No.

IN THE

SUPREME COURT of the UNITED STATES

JULIE M. SOWELL and GEORGE E. MENDILLO,

Petitioners,

v.

TINLEY, RENEHAN & DOST, LLP, ET AL.,

Respondents,

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of April, two thousand twenty.

PRESENT: BARRINGTON D. PARKER,
DENNY CHIN,
WILLIAM J. NARDINI,
Circuit Judges.

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JULIE M. SOWELL, GEORGE E. MENDILLO,
Plaintiffs-Appellants,

-v- 19-2809-cv

TINLEY RENEHAN & DOST, LLP, DOUGLAS S. LAVINE, Honorable, Judge of the Connecticut Appellate Court, ELIOT D. PRESCOTT, Honorable, Judge of the Connecticut Appellate Court, NINA F. ELGO, Honorable, Judge of the Connecticut Appellate Court, RICHARD A. ROBINSON, Honorable, Chief Justice of the Connecticut Supreme Court, JEFFREY J. TINLEY, JOHN P. MAJEWSKI,
Defendants-Appellees,

SOUTHBURY-MIDDLEBURY YOUTH AND FAMILY SERVICES, INC., PHILADELPHIA INDEMNITY INSURANCE COMPANY, MARY JANE MCCLAY,
Defendants.

----------x

FOR PLAINTIFFS-APPELLANTS: GEORGE E. MENDILLO, Woodbury, Connecticut.

FOR DEFENDANTS-APPELLEES: JEFFREY J. TINLEY, Tinley Renehan & Dost, LLP, Waterbury, Connecticut, *for* Tinley Renehan & Dost, LLP, Jeffrey J. Tinley, and John P. Majewski.

MICHAEL K. SKOLD, Assistant Attorney General, *for* William Tong, Attorney General, and Claire Kindall, Solicitor General, Hartford, Connecticut, *for* Honorable Douglas S. Lavine, Honorable Eliot D. Prescott, Honorable Nina F. Elgo, and Honorable Richard A. Robinson.

Appeal from the United States District Court for the District of Connecticut (Meyer, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED.**

Plaintiffs-appellants Julie M. Sowell and George E. Mendillo ("plaintiffs") appeal from the district court's judgment, entered August 6, 2019, dismissing their amended complaint. Plaintiffs sued defendants-appellees Douglas S. Lavine, Eliot D. Prescott, Nina F. Elgo, and Richard A. Robinson (the "judicial defendants") and Tinley

Renehan & Dost LLP, Jeffrey J. Tinley, and John P. Majewski (the "firm defendants") as well as defendants Southbury-Middlebury Youth and Family Services, Inc. ("YFS"), Philadelphia Indemnity Insurance Company ("PICC"), and Mary Jane McClay, seeking declaratory relief and damages pursuant to 42 U.S.C. § 1983 and state law. Plaintiffs challenge the constitutionality of certain Connecticut state court rules implicated in earlier state court judgments. By Order entered August 5, 2019, the district court granted motions filed by the judicial defendants and the firm defendants and dismissed the amended complaint under the *Rooker-Feldman* doctrine and for lack of Article III standing pursuant to Federal Rule of Civil Procedure 12(b)(1).[1] We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal.

BACKGROUND

The facts are taken from the amended complaint and are presumed to be true for the purposes of this appeal. The origins of this case lie in an action brought in the Connecticut Superior Court in 2012 by Sowell against YFS and the chair of its board of directors, McClay. Mendillo (an attorney) represented Sowell (his sister) in this state court action. During that litigation, Mendillo sent letters directly to YFS board members without permission of YFS's counsel. On December 17, 2013, the Superior Court found that by so doing Mendillo had violated Rule 4.2 of the Connecticut Rules of Professional

[1] Plaintiffs voluntarily dismissed their claims against YFS, PICC, and McClay.

Conduct ("Rule 4.2"), and entered a protective order enjoining him from further contact with YFS board members.[2]

On December 31, 2013, plaintiffs filed a writ of error in the Connecticut Supreme Court challenging the protective order. The Supreme Court transferred the matter to the Connecticut Appellate Court, which dismissed the writ on November 10, 2015, in an order written by Judge Lavine and joined by Judges Prescott and Elgo. On November 18, 2015, plaintiffs filed a petition in the Connecticut Supreme Court for certification to review the Appellate Court's dismissal. The Supreme Court denied the petition on December 16, 2015. Plaintiffs filed a motion for reconsideration on December 22, 2015, which was denied on January 13, 2016. Plaintiffs filed a second writ of error with the Connecticut Supreme Court on February 4, 2016, alleging that the Appellate Court had violated Mendillo's constitutional rights. The writ was dismissed by the Supreme Court.

In September 2016, Mendillo filed another action in the Connecticut Superior Court, seeking a declaratory judgment and challenging the Connecticut

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[2] Rule 4.2 provides in relevant part that "[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so." Conn. R. Prof'l. Conduct 4.2. Commentary to the rule clarifies that "[i]n the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization." *Id.* cmt.

Appellate Court's decision on several grounds. The Appellate Court, one of the defendants in the suit, moved to dismiss the action, and the Superior Court granted the motion. The Connecticut Supreme Court affirmed the dismissal, concluding that Mendillo's claims were nonjusticiable. Mendillo moved for reconsideration, and the Connecticut Supreme Court denied the motion on September 20, 2018. The parties settled the initial state action on April 8, 2019.

In October 2018, plaintiffs brought suit in federal district court for equitable relief and damages pursuant to 42 U.S.C. § 1983 and state law. In its order dismissing the amended complaint, the district court held that certain claims were barred by the *Rooker-Feldman* doctrine and that plaintiffs lacked standing to bring the remaining claims. This appeal followed.

DISCUSSION

A. Standard of Review

We review *de novo* a district court's dismissal under the *Rooker-Feldman* doctrine and for lack of standing pursuant to Fed. R. Civ. P. 12(b)(1). *See Sung Cho v. City of New York*, 910 F.3d 639, 644 (2d Cir. 2018) (*Rooker-Feldman*); *Allco Fin. Ltd. v. Klee*, 861 F.3d 82, 94 (2d Cir. 2017) (standing).

B. Applicable Law

1. *Rooker-Feldman* Doctrine

"When a federal suit follows a state suit, the former may, under certain circumstances, be prohibited by what has become known as the *Rooker-Feldman* doctrine." *Sung Cho*, 910 F.3d at 644. The doctrine "established the clear principle that federal district courts lack jurisdiction over suits that are, in substance, appeals from state-court judgments." *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 84 (2d Cir. 2005). The appropriate recourse for litigants who believe a state court judgment is "flawed for reasons raising federal questions" is to seek review in the U.S. Supreme Court. *Sung Cho*, 910 F.3d at 644 n.4. In recent years, "we have applied the *Rooker-Feldman* doctrine with some frequency to cases involving suits directly against state-court judges, or in which error by state-court judges in state-court proceedings is asserted." *Id.* at 645 & n.5 (collecting cases).

2. Standing

To establish standing, a plaintiff must have suffered an "injury in fact," that is "fairly traceable to the [defendant's] challenged conduct," and that is "likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). An injury in fact must be "concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* at 1548 (internal quotation marks omitted). Thus, a mere allegation that future injury is possible is not sufficient to establish injury in fact;

rather, the "threatened injury must be certainly impending." *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) (internal quotation marks omitted). A lawyer-plaintiff's conclusory assertion that a court rule or doctrine of interpretation has a chilling effect on her First Amendment rights is not sufficient to establish injury in fact. *See Conn. Bar Ass'n v. United States*, 620 F.3d 81, 90 n.12 (2d Cir. 2010) ("Allegations of a 'subjective chill' are generally 'not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.'" (quoting *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972))).

C. Analysis

We affirm substantially for the reasons set forth by the district court in its decision. As the district court noted, "the vast majority" of plaintiffs' claims are barred by the *Rooker-Feldman* doctrine, as they seek to attack prior judgments of the Connecticut state courts. App'x at 65. Plaintiffs contend that the state courts (and the judicial defendants) denied plaintiffs' rights to free speech, due process, and equal protection in their rulings interpreting Rule 4.2, and they seek, in essence, to overturn those rulings.

While plaintiffs argue that their constitutional claims are "independent claims," this argument is unpersuasive. Appellant's Br. at 7, 11-12; *see Hoblock*, 422 F.3d at 87-88. The claims allege an injury traceable not to Rule 4.2 itself, but to the courts' application of the rule to plaintiffs' particular state case and thus cannot be contested in federal court. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 286 (2005)

(stating that constitutionality of a state bar rule "could be contested in federal court . . . so long as plaintiffs did not seek review of the Rule's application in a particular case"). Accordingly, the claims are barred under the *Rooker-Feldman* doctrine.

Plaintiffs' third and fourth claims allege that Rule 4.2 is unconstitutionally overbroad and vague, while their ninth and tenth claims allege a due process challenge to Connecticut Rule of Appellate Procedure 72-1(b) ("Rule 72-1(b)") and the *stare decisis* doctrine of the Connecticut courts.[3] To the extent that these claims challenge the constitutionality of Rule 4.2, Rule 72-1(b), and the doctrine of *stare decisis*, rather than simply the state court's application of these rules to plaintiffs, they are not barred by *Rooker-Feldman*. *See Skinner v. Switzer*, 562 U.S. 521, 532 (2011). Plaintiffs, however, lack standing to bring these claims.

As to Sowell, the underlying litigation has been resolved, she is not an attorney subject to Rule 4.2, and she has no matters pending in Connecticut state court that could be subject to applications of Rule 4.2, Rule 72-1(b), or the doctrine of *stare decisis*. As to Mendillo, though as an attorney he remains subject to Rule 4.2, he fails to allege any facts demonstrating that he is or will be subject to the application of Rule 4.2, Rule 72-1(b), or the doctrine of *stare decisis*. Because plaintiffs fail to allege any facts demonstrating an injury in fact that is "actual or imminent," *Spokeo*, 136 S. Ct. at 1548, or

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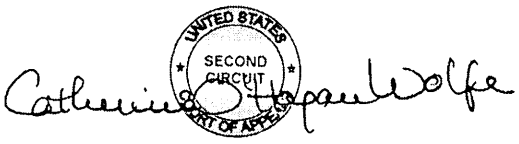
[3] Rule 72-1(b) provides that "[n]o writ of error may be brought in any civil or criminal proceeding for the correction of any error where (1) the error might have been reviewed by process of appeal, or by way of certification." Conn. Practice Book 1998 § 72-1(b).

"certainly impending," *Whitmore*, 495 U.S. at 158, they lack standing to bring the claims. Moreover, mere "allegations of a subjective chill" do not constitute an injury in fact. *See Conn. Bar Ass'n.*, 620 F.3d at 90 n.12 (internal quotation marks omitted). Accordingly, we conclude that the district court did not err when it dismissed these claims for lack of standing pursuant to Fed. R. Civ. P. 12(b)(1).

* * *

We have considered plaintiffs' remaining arguments and conclude they are without merit. For the foregoing reasons, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JULIE SOWELL, *et al.*,
Plaintiff,

v.

SOUTHBURY-MIDDLEBURY YOUTH AND FAMILY SERVICES, INC. *et al.*,
Defendants.

No. 3:18-cv-01652 (JAM)

ORDER RE MOTIONS TO DISMISS

For many years now, the Supreme Court has made clear by means of a rule known as the *Rooker-Feldman* doctrine that the federal district courts do not have a general or roving authority to sit in appellate review of state court judgments. Still, federal district courts are regularly asked to do just that—almost always at the behest of *pro se* litigants who do not know better.

This case is different. A *trained lawyer* has chosen to file a lawsuit that over and over again explicitly asks me to review and reverse settled judgments issued by the Connecticut Appellate Court and the Connecticut Supreme Court. Indeed, he has sued many of the judges and opposing lawyers who were involved with the prior state court judgments, apparently thinking that I can force the judges to "undo" their prior rulings and that I can force the lawyers to fork over money damages for the "wrongs" they did by making winning arguments in the Connecticut state courts. But of course I cannot do that consistent with the *Rooker-Feldman* doctrine.

Plaintiffs Julie Sowell and George Mendillo have filed this federal lawsuit seeking to challenge prior Connecticut state court judgments and to challenge the constitutional validity of certain state court rules that were involved or implicated in the prior state court litigation. I conclude that their claims are mostly barred by the *Rooker-Feldman* doctrine and that, to the

extent that the *Rooker-Feldman* doctrine does not apply, plaintiffs lack standing to pursue their challenges to the state court rules. Accordingly, I will dismiss their complaint.

BACKGROUND

This case involves years of state court litigation before its arrival here in federal court. Unless otherwise noted, the background facts recited below are drawn from the facts as stated in the opinions of the Connecticut Appellate Court in *Sowell v. DiCara*, 161 Conn. App. 102, *cert. denied*, 320 Conn. 909 (2015), and the Connecticut Supreme Court in *Mendillo v. Tinley, Renehan & Dost LLP*, 329 Conn. 515 (2018).

The initial state court action

The litigation began in 2012 when Sowell filed an employment-related lawsuit in the Connecticut Superior Court against her former employer, Southbury-Middlebury Youth and Family Services, Inc. ("YFS"). Sowell was represented in that lawsuit by Mendillo, who is an attorney and also her brother. YFS was represented by counsel from the law firm of Tinley, Renehan & Dost LLP, including attorneys Jeffrey Tinley and John Majewski.

After YFS filed a counterclaim against Sowell, Mendillo responded by sending an unsolicited letter to individual members of the YFS board. The letter contended in relevant part that YFS's counterclaim was "false and libelous and made with malice," that it "must be withdrawn immediately," and that the board members could face personal liability. *Sowell*, 161 Conn. App. at 108 n.5.

The Tinley firm objected that the letter was a violation of Rule 4.2 of the Connecticut Rules of Professional Conduct. This rule provides in relevant part that "in representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the

other lawyer or is authorized by law to do so." Conn. R. Prof. Cond. 4.2. The commentary to the rule states that "[i]n the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization . . . ." *Ibid.* (commentary).

YFS moved for a protective order to prohibit Mendillo from further violations of Rule 4.2. The state trial court granted the protective order after a hearing. Although it concluded that Mendillo had violated Rule 4.2, it did not otherwise impose any sanctions.

The appeal from the protective order and Appellate Court decision

Mendillo sought to challenge the protective order by filing a petition for writ of error in the Connecticut Supreme Court which transferred the petition to the Connecticut Appellate Court. On November 10, 2015, the Appellate Court ruled in part that "[o]n the basis of the letters attached to the agency's motion for protective order and Mendillo's admission before the court that he sent the claim letter to the board of directors, and in light of the trial court's articulation, we conclude that there was clear and convincing evidence before the court that Mendillo violated Rule 4.2 by communicating with Tinley's clients without his permission." *Sowell*, 161 Conn. App. at 126. The Appellate Court considered at length and rejected multiple arguments made by Mendillo about why he did not violate Rule 4.2 and about why his due process rights were violated by the trial court's hearing and order. *Id.* at 126-33.

The Connecticut Appellate Court decision was written by Judge Douglas Lavine and joined by Judges Eliot Prescott and Nina Elgo. On December 16, 2015, the Connecticut Supreme Court denied Mendillo's petition for certification for appeal of the Connecticut Appellate Court's decision. *See* 320 Conn. 909.

The denial of a writ of error by the Connecticut Supreme Court

On February 4, 2016, Mendillo filed a writ of error in the Connecticut Supreme Court seeking to challenge the Connecticut Appellate Court's ruling. The Connecticut Supreme Court dismissed the writ on May 25, 2016, and denied reconsideration on June 27, 2016.

The second state court action and the Connecticut Supreme Court decision

On October 3, 2016, Mendillo filed another lawsuit in the Connecticut Superior Court, now seeking a declaratory judgment to challenge the Connecticut Appellate Court's decision on multiple grounds. *See Mendillo*, 329 Conn. at 520 (summarizing claims). Mendillo named as defendants to this new action the Tinley law firm as well as Judges Lavine, Prescott, and Elgo. The trial court dismissed the action. Mendillo then appealed the ruling, and on July 24, 2018, the Connecticut Supreme Court dismissed the appeal. In an opinion written by Chief Justice Richard Robinson, the Connecticut Supreme Court concluded that the case was nonjusticiable: "We agree with the defendants that the present case is nonjusticiable because no practical relief is available to the plaintiff insofar as the allegations in the declaratory judgment complaint demonstrate that it is nothing more than a collateral attack on the protective order imposed by the trial court . . . and upheld by the Appellate Court." *Id.* at 527.

The federal action

Mendillo and Sowell have now filed this federal lawsuit. Their amended complaint names the following defendants: Chief Justice Robinson, Judge Lavine, Judge Prescott, Judge Elgo, the Tinley law firm, and attorneys Tinley and Majewski. Doc. #27.[1]

[1] Plaintiffs have voluntarily dismissed their claims against three more named defendants—YFS, Mary Jane McClay, and the Philadelphia Indemnity Insurance Company. Doc. #43. Accordingly, I will deny as moot the motion to dismiss filed by Philadelphia Insurance Company. Doc. #28.

The first ten counts of the complaint seek declaratory relief pursuant to 42 U.S.C. § 1983. Counts One and Two are as-applied First Amendment challenges. They allege that the Connecticut state court's protective order and Rule 4.2 as applied by the Connecticut Appellate Court in *Sowell* violated the First Amendment rights of plaintiffs as well as the First Amendment rights of YFS board members. Doc. #27 at 23-24.

Counts Three and Four allege that Rule 4.2 is unconstitutionally overbroad and vague because it fails to define key terms that would illuminate the scope and application of the rule. Doc. #27 at 24-27. It alleges that this vagueness subjects Mendillo and other lawyers to sanctions by the courts without notice and operates as a prior on restraint on speech protected by the First Amendment. *Id.* at 27.

Counts Five through Eight allege in various ways that the Connecticut Appellate Court judges violated Mendillo's constitutional rights when they found in *Sowell* that he was in violation of Rule 4.2. Doc. #27 at 28-32. Count Five alleges that the judges exceeded their constitutional and statutory authority and obstructed his efforts to seek judicial redress in violation of his First Amendment right of access to the courts. Count Six alleges that the judges violated Mendillo's First Amendment right to free speech. Count Seven alleges that the judges violated his right to due process under the Fifth and Fourteenth Amendments by engaging in ex-post facto decision making. Count Eight alleges that the judges violated his Fourteenth Amendment right to equal protection under the laws by treating him differently from similarly-situated plaintiffs with the aim of inhibiting or punishing the exercise of his constitutional rights.

Count Nine alleges a due process challenge to Rule 72-1(b) of the Connecticut Rules of Appellate Procedure on the ground that it does not allow for adequate review by the Connecticut

Supreme Court of decisions of the Connecticut Appellate Court. *Id.* at 33-34.[2] It also challenges Connecticut's "binding precedent doctrine" as articulated by the Connecticut Supreme Court in *Mendillo—i.e.*, the application by Connecticut courts of the near-universal *stare decisis* rule that a trial court must follow the precedent of an appellate court. *Id.* at 34.

Count Ten alleges a violation of the Supremacy Clause of the U.S. Constitution. It alleges that the Supremacy Clause requires Connecticut state courts to exercise jurisdiction over federal law claims and deduces from this that the application of Connecticut's binding precedent doctrine as articulated by the Connecticut Supreme Court in *Mendillo* violates the Supremacy Clause. *Id.* at 35.

In contrast to the first ten counts of the amended complaint, which seek only declaratory relief, the last two counts seek money damage awards against only the Tinley firm and attorneys Tinley and Majewski. Count Eleven alleges a claim for money damages under § 1983, claiming that the law firm and lawyer defendants were responsible for seeking entry of the protective order in the *Sowell* case and for the adverse findings against Mendillo that he violated Rule 4.2. *Id.* at 36-40. Count Twelve alleges on the basis of the same facts a state law violation for abuse of process against the Tinley law firm and the two lawyer defendants.

Defendants have now moved to dismiss. They argue that the complaint should be dismissed for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) and for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

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[2] Rule 72-1(b) provides in relevant part that "[n]o writ of error may be brought in any civil or criminal proceeding for the correction of any error where (1) the error might have been reviewed by process of appeal, or by way of certification." It appears that Mendillo's objection to this rule may be premised on the Connecticut Supreme Court's summary denial of his writ of error following its denial of certification to review the Appellate Court's decision in *Sowell*.

DISCUSSION

For purposes of a motion to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) or failure to state a claim under Rule 12(b)(6), a complaint may not survive unless it alleges facts that taken as true give rise to plausible grounds to support the Court's jurisdiction and to sustain the alleged claims for relief. *See, e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Kim v. Kimm*, 884 F.3d 98, 103 (2d Cir. 2018); *Lapaglia v. Transamerica Cas. Ins. Co.*, 155 F. Supp. 3d 153, 155 (D. Conn. 2016). Although this "plausibility" requirement is "not akin to a probability requirement," it "asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. Moreover, because the focus must be on what actual facts a complaint alleges, a court is "not bound to accept as true a legal conclusion that is couched as a factual allegation" or "to accept as true allegations that are wholly conclusory." *Krys v. Pigott*, 749 F.3d 117, 128 (2d Cir. 2014).[3]

The Rooker-Feldman *doctrine*

Defendants argue that the Court lacks subject matter jurisdiction because of the *Rooker-Feldman* doctrine—a doctrine that jurisdictionally bars the federal courts from hearing "cases that function as *de facto* appeals of state-court judgments." *Sung Cho v. City of New York*, 910 F.3d 639, 644 (2d Cir. 2018). The reason for the *Rooker-Feldman* rule is to respect the constitutional division of authority between the state and federal governments. If a litigant believes that a state court has not respected his federal constitutional rights, the litigant may ultimately seek review of the state court judgment in the U.S. Supreme Court. Congress did not otherwise designate the lower federal courts to sit in judgment of the state courts.

[3] Because Mendillo is an attorney who represents himself and his sister in this action, there is no basis to apply the usual rule of special solicitude for *pro se* litigants. *See, e.g., Tracy v. Freshwater*, 623 F.3d 90, 102 (2d Cir. 2010).

There are four requirements that must be met in order for the *Rooker-Feldman* doctrine to bar a plaintiff's claim: "(1) the federal-court plaintiff must have lost in state court; (2) the plaintiff must complain of injuries caused by a state-court judgment; (3) the plaintiff must invite district court review and rejection of that judgment; and (4) the state-court judgment must have been rendered before the district court proceedings commenced." *Id.* at 645.

It is clear to me that the vast majority of the complaint is barred by the *Rooker-Feldman* doctrine. Page after page of the complaint assails and attacks the prior rulings of the Connecticut courts in *Sowell* and *Mendillo.* As to these allegations, there is no doubt that each one of the four requirements of the *Rooker-Feldman* doctrine has been established. First, plaintiffs lost in state court. Second, plaintiffs complain of injuries caused by one or more of the state court judgments (*e.g.*, that Mendillo's reputation has been tarnished by the judicial finding that he violated Rule 4.2 and that Sowell and Mendillo are harmed because the protective order bars them from communication with YFS board members). Third, plaintiffs seek review and rejection of the state court judgments. Lastly, all of these state court judgments were rendered before this federal lawsuit began. *See, e.g.*, *Neroni v. Zayas*, 663 F. App'x 51, 53 (2d Cir. 2016) (affirming dismissal under *Rooker-Feldman* where "[t]he record shows that [plaintiff] lost in state court, the underlying injury complained of was his disbarment, he invited federal court review of his disbarment order, and he filed his complaint after the state court order was entered").

Although it is clear that the gravamen of the entire complaint is an attack on prior state court judgments, the application of the *Rooker-Feldman* doctrine should be considered on a claim-by-claim basis. Accordingly, I will now review each of the individual counts to evaluate whether they specifically come within the scope of the *Rooker-Feldman* doctrine.

Counts One and Two allege that the state court's protective order in *Sowell* violates the First Amendment rights of plaintiffs as well as of the YFS board members. Doc. #27 at 23-24. Because these counts explicitly challenge a final state court judgment, they are plainly barred by the *Rooker-Feldman* doctrine.

Counts Three and Four allege that Rule 4.2 is unconstitutionally overbroad and vague. Doc. #27 at 24-27. I conclude that these two counts are not subject to the *Rooker-Feldman* doctrine to the extent that they seek to challenge the validity of Rule 4.2 itself, as distinct from seeking to challenge the state court's prior findings that Mendillo violated Rule 4.2 in the *Sowell v. YFS* litigation. *See Skinner v. Switzer*, 562 U.S. 521, 532 (2011) (noting that under *Rooker-Feldman* doctrine, "[a] state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action"); *Sung Cho*, 910 F.3d at 646 (emphasizing that *Rooker-Feldman* doctrine applies only if the claimed injury was *caused* by the state court judgment); *Mosby v. Ligon*, 418 F.3d 927, 932 (8th Cir. 2005) ("We agree that the *Rooker-Feldman* doctrine does not bar the district court from exercising jurisdiction over general challenges to the constitutionality of a State's disciplinary rules and processes.").

Counts Five and Six allege in their headings that "the appellate court judges denied Mendillo's First Amendment right of access to the courts" and "Mendillo's First Amendment right to free speech," and that "the prospective application of the *Sowell* decision will deny Mendillo and other Connecticut lawyers [their] First Amendment access to the courts" as well as "violate the free speech rights of Mendillo and other Connecticut lawyers." Doc. #27 at 28, 29 (capitalization changed to lowercase). Because both these counts are framed in a manner that

explicitly seeks the invalidation of the Appellate Court judgment in *Sowell*, they are barred by the *Rooker-Feldman* doctrine.

Counts Seven and Eight similarly allege in their headings that "the appellate court judges denied Mendillo due process of law" and "equal protection of the laws," and that "the prospective application of the *Sowell* decision" will deny the due process and equal protection rights of Mendillo and other Connecticut lawyers. Doc. #27 at 30-32 (capitalization changed to lowercase). Again, because both these counts explicitly seek the invalidation of the Appellate Court judgment in *Sowell*, they are barred by the *Rooker-Feldman* doctrine.

Counts Nine and Ten challenge Rule 72-1(b) of the Connecticut Rules of Appellate Procedure and the *stare decisis* practice of the Connecticut courts that requires trial courts to treat precedent of higher courts as binding. Doc. #27 at 33-35. To the extent that these two counts explicitly reference the Connecticut Supreme Court's decision in *Mendillo* and seek on that basis a ruling that would invalidate the Connecticut Supreme Court's prior application of Rule 72-1(b) and its *stare decisis* doctrine, Counts Nine and Ten are similarly barred by the *Rooker-Feldman* doctrine. On the other hand, to the extent that these causes of action seek more generally to challenge the constitutional validity of Rule 72-1(b) and *stare decisis* apart from how these rules were applied in the prior state court proceedings in *Sowell* and *Mendillo*, then I conclude that this aspect of Counts Nine and Ten falls outside the scope of the *Rooker-Feldman* doctrine. *See Mosby*, 418 F.3d at 932.

Lastly, Counts Eleven and Twelve—damages claims against the Tinley law firm and the two lawyer defendants—are framed again to attack the validity of the state court judgment

relating to the protective order that was issued and affirmed by the state courts in *Sowell*. Doc. #27 at 36-41. Counts Eleven and Twelve are barred by the *Rooker-Feldman* doctrine.[4]

My conclusions with respect to how the *Rooker-Feldman* doctrine applies in this case is confirmed by plaintiffs' vexing choice of defendants in this action— the chief justice of the Connecticut Supreme Court who authored the *Mendillo* decision, the three judges of the Appellate Court who decided the *Sowell* decision, and the opposition lawyers involved in the *Sowell* litigation. The fact that plaintiffs singled out these particular defendants reinforces the conclusion that what plaintiffs now seek is a federal district court judgment to annul the prior state court decisions with which each of these defendants was involved.

The fact that plaintiffs chose not to pursue in the prior state court litigation the full range of federal constitutional claims that they now allege here is irrelevant to the application of the *Rooker-Feldman* doctrine. *See Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 87 (2d Cir. 2005) (rejecting argument that federal plaintiff may evade *Rooker-Feldman* by raising federal claim that he failed to pursue in state court); *Kropelnicki v. Siegel*, 290 F.3d 118, 128 (2d Cir. 2002) (*Rooker-Feldman* doctrine extends to claims inextricably intertwined with state court judgments that plaintiff could have raised in state court proceedings). Plaintiffs seek to invalidate the state court judgments all the same. They could have pursued such claims in the first instance before the state courts of Connecticut. If they were unhappy with how the state courts ruled, then they could have sought certiorari to the U.S. Supreme Court, which they did not do. What the *Rooker-Feldman* doctrine prevents is what plaintiffs seek to do here: to end-run the ordained

[4] In addition to being barred by the *Rooker-Feldman* doctrine, Count Eleven is subject to dismissal on grounds that it does not allege facts to plausibly establish that the Tinley law firm or the individual law firm defendants are state actors as is required to be proved for a § 1983 claim. *See Betts v. Shearman*, 751 F.3d 78, 84 (2d Cir. 2014). Although plaintiffs claim that the law firm defendants exercised the authority of the court system when they obtained the protective order against them, an attorney's participation in the court system does not transform an attorney into a state actor for purposes of a § 1983 claim. *See Polk Cty. v. Dodson*, 454 U.S. 312, 325 (1981); *Milan v. Wertheimer*, 808 F.3d 961, 964 (2d Cir. 2015).

procedural pathways for seeking appellate review of state court rulings and to improperly enlist a federal district court to sit in appellate review of the judgments of the Connecticut state courts.

In short, the *Rooker-Feldman* doctrine bars Counts One, Two, Five, Six, Seven, Eight, Eleven, and Twelve. Accordingly, I will dismiss these claims for lack of subject matter jurisdiction.

Standing

As to the remaining claims that are not barred in their entirety by the *Rooker-Feldman* doctrine (Counts Three, Four, Nine, and Ten), I now consider whether plaintiffs have "standing" as required under the Constitution to maintain their challenges to Rule 4.2, Rule 72-1(b), and the Connecticut rule of *stare decisis*. The requirements of standing derive from Article III of the Constitution which limits the judicial power of the United States to adjudication of actual cases or controversies. In order to establish standing to maintain a claim, a plaintiff must plead facts that plausibly show that the plaintiff (1) sustained an injury-in-fact, (2) that defendant's actions caused the injury, and (3) that plaintiff's request for relief would likely redress the injury. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016); *Hu v. City of New York*, 927 F.3d 81, 89 (2d Cir. 2019). An injury-in-fact must be "concrete and particularized" as well as "actual or imminent," rather than "conjectural or hypothetical." *Spokeo*, 136 S. Ct. at 1548 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

Of course, to the extent that a plaintiff's claimed injury-in-fact is solely the injury caused by a state court judgment over which the *Rooker-Feldman* doctrine otherwise prevents a federal court from reviewing, this type of injury cannot suffice to establish constitutional standing. More generally, as the U.S. Supreme Court has noted, "past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any

continuing, present adverse effects." *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (internal citation omitted).

As to Sowell, there is no basis to conclude that she has standing to challenge any of the state rules identified in the complaint. Because the parties have advised the Court that the underlying litigation in *Sowell v. YFS* has been settled, there is no longer any reason she needs an attorney to engage in unconsented-to communications with the board members of YFS. Sowell herself is not an attorney subject to Rule 4.2. She does not allege that she has any other matters pending in the state courts of Connecticut that could be subject to a misapplication of Rule 4.2, Rule 72-1(b), or the rule of *stare decisis*. Sowell has not alleged facts sufficient to establish standing.

Because Mendillo is an attorney, it is a closer question whether he has standing to maintain a challenge to Rule 4.2, Rule 72-1(b), or the rule of *stare.decisis.* Still, I conclude that he has not alleged enough facts to plausibly establish that he has standing. Other than conclusory allegations that Mendillo could be subject to future adverse effects from these rules, the complaint alleges no specific facts to suggest that he is presently or will in the future be subject to any wrongful application of these rules. For example, Mendillo does not allege that he is presently engaged in any disciplinary or other enforcement proceedings involving Rule 4.2. Nor does he allege that he has any particular pending matters involving the representation of clients in which he intends to engage in communicative conduct with another lawyer's clients that could arguably violate Rule 4.2. Similarly, he does not allege that he has any proceedings before the Connecticut courts that have triggered or would likely trigger the application of Rule 72-1(b) or the rule of *stare decisis*.

Lawyers do not have *per se* standing to challenge any court rule or doctrine of interpretation that displeases them. Like other litigants, lawyers as plaintiffs must satisfy the requirements to allege particularized, imminent, and non-conjectural injury before they may press a challenge to a court rule, even if they assert in general terms that any particular rule has a chilling effect on their rights under the First Amendment.

Indeed, as the Second Circuit has repeatedly recognized in the lawyer-plaintiff context, the fact that a lawyer-plaintiff may conclusorily claim that a rule has a chilling effect on First Amendment speech does not dispense with the constitutional baseline requirement that the lawyer-plaintiff establish an injury-in-fact. "[A]llegations of a subjective chill are generally not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *Conn. Bar Ass'n v. United States*, 620 F.3d 81, 90 (2d Cir. 2010) (internal quotations omitted); *Brooklyn Legal Servs. Corp. v. Legal Servs. Corp.*, 462 F.3d 219, 226 (2d Cir. 2006) (same), *abrogated on other grounds by Bond v. United States*, 564 U.S. 211 (2011).

Multiple courts have otherwise recognized that, absent specific facts to suggest that a lawyer has or will engage in conduct that could likely engender proceedings for a violation of an attorney conduct rule, a lawyer does not have standing to challenge the rule even if the lawyer has previously been subject to application of that rule. *See Fieger v. Mich. Supreme Court*, 553 F.3d 955, 964-73 (6th Cir. 2009) (despite fact that lawyer had previously been subject to sanctions proceedings, lawyer did not have standing to raise First Amendment challenge to certain "courtesy" and "civility" rules of the Michigan Rules of Professional Conduct absent pending sanctions, an enforcement proceeding, or other specific facts to show lawyer's intent to engage in specific speech or conduct that would again potentially engender sanctions); *Grendell v. Ohio Supreme Court*, 252 F.3d 828, 832-35 (6th Cir. 2001) (even though lawyer had

previously been subject to Ohio Supreme Court disciplinary rule, lawyer lacked standing to maintain First Amendment or other constitutional challenge to rule in light of lack of alleged facts to plausibly establish that lawyer would be at risk of sanctions again); *Mosby*, 418 F.3d at 933-34 (attorney lacked standing to raise general facial challenge to court disciplinary rules absent allegations of their likely application to her); *Maddox v. Prudenti*, 2006 WL 8438119, at *6 (E.D.N.Y. 2006) (attorney had no standing to "raise general challenges to the Appellate Division's disciplinary rules" where "the record here does not demonstrate that he is likely to suffer from any of these alleged constitutional deficiencies in the future"), *aff'd*, 303 F. App'x 962 (2d Cir. 2008).

Similarly, to the extent that plaintiffs claim standing to pursue the rights of third parties (such as members of the YFS board of directors or other attorneys in Connecticut), plaintiffs allege no facts that would afford them standing to pursue claims on any third-party's behalf. For example, they allege no facts to show that they have a close relationship with any third party or that there is any impediment to these third parties asserting their own rights before this Court if they wish to do so. *See Campbell v. Louisiana*, 523 U.S. 392, 397 (1998); *Am. Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 358 (2d Cir. 2016). Although the Second Circuit has recognized that a First Amendment overbreadth challenge may allow a plaintiff to assert the interests of third parties, it has made equally clear that the plaintiff personally must have sustained an injury-in-fact before the plaintiff may press the third-party interests of others. *See, e.g. Hedges v. Obama*, 724 F.3d 170, 204 (2d Cir. 2013). As discussed above, the complaint does not allege that plaintiffs themselves have sustained an injury-in-fact.

In short, plaintiffs have failed to allege facts to plausibly support standing to maintain their claims under Counts Three, Four, Nine, and Ten. Accordingly, I will dismiss these counts for lack of standing.[5]

CONCLUSION

For the reasons set forth above, the Court DENIES as moot the motion to dismiss of defendant Philadelphia Insurance Company (Doc. #28) on the ground that this defendant has been voluntarily dismissed from this action. The Court GRANTS the motions to dismiss of the remaining defendants (Docs. #31, #34) on the ground that most of the claims are barred by the *Rooker-Feldman* doctrine and that plaintiffs have not alleged sufficient facts to establish standing to maintain any of the claims that are not barred by the *Rooker-Feldman* doctrine.

The Clerk of Court shall close this case. This ruling is without prejudice to plaintiffs' filing of a motion to reopen along with a proposed amended complaint on or before **September 5, 2019**, in the event that plaintiffs have a good faith basis to allege additional facts that would suffice to redress the deficiencies identified in this ruling.

It is so ordered.

Dated at New Haven this 5th day of August 2019.

/s/ ***Jeffrey Alker Meyer***
Jeffrey Alker Meyer
United States District Judge

[5] In light of my conclusion that the complaint must be dismissed under the *Rooker-Feldman* doctrine and for lack of standing, I need not consider whether plaintiffs' claims for declaratory relief against Chief Justice Robinson and Judges Lavine, Prescott, and Elgo are further barred by judicial immunity or otherwise fall outside the scope of allowable actions against judicial officials under § 1983. *See Sargent v. Emons*, 582 F. App'x 51, 53 (2d Cir. 2014); *McCluskey v. New York State Unified Court Sys.*, 442 F. App'x 586, 588 (2d Cir. 2011).

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of June, two thousand twenty.

Julie M. Sowell, George E. Mendillo,

Plaintiff-Appellant,

v.

Tinley Renehan & Dost, LLP, Douglas S. Lavine, Honorable, Judge of the Connecticut Appellate Court, Eliot D. Prescott, Honorable, Judge of the Connecticut Appellate Court, Nina F. Elgo, Honorable, Judge of the Connecticut Appellate Court, Richard A. Robinson, Honorable, Chief Justice of the Connecticut Supreme Court, Jeffrey J. Tinley, John P. Majewski,

Defendants-Appellees,

Southbury-Middlebury Youth and Family Services, Inc., Philadelphia Indemnity Insurance Company, Mary Jane McClay,

Defendants.

ORDER

Docket No: 19-2809

Appellants, George E. Mendillo and Julie M. Sowell, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Appendix C

The judgment is reversed and the case is remanded with direction to render judgment for the plaintiffs on count two of their amended complaint. The plaintiffs' appeal with respect to their claim regarding their duty to defend under the umbrella policy is dismissed as moot.

In this opinion the other judges concurred.

JULIE M. SOWELL *v.* DEIRDRE H. DICARA ET AL. (AC 36921)

Lavine, Prescott and Elgo, Js.

Syllabus

The plaintiff in error, M, the attorney for the plaintiff in an underlying wrongful discharge action, brought this writ of error from an order of the trial court granting a motion for protective order filed by certain defendants in the underlying action. An attorney had filed an appearance in that action on behalf of the defendant S Co., the agency that previously had employed the plaintiff, and two individual defendants, the executive director of S Co. and the chairperson of its board of directors. S Co. filed a counterclaim in the action alleging breach of contract by the plaintiff. M then sent a letter to the members of the board of directors of S Co., in which he claimed that S Co. had improperly filed the counterclaim without the authority of the board, and that the individual board members may be subject to personal liability. M also sent a copy of the letter to S Co.'s counsel with another letter explaining that the chairperson did not have the authority to authorize S Co.'s counsel to file the counterclaim. S Co. filed a motion for protective order in which it sought to enjoin M from having any further contact with the members of its board of directors without the prior permission of its counsel. S Co. claimed that because it was represented by counsel, rule 4.2 of the Rules of Professional Conduct prohibited M from communicating with the members of its board of directors as they were persons having managerial responsibility on behalf of S Co., and therefore were represented by S Co.'s counsel. M claimed that counsel for S Co. did not represent the members of the board in their individual capacities and that the counterclaim was unauthorized and potentially subjected the members of the board to personal liability. The trial court found that M had violated rule 4.2 and granted the motion for protective order. Thereafter, M filed a petition for a writ of error in the Supreme Court, which transferred the petition to this court, in which M sought to have the finding that he had violated rule 4.2 set aside. *Held*:

1. Contrary to the defendants' claim, M had standing to pursue the writ of error, and this court therefore had subject matter jurisdiction to consider it: although S Co. did not ask the trial court to impose sanctions on M, and that court did not impose sanctions, the court's finding that M had violated rule 4.2 of the Rules of Professional Conduct was sufficient to establish aggrievement to confer standing on M to pursue the writ of error, as the court's finding that M had violated the Rules of Professional Conduct constituted a disciplinary sanction tantamount to a reprimand, even though that finding was not made in the context of a formal grievance proceeding, and the court here articulated that it had found by clear and convincing evidence that M had violated rule 4.2.

2. Contrary to M's claim that the members of the board were not represented by counsel at the time he sent the letters because S Co. had been dissolved and the board had not met to authorize counsel for S Co. to file the counterclaim, there was sufficient evidence in the record to support the trial court's finding that M had violated rule 4.2 of the Rules of Professional Conduct: the trial court had a copy of the letter that M had sent to each member of S Co.'s board of directors concerning the underlying action in which S Co. was represented by counsel, which contained M's legal opinion of the viability of S Co.'s counterclaim and suggested that the board members would be individually liable to the plaintiff if the counterclaim was not withdrawn, as well as M's admission that he had sent the letters without the permission of S Co.'s counsel; moreover, the trial court properly concluded that counsel had filed an appearance in the underlying action on behalf of S Co. and that there was evidence in the record that the business affairs of S Co. were managed by its board of directors such that the members of the board were represented by S Co.'s counsel; furthermore, this court found unavailing M's argument that the chairperson of the board was deprived of her authority to retain counsel on behalf of S Co. because S Co. was in the process of winding up its operations, as it was implicit in the chairperson's authority in the winding up process to resolve the outstanding obligations of S Co., which included the present litigation.

3. This court found unavailing M's claim that the trial court denied him due process of law by denying him an evidentiary hearing on the question of whether he had violated rule 4.2 of the Rules of Professional Conduct: although at oral argument on the motion for protective order, the trial court did not permit M to call the chairperson to testify or to put the chairperson's prior deposition testimony into evidence, none of the parties disputed the material facts, including that is was M's understanding that the members of the board were not represented by S Co.'s counsel in the underlying action, and the trial court thus properly concluded that an evidentiary hearing served no purpose as the question before it was one of law; furthermore, the trial court gave M an opportu-

nity to argue his position and to create a record such that it did not deny M's constitutional right to due process.

4. M could not prevail on his claim that the trial court abused its discretion by refusing to permit him to present testimony or to place the chairperson's deposition testimony into evidence, which evidence he alleged supported his claim that counsel for S Co. had no legal authority to represent S Co. in pursuing its counterclaim; the trial court accepted as true M's offer of proof and neither the testimony nor the deposition transcript would have materially aided that court in its decision on the motion for protective order.

Argued May 12—officially released November 10, 2015

Procedural History

Writ of error from an order of the Superior Court in the judicial district of Waterbury, *Hon. Barbara J. Sheedy*, judge trial referee, granting the motion for protective order filed by the defendants in error, brought to the Supreme Court, which transferred the matter to this court. *Writ of error dismissed.*

George E. Mendillo, self-represented, the plaintiff in error.

Jeffrey J. Tinley, with whom, on the brief, was *Amita P. Rossetti*, for the defendants in error (named defendant et al.).

Opinion

LAVINE, J. This case comes before this court on a writ of error brought by the plaintiff in error, George E. Mendillo, attorney for the plaintiff, Julie M. Sowell. In his writ of error, Mendillo alleges that, during the course of a hearing on an emergency motion for protective order (motion for protective order), the trial court, *Hon. Barbara J. Sheedy*, judge trial referee, (1) improperly found that he had violated rule 4.2 of the Rules of Professional Conduct as there was no clear and con-

vincing evidence to warrant such a finding, (2) violated his state and federal constitutional rights to due process, and (3) abused its discretion by refusing to let him present testimonial and documentary evidence at the hearing on the motion for protective order.[1] We dismiss the writ of error.

The record discloses the following uncontested facts. The underlying wrongful discharge action (Sowell action) was commenced in the summer of 2012. Sowell filed a revised complaint on August 30, 2013, alleging, in relevant part, that she was a licensed marriage and family therapist who had been employed by the defendant Southbury-Middlebury Youth and Family Services (agency) to provide mental health services to students and youth in the defendant Region 15 School District (Region 15). The revised complaint also alleged that the defendant Deirdre H. DiCara was the executive director of the agency, and the defendant Mary Jane McClay is the chairperson of the agency's board of directors.[2]

Sowell further alleged that the agency hired her as a counselor in 1997, and that she became the agency's

[1] In his brief to this court, but not alleged in his writ of error, Mendillo contends that "there is a substantial likelihood that the [defendants' counsel] has committed violations of the Rules of Professional Conduct." We decline to address the claim as it is not properly before us. As Mendillo himself correctly points out, before a sanction for a violation of the Rules of Professional Conduct may be imposed, an attorney must be given fair notice and an opportunity for a hearing. See *CFM of Connecticut, Inc.* v. *Chowdhury*, 239 Conn. 375, 393, 685 A.2d 1108 (1996), overruled in part on other grounds, *State* v. *Salmon*, 250 Conn. 147, 154–55, 735 A.2d 333 (1999) (en banc).

Mendillo also asks that this court vacate the order granting the motion for protective order. Although the writ of error arises from the underlying *Sowell* action, the *Sowell* action itself is not before us. The propriety of the protective order, therefore, is not properly before us.

[2] In this opinion, we refer to DiCara, McClay, and the agency as the defendants and to Region 15 School District as Region 15.

clinical director in 2006. Beginning in 2010, disputes about the agency's management arose between Sowell and DiCara and McClay. Sowell alleged that in late 2011, she reported to the superintendent and members of the Region 15 board of education her suspicions that the agency had violated state laws and regulations. She also alleged that DiCara and McClay created a hostile work environment, and that she experienced severe hypertension requiring her to take a medical leave of absence in early 2012. By letter dated February 21, 2012, Sowell notified the agency that she intended to resign her position as clinical director effective June 30, 2012. On February 25, 2012, Sowell received a letter from the agency terminating her employment effective immediately. Sowell alleged that DiCara and McClay conspired to terminate her employment due to her physical disability and the fact that she had disclosed the agency's violations of law. Sowell's twenty-one count revised complaint alleged various torts, breaches of contract, and statutory violations against each of the defendants and Region 15.

On October 30, 2013, the defendants filed an answer denying the material allegations of the revised complaint and alleged special defenses. The agency also alleged a breach of contract counterclaim that, on information and belief, claimed that on dates when Sowell reported that she was too ill to work at the agency, she engaged in her private counseling practice and was compensated by her private clients for her services. Moreover, Sowell failed to inform the agency that she had engaged in private practice while she was on paid sick leave thereby breaching the covenant of good faith and fair dealing, her duty of loyalty, and her duty of honest and faithful service as an employee of the agency. The agency alleged damages.

On December 5, 2013, the agency filed the motion for protective order in which it stated that it was seeking "an emergency hearing and protective order to permanently enjoin . . . Mendillo, from having any further contact of any kind with members of the Board of Directors of [the agency] without prior permission of counsel." In the memorandum of law accompanying the motion for protective order, the agency represented that, at all times relevant, the defendants were and are represented by an attorney, Jeffrey J. Tinley, of the law firm of Tinley, Nastri, Renehan & Dost, LLP (Tinley firm).[3]

The memorandum of law in support of the motion set forth the following facts. On December 2, 2013, Tinley received a letter signed by Mendillo that was dated November 29, 2013.[4] Attached to that letter were

[3] The record discloses that on September 6, 2012, the Tinley firm filed an appearance on behalf of the defendants. Attorney Jeffrey J. Tinley signed the appearance form and certified that a copy of the appearance was mailed or delivered electronically to Mendillo and to Shipman & Goodwin, LLP, counsel for Region 15.

The Tinley firm is now known as Tinley, Renehan & Dost, LLP.

[4] Mendillo's letter to Tinley stated: "On October 30, 2013, [the agency] filed a Counterclaim against [Sowell] in the captioned action. At deposition on November 25, 2013 . . . McClay, Chairman of the [agency] Board of Directors, testified that she authorized you to file the Counterclaim without authorization by the [agency] Board of Directors. Indeed, McClay testified that there has been no meeting of the [agency] Board of Directors since July 2012.

"McClay had no legal authority to authorize you to file that Counterclaim. Beyond that, the assertions contained in the Counterclaim are false and libelous and made with malice. The Counterclaim was filed to accomplish an unlawful purpose and is an unlawful abuse of process. [Sowell] has made demand for withdrawal of the Counterclaim to each member of the [agency] Board of Directors. Copies of the demand letters are enclosed.

" 'A lawyer shall not bring or defend a proceeding, or assert or controvert any issue therein, unless there is a basis in law and fact for doing so that is not frivolous . . . .' Rule 3.1, *Rules of Professional Conduct*. Demand is hereby made that the unauthorized and libelous Counterclaim be withdrawn immediately."

"/s/ George E. Mendillo."

copies of a claim letter that Mendillo had sent directly to members of the agency's board of directors,[5] but not to DiCara and McClay. In the claim letter, Mendillo suggested that counsel for the agency had filed the counterclaim without authority and that the board

[5] Mendillo's claim letter to each of the members of the agency's board of directors stated: "I represent . . . Sowell in connection with the referenced lawsuit. Available records indicate that you are a member of the Board of Directors of [the agency]. . . . On July 31, 2012, I wrote to . . . Tinley, [the agency's] legal counsel, informing him that each member of the [agency's] Board of Directors should know that if the affairs of [the agency] in dissolution were not conducted in accordance with the law, individual [agency] Board members might be held individually and personally liable to . . . Sowell and to other [agency] creditors for unsatisfied claims or unsatisfied judgments against [the agency]. A copy of that letter is enclosed.

"On November 25, 2013 . . . McClay, Chairman of the [agency] Board of Directors, testified at deposition that the insurer of [the agency] Director and Officer liability is defending the Sowell lawsuit under a reservation of rights. This means that the insurance company may decline to pay all or a part of any judgment entered against [the agency] and its Officers and Directors in this matter. McClay testified further that [the agency] has no assets from which a judgment might be satisfied.

"According to McClay, the [agency] Board of Directors has not met since July 2012. Notwithstanding that fact, McClay authorized . . . Tinley to file a Counterclaim by [the agency] against . . . Sowell on October 30, 2013. McClay had no legal authority to file that Counterclaim without proper authorization from the [agency] Board of Directors. In addition, . . . McClay is in a conflicted position vis-á-vis [the agency] in that she is a co-defendant in the lawsuit by Sowell and her interests and the interests of [the agency] in that lawsuit are in conflict. Not only does McClay lack the legal authority to file the Counterclaim on behalf of [the agency], she may not properly cast a vote as a member of the [agency] Board of Directors in any matter pertaining to action to be taken on behalf of the [agency] in the Sowell lawsuit.

"You are hereby advised that the assertions contained in the [agency] Counterclaim against . . . Sowell are false and libelous and made with malice. The Counterclaim was filed to accomplish an unlawful ulterior purpose and is an unlawful abuse of process. The Counterclaim must be withdrawn immediately.

"You are further advised that the immunity from liability of directors and officers of nonprofit tax exempt organizations does not extend to damage or injury caused by reckless, willful or wanton misconduct. You should consult legal counsel with regard to these claims. Please reply on or before December 13, 2013. If no reply is received by that date legal action will be taken against you individually, without further notice.

"If you have officially resigned as officer and/or director of [the agency] please provide me with written evidence confirming the resignation and that the resignation has been made in compliance with applicable law."

"/s/ George E. Mendillo."

members could be individually liable to Sowell. The memorandum of law described the content of the claim letter[6] and set forth the pertinent portion of article IV of the agency's bylaws.[7] The memorandum represented that during discovery, the defendants had provided Mendillo with a copy of the agency's bylaws. Moreover, it represented that Mendillo never obtained Tinley's permission to communicate directly with the board of directors.

The memorandum of law identified the defendants and Region 15. It set forth Sowell's employment history with the agency and that she is Mendillo's sister. It also described Sowell's cause of action against the defendants and stated that the agency had been dissolved on December 27, 2012, and was in the process of winding up its affairs.

As to the applicable law, the memorandum of law cited rule 4.2 of the Rules of Professional Conduct, which provides in relevant part: "In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. . . ." The agency added that the purpose of rule 4.2 "is to preserve the integrity of the lawyer-client relationship by protecting the represented party from the superior knowledge and skill of the opposing lawyer. The rule is to prevent situations in which a represented party may be taken advantage of by opposing counsel." *Pinsky* v. *Statewide Grievance Committee*, 216 Conn. 228, 236, 578 A.2d 1075 (1990).

[6] Copies of Mendillo's letter to Tinley and the claim letter to the board of directors were attached to the defendants' memorandum of law.

[7] Article IV of the agency's bylaws provides in relevant part: "3. Powers, Responsibilities and Accountabilities. The corporate business affairs of the corporation shall be managed under the direction of the Board of Directors, except as may be otherwise provided in these Bylaws or the articles of incorporation."

The agency argued that when the client is an organization, those individuals who have managerial responsibility fall within the definition of a client as the term is used in rule 4.2, citing specific language in the official commentary to rule 4.2.[8] It contended that Mendillo knowingly and wilfully violated rule 4.2 because he knew that the agency was represented by counsel as he had a copy of the agency's bylaws that state that the board of directors manages the agency's business. The agency argued that because Mendillo communicated directly with the members of the board of directors and knowingly requested that they authorize the withdrawal of the agency's counterclaim against Sowell, he had violated rule 4.2.

The agency also cited rule 2.15 of the Code of Judicial Conduct, in support of its motion for a protective order. Rule 2.15 (d) provides: "A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action." See *Bergeron* v. *Mackler*, 225 Conn. 391, 397, 623 A.2d 489 (1993) (court has authority to regulate conduct of attorneys and duty to enforce standards regarding their conduct). The memorandum of law concluded that, given Mendillo's direct communication with the board of directors regarding the merits of the agency's counterclaim against Sowell for the purpose of influencing their decision to withdraw it, the agency was entitled to a protective order prohibiting Mendillo from having further

[8] The agency cited the following portion of the official commentary to rule 4.2: "*In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization*, and with any other person whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute and admission on the part of the organization." (Emphasis added.) Rules of Professional Conduct 4.2, commentary.

unauthorized communication with the board of directors. Significantly, the agency requested only that its motion for protective order be granted; *it did not ask the court to sanction Mendillo for communicating with the board of directors.*

Sowell filed an objection to the agency's motion for a protective order. In it, she argued that the agency was a dissolved nonprofit nonstock corporation and that the counterclaim was filed without the knowledge or consent of the board of directors. Although Tinley represented the defendants, Sowell argued, he did not represent the board of directors in their individual capacities. She relied on rule 1.13 of the Rules of Professional Conduct to support her argument.

Sowell also argued in her written objection that the board of directors had not authorized Tinley to represent the agency in the Sowell action or to file the counterclaim, which contained false and libelous allegations. In support of her arguments, Sowell relied on portions of McClay's deposition at which McClay testified that she had not communicated with the board of directors since the board last held a meeting in July, 2012.[9] Sowell, therefore, argued that McClay lacked authority to represent the agency in the Sowell action. Moreover, Sowell argued that a conflict of interest existed between McClay and the board of directors because McClay is a defendant in the Sowell action. In conclusion, Sowell argued that unless Tinley could establish that he was retained to represent the agency by a person who had corporate authority to do so, he lacked standing to proceed with the agency's motion for a protective order. *Sowell contended that the only issue with regard to the protective order "is whether the notice claim letter sent by [Mendillo] to individual members of the [agency's] board of directors, advising them that they*

[9] Sowell deposed McClay on November 25, 2013.

will be held personally liable to [her] if the counterclaim filed by [the agency] is not withdrawn, is prohibited by rule 4.2 of the Rules of Professional Conduct." (Emphasis added.) Moreover, Sowell represented that Mendillo would not communicate with members of the board of directors without a court order or Tinley's consent.

Sowell also argued that the motion for protective order was improper and unnecessary on the grounds that the agency was a dissolved corporation and that McClay is the only member of the board of directors who has been actively engaged in the winding up of the agency's affairs. In addition, Sowell claimed that McClay has a material financial interest in the outcome of the *Sowell* action and that she did not have the authority to retain Tinley. Also, Sowell argued that Tinley owed a duty to the agency and the individual members of the board of directors to explain that the counterclaim constituted an abuse of process that was likely to result in substantial injury to the agency and might reasonably be imputed to the individual directors. In support of her argument, Sowell relied on rule 1.13 (a), (b), (f), and (g) of the Rules of Professional Conduct.[10]

[10] Rule 1.13 of the Rules of Professional Conduct provides in relevant part: "(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

"(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of law . . . that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization.

* * *

"(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

"(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents,

Sowell asserted that Tinley had not met with the board of directors to obtain their informed consent to allege the counterclaim, as he was required to do. Sowell was of the opinion that the individual members of the board of directors were not Tinley's clients and, therefore, it was not improper for Mendillo to communicate with them. For the foregoing reasons, Sowell asked that the motion for protective order be denied.

Mendillo, Tinley, and Attorney John Majewski of the Tinley firm appeared before the court on December 12, 2013, to present argument on the agency's motion for protective order. The court stated that it had read the motion for protective order and would hear from the parties. When the proceeding commenced, Majewski inquired whether the court needed argument. The court responded, "no." Majewski reminded the court that the defendants were not seeking sanctions, which the court stated it understood.

The court then turned to Mendillo, and the following colloquy transpired.

"Attorney Mendillo: Your Honor, the representations that were made in my objection concerning . . . McClay's statements at deposition have, in fact, been verified. I do have a transcript—a full transcript of her deposition testimony given on November 25. I think her testimony is directly material to the issue of whether or not it was appropriate to send the notice of claim letter to the individuals. And . . . McClay is here to testify, and I would ask that she do so.

"The Court: *Do you think that's necessary? Do you think the court cannot rule on this motion without*

subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders."

having heard from . . . McClay having read your motions and representations?

"Attorney Mendillo: My only issue, Your Honor, is based on the information available to me at the time the objection was filed. There was no legal authority for . . . Tinley. *You've read the objection.* There was no legal authority for . . . Tinley to be representing [the agency] in this matter, and therefore, I don't think he has standing.

"The Court: Well, that's not before the court today, first of all. That's not part of this issue. Here is the issue . . . . Let's pretend, sir, that you were representing me in a lawsuit. And along comes . . . Tinley who's defending that case. And he writes a letter not only to you as my lawyer, but to whatever other parties there were in the litigation. Tell me . . . if you think that's appropriate, sir? Be honest.

"Attorney Mendillo: Well, Your Honor, based on the fact scenario that you presented, I would say no but I think that . . . .

"The Court: But there isn't a different law for different fact scenarios. . . . Here is the thing. When you write to opposing counsel—and I understand you sent a copy of it to . . . Tinley, I believe; correct?

"Attorney Mendillo: Yes.

"The Court: But you were also generous enough, sir, to send a copy to all of the people that they represented, okay. And whether you intended it or not . . . the letter was such that you struck out. And to tell . . . Tinley's clients your view of the law as it applied to them, number one, that's not proper, sir. They hired him. And whether you would be a better choice, is beyond the pale, because he's their lawyer. So, for you to send a copy of the letter to . . . Tinley and to each of his clients at the same time and proceed to tell them what

the law is, and to present a kind of veiled threat of what will happen is just not appropriate . . . . And I know enough about you, sir, to know that you didn't intend any of these consequences, but it doesn't alter the fact that you are communicating with his clients.

"Attorney Mendillo: Your Honor, if I may . . . . The issue under rule 4.2, number one, is whether or not this is the transaction, the same transaction. And the transaction that . . . Tinley's firm represents [the agency] is the defense of a wrongful discharge claim. Now, [the agency] closed in August, 2012, and was dissolved in December, 2012. And the claims which were asserted in the notice letter that I filed have nothing to do with the wrongful discharge claim. They . . . pertain to causes of action which have arisen since the wrongful discharge. And I think that . . . is the principal issue for the court to focus on.

"The Court: No, sir. The principal issue for the court to focus on is what is proscribed by rule 4.2 of the Connecticut Rules of Professional Conduct. And I specifically refer to the language that says, 'when representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so.'

"It doesn't make any difference, sir, which cause of action you want to focus on . . . . What matters is that these people were . . . Tinley's clients, and sending them a copy of your letter at the same time that you . . . provided a copy to . . . Tinley, doesn't make it right, sir. That's what the rule reads. It doesn't say anything about representing on a prior claim or representation on a different cause of action. It doesn't care. You can't communicate with his clients without his

express consent and permission, and we know that wasn't done.

"No sanctions . . . are asked here. And that is the way, I think, frankly, I think one counsel should treat another. But that is the court's clear view and that is that there was a violation of that rule of conduct.

"Attorney Mendillo: Your Honor, because I do take my professional responsibilities extremely seriously . . .

"The Court: I believe that.

"Attorney Mendillo: I would like to, with the court's permission, to make a record because I have researched.

"The Court: *You can make a record. I read, by the way, your objection. So if you are going to tell me what you said in the objection, please don't.*

"Attorney Mendillo: No.

"The Court: Because that will be a matter of record.

"Attorney Mendillo: No. It's the underlying facts that I would like to make a record of because I wasn't in a position to do so in the objection.

"The Court: Go right ahead.

"Attorney Majewski: Oh, no, no, no. He wants testimony.

"The Court: No. Tell me what the testimony would show, sir.

"Attorney Mendillo: *The testimony will show, Your Honor, that there has been no communication between . . . McClay, who is the chairman of the* [*agency*] *board and the others on the board.*

"The Court: *I know. I read the papers. I really was telling the truth when I said I read it.*

* * *

"Attorney Mendillo: But, it's exceedingly important to me that the underlying facts are viewed here because I think that they have to be looked at in order to make an informed decision about 4.2.

"The Court: *Before I answer that question, sir, would you agree with me that it is an underlying fact that you sent to . . . McClay a communication, to . . . Tinley at the same time you sent a copy of the same letter to his clients; is that true?*

"Attorney Mendillo: *Yes, it is, Your Honor.* . . .

"The Court: *Is it also true that you did that without permission from . . . Tinley?*

"Attorney Mendillo: *Yes.* But I do not stipulate to, number one, Your Honor, that they were his clients.

"The Court: We are by number one. We are on number two.

"Attorney Mendillo: Well, I misspoke when I said yes to number one. I do not stipulate that they were . . . Tinley's client at that time. They may be at the present time, but only if they've been retained.

"The Court: Well, were they at the time you sent the letter to them?

"Attorney Mendillo: No, they were not.

"The Court: Well, then, what I'm going to say to you, sir, is if you are right in that, then what continues to be true, is that you are sending the letter to . . . Tinley and his then purported clients, creates the semblance of a violation of rule 4.2 of the Rules of Professional Conduct.

"Attorney Mendillo: Your Honor, if I may? In my view, I had an ethical obligation under the rules of professional responsibility to send those notice letters to the individual board members because if I had filed a lawsuit against them without notifying them . . . .

"The Court: You are putting yourself in a position you were not in, sir. That's what . . . Tinley's to worry about, not you. That's his problem if it's a problem at all, sir. It's not your job . . . to put yourself in the position of . . . Tinley and say he shouldn't have done it. We are talking about what you did, sir, because what's before the court today is whether you, under the Rules of Professional Conduct, had a clear right to send . . . Tinley a letter at the same time—here's the offensive part—at the same time you sent the same letter to his clients. And even if there was just one of those clients, that is a violation of the Rule of Professional Conduct 4.2. I believe you don't believe that, but that doesn't mean you are right, sir." (Emphasis added.)

At the conclusion of the proceeding, the court stated: "Rule 4.2 doesn't say anything about the truth of the matters to have been commented on. It simply says you cannot communicate with the clients of adverse . . . lawyers without the permission of that lawyer. True? Untrue? Partly true? Partly untrue? Makes no difference. You don't communicate with them. And when the communication veers off into areas that can be perceived as threatening, it's just too far . . . . You may not have intended it, sir, I don't believe you did, but I think you need to look more closely at the language that is used before you run off again. It's clear to me that you did what you shouldn't have done. *Counsel has been kind enough to say, we are not seeking sanctions.* I don't know whether I would have entered them or not, but he makes my job easier when he says I'm not seeking it. But *the emergency motion for protective order is granted*, enthusiastically." (Emphasis added.)

Thereafter, on December 31, 2013, Mendillo filed a petition for a writ of error in our Supreme Court, which transferred the petition to this court. See Practice Book § 65-1. In his petition for a writ of error, Mendillo alleged that the trial court exceeded its discretion during the proceeding on the motion for protective order by refusing to hear testimony from a lay witness and that the court violated both the federal and state constitutions in refusing to receive the proffer of documentary evidence that, according to Mendillo, the Tinley firm was not authorized to represent the agency in the Sowell action. Mendillo seeks to have the finding that he violated rule 4.2 of the Rules of Professional Conduct set aside.[11]

In his brief to this court, Mendillo claims that (1) the evidence in the record does not support the court's findings of fact, (2) the court's conclusion that he violated rule 4.2 of the Rules of Professional Conduct is legally and logically incorrect, (3) the court denied him due process of law, and (4) the court abused its discretion by failing to permit him to present testimony and place a document into evidence. We disagree with each of Mendillo's claims and, therefore, dismiss the writ of error.

Pursuant to the rules of practice, writs of error in matters of law may be brought from a final judgment

[11] As the transcript of the proceeding in the trial court demonstrates, and as the trial court found, the agency did not wish to have the court sanction Mendillo. Its objective merely was to have the court grant the motion for a protective order; the facts related to the letters Mendillo sent were the basis of the agency's request. During the hearing on the motion for protective order, Mendillo was the person who sought to contest whether he had violated the Rules of Professional Conduct.

By filing the writ of error, Mendillo has forced the trial court's hand to articulate its finding that he violated rule 4.2. When Tinley argued before this court, he iterated that he and the agency were not seeking to have Mendillo sanctioned, only that the court's order granting the motion for protective order be affirmed. Mendillo is the party pursuing the question of whether he violated the Rules of Professional Conduct.

of the Superior Court to the Supreme Court. Practice Book § 72-1 (a); accord General Statutes § 52-572; *State* v. *Salmon*, 250 Conn. 147, 150, 735 A.2d 333 (1999). A writ of error, therefore, necessarily presents a question of law. When the "trial court draws conclusions of law, our review is plenary and [an appellate court] must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *MSO, LLC* v. *DeSimone*, 313 Conn. 54, 62, 94 A.3d 1189 (2014).

I

Before we address the merits of Mendillo's writ of error, we first must decide whether we have jurisdiction to consider it. The defendants claim that this court lacks subject matter jurisdiction because Mendillo was not aggrieved when the court granted the motion for protective order, and therefore, he lacks standing to bring a writ of error. We disagree.

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless [one] has, in an individual or representative capacity, some real interest in the cause of action . . . . Standing is established by showing that the party claiming it is authorized by statute to bring suit or is classically aggrieved. . . . The fundamental test for determining [classical] aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as the concern of all the members of the community as a whole. Second, the party claiming aggrievement must successfully establish that the specific personal and legal interest has been specially and injuriously affected by the decision. . . .

Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) *Gold* v. *Rowland*, 296 Conn. 186, 207, 994 A.2d 106 (2010).

In the present case, Mendillo petitioned for a writ of error after the court granted the agency's motion for a protective order. At the time the parties appeared before the court to argue the agency's motion for protective order, counsel for the agency stated that it was not seeking sanctions against Mendillo. The court stated that it understood that the agency was not seeking sanctions and would not impose sanctions pursuant to that representation. In this court, the defendants contend that because the court did not sanction Mendillo, he has not been aggrieved. We disagree with the defendants because we conclude that the court's finding that Mendillo violated rule 4.2 is sufficient to establish aggrievement.

"It is settled law in Connecticut that a sanction for professional misconduct adversely affects an attorney's vested right to practice law." *Briggs* v. *McWeeny*, 260 Conn. 296, 312, 796 A.2d 516 (2002). Standing alone, a judicial finding that an attorney violated the Rules of Professional Conduct constitutes a disciplinary sanction tantamount to a reprimand, even when the finding was not made in the context of a formal grievance proceeding. See *State* v. *Perez*, 276 Conn. 285, 298–300, 88 A.2d 178 (2005). An attorney has standing to seek appellate review of a judicial determination that he has committed an ethical violation, notwithstanding the fact that no sanction was imposed, because that determination reflects adversely on an attorney's professional reputation. Id., 299.

Following oral argument before this court, we carefully reviewed the transcript of the hearing on the

agency's motion for protective order as well as the entire record in the Sowell action. We found it ambiguous as to whether the court had found that Mendillo had violated the Rules of Professional Conduct, and if so, by what burden of proof.[12] Whether the court found that Mendillo violated one of the Rules of Professional Conduct is central to whether he has been aggrieved. See *State* v. *Perez*, supra, 276 Conn. 298–300. We, therefore, sua sponte ordered the trial court to articulate "whether it affirmatively found on December 12, 2013, that . . . Mendillo violated rule 4.2 of the Rules of Professional Conduct. If the answer to that question is yes, the trial court is ordered to articulate whether it so found by clear and convincing evidence."

The trial court articulated that it found that Mendillo violated rule 4.2 of the Rules of Professional Conduct by sending a notice of claim letter related to the Sowell action to persons who were represented by counsel. The court stated that it made the finding by clear and convincing evidence.

On the basis of the full record, the court's articulation, and the law, we conclude that because the court found that Mendillo violated rule 4.2 of the Rules of Professional Conduct, he is aggrieved and has standing to bring a writ of error. This court, therefore, has jurisdiction to adjudicate it. We now turn to the merits of the writ of error.

[12] After the court granted the agency's motion for protective order, Sowell filed a motion to disqualify judicial authority directed to Judge Sheedy. The court denied the motion to disqualify in a memorandum of decision, stating that after hearing argument by all counsel on the agency's motion for a protective order, "the court found . . . Mendillo's sending of the . . . notice of claim letter to . . . Tinley's client without his knowledge and consent to be a clear violation of rule 4.2 and granted the Emergency Motion for Protective Order prohibiting further unprivileged communication with . . . Tinley's clients."

II

Mendillo's first claim is that the facts found by the court are not supported by clear and convincing evidence. We do not agree.[13]

The Superior Court has inherent authority to compel the observance of its rules. See *Fattibene* v. *Kealey*, 18 Conn. App. 344, 359, 558 A.2d 677 (1989). In matters concerning review of the decisions of the trial court regarding violations of the Rules of Professional Conduct, our role is to determine if the facts as found are supported by the evidence contained in the record and whether the conclusions that follow are legally and logically correct. See *Ansell* v. *Statewide Grievance Committee*, 87 Conn. App. 376, 382–83, 865 A.2d 1215 (2005).

"[I]n a matter involving attorney discipline, no sanction may be imposed unless a violation of the Rules of

[13] As noted previously, after the court granted the motion for protective order, Sowell filed a motion to disqualify the judicial authority. In a memorandum of decision denying the motion to disqualify, the court stated that it previously had found that Mendillo violated rule 4.2 of the Rules of Professional Conduct. Thereafter, Mendillo filed numerous motions for articulation and rectification to which the court responded. In his brief to this court, Mendillo has in minute detail examined every finding or statement of the court. In doing so, he identified discrepancies between the transcript of the hearing on the motion for protective order and the trial court's findings in its articulations.

We carefully have reviewed Mendillo's brief and acknowledge that some of the trial court's findings in its articulations are not supported by the record, e.g., whether the court was informed that McClay was present in the courtroom to testify. We conclude, however, that those findings that do not find support in the record are not material or relevant to the court's conclusion that Mendillo violated rule 4.2. As Sowell stated in her objection to the motion for protective order *the only issue with regard to the protective order "is whether the notice claim letter sent by [Mendillo] to individual members of the [agency's] board of directors, advising them that they will be held personally liable to [her] if the counterclaim filed by [the agency] is not withdrawn, is prohibited by rule 4.2 of the Rules of Professional Conduct."* We, therefore, do not address each instance in which the court made a subsequent factual finding that is at odds with the transcript of the hearing on the motion for protective order.

Professional Conduct has been established by clear and convincing evidence. . . . [C]lear and convincing proof denotes a degree of belief that lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution. . . . [The burden] is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." (Citation omitted; internal quotation marks omitted.) *State* v. *Perez*, supra, 276 Conn. 307–308.

In the present case "our role is limited to reviewing the record to determine if the facts as found are supported by the evidence contained within the record and whether the conclusions that follow are legally and logically correct." (Internal quotation marks omitted.) *Lewis* v. *Statewide Grievance Committee*, 235 Conn. 693, 698, 669 A.2d 1202 (1996).

In its articulation as ordered by this court, the trial court stated: "On December 12, 2013, I did affirmatively find—by clear and convincing evidence—that . . . Mendillo violated rule 4.2 of the Rules of Professional Conduct. On that date I heard argument on defense counsel's emergency motion for protective order and objection thereto. The conduct in question was . . . Mendillo's forwarding to defendants (represented by counsel) a notice of claim letter in which he stated his view of the applicable law and what he believed would be the legal consequences of their dismissal of his sister's employment by [the agency] . . . . Rule 4.2 of this state's Rules of Professional Conduct prohibits a lawyer from communicating with a party he knows to be represented without the prior consent of that lawyer. No such consent had been given . . . Mendillo and, thus, the impropriety of that communication. At the

hearing on December 12, 2013 . . . Mendillo acknowledged the communication with defendants without the prior knowledge or consent of their counsel. I found that communication was clear and convincing evidence of the violation of rule 4.2, which violation assaulted the integrity of the lawyer-client relationship to which defense counsel was entitled."

When the agency filed its motion for protective order, it attached a copy of the letter Mendillo sent to Tinley and copies of the letter Mendillo sent to members of the board of directors. See footnotes 4 and 5 of this opinion. Mendillo's letter to Tinley indicated that Mendillo had sent a claim letter to each member of the board of directors and that the letter concerned the Sowell action. The claim letter sent to the board of directors concerned the Sowell action and Mendillo's legal opinion of the agency's counterclaim against Sowell and threatened individual liability of the members of the board of directors. In the trial court and before us, Mendillo does not contend that the letters attached to the agency's motion for protective order were anything other than accurate copies of the letters that he sent to Tinley and the board of directors. Moreover, during his colloquy with the trial court, as previously noted, Mendillo admitted that he sent the claim letter to the board of directors and that he did so without Tinley's permission.[14]

[14] "The Court: *Before I answer that question, sir, would you agree with me that it is an underlying fact that you sent to . . . McClay a communication, to . . . Tinley at the same time you sent a copy of the same letter to his clients; is that true?*

"Attorney Mendillo: *Yes, it is, Your Honor.* . . .

"The Court: *Is it also true that you did that without permission from . . . Tinley?*

"Attorney Mendillo: *Yes.* But I do not stipulate to, number one, Your Honor, that they were his clients.

"The Court: We are by number one. We are on number two.

"Attorney Mendillo: Well, I misspoke when I said yes to number one. I do not stipulate that they were . . . Tinley's client at that time. They may be at the present time, but only if they've been retained.

On the basis of the letters attached to the agency's motion for protective order and Mendillo's admission before the court that he sent the claim letter to the board of directors, and in light of the trial court's articulation, we conclude that there was clear and convincing evidence before the court that Mendillo violated rule 4.2 by communicating with Tinley's clients without his permission.

There is no dispute as to the underlying facts. The issue is a legal question, i.e., whether the members of the agency's board of directors were Tinley's clients. Here, as in the trial court, Mendillo's argument that the members of the board of directors were not Tinley's clients begins with rule 1.13 (a) of the Rules of Professional Conduct, which provides that "[a] lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." Mendillo contends that because the agency had been dissolved, was in the process of winding down and that the board had not met to authorize McClay to retain the Tinley firm and had not ratified the filing of a counterclaim against Sowell at the time of the hearing on the motion for protective order, the members of the board were not Tinley's clients at the time Mendillo sent them the subject letters. Mendillo's argument is not legally or logically correct.

Rule 1.13 (a) provides that a lawyer "retained by an organization represents the organization acting through its duly authorized constituents." The commentary to rule 1.13 of the Rules of Professional Conduct states in relevant part: "An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders

"The Court: Well, were they at the time you sent the letter to them?

"Attorney Mendillo: No, they were not." (Emphasis added.)

are the constituents of the corporate organizational client."

In the underlying Sowell action, the Tinley firm filed an appearance on behalf of DiCara, McClay, *and* the agency. The trial court may take judicial notice of the file. See *Wasson* v. *Wasson*, 91 Conn. App. 149, 151 n.1, 881 A.2d 356, cert. denied, 276 Conn. 932, 890 A.2d 574 (2005).

The agency's bylaws, which were disclosed during discovery, state in relevant part: "3. Powers, Responsibilities and Accountabilities. The corporate business affairs of the corporation shall be managed under the director of the Board of Directors, except as may be otherwise provided in these Bylaws or the articles of incorporation." The agency's bylaws indicate that its business affairs are managed by the board of directors. The Tinley firm was retained to represent the agency; pursuant to rule 1.13, the members of the board of directors are constituents of Tinley's corporate client.

The commentary to rule 4.2 states in relevant part: "In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for the purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization." The copies of the letters Mendillo sent to the board of directors were before the court and Mendillo admitted to the court that he sent the letters to the members of the agency's board of directors. We therefore conclude that there was clear and convincing evidence to support the court's finding that Mendillo violated rule 4.2 by sending the letters to the board of directors.

Mendillo's argument that the board of directors had not authorized McClay to retain Tinley nor ratify her act of retaining Tinley prior to the time he sent the claim letter misconstrues the law of agency.[15] "Ratification means the adoption by a person, as binding upon himself, of an act done in such relations that he may claim it as done for his benefit, although done under such circumstances as would not bind him except for his subsequent assent; as where an act was done by a stranger having at the time no authority to act as his agent, or by an agent not having adequate authority. The acceptance of the results of the act with an intent to ratify, with full knowledge of all the material circumstances, is a ratification. Ratification makes the contract in all respects what it would have been if the requisite power had existed when it was entered into. It relates back to the execution of the contract and renders it obligatory from the outset." *Ansonia* v. *Cooper*, 64 Conn. 536, 544, 30 A. 760 (1894). In other words, the board of directors could not have ratified McClay's acts unless she had authority to act in the first place.

Mendillo's argument that because the agency had been dissolved and was in the process of winding up, McClay was deprived of her authority to retain Tinley is unpersuasive. General Statutes § 33-884 (a) provides in relevant part: "A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs . . . ." "Implicit in such authority is the ability to settle or otherwise be subject to litigation to resolve outstanding obligations." *Single Source, Inc.* v. *Central Regional Tourism District, Inc.*, 312

[15] The board of directors met on December 10, 2013. The minutes of the meeting state in relevant part: "A motion was made . . . to formally ratify all actions taken by . . . DiCara and . . . McClay to date and to continue said authorization to act on behalf of the Agency in the future until the completion of winding up of its affairs. Passed. Unanimously."

Conn. 374, 391, 93 A.3d 1065 (2014). For this reason, Mendillo's argument that McClay lacked authority to retain Tinley due to the agency's dissolution is of no avail.

For the foregoing reasons, we conclude that the court's legal conclusion that Mendillo violated rule 4.2 is supported by clear and convincing evidence in the record.

III

Mendillo next claims that the court denied him the right to due process by denying him an evidentiary hearing. We disagree.

"It is well established that [j]udges of the Superior Court possess the inherent authority to regulate attorney conduct and to discipline the members of the bar. . . . It is their unique position as officers and commissioners of the court . . . which casts attorneys in a special relationship with the judiciary and subjects them to its discipline. . . . It is also well established that a sanction for professional misconduct adversely affects an attorney's vested right to practice law. . . . Thus, attorneys subject to disciplinary proceedings are entitled to due process of law." (Citation omitted; internal quotation marks omitted.) *State* v. *Perez*, supra, 276 Conn. 296. "As a procedural matter, before imposing any . . . sanctions [on an attorney], the court must afford the . . . attorney a proper hearing . . . . There must be fair notice and an opportunity for a hearing on the record." (Internal quotation marks omitted.) Id., 296–97.

"In attorney disciplinary proceedings, two interests are of paramount importance. On the one hand, we must not tie the hands of . . . courts with procedural requirements so strict that it becomes virtually impossible to discipline an attorney for any but the most obvious, egregious and public misconduct. On the other

hand, we must ensure that attorneys subject to disciplinary action are afforded the full measure of procedural due process required under the constitution so that we do not unjustly deprive them of their reputation and livelihood. . . .

"To satisfy the requirements of due process, attorneys subject to disciplinary action must receive notice of the charges against them. In the context of attorney misconduct proceedings, this court previously has stated that notice must be sufficiently intelligible and informing to advise the . . . attorney of the accusation or accusations made against [him], to the end that . . . [he] may prepare to meet the charges against [him] . . . . If this condition is satisfied, so that the accused is fully and fairly apprised of the charge or charges made, the complaint is sufficient to give [him] an opportunity to be fully and fairly heard . . . ." (Citation omitted; internal quotation marks omitted.) Id., 297.

We are cognizant that the United States Supreme Court has stated that "due process, unlike some legal rules, is not a technical concept with fixed content unrelated to time, place and circumstances. . . . [D]ue process is flexible and calls for such procedural protections as the particular situation demands." (Citation omitted; internal quotation marks omitted.) *Gilbert* v. *Homar*, 520 U.S. 924, 929, 117 S. Ct. 1807, 138 L. Ed. 2d 120 (1997); see also *Commissioner of Environmental Protection* v. *Farricielli*, 307 Conn. 787, 820, 59 A.3d 789 (2013) (no per se rule that evidentiary hearing required whenever property interest may be affected); *Henderson* v. *Lagoudis*, 148 Conn. App. 330, 341–42, 85 A.3d 53 (2014) (due process does not mandate full evidentiary hearing on all matters; not all situations calling for procedural safeguards call for same kind of procedure).

Mendillo's due process claim is predicated on the court's refusing to permit him to call McClay to testify or

to put a copy of her deposition testimony into evidence. Mendillo proffered to the court that the proposed testimony was necessary to substantiate the representations he had made in Sowell's objection to the motion for protective order. That evidence, however, was not in dispute. The parties did not then, and do not now, dispute those facts. The court accepted Mendillo's understanding of the facts and the law, and his belief that the members of the board of directors were not Tinley's clients. The court stated that it had read the motion for protective order and Sowell's objection. The court recognized, however, that an evidentiary hearing would serve no purpose because the issue before it was not a question of fact, but an issue of law. In essence, therefore, Mendillo had a hearing at which he was able to create a record and tell his side of the story. See *AFSCME, Council 4, Local 2663* v. *Dept. of Children & Families*, 317 Conn. 238, 259, 117 A.3d 470 (2015).

The legal issue before the trial court, and before us, is whether Tinley's appearance on behalf of the defendants, including the agency, precluded Mendillo from sending the notice of claim letter to the agency's board of directors. In part II of this opinion, we considered and rejected Mendillo's claim that the court improperly concluded that he violated rule 4.2 as a matter of law. As the record before us discloses, Mendillo had an opportunity to argue his position before the trial court and to create a record. We conclude, therefore, that the trial court did not deny Mendillo his constitutional rights to due process of law.

IV

Mendillo's final claim is that the court abused its discretion as to the admission of evidence by failing to let him present testimony and place a document into evidence. We disagree.

The parties appeared before the court so that the court could determine whether a motion to prohibit Mendillo from communicating with the agency's board of directors should be granted. The court had familiarized itself with the motion for protective order and Sowell's objection. Mendillo sought to have McClay testify because in his opinion, "her testimony is directly material to the issue of whether or not it was appropriate to send the notice of claim letter to the individuals." The court asked why it could not rule on the bases of the parties' representations in their memoranda of law. Mendillo stated that his only issue "is based on information available to me at the time the objection was filed." Mendillo claimed that there was no legal authority for Tinley to be representing the agency in the counterclaim.

"[M]atters involving judicial economy, docket management [and control of] courtroom proceedings . . . are particularly within the province of a trial court." (Internal quotation marks omitted.) *Marshall* v. *Marshall*, 71 Conn. App. 565, 574, 803 A.2d 919, cert. denied, 261 Conn. 941, 808 A.2d 1132 (2002). Connecticut trial judges have "inherent discretionary powers to control proceedings, exclude evidence, and prevent occurrences that might unnecessarily prejudice the right of any party to a fair trial. . . . The trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion." (Internal quotation marks omitted.) *Connecticut Light & Power Co.* v. *Gilmore*, 289 Conn. 88, 128, 956 A.2d 1145 (2008).

As we previously concluded in part III of this opinion, the parties agreed on the underlying facts and the court made clear that it had familiarized itself with the motion for protective order, the objection thereto, and the parties' memoranda of law. The court accepted as true Mendillo's proffer of proof. Neither the testimony, nor

the deposition transcript, would have materially aided the court in reaching its decision. We conclude, therefore, that the court did not abuse its discretion by denying Mendillo's request to present evidence.

The writ of error is dismissed.

In this opinion the other judges concurred.

here do not rise to the level of the extraordinary situation that would warrant tax relief under the provisions of § 12-119").

Accordingly, we conclude that the trial court properly determined that the plaintiff did not meet its burden to establish a claim under § 12-119.

The judgment is affirmed.

In this opinion the other justices concurred.

GEORGE E. MENDILLO *v.* TINLEY, RENEHAN & DOST, LLP, ET AL.
(SC 19923)

Palmer, McDonald, Robinson, Mullins and Kahn, Js.*

Syllabus

The plaintiff, an attorney who previously had represented a party in a wrongful discharge action, brought the present action, seeking a judgment declaring, inter alia, that the defendant Appellate Court violated his constitutional rights by upholding, in *Sowell* v. *DiCara* (161 Conn. App. 102), a trial court's determination that he had violated rule 4.2 of the Rules of Professional Conduct, which proscribes certain direct communications with parties represented by counsel. The basis of the violation stemmed from the plaintiff's direct communication with certain members of the board of directors of Y Co., which was represented by the defendant law firm in the wrongful discharge action. The trial court granted the defendants' motion to dismiss the present action, concluding that it lacked jurisdiction because the Appellate Court's decision in *Sowell* constituted binding precedent and that a collateral challenge to that decision in the present case was precluded by the statute (§ 51-197f) governing the review of Appellate Court judgments. On the plaintiff's appeal from the trial court's judgment dismissing the present action, *held* that the trial court properly granted the defendants' motion to

* This case originally was scheduled to be argued before a panel of this court consisting of Justices Palmer, McDonald, Robinson, Mullins and Kahn. Although Justice Robinson was not present when the case was argued before the court, he has read the briefs and appendices, and listened to a recording of the oral argument prior to participating in this decision. The listing of justices reflects their seniority status on this court as of the date of oral argument.

Appendix E

dismiss, this court having concluded that the plaintiff's declaratory judgment action was nonjusticiable because the trial court could not afford the plaintiff any practical relief: the allegations in the plaintiff's complaint indicating that a declaratory judgment would provide guidance to members of the bar with respect to future conduct amounted to a request for an advisory opinion, and, in the absence of a dispute beyond that considered by the Appellate Court in its decision in *Sowell*, the present action amounted to nothing more than a impermissible collateral attack on that decision; moreover, entertaining the present action would violate § 51-197f, which rendered the Appellate Court's decision in *Sowell* final, as the plaintiff was afforded the opportunity to seek review of that decision by filing a petition for certification to appeal with this court.

Argued May 3—officially released July 24, 2018

Procedural History

Action for a judgment declaring, inter alia, that the plaintiff had been deprived of certain constitutional rights, brought to the Superior Court in the judicial district of Litchfield, where the court, *Schuman, J.*, granted the defendants' motion to dismiss and rendered judgment thereon, from which the plaintiff appealed. *Affirmed.*

George E. Mendillo, self-represented, with whom was *John G. Manning*, for the appellant (plaintiff).

Jeffrey J. Tinley, for the appellee (named defendant).

Jane R. Rosenberg, solicitor general, with whom, on the brief, was *George Jepsen*, attorney general, for the appellees (defendant Connecticut Appellate Court et al.).

Opinion

ROBINSON, J. In this appeal, we consider whether the Superior Court has subject matter jurisdiction over a declaratory judgment action brought as a collateral attack on a judgment of the Appellate Court concerning the plaintiff, George E. Mendillo. The plaintiff appeals[1]

[1] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2.

from the judgment of the trial court dismissing his declaratory judgment action against the defendants, the law firm of Tinley, Renehan & Dost, LLP (law firm), and the Connecticut Appellate Court.[2] On appeal, the plaintiff, who is an attorney, claims that the trial court improperly concluded that his challenge to the Appellate Court's interpretation of rule 4.2 of the Rules of Professional Conduct[3] in *Sowell* v. *DiCara*, 161 Conn. App. 102, 127 A.3d 356, cert. denied, 320 Conn. 909, 128 A.3d 953 (2015), was barred by the doctrine of sovereign immunity. We, however, do not reach the sovereign immunity issues raised by the plaintiff because we agree with the defendants' alternative jurisdictional argu-

[2] The plaintiff also named as defendants three judges of the Appellate Court acting in their official capacities, specifically, Douglas S. Lavine, Eliot D. Prescott, and Nina F. Elgo. We also note that the law firm has adopted the brief of the Appellate Court in the present appeal. Accordingly, we refer to the defendants collectively where appropriate and individually by name.

[3] Rule 4.2 of the Rules of Professional Conduct provides in relevant part: "In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. . . ."

The Commentary to rule 4.2 provides in relevant part: "This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

"In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. . . ."

ment, and conclude that the plaintiff's collateral attack on *Sowell* in this declaratory judgment action is nonjusticiable under *Valvo* v. *Freedom of Information Commission*, 294 Conn. 534, 985 A.2d 1052 (2010). Accordingly, we affirm the judgment of the trial court.

The record reveals the following undisputed relevant facts and procedural history. The plaintiff represents Julie M. Sowell, the plaintiff in a wrongful discharge action pending in the Superior Court against her former employer, Southbury-Middlebury Youth and Family Services, Inc. (Youth Services), a Connecticut nonstock, nonprofit corporation that had been dissolved, Deirdre H. DiCara, its executive director, and Mary Jane McClay, the chairperson of its board of directors. See *Sowell* v. *DiCara*, Superior Court, judicial district of Waterbury, Docket No. CV-12-6016087-S (Sowell action). On September 6, 2012, the law firm filed an appearance in the Sowell action on behalf of Youth Services, McClay, and DiCara. At a hearing held on December 12, 2013, the trial court, *Hon. Barbara J. Sheedy*, judge trial referee, granted Youth Services' motion for an emergency protective order (protective order) on the basis of the court's finding that the plaintiff had violated rule 4.2 of the Rules of Professional Conduct by communicating directly with certain "putative" members of Youth Services' board of directors regarding the merits of a counterclaim that counsel for Youth Services had filed against Sowell at McClay's direction.[1] Although Judge Sheedy did not order any sanctions against the plaintiff, the protective order enjoined him from further contact of any kind with members of Youth Services' board of directors without prior permission from the law firm. See *Sowell* v. *DiCara*, supra, 161 Conn. App. 107, 118.

[1] A detailed rendition of the facts and procedural history underlying Judge Sheedy's finding is set forth in *Sowell* v. *DiCara*, supra, 161 Conn. App. 105–18.

The plaintiff filed a writ of error in this court challenging the basis for the protective order (first writ), which was subsequently transferred to the Appellate Court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. Id., 119. In the first writ, the plaintiff claimed that Judge Sheedy had (1) improperly found clear and convincing evidence that he had violated rule 4.2 of the Rules of Professional Conduct, and (2) violated his state and federal constitutional rights to due process and abused its discretion by refusing to permit him to present evidence at the hearing on the motion for a protective order. Id. The Appellate Court issued a comprehensive opinion rejecting the plaintiff's challenges to the basis for the protective order, namely, the finding that he had violated rule 4.2, and rendered judgment dismissing the first writ.[5] Id., 133. This court subsequently denied the plaintiff's petition for certification to appeal in an order dated December 16, 2015; see *Sowell* v. *DiCara*, 320 Conn. 909, 128 A.3d 953

[5] With respect to the specific claims presented in the first writ, the Appellate Court relied on the letters attached to Youth Services' motion for a protective order and the plaintiff's "admission before the court that he sent the claim letter to the board of directors, and [Judge Sheedy's] articulation," and "conclude[d] that there was clear and convincing evidence before the court that [the plaintiff] violated rule 4.2 [of the Rules of Professional Conduct] by communicating with [the law firm's] clients without [its] permission." *Sowell* v. *DiCara*, supra, 161 Conn. App. 126; see id., 126–29 (noting that claim presented "legal question" concerning whether "the members of [Youth Services'] board of directors were [the law firm's] clients," as contemplated by rule 1.13 [a] of the Rules of Professional Conduct, given fact that "agency had been dissolved and was in the process of winding up" pursuant to General Statutes § 33-884 [a]). The Appellate Court next concluded that due process did not require an evidentiary hearing at which McClay would testify or her deposition testimony would be admitted into evidence, insofar as "an evidentiary hearing would serve no purpose because the issue before [the Appellate Court] was not a question of fact, but an issue of law. In essence, therefore, [the plaintiff] had a hearing at which he was able to create a record and tell his side of the story." Id., 131. Finally, citing judicial economy and the lack of disputed facts, the Appellate Court rejected the plaintiff's claim "that the court abused its discretion as to the admission of evidence by failing to let him present testimony and place a document into evidence." Id., 131–33.

(2015); and later denied the plaintiff's motion for reconsideration of that denial.

Subsequently, on February 4, 2016, the plaintiff filed a writ of error in this court challenging the Appellate Court's actions (second writ). This court dismissed the second writ on May 25, 2016, and denied the plaintiff's motion for reconsideration en banc of that dismissal on June 27, 2016.

On October 3, 2016, the plaintiff filed the present action in the Superior Court seeking a declaratory judgment pursuant to General Statutes § 52-29 and 42 U.S.C. § 1983 (2012). In the first count of the declaratory judgment complaint, the plaintiff claimed that there is substantial uncertainty with respect to the scope, meaning, and applicability of rule 4.2 of the Rules of Professional Conduct affecting his legal rights and relations with other parties. In the second count, the plaintiff claimed that the Appellate Court exceeded its constitutional authority and violated his constitutional rights by finding facts from evidence beyond the trial court record, namely, the existence of an attorney-client relationship between the law firm and Youth Services, which he was not given the opportunity to rebut or explain. In the third count, the plaintiff sought a declaration pursuant to 42 U.S.C. § 1983 that rule 4.2 is unconstitutional under the due process and equal protection clauses as applied to the facts of this case. In the fourth count, the plaintiff claimed that the Appellate Court had violated his free speech rights under the state and federal constitutions because his speech was a reasonable remedial measure under rule 3.3 (b) of the Rules of Professional Conduct to address fraud and a matter of public importance. In the fifth count, the plaintiff claimed that the Appellate Court's construction of rule 4.2 was a due process violation because it amounted to an ex post facto law. In the sixth count, the plaintiff claimed a violation of his right to equal protection of the laws.

The defendants moved to dismiss the declaratory judgment complaint, claiming that the plaintiff's claims are nonjusticiable and barred by the doctrine of sovereign immunity. The trial court, *Schuman, J.*,[6] granted the motion to dismiss, concluding that General Statutes § 51-197f[7] precluded further review of the Appellate Court's decision in *Sowell* v. *DiCara*, supra, 161 Conn. App. 102, except by this court following a petition for certification. The trial court further concluded that the claims against the Appellate Court were barred by sovereign immunity. Concluding that it lacked subject matter jurisdiction, the trial court granted the defendants' motion to dismiss and rendered judgment accordingly. This appeal followed.

On appeal, the plaintiff claims that the trial court improperly concluded that the existence of binding precedent, namely, the decision of the Appellate Court in *Sowell* v. *DiCara*, supra, 161 Conn. App. 102, operated to deprive the trial court of jurisdiction because the constitutional issues did not arise until after the Appellate Court rendered that decision. The plaintiff also argues that he has standing to seek a declaratory judgment under § 52-29 because the Appellate Court's decision in *Sowell* "has caused a continuing injury to his reputation and professional standing and the unconstitutional application of rule 4.2 [of the Rules of Professional Conduct] by the Appellate Court poses an immediate threat of further injury in the future." The plaintiff then contends in detail that the trial court improperly determined that sovereign immunity and

[6] Unless otherwise noted, all references to the trial court hereinafter are to Judge Schuman.

[7] General Statutes § 51-197f provides in relevant part: "Upon final determination of any appeal by the Appellate Court, there shall be no right to further review except the Supreme Court shall have the power to certify cases for its review upon petition by an aggrieved party or by the appellate panel which heard the matter. . . ."

judicial immunity barred his claim for declaratory relief under § 52-29 and 42 U.S.C. § 1983.[8]

In response, the defendants contend, inter alia, that the trial court properly dismissed the plaintiff's claims because they are not justiciable, relying specifically on *Valvo* v. *Freedom of Information Commission*, supra, 294 Conn. 534, to argue that no practical relief is available because a trial court lacks the authority to reverse the rulings of another court in a separate case, and particularly those of the Appellate Court, which are binding precedent. The defendants contend that the sole avenue of relief available to the plaintiff was his petition for certification to appeal from the judgment of the Appellate Court to this court pursuant to § 51-197f. The defendants emphasize that the plaintiff's complaint did not allege any facts to establish the existence of a "dispute separate and distinct from his desire to overturn *Sowell*," such as a new threat of discipline under rule 4.2 of the Rules of Professional Conduct or a new situation in which he might commit a similar violation of rule 4.2. We agree with the defendants and conclude that the trial court lacked subject matter jurisdiction over this declaratory judgment action because the plaintiff's claims are not justiciable.

"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. . . . In ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court must consider the allegations of the complaint in their most favorable light . . . including those facts necessarily implied from the allegations . . . ." (Citations omitted; internal quotation marks

[8] Given our conclusion with respect to justiciability, we need not address in detail the plaintiff's comprehensive arguments with respect to sovereign and judicial immunity, and the defendants' equally comprehensive responses thereto.

omitted.) *Giannoni* v. *Commissioner of Transportation*, 322 Conn. 344, 349, 141 A.3d 784 (2016); see id., 349–50 (discussing "different situations" with respect to motion to dismiss "depending on the status of the record in the case," which might require consideration of "supplementary undisputed facts" or evidentiary hearing to resolve "critical factual dispute" [internal quotation marks omitted]).

We engage in plenary review of a trial court's grant of a motion to dismiss for lack of subject matter jurisdiction. See, e.g., *Chief Information Officer* v. *Computers Plus Center, Inc.*, 310 Conn. 60, 79, 74 A.3d 1242 (2013); *Valvo* v. *Freedom of Information Commission*, supra, 294 Conn. 541. "In undertaking this review, we are mindful of the well established notion that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Giannoni* v. *Commissioner of Transportation*, supra, 322 Conn. 350.

"Justiciability comprises several related doctrines, namely, standing, ripeness, mootness and the political question doctrine, that implicate a court's subject matter jurisdiction and its competency to adjudicate a particular matter." (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, 305 Conn. 523, 537–38, 46 A.3d 102 (2012). "Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. . . . Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant." (Internal quotation marks omitted.) *Glastonbury* v. *Metropolitan*

District Commission, 328 Conn. 326, 333, 179 A.3d 201 (2018).

The declaratory judgment procedure, governed by § 52-29 and Practice Book § 17-54 et seq., does not relieve the plaintiff from justiciability requirements. A "declaratory judgment action pursuant to § 52-29 . . . provides a valuable tool by which litigants may resolve uncertainty of legal obligations. . . . The [declaratory judgment] procedure has the distinct advantage of affording to the court in granting any relief consequential to its determination of rights the opportunity of tailoring that relief to the particular circumstances. . . . A declaratory judgment action is not, however, a procedural panacea for use on all occasions, but, rather, is limited to solving justiciable controversies. . . . Invoking § 52-29 does not create jurisdiction where it would not otherwise exist." (Citations omitted; internal quotation marks omitted.) *Milford Power Co., LLC* v. *Alstom Power, Inc.*, 263 Conn. 616, 625, 822 A.2d 196 (2003).

"As we noted in *Pamela B.* v. *Ment*, 244 Conn. 296, 323–24, 709 A.2d 1089 (1998), [w]hile the declaratory judgment procedure may not be utilized merely to secure advice on the law . . . or to establish abstract principles of law . . . or to secure the construction of a statute if the effect of that construction will not affect a plaintiff's personal rights . . . it may be employed in a justiciable controversy where the interests are adverse, where there is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement, and where all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof. . . . Finally, the determination of the controversy must be capable of resulting in practical relief to the complainant. . . .

"In deciding whether the plaintiff's complaint presents a justiciable claim, we make no determination regarding its merits. Rather, we consider only whether the matter in controversy [is] capable of being adjudicated by judicial power according to the aforestated well established principles." (Citations omitted; internal quotation marks omitted.) *Milford Power Co., LLC* v. *Alstom Power, Inc.*, supra, 263 Conn. 625–26; see also *Wilson* v. *Kelley*, 224 Conn. 110, 116, 617 A.2d 433 (1992) ("Implicit in these principles is the notion that a declaratory judgment must rest on some cause of action that would be cognizable in a nondeclaratory suit. . . . To hold otherwise would convert our declaratory judgment statute and rules into a convenient route for procuring an advisory opinion on moot or abstract questions . . . and would mean that the declaratory judgment statute and rules created substantive rights that did not otherwise exist." [Citations omitted.]).

In determining whether the present case is justiciable, we find instructive *Valvo* v. *Freedom of Information Commission*, supra, 294 Conn. 543, in which this court concluded that the plaintiff's claim, brought through an administrative appeal, was nonjusticiable when he sought to have the trial court "overturn sealing orders issued by another trial court in a separate case." See also id. ("[w]e are aware of no authority for the proposition that a trial court presiding over an administrative appeal may overturn a ruling by another trial court in an entirely unrelated case involving different parties—a proposition that the plaintiffs themselves have characterized as novel" [emphasis omitted]). Rejecting the proposed collateral attack as "completely unworkable," we observed that "[o]ur jurisprudence concerning the trial court's authority to overturn or to modify a ruling in a particular case assumes, as a proposition so basic that it requires no citation of authority, that any such action will be taken only by

the trial court with continuing jurisdiction over the case, and that the only court with continuing jurisdiction is the court that originally rendered the ruling." Id., 543–44. We emphasized that "[t]his assumption is well justified in light of the public policies favoring consistency and stability of judgments and the orderly administration of justice. . . . It would wreak havoc on the judicial system to allow a trial court in an administrative appeal to second-guess the judgment of another trial court in a separate proceeding involving different parties, and possibly to render an inconsistent ruling." (Citations omitted.) Id., 545; see also id., 548 ("We reject the plaintiffs' claims that they may mount a collateral attack on the sealing orders in this administrative appeal. We conclude, therefore, that the plaintiffs' claim that the remaining five sealed docket sheets are administrative records subject to the act is nonjusticiable because no practical relief is available . . . .").

Similarly, in *ASL Associates* v. *Zoning Commission*, 18 Conn. App. 542, 559 A.2d 236 (1989), the Appellate Court concluded that it lacked subject matter jurisdiction over a reservation arising from a declaratory judgment action brought to settle the interpretation of a zoning regulation because "the plaintiff's complaint fails to allege an actual controversy. The plaintiff obtained a building permit issued pursuant to the special permit and began the site work for the condominium project in the fall of 1986. There is no allegation that the defendant has taken, or even has threatened to take, action to declare the special permit void or to rescind the building permit." Id., 546. Significantly, the Appellate Court further emphasized that, "[*w*]*here the parties in a case were parties to an earlier action in which the same issue was the subject of a final judgment, it is difficult to understand how there could remain a justiciable or real controversy between the parties.* . . . The question presented in the prior

action, as well as in this action, was whether the town could issue a building permit to the plaintiff. The plaintiff and the defendant were parties to that action, and cannot impose their wish upon this court to have the same issue determined once again by way of this declaratory judgment action." (Citation omitted; emphasis added.) Id., 548.

On the basis of these authorities, we agree with the defendants that the present case is nonjusticiable because no practical relief is available to the plaintiff insofar as the allegations in the declaratory judgment complaint demonstrate that it is nothing more than a collateral attack on the protective order imposed by the trial court, *Sheedy, J.*, in the Sowell action, and upheld by the Appellate Court in *Sowell* v. *DiCara*, supra, 161 Conn. App. 102. Although the plaintiff alleges in his declaratory judgment complaint that a court decision would provide guidance to members of the bar with respect to their "future conduct," that allegation is nothing more than a request for an advisory opinion, insofar as none of the allegations therein identifies a dispute beyond that considered by the Appellate Court in *Sowell*. Put differently, the remainder of the allegations in the complaint unmistakably indicate that this case is a collateral challenge to the prior Appellate Court decision in *Sowell* concerning the plaintiff's previous violation of rule 4.2 of the Rules of Professional Conduct, rather than an action seeking guidance as to the application or vitality of principles from that decision with respect to a different set of facts. Thus, to entertain this declaratory judgment action would violate § 51-197f, which renders the Appellate Court's decision final insofar as the plaintiff has had his opportunity to seek review by a petition for certification to appeal. Cf. *Presnick* v. *Santoro*, 832 F. Supp. 521, 529–30 (D. Conn. 1993) (dismissing claim seeking to enjoin Superior Court chief clerk from enforcing judgment or to

force Appellate Court to hear dismissed appeal because, in addition to *Rooker-Feldman*[9] abstention, "[n]othing has been alleged here that would prevent the plaintiff from appealing the order dismissing his appeal by certification to the Connecticut Supreme Court pursuant to . . . § 51-197f, or, thereafter, to the United States Supreme Court itself"). Given the finality of the Appellate Court's judgment in *Sowell*, the trial court simply had no authority to afford the plaintiff relief by disturbing it in this collateral proceeding, rendering the present case nonjusticiable.

The plaintiff contends, however, that, "taken to its logical [end], this [conclusion] leads to the proposition that a court is deprived of subject matter jurisdiction whenever the outcome on the merits of any plaintiff's claim is determined unfavorably by a prior binding precedent or series of such precedents." We disagree. We emphasize that, consistent with the purpose of the declaratory judgment procedure, nothing would preclude a different attorney—or even this plaintiff himself—from asking a court to overrule the precedent set by *Sowell* v. *DiCara*, supra, 161 Conn. App. 102, in connection with a different dispute concerning the application of rule 4.2 of the Rules of Professional Conduct.[10] In the absence of such allegations establishing

[9] See *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462, 482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413, 416, 44 S. Ct. 149, 68 L. Ed. 362 (1923).

[10] We acknowledge, as a practical matter, that a trial court considering such a claim in the first instance would be bound by *Sowell* v. *DiCara*, supra, 161 Conn. App. 102, because, "[a]lthough the doctrine of stare decisis permits a court to overturn *its own* prior cases in limited circumstances, the concept of binding precedent prohibits a trial court from overturning a prior decision of an appellate court. This prohibition is necessary to accomplish the purpose of a hierarchical judicial system. A trial court is required to follow the prior decisions of an appellate court to the extent that they are applicable to facts and issues in the case before it, and the trial court may not overturn or disregard binding precedent." (Emphasis in original.) *Potvin* v. *Lincoln Service & Equipment Co.*, 298 Conn. 620, 650, 6 A.3d 60 (2010). Moreover, given the Appellate Court's well established policy with respect to panel decisions, the party challenging the vitality of *Sowell* would

the bona fide existence of a dispute, the plaintiff's declaratory judgment action is purely a hypothetical request for an advisory opinion that second-guesses an existing final judgment, over which jurisdiction will not lie under § 52-29. See *Costantino* v. *Skolnick*, 294 Conn. 719, 737–38, 988 A.2d 257 (2010) (no jurisdiction over declaratory judgment action concerning insurance coverage for prejudgment interest when "predicates for an award of offer of judgment interest under [General Statutes] § 52-192a had not been met"); *Liberty Mutual Ins. Co.* v. *Lone Star Industries, Inc.*, 290 Conn. 767, 814–15, 967 A.2d 1 (2009) (for purposes of jurisdiction over declaratory judgment action concerning excess insurance policy, court remanded case for factual determination as to whether it is "reasonably likely that the insured's potential liability will reach into the excess coverage"); *Milford Power Co., LLC* v. *Alstom Power, Inc.*, supra, 263 Conn. 626–27 (no jurisdiction over declaratory judgment action concerning meaning of contract's force majeure clause when defendant had not yet asserted claim of entitlement under contract). Accordingly, we conclude that the present case is not justiciable, and the trial court, therefore, properly granted the defendants' motion to dismiss.

The judgment is affirmed.

In this opinion the other justices concurred.

need to secure transfer to this court or review by the Appellate Court en banc to obtain relief. See, e.g., *Hylton* v. *Gunter*, 313 Conn. 472, 488 n.16, 97 A.3d 970 (2014); *State* v. *Tucker*, 179 Conn. App. 270, 278 n.4, 178 A.3d 1103, cert. denied, 328 Conn. 917, 180 A.3d 963 (2018). Finally, although the parties to such a declaratory judgment action might use a reservation to advance the legal issue concerning the vitality of *Sowell* into the Appellate Court or this court more expeditiously; see Practice Book § 73-1 (a); the use of that reservation procedure would not relieve the Appellate Court of its obligation to ensure that jurisdiction lies over the underlying declaratory judgment action. See *ASL Associates* v. *Zoning Commission*, supra, 18 Conn. App. 546–49.

42 U.S.C. § 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Constitution of the State of Connecticut

(Right of redress for injuries.)

Art. 1, Sec. 10. All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

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

Sec. 52-264. Judges of Supreme Court to make rules for appeals and writs of error. The judges of the Supreme Court shall make such orders and rules as they deem necessary concerning the practice and procedure in the taking of appeals and writs of error to the Supreme Court, and concerning the giving of security by the appealing party, the stay of execution during the pendency of appeal, the payment of costs and the taxation of reasonable costs when the same have not been fixed by statute.

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. An otherwise unrepresented party for whom a limited appearance has been filed pursuant to Practice Book Section 3-8 (b) is considered to be unrepresented for purposes of this Rule as to anything other than the subject matter of the limited appearance. When a limited appearance has been filed for the party, and served on the other lawyer, or the other lawyer is otherwise notified that a limited appearance has been filed or will be filed, that lawyer may directly communicate with the party only about matters outside the scope of the limited appearance without consulting with the party's limited appearance lawyer.

(P.B. 1978-1997, Rule 4.2.) (Amended June 14, 2013, to take effect Oct. 1, 2013.)

COMMENTARY: This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. (Compare Rule 3.4).

This Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

§ 72-1. Writs of Error; In General

(b) No writ of error may be brought in any civil or criminal proceeding for the correction of any error where (1) the error might have been reviewed by process of appeal, or by way of certification, or (2) the parties, by failure timely to seek a transfer or otherwise, have consented to have the case determined by a court or tribunal from whose judgment there is no right of appeal or opportunity for certification.

Sec. 73-1. Reservation of Questions from the Superior Court to the Supreme Court or Appellate Court; Contents of Reservation Request

(Amended Sept. 16, 2015, to take effect Jan. 1, 2016.)

(a) Counsel may jointly file with the superior court a request to reserve questions of law for consideration by the supreme court or appellate court. A reservation request shall set forth: (1) a stipulation of the essential undisputed facts and a clear and full statement of the question or questions upon which advice is desired; (2) a statement of reasons why the resolution of the question by the appellate court having jurisdiction would serve the interest of simplicity, directness and judicial economy; and (3) whether the answers to the questions will determine, or are reasonably certain to enter into the final determination of the case. All questions presented for advice shall be specific and shall be phrased so as to require a Yes or No answer.

(b) Reservation requests may be brought only in those cases in which an appeal could have been filed directly to the supreme court, or to the appellate court, respectively, had judgment been rendered. Reservations in cases where the proper court for the appeal cannot be determined prior to judgment shall be filed directly to the supreme court.

(P.B. 1978-1997, Sec. 4147.) (Amended June 5, 2013, to take effect July 1, 2013; amended Sept. 16, 2015, to take effect Jan. 1, 2016.)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JULIE M. SOWELL and GEORGE E. MENDILLO, Plaintiffs V. SOUTHBURY-MIDDLEBURY YOUTH AND FAMILY SERVICES, INC.; PHILADELPHIA INDEMNITY INSURANCE COMPANY; TINLEY, RENEHAN & DOST, LLP; HONORABLE DOUGLAS S. LEVINE, Judge of the Connecticut Appellate Court; HONORABLE ELIOT D. PRESCOTT, Judge of the Connecticut Appellate Court; HONORABLE NINA F. ELGO, Judge of the Connecticut Appellate Court; HONORABLE RICHARD A. ROBINSON, Chief Justice of the Connecticut Supreme Court; JEFFREY J. TINLEY; JOHN P. MAJEWSKI; and MARY JANE McCLAY, Defendants	)	Case No. 3:18-cv-01652-JAM

AMENDED COMPLAINT

I. NATURE OF ACTION

A. Declaratory Relief Pursuant to 42 U.S.C Section 1983
(Counts One through Ten)

1. The plaintiff Sowell is the plaintiff in *Sowell v. DiCara et al.*, a civil action pending in the Connecticut Superior Court, Doc. No. UWY-CV12-6016087-S ("*Sowell* action"). The plaintiff Mendillo represents Sowell in that action. The defendant Southbury-Middlebury Youth and Family Services, Inc. ("YFS") is a defendant in the *Sowell* action. The defendant Mary Jane McClay ("McClay"), Chair of the YFS board of directors is also a defendant in the *Sowell* action.

2. On December 17, 2013, the Superior Court entered a protective order in the *Sowell* action permanently enjoining Mendillo from having contact of any kind with members of the YFS board of directors without prior permission of YFS' counsel.

3. The Superior Court entered the protective order based on its finding that Mendillo violated Rule 4.2 of the Connecticut Rules of Professional Conduct when he sent a claim letter to YFS board members notifying them that Sowell intended to pursue a claim for damages against them for their acts and/or omissions in the prosecution of a false counterclaim in the *Sowell* action.

4. The protective order bars Mendillo from having contact of any kind with YFS board members notwithstanding the fact that the board members are unrepresented with respect to the claim asserted in the claim letter and notwithstanding the fact that the claim asserted in the claim letter will not be adjudicated in the *Sowell* action.

5. Rule 4.2 of the Connecticut Rules of Professional Conduct ("the no-contact rule") provides that "[i]n representing a client, a lawyer shall not communicate about the *subject of the representation* with a party the lawyer knows to be represented by another lawyer *in the matter*, unless the lawyer has the consent of the other lawyer or is authorized by law to do so..." (Emphasis added).

6. Rule 4.3 of the Connecticut Rules of Professional Conduct is the only rule that is intended to protect unrepresented corporate constituents from overreaching by an opposing attorney when the subject of the communication is a separate matter, e.g., one involving the personal liability of the constituents.

7. Rule 4.4 of the Connecticut Rules of Professional Conduct protects corporations and unrepresented corporate constituents from methods of obtaining evidence that violate their legal rights.

8. Sowell is entitled under the First and Fourteenth Amendments to the United States Constitution to communicate through her lawyers with the unrepresented YFS constituents with respect to a matter involving their personal liability so long as her lawyers comply with the strictures of Rule 4.3 and Rule 4.4 of the Rules of Professional Conduct.

9. Sowell is entitled under the First Amendment and pursuant to Rule 4.3 to negotiate, through her lawyers, the settlement of a dispute with an unrepresented person: "So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle the matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations." Commentary to Rule 4.3.

10. The unrepresented YFS board members are entitled under the First Amendment to communicate with, and to receive communications from, Sowell's attorneys with respect to a claim that exposes them to personal liability.

11. As detailed below, Rule 4.2 on its face and as applied violates the First and Fourteenth Amendments to the United States Constitution.

12. Mendillo has attempted to challenge the constitutionality of Rule 4.2 in several state court actions. Those actions have been dismissed without determining the constitutionality of Rule 4.2.

13. Sowell's attorneys are engaging in self-censorship of their First Amendment right to communicate with unrepresented YFS board members under the threat of enforcement of Rule 4.2. Self-censorship is a constitutionally recognized injury.

14. The Superior Court protective order was entered without affording Mendillo and Sowell procedural due process of law in violation of the Fourteenth Amendment to the United States Constitution. The protective order violates the First Amendment rights of Sowell and her attorneys. (Count One)

15. The Superior Court protective order violates the First Amendment rights of unrepresented YFS board members. (Count Two)

16. Rule 4.2 is unconstitutionally overbroad and violates the First Amendment rights and the due process rights of plaintiffs and other represented persons and their lawyers and unrepresented corporate constituents, because it prohibits communications the State has no proper interest in prohibiting. (Count Three)

17. Rule 4.2 is unconstitutionally vague because it does not provide standards for determining when it applies to unrepresented corporate constituents. (Count Four)

18. Mendillo challenged the Superior Court's finding that he violated Rule 4.2 by writ of error to the Connecticut Supreme Court. The writ of error was transferred to, and subsequently dismissed by, the Connecticut Appellate Court.

19. As detailed below, the judges on the Appellate Court panel that dismissed the writ of error engaged in fact-finding which exceeded their constitutional and statutory power and disregarded substantive principles of law which govern the application of Rule 4.2. In so doing, the judges violated Mendillo's First Amendment right of access to the courts (Count Five); First Amendment right to free speech (Count Six); Due Process of law (Count Seven); and Equal Protection of the laws (Count Eight).

20. The Connecticut Supreme Court denied Mendillo's petition for certification to appeal the Appellate Court decision in *Sowell*, and subsequently the Supreme Court held that the Appellate Court's decision in *Sowell* is binding precedent and, therefore, the Superior Court does not have subject matter jurisdiction, pursuant to 42 U.S.C. 1983, to determine the federal constitutional claims arising from that decision.

21. The Connecticut Appellate Court's decision in *Sowell* is binding precedent with respect to the application of Rule 4.2 in Connecticut State Courts. The prospective application of the Appellate Court's interpretation of Rule 4.2 will violate Mendillo's constitutional rights and the constitutional rights of other Connecticut lawyers.

22. The fact that the Appellate Court's decision in *Sowell* is binding precedent is not an adequate ground to support the Supreme Court's judgment precluding Mendillo's federal constitutional claims pursuant to 42 U.S.C. 1983. The Connecticut Supreme Court's dismissal of *Mendillo* violated the Supremacy Clause of the United States Constitution. The prospective application of the Supreme Court's decision in *Mendillo* will violate Mendillo's constitutional rights and the constitutional rights of other Connecticut lawyers.

23. Count Nine seeks prospective declaratory relief determining that Rule 72-1(b) of the Connecticut Rules of Appellate Procedure and Connecticut's binding precedent doctrine, as enunciated by the Connecticut Supreme Court, taken together and as applied, deny Connecticut lawyers due process of law.

24. Count Ten seeks prospective declaratory relief determining that Connecticut's binding precedent doctrine, as enunciated by the Connecticut Supreme Court, violates the Supremacy Clause of the United States Constitution because it is contrary to Connecticut preclusion law and bars the adjudication of federal claims pursuant to 42 U.S.C. Section 1983, in the Connecticut Superior Court.

B. Damages Claims

25. Count Eleven is a claim for damages, pursuant to 42 U.S.C. 1983, by Sowell and Mendillo against the defendants Tinley, Renehan & Dost, LLP ("Tinley firm"), Attorney Jeffrey J. Tinley ("Tinley"), Attorney John P. Majewski ("Majewski"), Mary Jane McClay and Philadelphia Indemnity Insurance Company ("Philadelphia").

26. Count Twelve is a claim for damages for abuse of process under Connecticut State law by Sowell and Mendillo against the Tinley firm, Tinley, Majewski, McClay and Philadelphia.

II. JURISDICTION AND VENUE

27. Jurisdiction is asserted pursuant to 42 U.S.C. Section 1983, 28 U.S.C. Section 1331, 28 U.S.C. Section 1343, 28 U.S.C. Section 1367 and the Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202.

28. Venue is proper in this district pursuant to 28 U.S.C. Section 1391(b)(1).

III. PARTIES

29. Plaintiff, Julie M. Sowell ("Sowell") is a citizen of Connecticut residing at 430 Georges Hill Road, Southbury, Connecticut 06488.

30. Plaintiff, George E. Mendillo ("Mendillo") is a citizen of Connecticut residing at 190 Carmel Hill Road, Woodbury, Connecticut 06798. Mendillo is an attorney at law admitted to practice in the courts of the State of Connecticut (Juris No. 101887) and the United States District Court for the District of Connecticut. (Bar No. 15892)

31. Defendant, Southbury-Middlebury Youth and Family Services, Inc. ("YFS"), is a dissolved, insolvent, non-profit Connecticut corporation with a principal place of business, c/o Mary Jane McClay, 43 Westwood Road, Woodbury, CT 06798, sued in its individual capacity.

32. Defendant, Philadelphia Indemnity Insurance Company ("Philadelphia") c/o Philadelphia Insurance Companies, One Bala Plaza, Suite 100, Bala Cynwyd, Pennsylvania 19004, is YFS' insurer in the *Sowell* action, under a reservation of rights, Claim File No. PHFF12120682884, sued in its individual capacity.

33. Defendant, Tinley, Renehan & Dost, LLP ("Tinley firm"), is a Connecticut law firm with a principal place of business at 60 North Main Street, 2nd Floor, Waterbury, CT 06702, sued in its individual capacity. The Tinley firm purports to represent YFS and McClay in the *Sowell* action.

34. Defendant, Honorable Douglas S. Lavine, Connecticut Appellate Court, 75 Elm Street, Hartford, CT 06106, is sued only in his official capacity as judge of the Connecticut Superior Court and judge of the Connecticut Appellate Court.

35. Defendant, Honorable Eliot D. Prescott, Connecticut Appellate Court, 75 Elm Street, Hartford, CT 06106, is sued only in his official capacity as judge of the Connecticut Superior Court and judge of the Connecticut Appellate Court.

36. Defendant, Honorable Nina F. Elgo, Connecticut Appellate Court, 75 Elm Street, Hartford, CT 06106, is sued only in her official capacity as judge of the Connecticut Superior Court and judge of the Connecticut Appellate Court.

37. Defendant, Honorable Richard A. Robinson, Connecticut Supreme Court, 231 Capitol Avenue, Hartford, CT 06106, is sued only in his official capacity as judge of the Connecticut Superior Court and Chief Justice of the Connecticut Supreme Court.

38. Defendant, Jeffrey J. Tinley ("Tinley"), is a citizen of Connecticut and a Connecticut attorney residing at 314 Tepi Drive, Southbury, CT 06488, sued in his individual capacity.

39. Defendant, John P. Majewski ("Majewski"), is a citizen of Connecticut and a Connecticut attorney residing at 1996 South Britain Road, Southbury, CT 06488, sued in his individual capacity.

40. Defendant, Mary Jane McClay, a citizen of Connecticut, residing at 43 Westwood Road, Woodbury, CT 06798, sued in her individual capacity.

IV. FACTUAL ALLEGATIONS

A. State Court proceedings on motion for protective order

41. Defendants, Tinley firm, Tinley, Majewski, McClay and Philadelphia were state actors acting under color of state law when they took the actions alleged herein.

42. The Tinley firm acted by and through Tinley, Majewski and Attorney Amita P. Rossetti ("Rossetti") when it took the actions alleged herein.

43. The *Sowell* action was filed in August, 2012. On September 6, 2012, the Tinley firm filed an appearance in the action on behalf of YFS, McClay and DiCara. McClay is Chair of the YFS board of directors. DiCara is the former YFS executive director. On October 30, 2013, the Tinley firm filed a counterclaim against Sowell purportedly on YFS' behalf.

44. On November 25, 2013, Mendillo took McClay's deposition testimony. Tinley was present at the deposition. McClay testified that YFS was insolvent; that the YFS board voted to dissolve YFS in July, 2012; that when YFS dissolved, the YFS board also dissolved; that there had been no meeting of the YFS board since it voted to dissolve in July, 2012; that the YFS board had not participated in YFS management since that date; that she did not notify the YFS board that she and YFS had been sued in the *Sowell* action; that when individual board members became aware of the lawsuit she did not discuss how YFS would respond to the lawsuit because she did not believe it involved them; that she assumed that she was authorized to act on behalf of YFS based on her belief "that the board of directors just made the assumption that that's in keeping with the role of the chairperson"; that she did not discuss with YFS board members the issue of potential conflicts of interest between YFS and herself in the *Sowell* action; that she retained Tinley to represent YFS in the *Sowell* action without the knowledge, authorization or consent of the YFS board; and that she authorized Tinley to file the YFS counterclaim against Sowell without the knowledge, authorization or consent of the YFS board.

45. On November 29, 2013, Mendillo notified Tinley that McClay's testimony showed that he was not authorized by YFS to represent it in the *Sowell* action and that he had violated Rule 3.1 of the Rules of Professional Conduct by filing the counterclaim against Sowell without the knowledge, authorization or consent of the YFS board.

46. On November 29, 2013, Mendillo sent a claim letter to putative members of the YFS board advising them that the *Sowell* action had been commenced; that

he represented Sowell in that action; that McClay retained Tinley to represent YFS in that action; that McClay authorized Tinley to file a counterclaim on YFS' behalf against Sowell; that the counterclaim contained false allegations that were made by McClay for an unlawful purpose; that the immunity from liability of directors and officers of nonprofit corporations does not extend to damages caused by reckless, willful or wanton misconduct; that they would be held personally liable if the counterclaim was not withdrawn; that based on McClay's deposition testimony, YFS was insolvent; that the YFS insurance carrier was defending YFS under a reservation of rights; *that they should contact legal counsel*; and that if no reply was received from them by December 13, 2013, legal action would be taken against them without further notice.

47. *It is undisputed that the putative members of the YFS board to whom the claim letter was sent were* ***not*** *represented individually by the Tinley firm, Tinley or Majewski.* Communications to unrepresented persons are governed by Rule 4.3 of the Rules of Professional Conduct. The claim letter complied with Rule 4.3. Mendillo did not send a claim letter to McClay or DiCara because they were represented by the Tinley firm individually. Mendillo sent a copy of the claim letter to Tinley at the same time that he sent the letter to the YFS board members. The claim letter is the only communication Mendillo has had with the YFS board members.

48. The Tinley firm did not represent YFS or the YFS board members to whom Mendillo sent the claim letter. Notwithstanding that fact, Tinley and Majewski filed a motion for protective order in the *Sowell* action alleging that Mendillo violated Rule 4.2 when he sent the claim letter to the unrepresented YFS board members.

49. A hearing on the motion for protective order was held before Judge Barbara Sheedy, judge trial referee. Mendillo informed the Court that the Tinley firm did not represent YFS or the individual YFS board members. McClay was present in the courtroom under Mendillo's subpoena. Mendillo attempted to call McClay as a witness. Mendillo also proffered McClay's testimony to establish that the Tinley firm was not

authorized to represent YFS when Mendillo sent the claim letter. Further, Mendillo argued that the claim letter pertained to the individual liability of the YFS board members and, therefore, was a "separate matter" as to which communication was not prohibited by Rule 4.2. Mendillo also argued that under Rule 3.3(b) of the Rules of Professional Conduct he had an ethical obligation to notify the board members that the Tinley firm had sued Sowell without their knowledge or authorization.

50. Judge Sheedy concluded that the question whether the Tinley firm had legal authority to represent YFS was not before the court and was not part of the issue to be determined (viz., whether the claim letter violated Rule 4.2). The Court reasoned that even if Mendillo was correct and the Tinley firm did not represent YFS when Mendillo sent the claim letter, "sending the letter to Attorney Tinley and his then purported clients creates a semblance of a violation of Rule 4.2 of the Rules of Professional Conduct." With respect to the question whether the claim letter pertained to a "separate matter" under Rule 4.2, the Court concluded that Rule 4.2 "doesn't say anything about representing on a prior claim or representation on a different cause of action. It doesn't care." The Court concluded that Rule 4.2 prohibited the claim letter even if it pertained to claims of individual liability against the YFS board members and even if the board members were unrepresented in those claims. The Court stated its "clear view...that there was a violation of the rule of conduct." The Court also found Mendillo had no ethical duty to notify the YFS board members that the Tinley firm was representing YFS without the board's knowledge, authorization or consent and that it had filed a counterclaim against Sowell without their knowledge, authorization or consent. The Court refused Mendillo's request to present McClay's live testimony and refused to admit in evidence McClay's deposition testimony. The Court granted the protective order permanently enjoining Mendillo from having contact of any kind with members of the board of directors of YFS without prior permission of YFS' counsel.

51. The Superior Court's finding that Mendillo violated Rule 4.2 constituted a disciplinary sanction tantamount to a reprimand. *State v. Perez*, 276 Conn. 285 (2005).

B. Dismissal of writ of error by Appellate Court

52. On December 31, 2013, Mendillo filed a writ of error in the Connecticut Supreme Court alleging that the Superior Court erred (1) in finding that Mendillo violated Rule 4.2 because there was no clear and convincing evidence to warrant that finding; (2) violated Mendillo's state and federal constitutional rights to due process when it refused to permit him to present evidence at the hearing on the motion for protective order, and (3) abused its discretion when it refused to permit Mendillo to present evidence at the hearing on the motion for protective order. *Sowell v. DiCara* (SC19270).

53. In July 2014, the Connecticut Supreme Court transferred *Sowell v. DiCara* (SC 19270) to the Connecticut Appellate Court (AC36921). On November 10, 2015, the Appellate Court (Lavine, J., Prescott, J. and Elgo, J.) dismissed the writ of error. *Sowell v. DiCara*, 161 Conn. App. 102, 127 A.3d 356, cert. denied, 320 Conn. 909 (2015). The Court found that:

(a) Due Process of law did not require an evidentiary hearing to determine whether Tinley represented YFS when Mendillo sent the claim letter because Tinley's court appearance in the *Sowell* action established as a matter of law that he was authorized to represent YFS.

(b) A purported ratification of McClay's actions by the YFS board eleven days after Mendillo sent the claim letter validated Tinley's representation of YFS retroactively and thus provided a proper basis for the trial court's finding that the claim letter violated Rule 4.2 of the Rules of Professional Conduct.

(c) McClay must have had authority to hire Tinley in the first instance because "the board of directors could not have ratified McClay's acts unless she had authority to act in the first place."

54. Judges Lavine, Prescott and Elgo, and Chief Justice Robinson, were acting under color of state law when they took the actions alleged herein.

55. The Rules of Professional Conduct Note on Scope states: "for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these rules determine whether a client-lawyer relationship exists..."

56. The Appellate Court's conclusion that Tinley's court appearance in the *Sowell* action established conclusively that he was authorized to represent YFS in that action is contrary to all Connecticut legal precedent.

57. The purported ratification by YFS eleven days after Mendillo sent the claim letter was not admitted in evidence at the hearing before Judge Sheedy and was not a part of the trial court record. Judge Sheedy made no factual finding with respect to the purported ratification and could not have made any such finding because there was no evidence of the ratification presented. The Appellate Court had no constitutional or statutory authority to find that YFS ratified McClay's acts.

58. The Appellate Court concluded that the client-lawyer relationship established by the purported YFS ratification applied retroactively, so that the Mendillo claim letter violated Rule 4.2 notwithstanding the fact that no client-lawyer relationship existed between YFS and Tinley when he sent the claim letter. That conclusion is contrary to Connecticut legal precedent which provides that ratification is not effective to diminish the rights or other interests of persons, not party to the transaction, that were acquired in the subject matter prior to ratification. Mendillo was not a party to the purported ratification. Therefore, his rights and interests acquired in the subject matter prior to the ratification were unaffected by the ratification.

59. Mendillo's claim letter was speech protected by the First Amendment to the U.S. Constitution. There is no legal authority supporting the Appellate Court's conclusion that Rule 4.2 may be applied retroactively to punish speech which was constitutionally protected when spoken.

60. The Appellate Court concluded that McClay must have had authority to hire Tinley in the first instance because "the board of directors could not have ratified McClay's acts unless she had authority to act in the first place." That conclusion is contrary to all Connecticut legal precedent including the case cited by the judges in support of their conclusion.

61. The Appellate Court's decision in the *Sowell* action is controlling precedent with respect to the application of Rule 4.2 in Connecticut. Application of that precedent by Connecticut courts is an ongoing violation of the United States Constitution.

62. A declaration by this Court that the Appellate Court's application of Rule 4.2 in the *Sowell* action is unconstitutional will provide Mendillo and Sowell with relief from the protective order and will alert Connecticut state courts that the prospective application of Rule 4.2 in accordance with the Appellate Court's decision in *Sowell* will violate the Unites States Constitution.

63. The independent factual findings and legal conclusions by the Appellate Court judges are causing a continuing injury to Mendillo's professional reputation. Declaration by this Court that the Appellate Court's application of Rule 4.2 in the *Sowell* action is unconstitutional would be prospective in nature because it would address a continuing injury to Mendillo's reputation resulting from the Appellate Court's unconstitutional application of the rule. See *Bauer v. Texas*, 341 F.2d 352 (5th Cir. 2003) (To obtain relief from past wrongs, a plaintiff must demonstrate either a continuing harm or a real and immediate threat of repeated injury in the future); *State Employees Bargaining Agent Coalition v. Rowland*, 494 F.3d 71 (2nd Cir. 2007) (Claims for reinstatement to positions of previous employment allegedly terminated in violation of the Constitution satisfied the exception to Eleventh Amendment sovereign immunity first set forth in *Ex Parte Young*, 209 U.S. 123 (1908)).

64. The source of the injury to Mendillo are the constitutional violations by the Appellate Court judges rather than the judgment of the Appellate Court. Federal District Courts have jurisdiction where the source of the injury complained of are independent constitutional violations rather than the state court judgment. *Great Western Mining & Mineral v. Fox Rothschild,* 615 F.3d 159 (3rd Cir. 2010); *Brokaw v. Weaver,* 305 F.3d 660, 662 (7th Cir. 2002); *Nesses v. Shepard*, 68 F.3d 1003, 1004 (7th Cir. 1995).

65. The Appellate Court judges are subject to suit for prospective declaratory relief, pursuant to 42 U.S.C. Sec. 1983, because they have the inherent and statutory power to enforce the Connecticut Rules of Professional Conduct. *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719 (1980). In *Consumers Union*, the Supreme Court distinguished between judges' legislative, adjudicative and enforcement functions. It held that although the state court and its Chief Justice were immune for the promulgation of the State Bar Code, which was a legislative function, *id.* 731-734, they were proper defendants in a suit for declaratory and injunctive relief when they had the power to initiate disciplinary proceedings. *Id.* 736-737.

66. The Appellate Court judges are subject to suit for prospective declaratory relief, pursuant to 42 U.S.C. Sec. 1983, even in the exercise of their judicial functions. *Pulliam v. Allen*, 466 U.S. 522, 104 S. Ct. 1970 (1984). In *Pulliam*, the Supreme Court reaffirmed the principle announced in *Ex Parte Virginia*, 100 U.S. (10 Otto) 339 (1879), that 42 U.S.C. 1983 was intended to apply to all state actors whether they be executive, legislative or judicial. *Pulliam*, 104 S. Ct at 1980-81.

C. Supreme Court denial of petition for certification to appeal

67. On November 18, 2015, Mendillo filed a petition in the Connecticut Supreme Court for certification to review the Appellate Court order dismissing the writ of error. The Supreme Court denied the petition by order dated December 16, 2015.

68. On December 22, 2015, Mendillo filed a motion in the Supreme Court to reconsider its denial of the petition for certification. The Supreme Court denied that motion by order dated January 13, 2016.

D. Dismissal by Supreme Court of second writ of error

69. On February 4, 2016, Mendillo filed a second writ of error in the Connecticut Supreme Court which alleged that the Appellate Court judges had violated

his constitutional rights (SC19628). The Appellate Court moved to dismiss the writ of error on the ground that Connecticut Practice Book Sec. 72-1(b) provides that "[n]o writ of error may be brought in any civil or criminal proceeding for the correction of any error where...the error might have been reviewed by process of appeal, or by way of certification." The Supreme Court dismissed the writ of error without opinion.

70. The dismissal of the writ of error by the Connecticut Supreme Court denied Mendillo his right of access to the courts pursuant to the Connecticut Constitution, Article 1, Section 10.

E. Superior Court dismissal of action pursuant to 42 U.S.C. 1983

71. In September 2016, Mendillo filed an action in the Connecticut Superior Court pursuant to 42 U.S.C. Sec. 1983 and the Connecticut Declaratory Judgment Act, General Statutes Section 52-29. The action was captioned *Mendillo v. Tinley, Renehan & Dost, LLP, at al*, Judicial District of Litchfield, Docket No. LLI-CV-16-6014292-S. In that action Mendillo sought clarification of Rule 4.2 as follows:

(a) A declaration that Rule 4.2 is not triggered unless there is a client-lawyer relationship with respect to the matter at issue and that the matter at issue is defined from a case/matter perspective and not from a fact perspective.

(b) A declaration that Rule 4.2 does not prohibit an attorney from communicating with a corporate director with respect to a claim alleging individual liability against the director, provided the director is not represented by a lawyer in that matter.

(c) A declaration that under Rule 4.2 a lawyer's court appearance on behalf of a corporation does not give rise to a conclusive presumption that a client-lawyer relationship exists between the corporation and the lawyer in that matter.

(d) A declaration that Rule 4.2 is not triggered unless there is a client-lawyer relationship at the time the challenged communication is made. A client-lawyer relationship established retroactively by operation of agency ratification doctrine does not trigger operation of Rule 4.2 because ratification is not effective to diminish the rights or other interests of persons, not parties to the transaction, that were acquired in the subject matter prior to ratification.

72. *Mendillo* also sought declarations that the Appellate Court's application of Rule 4.2 in *Sowell* violated Mendillo's federal constitutional right to (1) due process of law (2) equal protection of the laws and (3) First Amendment right of access to the courts. The action also sought declarations that Rule 4.2 is unconstitutionally overbroad and unconstitutionally vague. Any one or more of these declarations would have provided Mendillo with substantial relief from the ongoing injury to his reputation caused by the actions of the Appellate Court judges in *Sowell*.

73. The Appellate Court decision in *Sowell* raised substantial constitutional questions as to the proper application of Rule 4.2. Section 73-1 of the Connecticut Rules of Appellate Procedure provides for reservation of such questions from the Superior Court to the Connecticut Supreme Court for its determination.

74. In *Mendillo*, the Superior Court granted the Appellate Court's motion to dismiss rather than seeking reservation to the Connecticut Supreme Court of the constitutional questions presented. The Court concluded that "the concept of binding precedent prohibits a trial court from overturning a prior decision of an appellate court."

75. The constitutional claims presented in *Mendillo v. Tinley, Renehan & Dost, LLP, et al,* have not been decided by any court.

F. Supreme Court's decision affirming the Superior Court dismissal

76. Mendillo appealed the dismissal of *Mendillo* to the Connecticut Supreme Court. The Supreme Court affirmed the dismissal based on its conclusion that Mendillo's constitutional claims were not justiciable because the Appellate Court's decision in *Sowell* constituted a precedent binding on the Superior Court. *Mendillo v. Tinley, Renehan & Dost, LLP, et al*, 329 Conn. 515 (2018).

77. The Supreme Court did not apply collateral estoppel or any other Connecticut preclusion doctrine in finding that *Sowell* was binding precedent precluding the Superior Court's jurisdiction in *Mendillo*.

78. Under Connecticut law, collateral estoppel prevents a party from re-litigating an issue decided against that party in a prior adjudication. It may be invoked to preclude a party from raising an issue (1) identical to an issue already decided (2) in a previous proceeding in which that party had a full and fair opportunity to litigate the issue.

79. The issues resolved by the Appellate Court in *Sowell* were neither identical to the constitutional issues raised in *Mendillo* nor dispositive of them. Although the Appellate Court in *Sowell* concluded that Mendillo violated Rule 4.2, that conclusion was not dispositive of the constitutional claims raised in and by *Mendillo* and is not dispositive of those same claims in this action. *Farrell v. Burke*, 449 F.3d 470 (2nd Cir. 2006).

80. Mendillo has not had a full and fair opportunity to litigate his constitutional claims for the following reasons: (a) the claims did not arise until the Appellate Court issued its decision in *Sowell* (b) his petition for certification to appeal *Sowell* was denied by the Connecticut Supreme Court (c) his writ of error to the Connecticut Supreme Court alleging constitutional error by the Appellate Court was dismissed without opinion, and (d) his appeal of the Superior Court's dismissal of *Mendillo* was affirmed by the Connecticut Supreme Court without reaching the constitutional issues presented.

G. Supreme Court denial of reconsideration en banc

81. Mendillo moved for reconsideration en banc in *Mendillo* as follows:

(1) *Sowell v. DiCara* (161 Conn. App. 102) is binding precedent only with respect to the issues litigated and actually determined. None of the constitutional issues presented in *Mendillo* were litigated or actually determined in *Sowell.*

(2) The Supreme Court's decision affirming the Superior Court's dismissal of *Mendillo,* without the determination of the constitutional issues presented, denied Mendillo due process of law and equal access to the courts.

(3) The Superior Court's jurisdiction over the constitutional claims pursuant to 42 U.S.C. Sec. 1983 is mandated by the Supremacy Clause of the U.S. Constitution and no adequate state law ground exists to support the judgment in *Mendillo* precluding litigation of the federal claims.

82. The Connecticut Supreme Court denied the motion for reconsideration en banc on September 20, 2018.

H. Jurisdiction of Connecticut courts.

83. The constitution of the State of Connecticut vests the judicial power in three courts, a Supreme Court, an Appellate Court and a Superior Court. The power and jurisdiction of these courts is defined by law. Amendment XX, section 1, of the Connecticut Constitution.

84. The Superior Court is the sole court of original jurisdiction for all causes of action. Connecticut General Statutes ("General Statutes") Sec. 51-164s.

85. The Chief Justice and the Associate Justices of the Supreme Court are, at the time of their appointment, also appointed judges of the Superior Court. General Statutes Sec. 51-198(a).

86. The judges of the Appellate Court are also judges of the Superior Court. General Statutes Sec. 51-197c(a).

I. Rule-making and enforcement power of the Superior Court

87. The judges of the Superior Court are authorized to establish rules relative to the admission, qualifications, practice and removal of attorneys. General Statutes Sec. 51-80. Pursuant to that authority, the judges have adopted the Rules of Professional Conduct.

88. Superior Court judges possess inherent authority to regulate attorney conduct and to discipline members of the bar. *Heslin v. Connecticut Law Clinic of Trantolo & Trantolo*, 190 Conn. 510, 523 (1983).

J. Enforcement power of the Appellate Court

89. Appellate Court judges possess inherent and statutory power to impose disciplinary sanctions on attorneys for non-compliance with published rules of court. *In the Matter of Presnick*, 19 Conn. App. 340 (1989).

90. Superior Court judges and Appellate Court judges possess the power to initiate proceedings to enforce the Rules of Professional Conduct, akin to a prosecutor's power to initiate proceedings to enforce the criminal law.

91. The judges of the Superior Court have empowered the statewide grievance committee to hear complaints of attorney misconduct. Practice Book Sec. 2-35(c). At all such hearings, the respondent has the right to be heard in his own defense and by witnesses and counsel. Practice Book Sec. 2-35(h).

K. Attorneys' constitutional and property interest in reputation

92. The Connecticut State Constitution provides that "[a]ll courts shall be open, and every person, for injury done to him in his person, property or ***reputation***, shall have remedy by due course of law, and right and justice administered without sale, denial or delay." (Emphasis added). Conn. Const., art 1, sec. 10.

93. Connecticut attorneys also have a vested property interest in their licenses to practice law, and because disciplinary proceedings are adversary proceedings of a quasi-criminal nature, an attorney subject to discipline is entitled to due process of law. *Burton v. Mottolese*, 267 Conn. 1, 19 (2003).

L. Application of Rule 4.2 to unrepresented corporate constituents

94. In the case of an organization, Rule 4.2 prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person

whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization.

95. Under Connecticut law, corporate constituents, such as shareholders, directors, officers and employees, are not represented by the corporation's lawyer unless the corporation's lawyer is jointly retained to represent both the corporation and the constituent.

96. Absent a separate agreement between a constituent and a corporation's lawyer pursuant to which the corporation's lawyer undertakes to jointly represent the constituent and the organization, or the retention by the constituent of another lawyer to represent him in the matter, the constituent is an unrepresented person.

M. Rule 4.2 restrains speech in violation of the First Amendment

97. An unrepresented corporate constituent's communication with the opposing counsel in the matter is controlled by the lawyer for the corporation, who, as a matter of professional responsibility, must serve the interests of the corporation, even if in conflict with the interests of the constituent.

98. Control over the corporate constituent's communication with the opposing counsel is given to the corporation's lawyer by the no-contact rule, not by the constituent. The constituent has no say in the matter and can only divest the corporation's lawyer of this control by retaining another lawyer in the matter or terminating his relationship with the corporation.

99. The no-contact rule not only prevents a communication initiated by the opposing lawyer but it also precludes the opposing counsel from responding to a communication from the constituent. Thus, the no-contact rule deprives the constituent of his capacity to communicate with the opposing counsel even if he thinks it would be

in his best interest to do so. The Rule has this effect even if there is a serious conflict of interest between the corporation and the constituent.

100. The control given to corporate lawyers by the no-contact rule is absolute in that it is not subject to any standard. The absolute control exercised by corporate lawyers over the speech of corporate constituents and opposing counsel violates the First Amendment.

N. Sowell's claim against unrepresented YFS board members

101. The unrepresented YFS board members to whom Mendillo sent the claim letter are: Karen Fisher, 163 Bowers Hill Road, Oxford, CT 06478; Shelagh Greatorex, 300 Shadduck Road, Middlebury, CT 06762; John Mudry, 66 Wedgewood Road, Naugatuck, CT 06770; John Monteleone, 115 Lantern Park Lane, Southbury, CT 06488; Ann Brittain, 76 Three Mile Hill Road, Middlebury, CT 06762; Carol Anelli, 30 Blueberry Knoll, Middlebury, CT 06762; Barbara Henson, 117 Joy Road, Middlebury, CT 06762; Sue LoRusso, 1450 Southford Road, Southbury, CT 06488; Kendra Hoyt, 159 Westbury Park Road, Watertown, CT 06795; and, Toni Beccia, 150 Acme Drive, Middlebury, CT 06762. None of the board members has responded to the Mendillo claim letter. Based on information and belief, the board members are unrepresented with respect to the claim asserted in the Mendillo claim letter. The claim subjects the board members to personal liability.

102. The protective order entered by the Superior Court in the *Sowell* action prohibits Sowell's lawyers from contact of any kind with the unrepresented YFS board members, notwithstanding the fact that the board members are not parties to the *Sowell* action and notwithstanding the fact that Sowell's claim against the board members will not be litigated in that action.

103. The Superior Court's protective order was based on its conclusion that Rule 4.2 prohibits contact of any kind between Mendillo and the unrepresented YFS board members without regard to the subject matter or the purpose of the contact.

104. Mendillo has exhausted all Connecticut state court remedies for determining the constitutionality of Rule 4.2 on its face and as applied by the Appellate Court in *Sowell*.

O. Tinley has not responded to settlement proposals

105. On December 15, 2017, one of Sowell's attorneys, Dennis M. Buckley ("Buckley"), sent a letter to attorney Tinley proposing settlement of all claims in the *Sowell* action. Buckley received no reply to his letter.

106. On January 22, 2018, Buckley sent a second letter to Tinley requesting a reply to his December 15, 2017 letter. Again, Buckley received no reply to his letter.

107. On February 6, 2018, Buckley sent Tinley seven (7) copies of a "Settlement Agreement and General Release" executed by Sowell. By its terms, the "Settlement Agreement and General Release" would settle all claims in the *Sowell* action as well as the claims against members of the YFS board of directors who are not parties to the *Sowell* action. Buckley received no reply to the settlement proposal.

108. On November 21, 2018, Mendillo notified Tinley and Philadelphia's lawyer that the proposed "Settlement Agreement and General Release" executed by Sowell and sent to Tinley by Buckley on February 6, 2018, would remain open to acceptance until December 18, 2018. Mendillo received no reply from Tinley or Philadelphia.

P. Conflict of interest between McClay and the unrepresented YFS board members

109. It is highly probable that McClay's interests in settlement of the *Sowell* action are in conflict with the interests of the uninsured YFS board members. In the *Sowell* action, McClay is an insured under YFS' insurance policy with Philadelphia and her

defense is being paid by Philadelphia. The policy limits of the Philadelphia policy far exceed the damages claimed by Sowell in the *Sowell* action. Therefore, McClay has no financial exposure to a judgment against her in the Sowell action. The YFS board members are in an entirely different position. Based on information and belief, YFS board members are not insured with respect to Sowell's claims and they will not be able to look to YFS for indemnification because YFS is insolvent.

V. CAUSES OF ACTION

COUNT ONE

DECLARATORY JUDGMENT – THE PROTECTIVE ORDER VIOLATES THE FIRST AMENDMENT RIGHTS OF SOWELL AND HER ATTORNEYS

110. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

111. Sowell has a First Amendment right to communicate through her lawyers with unrepresented YFS board members with respect to her claim. The Superior Court protective order is an iron curtain barring the exercise of that First Amendment right.

112. On its face, Rule 4.2 does not prohibit communications "authorized by law".

113. The Connecticut Appellate Court has applied Rule 4.2 to prohibit communications protected by the First Amendment to the United States Constitution.

114. Mendillo and Buckley are engaging in self-censorship of their First Amendment right to communicate with unrepresented YFS board members under threat of enforcement of Rule 4.2. Self-censorship is a constitutionally recognized injury.

115. Mendillo brings this pre-enforcement challenge because he seeks to exercise his clients' First Amendment rights and his First Amendment rights by communicating with unrepresented corporate constituents on behalf of his clients without threat of enforcement of Rule 4.2. Such conduct is proscribed by Rule 4.2, as applied, and there exists a credible threat that he will be sanctioned by the Connecticut grievance committee and/or by the Connecticut courts when he does so.

COUNT TWO

DECLARATORY JUDGMENT – THE PROTECTIVE ORDER VIOLATES THE FIRST AMENDMENT RIGHTS OF THE UNREPRESENTED YFS BOARD MEMBERS

116. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

117. The unrepresented YFS board members have the First Amendment right to communicate with, and to receive communications from, Sowell's attorneys with respect to a claim that exposes them to personal liability. The Superior Court protective order is an iron curtain barring the exercise of that First Amendment right.

COUNT THREE

DECLARATORY JUDGMENT – RULE 4.2 IS UNCONSTITUTIONALLY OVERBROAD

118. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

119. The scope and proper application of Rule 4.2 cannot be understood without a definition of "subject of the representation" and a definition of "matter" as the terms are used in the Rule. Rule 4.2 does not define the terms.

120. The meaning of the terms "subject of the representation" and "matter" depend on whether Rule 4.2 is defined from a case (matter) perspective or from a fact perspective. The case (matter) perspective focuses on the existence of a client-attorney relationship with respect to the matter at issue. Under the case (matter) perspective, where the same facts or related facts give rise to two claims against a defendant and the defendant is represented by counsel in one case (matter) but not the other, Rule 4.2 does *not* prohibit an attorney from communicating with the defendant concerning the case (matter) in which he is unrepresented by an attorney.

121. In the *Sowell* action, Mendillo argued to the Appellate Court that Rule 4.2 does not prohibit communications with a party, or employee or agent of a party,

concerning *matters outside the scope of the client-lawyer relationship* and that his claim letter pertained to a matter separate from any matter that was the subject of Tinley's purported representation of YFS because it pertained to a claim by Sowell against the unrepresented YFS board members that exposed them to personal liability. The Appellate Court did not analyze that argument.

122. The drafters of Rule 4.2 of the Model Rules of Professional Conduct intended Rule 4.2 to be defined from a case (matter) perspective and not a fact perspective. See, e.g., *People v. Santiago*, 925 NE 2d 1122 (Ill. 2010). Connecticut has not determined whether Rule 4.2 is defined from a case (matter) perspective or a fact perspective. Rule 4.2 is unconstitutionally overbroad when defined from a fact perspective because it prohibits communications to corporate constituents which pertain to separate matters in which they are unrepresented by a lawyer.

123. Rule 4.2 prohibits "communications" with represented persons, without regard to the mode of communication – written, in-person, telephonic, or electronic. Corporate constituents are unrepresented persons absent a separate agreement between the constituent and the corporation's lawyer pursuant to which the corporation's lawyer undertakes to jointly represent the constituent and the corporation. Notwithstanding that fact, the prohibition against any and all communications that applies to represented persons has been extended to apply to unrepresented corporate constituents. Rule 4.2 has been construed to prohibit a lawyer who is representing a client in litigation against a corporation from sending a letter to unrepresented constituents of the corporation notifying them that they will be held personally liable for actions they have taken or have failed to take on behalf of the corporation. Such a letter does not overreach, interfere with the corporation's lawyer-client relationship, or seek uncounseled revelation of privileged or otherwise harmful information.

124. Rule 4.3 of the Rules of Professional Conduct is the only rule that is intended to protect unrepresented corporate constituents from overreaching by an opposing attorney when the subject of the communication is a separate matter, e.g., one involving the personal liability of the constituents.

125. Rule 4.4 of the Rules of Professional Conduct protects corporations and unrepresented corporate constituents from methods of obtaining evidence that violate their legal rights.

126. Represented persons are entitled under the First Amendment to communicate through their lawyers with unrepresented corporate constituents on a separate matter so long as the lawyers comply with the strictures of Rule 4.3 and Rule 4.4.

127. Represented persons are entitled, under the First Amendment and pursuant to Rule 4.3, to negotiate, through their lawyers, the settlement of disputes with unrepresented persons "[s]o long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle the matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations." Commentary to Rule 4.3.

128. Unrepresented corporate constituents have a right under the First Amendment to receive a claim letter notifying them that they will be held personally liable for actions they have taken or have failed to take on behalf of the corporation. Such a letter protects the unrepresented corporate constituents in situations where the interests of the corporation and the interests of the constituents are in conflict and the corporation's lawyer concludes that it is in the corporation's interests not to inform the constituents that they may be held personally liable on the claim.

129. Rule 4.2 is vague and overbroad, both on its face and as applied, in violation of First Amendment and due process rights of plaintiffs, and other represented persons and their lawyers and the rights of unrepresented corporate constituents, in that:

(a) It fails to set out narrow, objective, and definite standards to guide lawyers and judges with respect the scope and proper application of the rule;
(b) It subjects Mendillo and other lawyers to sanctions by the courts and other disciplinary authorities without giving him and them fair notice as to what communications are prohibited by the rule;
(c) It prohibits communications the State has no proper interest in prohibiting in violation of the First Amendment;
(d) It places a prior restraint on speech protected by the First Amendment which impermissibly places the burden on plaintiffs to obtain prior approval for such activity.

COUNT FOUR

DECLARATORY JUDGMENT – RULE 4.2 IS UNCONSTITUTIONALLY VAGUE

130. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

131. Rule 4.2 is unconstitutionally vague because it does not define the term "subject of the representation" and does not provide standards for determining when the no-contact rule applies to unrepresented corporate constituents.

132. The official commentary to Rule 4.2 states that "a lawyer having independent justification for communicating with the other party is permitted to do so." The term "independent justification" is not defined in Rule 4.2 or the commentary.

133. Rule 4.2 is unconstitutionally vague and violates the First Amendment rights of represented persons, their lawyers and unrepresented corporate constituents.

COUNT FIVE

DECLARATORY JUDGMENT – THE APPELLATE COURT JUDGES DENIED MENDILLO'S FIRST AMENDMENT RIGHT OF ACCESS TO THE COURTS. THE PROSPECTIVE APPLICATION OF THE *SOWELL* DECISION WILL DENY MENDILLO AND OTHER CONNECTICUT LAWYERS WITH FIRST AMENDMENT ACCESS TO THE COURTS.

134. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

135. Under Connecticut law, violations of state or federal constitutional rights by state officers acting in their official capacity are actionable. Connecticut judges who violate constitutional rights while acting in their official capacity are subject to suit in an action for declaratory relief. *Pamela B. v. Ment*, 244 Conn. 296 (1998).

136. Sovereign immunity does not bar suits against state officials acting in excess of their statutory authority or pursuant to an unconstitutional statute. *Doe v. Heintz*, 204 Conn. 17, 31 (1987).

137. The distinction between acts of a state official that are in excess of constitutional or statutory authority and those that constitute an erroneous exercise of that authority is inapplicable when the malfeasance or nonfeasance of a state officer is alleged to constitute a violation of a constitutional right. *Savage v. Aronson*, 214 Conn. 256, 265 (1990).

138. Pursuant to 42 U.S.C. Sec. 1983, "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding..."

139. The Fourteenth Amendment to the U.S. Constitution applies to any state agent exerting the power of a state. *Ex parte Virginia*, 100 U.S. 339, 347 (1879).

"Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away equal protection of the laws, violates the constitutional inhibition [of the fourteenth amendment]; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning." Id. Connecticut judges and justices are not immune from suit for prospective declaratory relief under 42 U.S.C. 1983.

140. The fact-finding, conclusive presumption and retroactive application of Rule 4.2 by the Appellate Court judges in *Sowell* exceeded their constitutional and statutory authority and obstructed Mendillo's legitimate efforts to seek judicial redress for injury to his reputation and thereby violated his First Amendment right of access to the courts. *Friedl v. City of New York*, 210 F.3d 79, 86 (2nd Cir. 2000); *Whalen v. County of Fulton*, 126 F.3d 400, 406 (2nd Cir. 1997); *Barrett v. U.S.*, 798 F.2d 565, 575 (2nd Cir. 1986).

141. The prospective application of the *Sowell* decision will deny Mendillo and other Connecticut lawyers with First Amendment access to the Courts.

COUNT SIX

DECLARATORY JUDGMENT - THE APPELLATE COURT JUDGES VIOLATED MENDILLO'S FIRST AMENDMENT RIGHT TO FREE SPEECH. THE PROSPECTIVE APPLICATION OF THE *SOWELL* DECISION WILL VIOLATE THE FREE SPEECH RIGHTS OF MENDILLO AND OTHER CONNECTICUT LAWYERS.

142. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

143. The fact-finding, conclusive presumption and retroactive application of Rule 4.2 violated Mendillo's right to free speech under the First Amendment to the United States Constitution.

144. The prospective application of Rule 4.2, as applied by the Appellate Court in *Sowell,* will violate the First Amendment rights of Mendillo and other lawyers in the practice of their profession.

COUNT SEVEN

DECLARATORY JUDGMENT – THE APPELLATE COURT JUDGES DENIED MENDILLO DUE PROCESS OF LAW. THE PROSPECTIVE APPLICATION OF THE *SOWELL* DECISION WILL DENY MENDILLO AND OTHER CONNECTICUT LAWYERS DUE PROCESS OF LAW.

145. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

146. The fact-finding, conclusive presumption and retroactive application of Rule 4.2 by the Appellate Court has caused a direct and continuing injury to Mendillo's professional reputation.

147. Mendillo has been denied his constitutional right of access to Connecticut courts to remedy the continuing injury to his reputation guaranteed by Article First, Section 10 of the Connecticut Constitution.

148. The fact-finding, conclusive presumption and retroactive application of Rule 4.2 violated Mendillo's right to due process of law under the Fifth and Fourteenth Amendments to the U.S. Constitution. Prior to *Sowell v. DiCara*, an attorney's court appearance gave rise to a rebuttable presumption that the attorney was authorized to file the appearance. In *Sowell v. DiCara* the Appellate Court found that Tinley's court appearance gave rise to a conclusive presumption that he was authorized to represent YFS in that case. That was a change in the law. On the basis of the new law, the Appellate Court concluded that Mendillo had no due process right to present evidence that Tinley was not authorized to represent YFS when he filed the appearance. The ex post facto decision making by the Appellate Court judges violated due process of law.

149. Prior to *Sowell v. DiCara*, the existence of a client-lawyer relationship under Rule 4.2 was determined by substantive law external to the Rules of Professional Conduct. Prior to *Sowell v. DiCara* the law was clear that the burden of establishing a client-lawyer relationship was on the party claiming the relationship. See *DiStefano v. Milardo*, 276 Conn. 416, 422 (2005). The Appellate Court's conclusion that Tinley's

court appearance satisfied his burden of establishing that he represented YFS when Mendillo sent the claim letter was a change in the law. The Appellate Court's application of that change in the law to Mendillo was ex post facto decision making and violated due process of law.

150. Prior to *Sowell v. DiCara*, when the authority of a person to act in a representative capacity was challenged, the party whose authority was challenged had the burden of convincing the court that the authority existed. See *Community Collaborative of Bridgeport, Inc. v. Ganim*, 241 Conn. 546, 553-554 (1997). In *Sowell v. DiCara*, Mendillo challenged McClay's authority to retain Tinley to represent YFS. The Appellate Court concluded that McClay must have had authority to hire Tinley in the first instance because "the board of directors could not have ratified McClay's acts unless she had authority to act in the first place." That conclusion is contrary to all Connecticut precedent including the case cited by the Court in support of its conclusion. See *Ansonia v. Cooper*, 64 Conn. 536 (1894) (the act of a stranger having at the time no authority to act as agent, or by an agent not having adequate authority, may be adopted by ratification). The Appellate Court's application of that change in the law to Mendillo was ex post facto decision making and violated due process of law.

151. In *Sowell v. DiCara*, the Appellate Court concluded that even though the Mendillo claim letter was sent to the putative YFS board members eleven days ***before*** the purported YFS ratification, the letter nevertheless violated Rule 4.2 because a ratification validates the act ratified retroactively. The Court thus concluded that the retroactive effect of ratification applied to the formation of a client-lawyer relationship under Rule 4.2, so that Mendillo's claim letter violated Rule 4.2 even though no client-lawyer relationship existed between YFS and Tinley when Mendillo sent the claim letter. Prior to *Sowell v. DiCara* the law was clear that ratification is not effective to diminish the rights or other interests of persons, not parties to the transaction, that were acquired

in the subject matter prior to ratification. See *Restatement of the Law Third, Agency,* Sec. 4.02(2)(c); *Mereness v. DeLemos*, 91 Conn. 651, 656 (1917). Mendillo was not a party to the transaction. The Appellate Court's conclusion that ratification applies to non-parties, and that an attorney may be sanctioned for a communication that was permitted by the Rule when made, is a change in the law. The Appellate Court's application of that change in the law to Mendillo was ex post facto decision making and violated due process of law.

152. The prospective application of the *Sowell* decision will deny Mendillo and other Connecticut lawyers due process of law.

COUNT EIGHT

DECLARATORY JUDGMENT – THE APPELLATE COURT JUDGES DENIED MENDILLO EQUAL PROTECTION OF THE LAWS. THE PROSPECTIVE APPLICATION OF THE *SOWELL* DECISION WILL DENY MENDILLO AND OTHER CONNECTICUT LAWYERS EQUAL PROTECTION OF THE LAWS.

153. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

154. The Appellate Court's application of Rule 4.2 denied Mendillo equal protection of the laws under the Fourteenth Amendment to the United States Constitution because the Rule had not previously been interpreted and applied in that manner to other similarly situated persons in disciplinary proceedings. The Appellate Court judges treated Mendillo selectively and the selective treatment was intended to inhibit or punish the exercise of his constitutional rights.

155. *Sowell* holds that the retroactive effect of a corporate ratification applies to the formation of a client-lawyer relationships under Rule 4.2. The prospective application of that holding will deny lawyers charged with violating Rule 4.2 equal protection of the laws because similarly situated persons charged with engaging in prohibited speech are not subject to punishment for engaging in speech which was protected by the First Amendment when spoken.

COUNT NINE

DECLARATORY JUDGMENT – THE PROSPECTIVE APPLICATION OF RULE 72-1(b) OF THE CONNECTICUT RULES OF APPELLATE PROCEDURE AND CONNECTICUT BINDING PRECEDENT DOCTRINE WILL DENY MENDILLO AND OTHER CONNECTICUT LAWYERS DUE PROCESS OF LAW

156. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

157. Rule 72-1(b) of the Connecticut Rules of Appellate Procedure provides that "[n]o writ of error may be brought in any civil or criminal proceeding for the correction of any error where (1) the error might have been reviewed by process of appeal, or by way of certification..." Prior to October 1, 1986 the Rule stated as follows: "An aggrieved party may file a writ of error in the supreme court only to review the final judgment of a judge or court in a case where no unqualified statutory right of appeal has been provided. A writ of error may be used only to review errors apparent on the face of the record." (1978 P.B. Sec. 3090). Thus, prior to the 1986 amendment to the Rule, a writ of error would lie to the Supreme Court, as a matter of right, where the state legislature had not provided an ***unqualified*** statutory right of appeal.

158. The Connecticut legislature has not provided an unqualified right to appeal a decision of the Connecticut Appellate Court.

159. A person aggrieved by a decision of the Connecticut Appellate Court is precluded from filing a writ of error in the Supreme Court where the Supreme Court has denied discretionary review of the case by way of certification.

160. Thus the State of Connecticut has not provided a legislative or judicial remedy for redress of constitutional violations by Appellate Court judges in their capacities as judges.

161. The Connecticut Supreme Court has concluded that the Appellate Court's decision in *Sowell v. DiCara* is binding precedent and, therefore, the Connecticut

Superior Court does not have subject matter jurisdiction to determine Mendillo's federal constitutional claims pursuant to 42 U.S.C. Sec. 1983.

162. The Connecticut Supreme Court has ruled that while the constitutionality of the Appellate Court's application of Rule 4.2 in *Sowell v. DiCara* may be determined in some future case, it may not be determined in Mendillo's action pursuant to 42 U.S.C. 1983, because the Appellate Court's decision is binding precedent.

163. The Superior Court and the Connecticut Grievance Committee are required to follow the Appellate Court's application of Rule 4.2. The Connecticut Supreme Court's conclusion that Mendillo and other lawyers must await another casualty before the constitutional claims asserted by Mendillo are justiciable is contrary to U.S Supreme Court cases holding that judges who possess the power to enforce attorney disciplinary rules are subject to suit for prospective declaratory relief pursuant to 42 U.S.C. 1983. The U.S. Supreme Court made that fact crystal clear in *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719 (1980): "If prosecutors and law enforcement personnel cannot be proceeded against for declaratory relief, putative plaintiffs would have to await the institution of state court proceedings against them in order to assert their federal constitutional claims. That is not the way the law has developed, and, because of its own inherent and statutory enforcement powers, immunity does not shield the Virginia Court and its chief justice from suit in this case." Id., 736.

164. Rule 72-1(b) and Connecticut binding precedent doctrine as enunciated by the Supreme Court, have denied Mendillo due process of law. The prospective application of Rule 72-1(b) and binding precedent doctrine will deny Mendillo and other lawyers due process of law.

COUNT TEN

DECLARATORY JUDGMENT – THE PROSPECTIVE APPLICATION OF CONNECTICUT'S BINDING PRECEDENT DOCTRINE, AS ARTICULATED BY THE CONNECTICUT SUPREME COURT IN *MENDILLO,* WILL VIOLATE THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION.

165. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

166. The ordinary jurisdiction of the Connecticut Superior Court, as prescribed by Connecticut law, is appropriate for the adjudication of federal claims pursuant to 42 U.S.C. Section 1983. Its jurisdiction over such claims is mandated by the Supremacy Clause of the United States Constitution.

167. The preclusive effect of a state court judgment on federal claims is determined by state preclusion law.

168. The issues resolved by the Appellate Court in *Sowell* are neither identical to the issues raised in *Mendillo* nor dispositive of them. Under Connecticut preclusion law the issues resolved in *Sowell* did not preclude litigation of the claims in *Mendillo.*

169. The adequacy of the state law ground to support a judgment precluding litigation of a federal claim is a federal question. *Howlett v. Rose*, 496 U.S. 356, 366 (1990). The state law ground supporting the Connecticut Supreme Court judgment in *Mendillo* is not adequate under federal law. The judgment therefore discriminates against rights arising under federal law in violation of the Supremacy Clause of the United States Constitution.

170. The prospective application of Connecticut binding precedent doctrine, as articulated by the Connecticut Supreme Court in *Mendillo,* will violate the Supremacy Clause of the United States Constitution.

COUNT ELEVEN

PLAINTIFFS' CLAIMS FOR DAMAGES, PURSUANT TO 42 U.S.C. 1983, AGAINST THE TINLEY FIRM, TINLEY, MAJEWSKI, MCCLAY AND PHILADELPHIA.

171. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

172. The violations of plaintiffs' constitutional rights as alleged resulted from a rule of conduct (Rule 4.2) imposed by the State of Connecticut.

173. The Tinley firm, Tinley, Majewski, McClay and Philadelphia acted jointly with the State of Connecticut as alleged herein.

174. Tinley and Majewski, as Commissioners of the Superior Court, exercised the authority of the Superior Court in obtaining and enforcing the protective order.

175. The Tinley firm, Tinley, Majewski, McClay and Philadelphia enlisted the help of judicial officers in taking advantage of the state's procedures for obtaining protective orders and were at all times State actors with respect to the judicial proceedings initiated and prosecuted by them.

176. On December 5, 2013, Majewski filed the motion for protective order in the *Sowell* action purportedly on YFS' behalf. The Tinley firm, Tinley and Majewski were not authorized by YFS to represent it in the *Sowell* action when Majewski filed the motion for protective order.

177. On December 12, 2013, Judge Sheedy held a hearing on the motion for protective order. Tinley, Majewski, Mendillo and McClay were present at the hearing. Tinley and Majewski did *not* disclose any of the following facts to the Court:

(a) YFS is a dissolved and insolvent non-profit corporation.
(b) The YFS board of directors voted to dissolve YFS in July 2012.
(c) The YFS board of directors did not participate in YFS management after July, 2012.

(d) YFS by-laws grant the board of directors the exclusive power to retain legal counsel.
(e) The YFS board could not have authorized McClay to retain the Tinley firm to represent it in the *Sowell* action because it had not met since July 2012 and the complaint in the *Sowell* action was served on McClay on August 17, 2012.
(f) The Tinley firm did not represent the YFS board members individually.
(g) The Tinley firm did not represent YFS in the *Sowell* action when Majewski filed the motion for protective order.
(h) A meeting was held of putative members of the YFS board of directors on December 10, 2013. The meeting was called by Tinley and Majewski for the purpose of obtaining a ratification validating the Tinley firm's representation of YFS in the *Sowell* action. The meeting was eleven days after Mendillo sent the claim letter and two days before the hearing on the motion for protective order.

Mendillo offered to present evidence of these facts. Majewski and Tinley objected. Judge Sheedy sustained the objection on the ground that whether the Tinley firm had legal authority to represent YFS was not before the Court and was not part of the issue to be determined (viz., whether the protective order should be granted based on Mendillo's violation of Rule 4.2).

178. Rule 4.2 is not triggered in the absence of a client-lawyer relationship.

179. Tinley and Majewski knew that the Tinley firm had not been retained by YFS to represent it in the *Sowell* action when they filed the motion for protective order. Therefore, there was no basis in law or fact for filing the motion.

180. The Tinley firm claims that it represents YFS in the *Sowell* action and is authorized to enforce the protective order based on a purported ratification by the YFS board of directors on December 10, 2013.

181. Under Connecticut law, in order to ratify the unauthorized act of an agent the ratification must be made by the principal with a full and complete knowledge of all the material facts connected with the transaction to which it relates.

182. The validity of the purported YFS ratification has not been adjudicated. The purported ratification does not indicate: (a) whether YFS was informed that McClay has a conflict of interest with YFS with respect to the counterclaim against Sowell; (b) whether YFS was informed that the counterclaim exposes members of the YFS board to individual liability; (c) whether YFS was informed that YFS has no resources from which to indemnify YFS members with respect to Sowell's claims; or (d) whether YFS was informed that Sowell's claims against the YFS board members will not be covered by YFS' liability insurance carrier.

183. It was the Appellate Court, not the Superior Court that found that the Tinley firm was authorized to represent YFS in the *Sowell* action. The Appellate Court concluded that the YFS ratification operated to validate the Tinley firm's representation retroactively. The Appellate Court's finding with respect to ratification is void because the Appellate Court has no fact-finding power and there is no evidence whatsoever in the trial court record pertaining to ratification.

184. In the absence of a valid ratification, the Tinley firm is not authorized to represent YFS in the *Sowell* action and is not authorized to enforce the protective order.

185. The Tinley firm, Tinley, Majewski, McClay and Philadelphia have, at all times since the protective order was issued, denied Sowell her First Amendment right to communicate through her lawyers with the unrepresented YFS constituents with respect to a matter involving their personal liability.

186. The defendants' motive for the protective order remains the same. The motive is to prevent Sowell from communicating through her lawyers with the unrepresented YFS constituents the information authorized by Rule 4.3. Rule 4.3 is titled "Dealing with Unrepresented Person". The Commentary to Rule 4.3 states "the lawyer may inform the person of the terms on which the lawyer's client will enter into an

agreement or settle the matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations."

187. Tinley and Majewski know that disclosure of the information authorized by Rule 4.3 will demonstrate that the interests of the board members are in direct conflict with McClay's interests and that McClay's actions, purportedly on YFS' behalf, are exposing them to personal liability for which the insolvent YFS cannot indemnify them and as to which they are uninsured.

188. The motion for protective order was an abuse of process under Connecticut law in that the Tinley firm, Tinley and Majewski knew that they were not authorized to represent YFS in the *Sowell* action when they filed the motion.

189. After Mendillo filed the writ of error a settlement conference was held before the Court, Agati, J., in the *Sowell* action. At the settlement conference Tinley reported to the Court that the parties had reached agreement with respect to settlement but that Philadelphia would not authorize the settlement unless Mendillo withdrew the writ of error then pending in the Appellate Court. The parties to the *Sowell* action had no interest in the writ of error that would survive settlement of the *Sowell* action. Mendillo filed the writ of error for the dual purpose of overturning the Superior Court's finding that he violated Rule 4.2 and for the purpose of vacating the protective order. Settlement of the *Sowell* action would have rendered the protective order moot. The Superior Court finding that Mendillo violated Rule 4.2 would remain. Mendillo refused to withdraw the writ of error and Philadelphia refused to settle the *Sowell* action.

190. Before oral argument on the writ of error, Mendillo reported to the Appellate Court that Tinley and Philadelphia had conditioned settlement of the *Sowell* action on the withdrawal of the writ of error by Mendillo.

191. Philadelphia had no interest in demanding that the writ of error be withdrawn as a condition to settlement of the *Sowell* action. Philadelphia had no duty to defend its insured in the writ of error proceedings because upon settlement of the *Sowell* action its insured would have had no interest in the writ of error.

192. Philadelphia refused to settle the Sowell action and instead funded the litigation before the Appellate Court which it would have had no duty to fund if it had settled the *Sowell* action.

193. Philadelphia financed and authorized the Tinley firm, Tinley, Majewski and McClay to enforce the protective order when it knew that the protective order was not lawfully obtained and when it knew that the enforcement of the protective order would result in the continued violation of plaintiffs' First Amendment rights. Philadelphia's actions were a substantial factor and proximate cause of the continuing abuse of process by the Tinley firm, Tinley, Majewski and McClay.

194. The Appellate Court's finding that Mendillo violated Rule 4.2 has caused an ongoing injury to his professional reputation and the protective order has violated and continues to violate his First Amendment right to communicate with unrepresented YFS board members with respect to a matter pertaining to their personal liability.

195. The actions of the Tinley firm, Tinley, Majewski, McClay and Philadelphia were substantial and proximate causes of the Appellate Court's finding that Mendillo violated Rule 4.2 and substantial and proximate causes of his continuing injuries.

196. The enforcement of the protective order by the Tinley firm, Tinley, Majewski, McClay and Philadelphia continues to violate Sowell's First Amendment rights and continues to prevent settlement of the *Sowell* action and settlement of Sowell's claims against the YFS board members.

197. The enforcement of the protective order has caused and will continue to cause Sowell to incur substantial legal fees and costs to her loss and damage.

COUNT TWELVE

PLAINTIFFS' CLAIMS FOR DAMAGES FOR ABUSE OF PROCESS UNDER STATE LAW AGAINST THE TINLEY FIRM, TINLEY, MAJEWSKI, MCCLAY AND PHILADELPHIA.

198. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs, as fully set forth herein.

199. The Tinley firm, Tinley, Majewski, McClay and Philadelphia have used and continue to use the protective order for an unauthorized purpose.

200. Filing the motion for protective order at a time when the Tinley firm, Tinley and Majewski were not authorized by YFS to represent it was misconduct. The continued enforcement of the protective order by the Tinley firm, Tinley, Majewski, McClay and Philadelphia is misconduct because they know that the purported ratification is not valid because it was not made by YFS with a full and complete knowledge of all material facts related to its authorization of McClay's past actions, including the fact that the counterclaim authorized by McClay exposes the YFS board members to personal liability.

201. The defendants' misconduct was intended to cause and did cause the specific injuries sustained by the plaintiffs. The injuries caused by the defendants' misconduct is outside the normal contemplation of private litigation.

VI. PRAYER FOR RELIEF

WHEREFORE, Sowell and Mendillo pray for the following relief:

A. A declaratory judgment that:

(a) Sowell has standing to challenge the constitutionality of the protective order entered by the Superior Court in the *Sowell* action, and the constitutionality of Rule 4.2, because the order bars the exercise of her First Amendment right to communicate through her attorneys with unrepresented YFS constituents.

(b) Mendillo has standing to challenge the constitutionality of the protective order entered by the Superior Court in the *Sowell* action, and the constitutionality of Rule 4.2, because (1) he is engaging in self-censorship by not communicating with the unrepresented YFS board members under threat of enforcement of Rule 4.2, (2) he seeks to exercise his clients' First Amendment rights and his First Amendment rights by communicating with unrepresented corporate constituents on behalf of his clients without the threat of enforcement of Rule 4.2 and (3) he is sustaining an ongoing injury to his professional reputation as a direct result of the unconstitutional application of the rule in that action.

(c) The State of Connecticut has a substantial interest in protecting the client-lawyer relationship. Rule 4.2 prohibits interference with that relationship by opposing counsel.

(d) In the case of a represented corporation the application of Rule 4.2 is complicated by the fact that protection of the client-attorney relationship requires regulation of communications between opposing lawyers and corporate constituents.

(e) Under Connecticut law, corporate constituents, such as shareholders, directors, officers and employees, are not represented by the corporation's lawyer unless the corporation's lawyer is jointly retained to represent both the corporation and the constituent.

(f) Under Connecticut law, absent a separate agreement between a constituent and a corporation's lawyer pursuant to which the corporation's lawyer undertakes to jointly represent the constituent and the organization, or the retention by the constituent of another lawyer to represent him in the matter, the constituent is an unrepresented person.

(g) Rule 4.3 of the Rules of Professional Conduct is the only rule that is intended to protect unrepresented corporate constituents from overreaching by an opposing attorney when the subject of the communication is a separate matter, e.g., one involving the personal liability of the constituents.

(h) Rule 4.4 of the Rules of Professional Conduct protects corporations and unrepresented corporate constituents from methods of obtaining evidence that violate their legal rights.

(i) Rule 4.2 does not prohibit a lawyer from communicating with a corporate constituent of a represented corporation with respect to a separate matter in which the constituent is not represented by a lawyer, provided the lawyer complies with the strictures of Rule 4.3 and Rule 4.4.

(j) It is undisputed that the YFS board members to whom Mendillo sent the claim letter were unrepresented by a lawyer with respect to the claim asserted in the letter when the letter was sent.

(k) The Superior Court protective order in the *Sowell* action violates Sowell's First Amendment right to communicate through her lawyers with YFS board members with respect to matters in which they are unrepresented by a lawyer.

(l) The Superior Court protective order in the *Sowell* action violates Mendillo's First Amendment right to communicate on behalf of his client with YFS board members with respect to separate matters in which they are unrepresented by a lawyer.

(m) The Superior Court protective order in the *Sowell* action violates the First Amendment rights of YFS board members because it prohibits them from communicating with, or receiving communications from, Sowell's attorneys with respect to matters in which they are unrepresented by a lawyer.

(n) Rule 4.2 is unconstitutionally overbroad because the meaning of the terms "subject of the representation" and "matter" depend on whether Rule 4.2 is defined from a case (matter) perspective or from a fact perspective. There is no controlling precedent in Connecticut determining whether Rule 4.2 is defined from a case (matter) perspective or a fact perspective. Rule 4.2 is unconstitutionally overbroad when defined from a fact perspective because it prohibits communications to corporate constituents which pertain to separate matters in which they are unrepresented by a lawyer.

(o) Rule 4.2 is unconstitutionally overbroad because it prohibits a lawyer who is representing a client in litigation against a corporation from sending a letter to unrepresented constituents of the corporation notifying them that they will be held personally liable for actions they have taken or have failed to take on behalf of the corporation. Such a letter does not overreach, interfere with the corporation's client-lawyer relationship, or seek uncounseled revelation of privileged or otherwise harmful information.

(p) Rule 4.2 is unconstitutionally overbroad as applied by the Appellate Court in the *Sowell* action because it punishes speech that was protected by the First Amendment when spoken. A client-attorney relationship established retroactively by operation of agency ratification doctrine does not trigger the operation of Rule 4.2 because under Connecticut law ratification is not effective to diminish the rights or other interests of lawyers not parties to the transaction that were acquired in the subject matter prior to ratification.

(q) Rule 4.2 is unconstitutionally vague because it does not define the term "subject of the representation" and does not provide standards for determining when the no-contact rule applies to corporate constituents.

(r) Rule 4.2 is unconstitutionally vague because the commentary states that "a lawyer having independent justification for communicating with the other party is permitted to do so" without defining the term "independent justification".

(s) The fact-finding, conclusive presumption and retroactive application of Rule 4.2 by the Appellate Court judges in the *Sowell* action exceeded their constitutional and statutory authority and obstructed Mendillo's legitimate efforts to seek redress for injury to his reputation and thereby violated his First Amendment right of access to the courts.

(t) The fact-finding, conclusive presumption and retroactive application of Rule 4.2 by the Appellate Court judges in the *Sowell* action violated Mendillo's right to free speech under the First Amendment.

(u) The fact-finding, conclusive presumption and retroactive application of Rule 4.2 by the Appellate Court judges in the *Sowell* action denied Mendillo due process of law.

(v) The fact-finding, conclusive presumption and retroactive application of Rule 4.2 by the Appellate Court judges in the *Sowell* action denied Mendillo equal protection of the laws.

(w) Access to state court to remedy injury to reputation is mandated by Article 1, Section 10 of the Connecticut Constitution. Mendillo alleged that the Appellate Court's unconstitutional application of Rule 4.2 in *Sowell* caused injury to his professional reputation. Mendillo was denied due process of law under the Fifth and Fourteenth Amendments to the United States Constitution when he was denied the right to litigate his constitutional claims in Connecticut state court.

(x) The jurisdiction of the Connecticut Superior Court over federal claims pursuant to 42 U.S.C. 1983, is mandated by the Supremacy Clause of the United States Constitution.

(y) The issues resolved by the Appellate Court in *Sowell* are neither identical to the issues raised in *Mendillo* nor dispositive of them. Under Connecticut preclusion law the issues resolved in *Sowell* did not preclude litigation of the claims in *Mendillo*.

(z) The state law ground supporting the Connecticut Supreme Court's judgment in *Mendillo* is not adequate under federal law. The judgment therefore discriminates against rights arising under federal law in violation of the Supremacy Clause of the United States Constitution.

B. Monetary damages, both compensatory and exemplary, in favor of plaintiffs and against the defendants Tinley Firm, Tinley, Majewski, McClay and Philadelphia.

C. An award of attorneys' fees and costs to plaintiffs.

D. Such other and further relief as this Court deems just and proper.

Dated: December 28, 2018

Respectfully submitted,

/s/ George E. Mendillo

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CERTIFICATE OF SERVICE

I, George E. Mendillo, hereby certify that I electronically filed the foregoing with the Clerk of the Court of the United States District Court for the District of Connecticut by using the CM/ECF system on this 28th day of December, 2018. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ George E. Mendillo

George E. Mendillo