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## Week of August 29, 2016

*Welcome to our Supreme and Appellate Court summaries webpage. On this page, I provide abbreviated summaries of decisions from the Connecticut Appellate Courts which highlight important issues and developments in Connecticut law, and provide practical practice pointers to litigants. I have been summarizing these court decisions internally for our firm for more than 10 years, and providing relevant highlights to my municipal and insurance practice clients for almost as long. It was suggested that a wider audience might appreciate brief summaries of recent rulings that condense often long and confusing decisions down to their basic elements. These summaries are limited to the civil litigation decisions. I may from time to time add commentary, and may even criticize a decision's reasoning. Such commentary is solely my own personal opinion. Pullman & Comley's Appellate Practice Group of which I am a member includes experienced appellate advocates in almost every area of the law. Should you have a need to consult about a potential appeal, please email me at [emccreery@pullcom.com](mailto:emccreery@pullcom.com). I hope the reader finds these summaries helpful. – Edward P. McCreery*

*Posted September 23, 2016*

### Supreme Court Advance Release Opinions:

- SC19586 - [Harrington v. Freedom of Information Commission](#)

The Court started off by saying..... *We have not previously had occasion to squarely address..... [this] ..... specific situation....[and].....this case provides an opportunity to address the circumstances under which communications relating to both nonlegal and legal advice may be covered by the attorney-client privilege.*

It then reversed the Commission's decision not to order the release of emails between the CRRA and its lobbyist/counselors from Brown & Rudnick and Halloran & Sage when the communications contained both legal advice and business advice.

After an in-camera review of the emails and associated privilege log by the hearing officer, the Agency concluded that the discussions of business advice in the emails was *inextricably linked* to the legal advice given or sought contained therein. The Superior Court did its own in-camera review and agreed with the Agency noting that even the emails only cc'd to the attorney could be covered as an effort to "keep the attorney in the loop."

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The Supremes reversed and remanded. First they adopted the (presumed existing) rule that a lawyer's business advice is not protected under a privilege claim. But there can be no bright line between a business communication and a legal advice communication when a lawyer is expected to take into account societal and political considerations in their advice to clients. But the communication must seek contemporaneous legal advice, not merely be information that might be relevant to legal advice down the road. Merely keeping the attorney informed is not enough unless it impliedly seeks advice. Thus an attorney informing a client of legal developments would impliedly be conveying advice.

The Agency here incorrectly applied an inextricably linked test, but the proper test once you find a linking of both legal and non-legal discussions is whether the *primary purpose of the communication* was for legal advice. Redaction is appropriate remedy for documents which contain legal advice which was incidental and not primary to the communication. The question will always be the *intent* of the client.

The Supreme Court then performed its own in-camera review and concluded many of the communications didn't pass muster. On remand, Agency needs to reevaluate the communications and the "keeping in the loop" emails will have to be more strictly scrutinized as well as the ones where the non-lawyers just cc'd the lawyer. Emails about proposed legislation may not be privileged when the lawyers were being consulted as a lobbyist. The Agency will have to look to see if copying a non-lawyer lobbyist destroyed some of the privilege. And the CRRA may have to offer some extrinsic evidence to show some context to bring some of the communications into the fold of protection because on their face they don't seem to be asking for or giving legal advice.

- SC19465 - [Estate of Rock v. University of Connecticut](#)

This decision upheld the dismissal for lack of standing for a post-death workers comp claim filed by the *Estate* of the decedent. Estates are not legal entities that can sue or be sued. Only a legal representative such as an executor has standing to assert the claim.

### Appellate Court Advance Release Opinions:

- AC37988 - [Solairaj v. Mannarino Builders, Inc.](#)

Trial Court reasonably concluded that it was the plaintiffs (new home purchasers), who had breached the contract and not the defendant - builder, when they refused to close and imposed unreasonable demands upon the builder that he verify through independent experts that certain items had been properly constructed. The builder explained that he discovered and repaired the issue of water observed in the basement and that he had an engineer verify the floor trusses were properly installed. The buyers just refused to believe him and wouldn't close.

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- AC37441 - [State v. Baker](#)
- AC37891 - [State v. Palmenta](#)
- AC37569 - [Helfant v. Yale-New Haven Hospital](#)

Medical malpractice complaint was properly dismissed when it was not accompanied by an opinion from a *similar health care provider*. Here the defendant doctor was board certified in emergency medicine. The plaintiff's expert said nothing about that in his opinion. In response to the Motion to Dismiss, the plaintiff's attorney had their expert supplement his letter with comments that he too had helped out in ER rooms on occasion. The Appellate Court said that is not enough. The two physicians must be certified by the same specialty boards. In a last ditch effort to save their case, the plaintiff claimed that the defendant doctor had acted outside the scope of his specialty. The Court responded by saying that was never pled in the complaint.

- AC37433, AC37434 - [State v. Kinch](#)
- AC37303 - [Wiblyi v. McDonald's Corp.](#)

Workers comp review board improperly set aside and remanded findings of the commissioner on the grounds that the evidence in the record was inconclusive and contradictory. The Board should have deferred to the commissioner's role of fact finder.

- AC37304 - [Wiblyi v. McDonald's Corp.](#)
- AC37939 - [Tutson v. Commissioner of Correction](#)
- AC36974 - [Dumas v. Commissioner of Correction](#)

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*The facts and holdings of any case may be redacted, paraphrased or condensed for ease of reading. No summary can be an exact rendering of any decision, however, so interested readers are referred to the full decisions. The docket number of each case is a hyperlink to the Connecticut Judicial Department online slip opinion. © 2016 Pullman & Comley, LLC. All Rights Reserved.*

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The factual summary, or even the legal conclusions, of any case may be summarized, redacted, paraphrased or altered at the author's discretion for ease of reading. Accuracy of the summary cannot be guaranteed and the viewer is referred to the actual case for an exact reading. The Docket number should be a link to the full decision.