and that he was only being detained in handcuffs because of his actions. I walked the accused over to the curb and told him to sit down. I held the accused's arm as he was sitting and he then accused me of trying to pull him to the ground and that he was capable of sitting at his own speed. I continued to hold the accused's arm for his safety so he would not injure himself as he sat down in handcuffs.

At this point Officer Karasuk had arrived on scene and I asked him to watch the accused while I spoke to the campus safety officer and the two witnesses. The campus safety officer stated they received a call from students who were working in the art studios when the accused entered and started asking questions about hiring the student to do sketch work. One of the students is a female and was posing nude at the time. The accused stated he had been told by two art professors to go the third floor art studios to look for an artist to do sketches. The accused stated that he heard loud music and saw the door ajar so he entered the room. He stated he walked passed the female posing and addresses the artist out of view of the female.

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Time: 7:54:29

NEW LONDON POLICE DEPARTMENT  
Incident Report

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The campus safety officer and I went to the studio and spoke to the two students. The students were working in a studio with small cubicles that clearly are work spaces for individual students and not a studio that was large or appeared to be a classroom setting or for public use as personal items were visible in the room.

The female student, stated that she was laying on a couch type sofa nude. Out of the corner of her eye she saw something move in between the opening of the partitions. She thought it was another art student so she did not move. When she realized that the person was not moving she turned to look and observed the accused looking at her. She estimated the time to be five to ten seconds. The accused then continued walking to where he could not see her and began speaking to the artist, a male student. Upon walking out of the room the accused turned and looked at her again, still in the nude, and told her to have a good day. The female student stated that the accused "would have been able to look at all of me, including my vagina, because of the way I was laying". The female student felt that the accused was lying as to why he needed a sketch artist and felt that he was making up an excuse as he spoke because of his hesitation to answer and the odd and vague explanation he gave.

The male student stated he could not see the accused until he walked over to where he was working because the partition was blocking his view of the accused approaching, so he could not estimate how long the accused was standing at the partition. The male student stated the accused told him he was looking for a sketch artist. When he asked why, the male student also felt as though the accused was lying and making up an excuse, for the same reasons as the female student. The accused told the male student that he was involved in a law suit and needed a sketch artist to draw the court room and the judge. When the male student told the accused that he was not interested the accused continued to try to convince the student to do the work.

When I spoke to the students about the accused stating he spoke to two art professors and was told to go up to the studios, they both stated they have great art professors, but that the professors would not be working that late. They stated they never see professors that late at night in the building on a regular night. Both students stated they felt very uncomfortable with the accused and his actions and immediately called campus safety to report the incident. When I asked about the loud music they agreed that the music was loud. When I asked about the open door they stated the door was ajar but only a little bit, so other art students who regularly use the private cubicles could enter. They both stated the door was not left wide open. Additionally, both students were hesitant to give their names and, mostly, their addresses because the accused made them feel so uncomfortable. It was agreed that I would use the generic college address and contact with them would be made using school officials. Also, when entering the studio you can not see the area where the female student was posing. The get to this area you would have to walk into the room, make a right turn and walk down a short aisle

Date: 6/18/14  
Time: 7:54:29

NEW LONDON POLICE DEPARTMENT  
Incident Report

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1-11-001732 (Continued)

between the rows of partitions.

After speaking to the two students I returned to speak with the accused. He then stated that he spoke to three art professors who told him to go to the studios. Also, the accused implied that he knows the Director of the art department and that he knows "a lot of people" on the campus. I noticed the accused was wearing an Army Veteran ball cap and that his vehicle was registered in New Mexico, 403-NTW. I asked the accused where he lived and he stated an address in Waterford, CT. When I asked about the vehicle, he stated it belonged to a man in the Navy. When I looked into the rear of the vehicle I observed, in plain view, a US Coast Guard sweatshirt and a US Coast Guard embroidered back pack. I asked the accused if he was in the Coast Guard and he replied that he was not and that he had served in the Army. When I asked where he got the US Coast Guard equipment, he paused, and said, "I have a friend in the Coast Guard." At this point I determined the accused would be cited for simple trespass and the campus safety officers stated they wanted him banned from campus.

I removed the handcuffs from the accused at this time. The did not observe any type of injury to the accused, nor did he complain of any injury. I explained to the accused that the College was private property and that he could not go anywhere he pleased. The accused argued that the college was open to the public and he was not trespassing. After numerous attempts to explain that private property with public access does not entitle him to go any everywhere he pleased on the property, the accused continue to disagree and I stopped addressing the issue with him. The accused stated he would plead not guilty to the infraction and I explained how to go about pleading not guilty. While waiting for the infraction to be issued the accused stated that he knows members of my family. I explained that he was not going to intimidate me by claiming to know my family and he replied, "We'll see." I do not know the accused, nor can I recall having any contact with the accused before this incident.

The accused was issued the infraction by Off. Karasuk and told by campus safety officers and I that he was now banned from the Connecticut College campus and if he returned would be arrested immediately. The accused stated he understood he could not returned to the campus. As he was entering his vehicle the accused looked at me and stated, "Say hi to the Deputy Chief for me." Again I explained that I would not be intimidated by who he knows and he replied, "I know".

Throughout the incident the accused was evasive in his answers, argumentative when questioned about his actions and did not have a clear explanation for his being on the campus or being in rooms that are clearly for the use of students and not members of the public. The accused was treated in a professional manner throughout the incident. End.

# EXHIBIT S

Sylvester Traylor v. Department of the Navy  
01A31450  
September 8, 2003

Sylvester Traylor,  
Complainant,

v.

Hansford T. Johnson,  
Acting Secretary,  
Department of the Navy,  
Agency.

Appeal No. 01A31450

Agency No. 02-61115-001

#### DECISION

Complainant filed a formal complaint in Agency Case No. 02-6115-001 alleging that he was subjected to discrimination based on reprisal for prior EEO activity when:

On January 24, 2001, he was not selected for the position of Cashier;

On February 15, 2001, he was terminated from the NEX Security Department;

In February 2001, a Security Manager issued a defamatory and untrue memo to supervisors and managers about him;

In March 2001, a Security Manager contacted complainant's supervisor at the Morale, Welfare and Recreation Department to discredit and disgrace his name;

In March 2001, his supervisor told a former coworker of his that he was not allowed to talk to complainant;

In March 2001, the Security Manager contacted the Naval Submarine Base Security Department to have complainant's car decals removed and complainant's identification card taken away so complainant could not re-enter the Naval Submarine Base, even though he knew complainant was employed at the Morale, Welfare, and Recreation Department of the Naval Submarine Base; and

On March 14, 2001, the local town police were called to the Naval Housing Facility after a person living there thought complainant was following her.

The agency issued a decision dated February 8, 2002, dismissing claims (a) through (f) for untimely EEO Counselor contact. Additionally, the agency

dismissed claim (g) for failure to state a claim. Complainant appealed the agency's decision and argued that he previously raised the alleged matters, via a letter dated March 16, 2001, which he presented to an identified EEO Counselor.

In our previous decision, in *Sylvester Traylor v. Department of Navy*, EEOC Appeal No. 01A22217 (October 31, 2002), the Commission affirmed the dismissal of issues (a) and (g). However, the Commission found that there was no evidence in the record to show whether complainant submitted his March 16, 2001 letter in order to initiate the EEO complaint processing with regard to the matters raised therein. Therefore, the Commission remanded the matter and ordered the agency to provide in the record a statement from the identified EEO Counselor, indicating whether complainant gave the letter to the same EEO Counselor in order to initiate the EEO complaint process concerning the matters raised therein. The Commission further ordered the agency to then redetermine whether claims (b) - (f) were timely raised with an EEO Counselor.

The agency reissued a notice of dismissal of Agency Case No. 02-61115-001, on December 12, 2002. The agency referenced the declaration of the counselor in its final decision. The agency decided that issues (b) - (f), occurring from January through March 2001, were untimely. The agency noted that complainant did not file on these issues in his formal complaint for Agency Case No. 01-6115-001 filed on February 16, 2001 nor did he seek counseling for these issues. The agency noted that on February 27, 2001, complainant requested a right to sue letter in order to file a claim in U.S. District Court which the Deputy EEO Officer responded to on March 7, 2001, informing complainant of the forty-five (45) day requirement to contact a counselor to bring any new issues into the process. The agency stated that on March 16, 2001, complainant visited the EEO Office and informed the EEO Counselor that he did not trust the EEO Office and provided the office with a copy of a claim he filed in U.S. District Court. The agency claimed that the EEO Counselor signed and dated the notice complainant gave him and reminded him of the forty-five (45) day time limit to initiate a new claim. The agency concluded that since complainant did not file an informal complaint on the described issues until September 9, 2001, his complainant is dismissed for untimely counselor contact.

The record contains a declaration of the identified EEO Counselor in which he states that complainant came to his office to drop off a copy of the March 16, 2001 letter addressed to the Staff Judge Advocate of NAVSUBASE New London. The counselor states that he asked complainant if he wanted to be interviewed to complete an intake sheet to start the informal complaint process for a new complaint. The counselor states that complainant told him he was not interested in starting another complaint. The counselor explains that complainant provided the EEO Office with a copy of a complaint dated March 2, 2001, that he indicated he would file in U.S. District Court because he was voicing his displeasure with the EEO process. The Counselor states that he explained the need to go through the informal process and that he had forty-five (45) days to commence the process. The counselor states that he annotated the document as received from complainant and dated it in order to indicate that he advised complainant of the time limitation for processing.

Complainant filed the present appeal on January 3, 2003, challenging the agency's December 12, 2002 dismissal of his complaint for untimely counselor contact.<1> In his appeal, complainant refers to the signature of the EEO Counselor acknowledging receipt of his March 16, 2001 letter. Complainant claims that the EEO Counselor and the Deputy EEO Officer, told him that it was not necessary for him to open a new case against the same respondent, but they will incorporate the complainant's March 16, 2001 letter, into his previous complaint, Agency Case No. 01-61115-001. Complainant further states that the EEO Counselor requested that he "cc" the March 16, 2001 letter to Agency Case No. 01-61115-001.

Upon review of all submissions on appeal, the Commission finds that the agency properly dismissed issues (b) - (f) of complainant's complaint for untimely EEO Counselor contact. We find that complainant has not presented evidence to show that he submitted his March 16, 2001 letter in order to initiate the EEO complaint processing with regard to the matters raised therein. Since the incidents alleged in issues (b) - (f) occurred between February 2001 through March 2001, we find that complainant's September 9, 2001 counselor contact was beyond the applicable limitations period.

Accordingly, the agency's final decision dismissing complainant's complaint is AFFIRMED.

## STATEMENT OF RIGHTS - ON APPEAL

### RECONSIDERATION (M0701)

The Commission may, in its discretion, reconsider the decision in this case if the complainant or the agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) within thirty (30) calendar days of receipt of this decision or within twenty (20) calendar days of receipt of another party's timely request for reconsideration. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 9-18 (November 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0900)

You have the right to file a civil action in an appropriate United States District Court within ninety (90) calendar days from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, filing a civil action will terminate the administrative processing of your complaint.

#### RIGHT TO REQUEST COUNSEL (Z1199)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:

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Carlton M. Hadden, Director  
Office of Federal Operations

September 8, 2003

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Date

<sup>1</sup>Complainant also appeals the agency's decision in Agency Case No. 01-61115-001, which is being addressed by the Commission in a separate decision under EEOC Appeal No. 01A33880.

# EXHIBIT T

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 Traylor-stip.doc  
113K

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**Sylvester Traylor <syldr02@gmail.com>**  
To: Lois G Andrews <LAndrews@newlondonlegal.com>

Thu, Apr 15, 2010 at 6:37 PM

Lois,  
First of all, Thank-you.  
I got it, and I'm meeting with the other attorney tomorrow morning.  
Syl

[Quoted text hidden]

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**Sylvester Traylor <syldr02@gmail.com>**  
To: syldr02@gmail.com

Mon, Apr 19, 2010 at 3:05 PM

Lois,  
I'm attaching the correction to the stipulation. Initially when I saw point number #4 four, I wanted it to be deleted because this statement ONLY reflect the statement of Beth, who should be advised of her rights concerning her slanderous remarks to you that she believed I killed my wife which is contrary to the Medical Examiner Report. Futhermore

Beth together with Andy and Chris should be informed in a separate letter concering slanderous remarks, the clean hands doctrine and the fact that should they take the witnesses stand against their own mother's wrongful death suit they maybe treated as hostelt witnesses.

Prior to Roberta's death she clear communicated to Beth verbally as well as in writing by using the words: "*Beth, I am disappointed in you because we had to go to the Juvenile Court concerning your belligerent behavior.*" These words were also records during the Juvenile Court hearing.

As you can see even in her mother's death, she is still being influence to hate and continue her belligerent behavior. It took the Juvenile Court to tell her that her attitude towards her mother and step-father was not the cause of her being on the Sub-Base at 3:00am. It may take the Superior Court to tell her what is liability concerning slanderous remarks and the clean hands doctrine. If she wants nothing to do with this case then she should have no problem signing this stipulation. Please find attached the amend

Syl

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**Sylvester Traylor <syldr02@gmail.com>**  
To: Lois G Andrews <LAndrews@newlondonlegal.com>

Mon, Apr 19, 2010 at 3:37 PM

On Mon, Apr 19, 2010 at 3:05 PM, Sylvester Traylor <syldr02@gmail.com> wrote:

Lois,

Ex B "

I'm attaching the correction to the stipulation. Initially when first read point number #4 four, I was upset, and I wanted it to be deleted because this statement ONLY reflect the statement of Beth, who should be advised of her rights concerning her slanderous remarks, to YOU which is NOT recorded in the stipulation that she believed that I killed my wife which is contrary to the Medical Examiner Report. Furthermore her actions constitutes intentional, reckless and/or negligent actions by stating to a third party slanderous remarks that she believe that I killed my wife. I have **NEVER** been charged and/or convicted of any crimes associated with the slanderous remarks made by Beth.

Beth together with Andy and Chris should be INFORMED in a separate letter:

1. Concerning slanderous remarks,
2. The clean hands doctrine,
3. And the fact that should they take the witnesses stand against their own mother's wrongful death suit they maybe treated as hostel witnesses.

Prior to Roberta's death she clearly communicated to Beth verbally as well as in writing by stating: "*Beth, I'm disappointed in you because we had to go to the Juvenile Court concerning your belligerent behavior.*" These words were also records during the Juvenile Court hearing.

As you can see, even in her mother's death, she is still being influence to hate and continue her belligerent behavior. It took the Juvenile Court to tell her that her attitude towards her mother and step-father was not the cause of her being on the Sub-Base at 3:00a.m. It may take the Superior Court to tell her what is liability concerning slanderous remarks and the clean hands doctrine.

If Beth, Andy and Chris doesn't want anything to do with this case then they should have no problem signing this stipulation.  
Please find attached the stipulation.

Syl

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EXIB