

**STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS**

June 13, 2014

**CHRO No. 1030184 - Commission on Human Rights and Opportunities ex rel. Latef Roberts,
Complainant v. State of Connecticut, Judicial Branch, Court Support Services Division,
Respondent**

Memorandum of Decision

Procedural Background

On December 17, 2009, Latef Roberts ("the complainant" or "Roberts") filed an affidavit of illegal discriminatory practice, ("affidavit" or "complaint") with the Commission on Human Rights and Opportunities ("commission" or "CHRO") asking that the commission investigate the complaint and secure for the complainant his rights and any remedy to which he is entitled. The affidavit, inter alia, alleged that the State of Connecticut, Judicial Branch, Court Support Services Division ("the respondent" or "CSSD"), violated Conn. Gen. Stat. sections 46a-58(a) (based upon an alleged violation of the substantive provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 12101 et seq.), 46a-60(a)(1) (based on race and color (black)) ; 46a-60(a)(4), and 46a-70.¹ Additionally, the affidavit alleged certain conduct intended to reflect the factual basis of the complainant's claims.

¹ Section 46a-58(a) – "It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of this state or of the United States, on account of ... color, race, ... or physical disability."

46a-60(a)(1) – "It shall be a discriminatory practice in violation of this section: (1) For an employer, by the employer or the employer's agent, ... to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, ... mental disability"

46a-60(a)(4) – "It shall be a discriminatory practice in violation of this section: ... (4) For any person [or] employer ... to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84."

Section 46a-70 -- (a) State officials and supervisory personnel shall recruit, appoint, assign, train, evaluate and promote state personnel on the basis of merit and qualifications, without regard for race, color, religious creed, sex, gender identity or expression, marital status, age, national origin, ancestry,

By letter dated February 3, 2012, the commission notified the parties that either the complainant or the complainant's attorney requested that the complaint be sent to the Office of Public Hearings ("OPH") for a de novo contested case proceeding, pursuant to the early legal intervention ("ELI") process established by public act 11-237.² The letter also stated that complainant or his attorney would be responsible for putting on the case before the presiding human rights referee assigned to the case, and that the commission counsel assigned to the case retained the discretion to participate in the hearing.³

On March 19, 2012, the required Notice of Contested Case Proceeding and Hearing Conference, was issued and the case was assigned to the undersigned as the presiding human rights referee ("presiding referee").⁴ All statutory and procedural prerequisites having been satisfied, the complaint is properly before this tribunal for hearing and decision. The public hearing was held on June 18, 19, and 20, and July 16, 2013. Attorney W. Martyn Philpot, Jr., appeared on behalf of the complainant. Assistant Attorney General Colleen B. Valentine, appeared on behalf of the

intellectual disability, mental disability, learning disability or physical disability, including but not limited to, blindness, unless it is shown by such state officials or supervisory personnel that such disability prevents performance of the work involved. (b) All state agencies shall promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state government. They shall regularly review their personnel practices to assure compliance. (c) All state agencies shall conduct continuing orientation and training programs with emphasis on human relations and nondiscriminatory employment practices. (d) The Commissioner of Administrative Services shall insure that the entire examination process, including qualifications appraisal, is free from bias. (e) Appointing authorities shall exercise care to insure utilization of minority group persons.

² The complainant's affidavit is the only document filed by the parties with the commission during the investigative stage that is sent to the OPH to commence the de novo hearing process. The presiding referee receives no information regarding actions taken by the commission during the investigative stage and only considers the evidence presented during the public hearing.

³ In a second letter, also dated February 3, 2012, the commission, after determining that the state's interests would not be adversely affected, notified the parties that, pursuant to section 46a-84(d), it deferred prosecution of the entire case before the OPH to the complainant or his attorney. The commission did not participate in the contested case proceeding.

⁴ Cases presided over by human rights referees ("referees") are contested cases as defined by the Connecticut Uniform Administrative Procedures Act ("UAPA"), section 4-16, et seq. various provisions of the Connecticut Fair Employment Practices Act ("CFEPA"), section 46a-51, et seq., and the respective regulations issued in accordance with those statutory sections. Although referees are appointed by the governor and confirmed by the general assembly, referees are granted the same powers that "hearing officers" and "presiding officers" appointed by an agency head are granted under the UAPA (see section 46a-57(b)), as well as powers granted by the CFEPA.

respondent. Thereafter, the parties filed post-hearing briefs, on or about December 19, 2013. Subsequently, no post-hearing reply briefs were filed and the record was closed.

Findings of Fact

The following facts relevant to this decision are found after the undersigned conducted a comprehensive review of all of the evidence and testimony adduced at the public hearing, the complaint, the answer and an assessment of the credibility of each witness:

1. On or before April 9, 2008, the complainant was offered and accepted the position of juvenile probation officer trainee ("JPOT") with the respondent. Julia O'Leary, the respondent's Deputy Director of Juvenile Probation Services ("O'Leary"), called Roberts in March 2008 and offered him the position; he accepted the appointment. Transcript p. 26, 147-149, 487, and 812 (hereinafter referred to as "Tr. #") (The respondent's exhibits will be referred to as "R-#".) Prior to offering the complainant the position, O'Leary was part of a panel that included regional managers and probation office supervisors that considered applicants for the position. O'Leary interviewed Roberts. Afterwards, she recommended him for the job. Tr. 810-811.
2. The appointment letter, dated April 4, 2008, inter alia, stated that: (1) his first day of work was to be April 11, 2008; (2) he was to report to the respondent's 90 Washington Street, Hartford, CT office for new employee orientation; (3) thereafter, he was to report to Maura Brennan, juvenile matters supervisor 2 ("Brennan"), the supervisor of the Juvenile Supervision Office, located at 299 Washington Avenue, Bridgeport, CT ("Bridgeport JSO"); (4) respondent's policy and the AFT collective bargaining agreement requires a JPOT to complete a nine-month probationary period before becoming a permanent employee of the respondent. The appointment letter was signed by William H. Carbone, Executive Director of the respondent's Court Support Services Division ("Carbone"). Complainant Exhibit 2 (hereinafter referred to as "C-#").
3. The complainant understood that he was subject to a nine-month probation period. Tr. 50, 168, 169 and 174.
4. Shortly before the complainant was to start his employment, O'Leary announced the names of the JPOTs recently hired at a meeting of the juvenile service supervisors who worked in the respondent's New Haven, Bridgeport, Hartford, Middletown, and New Britain offices. Oliver Macklin ("Macklin"), a supervisor 1, was present at this meeting. After O'Leary mentioned the complainant's name, Macklin asked her if Roberts had been assigned to the Bridgeport JSO; she replied yes. In response, Macklin asked if the complainant could be assigned to another office. O'Leary asked Macklin why and he replied that the complainant had "boundary issues" and would not be a good fit in Bridgeport. When O'Leary and Macklin were alone later that day, she asked him if there was anything else about the

"boundary issues" that he wanted to tell her, and Macklin said, "there's nothing. No." Beyond this exchange, O'Leary did not ask Macklin to elaborate, and he never did so. Tr. 343, 344, 348, 354, 355, and 811-814. Macklin did not tell O'Leary that the complainant had engaged in inappropriate contact with any individual. Tr. 343-344, 348, 354-355 and 812-813.⁵

5. Subsequently, O'Leary and Joel Riley, CSSD's Personnel Director in 2008 and 2009, ("Riley"), spoke with Carbone, about Macklin's "boundary issues" comment, and Carbone decided that a meeting be convened with the complainant to ask him directly about the situation. Tr. 724 and 814. (Compare Tr. 590.) The meeting took place on April 9, 2008, and the attendees were Roberts, O'Leary, Macklin, Riley, and Randy Roorbach, the regional manager responsible for the Bridgeport JSO ("Roorbach").⁶ Tr. 25, 346, 347, 722, 723, and 814.
6. During the meeting O'Leary told Roberts that boundary concerns had been raised about him. She questioned him about those concerns and asked him if he had ever been accused of engaging in appropriate contact. The complainant adamantly denied the allegations. Tr. 26, 123, 347-349, 721, 725, 814-815.
7. After meeting with Roberts on April 9, 2008, O'Leary called the principal at Amistad and asked him about the boundary issues. Tr. 186. Riley was present when O'Leary made the call. Tr. 725.
8. After the meeting on April 9, 2008 had ended, Macklin received a phone call from Carbone at about 5:30 p.m. O'Leary was with Carbone when he made the call. Tr. 817. Carbone had appointed Macklin to his supervisor's position. Carbone asked him if he knew any reason that the complainant should not be hired, and Macklin "made it clear to [Carbone] that he did not have any knowledge of anything that should prevent [Roberts'] hiring." Carbone respects Macklin and holds him in high regard. If, at that time, Macklin had recommended that Carbone rescind the complainant's appointment as a JPOT, Carbone likely would have done so. Tr. 356, 357, 590, 591, 620-622 and 625.
9. Roberts reported for work on April 11, 2008. Tr. 357. From April 2008 to July 2008, the complainant and the other JPOTs in his class participated in pre-service training at the respondent's training academy ("academy"). On days when there was no course at the academy, the JPOTs would report to the regional office to which he or she was assigned and

⁵ Macklin testified that the boundary issues comment actually involved alleged misrepresentations by the complainant to third parties about how well the two knew each other and their level of social interactions. These statements had occurred years before the complainant was appointed to the JPOT position. Tr. 345-347.

⁶ Roorbach did not testify at the public hearing.

“shadow,” i.e., accompany and observe, an experienced juvenile probation officer performing the functions of the job. Tr. 489, 530.

10. At the time the complainant received his pre-service training at the academy, Charlene Shepard (“Shepard”) taught a course and did not perceive that Roberts had any difficulty comprehending the subject matter; the course she taught was not specified. She was not always in the other pre-service classes taught by other instructors. She had no information regarding how well the complainant comprehended the information offered in those courses. Tr. 671-672. Shepard would only have access to that information if another trainer provided it to her; no trainer did so. Tr. 674.
11. Brennan was Roberts’ supervisor from on or about July 2008 (when the JPOTs had finished the pre-service training) until January 14, 2009. Brennan was happy and relieved to have the complainant assigned to her office as a JPOT because she believed that it would be good to have an additional African-American male probation officer added to her staff. In 2008, in addition to the complainant and Macklin, Brennan had two other African-American males on her staff. Tr. 489, 490, and 531-533. She believed that given the composition of the client population served by her office, that African-American male probation officers could be role models to and better engage some of them. Tr. 532.
12. Soon after Roberts commenced work at the Bridgeport JSO, Brennan recognized that he struggled putting into practice many of the skills taught during the pre-service training. While supervising Roberts, Brennan met with him frequently to discuss her concerns, and she also provided him substantial written feedback and guidance. Tr. 496, 497, 505, and 533-541.
13. Brennan reported her concerns to O’Leary commencing in July 2008 and during the ensuing months, both verbally and in writing. It was in the respondent’s interest that Roberts be successful because if he failed his probation, the agency would not be able to replace him. Tr. 499, 821, 822, 903-904. R-2, R-3, and R-4.
14. The respondent scheduled a ceremony for November 14, 2008 to commemorate the completion of the pre-service classroom portion of the JPOTs’ training. Brennan told Macklin that she was uncomfortable about attending the ceremony, and having the complainant participate in it prior to the end of his nine-month probationary period, given the deficiencies that she observed in his performance. Brennan did not recall if she said this to anyone else.⁷ Tr. 326, 327, 499 and 501.

⁷ O’Leary was questioned about this twice by complainant’s counsel. First she replied, yes, Brennan had mentioned to her the concern about allowing Roberts to graduate, since his performance was deficient. When questioned the second time, O’Leary replied no. In both instances, O’Leary indicated that after the pre-service training is completed, if the ceremony is scheduled prior to the end of the nine-month probationary period, all the JPOTs are allowed to participate in the ceremony. Tr. 499, 500, 826-827 and 915

15. As with all JPOT classes hired since 2001, the November 14, 2008 "graduation" ceremony only signified that the JPOT has completed the pre-service classroom portion of his or her nine-month probationary period. There are no grades assigned to the courses given at the academy; it is all instructional. The respondent makes it clear to each JPOT that after graduating from the academy, he or she is still a trainee on probationary status. Tr. 240-41, 268-269, 500-501, 682, 685, 738-739, 773, 828-830, 901, 914-915.
16. To address the complainant's continuing performance deficiencies, O'Leary directed Brennan to meet weekly with Roberts. O'Leary instructed Brennan to identify the complainant's strengths and weaknesses, so he would successfully complete his probation. Tr. 831-832. On November 17, 2008, Brennan and Macklin met with the complainant. Brennan told him that O'Leary directed her to meet weekly with him to help improve his performance, so that he would be a successful probation officer. Tr. 23, 31, 502 and 503. R-26.
17. At this meeting, Brennan reviewed specific areas of concern that she identified with his performance. These concerns included issues raised by academy trainers; his lack of understanding of the non-judicial case process; and his inability to compile the required information and write a complete pre-dispositional study. R-26. She also instructed Roberts that Macklin, Roorbach, and Mark White (then Supervisor 2 for Special Projects, and who succeeded Roorbach as Regional Manager in February 2009) would also observe the complainant's progress. R-26. Tr. 223. Brennan made written notes of the meeting. R-26.
18. On November 17, 2008, neither Brennan nor Macklin told Roberts that he had not graduated from the academy or that he was being placed on extended probation.⁸ Tr. 364, 394, 490, 501-503, 507-508.
19. Immediately after the complainant met with Brennan and Macklin on November 17, 2008, Roberts walked into Macklin's office, closed the door, and asked Macklin if they could talk off the record. Macklin told the complainant that if the conversation was about his job performance, he would share that information with Brennan because she was Roberts' supervisor. Macklin made written notes of what was discussed at this meeting. Roberts asked for advice to improve his performance and work situation. Macklin recommended that Roberts utilize his mentors and take notes about what he is being told to do. Roberts also said at this meeting that Brennan did not understand where he was coming from.

⁸ Macklin's testimony about the November 17th meeting confuses some details from that meeting with the December 29, 2008 meeting, where he and Brennan informed the complainant that his probation was being extended. See Tr. 322, 323, 328, 359, 360, 361, 364, 393 and 394.

Macklin said that the complainant could approach him for advice at any time. R-26, Tr. 323, and 327-329.

20. Sometime that day, after meeting privately with Macklin, the complainant called Carbone. It is unclear what they discussed. (Carbone and Roberts offered conflicting testimony about the specifics of this conversation. Additionally, the testimony of other witnesses conflicts with various aspects of the complainant's and Carbone's respective testimony. See end note i infra.)¹ After speaking with the complainant, Carbone asked White to look into Roberts' concerns.
21. After Carbone and Roberts spoke, Carbone stopped White and asked White if he knew the complainant. White said yes. Carbone explained to White that Roberts called and it sounded like he was having trouble in the office.
22. White was excited when he learned that Roberts had been hired, and told the complainant that he was available to assist him in any way to be successful. White, on numerous occasions, told Roberts that he could contact him for help at any time.
23. White went to Bridgeport the next day and spoke with the complainant. Roberts explained to White that he did not believe he could get a fair shake in the Bridgeport office, but when asked what he meant, the complainant did not elaborate. He only repeated that he felt he could not get a fair shake. White had worked in the office – he had been a juvenile probation officer for five years in the Bridgeport office (from late 1999 to 2004) and told the complainant that the folks that work there are very decent and good folks. Tr. 220-222, 270, 273.
24. Roberts did not say to White that he felt he was being racially discriminated against. Tr. 220-222 and 259. Tr. 56-57. White did not believe that discrimination was occurring in the Bridgeport office; it was never an issue in his mind. He had worked in that office and knew the people there, including Brennan and Macklin. White stated that he did not believe that Brennan was culturally insensitive. Tr. 258-259.
25. After White spoke to the complainant, that same day, he had a conversation with Brennan. She explained the work deficiencies that she observed and had reported to Roberts. She and White briefly discussed whether there was something to be done to help the complainant succeed as a juvenile probation officer. Tr. 223. White told Brennan that, "we want to do everything we can to support [Roberts] in his endeavors to become a probation officer." Tr. 236. They did not discuss extending the complainant's probation period beyond the initial nine months. Tr. 237-238.
26. Subsequent to November 17, 2008, Roorbach recommended to Carbone that the complainant be terminated before the end of his probationary period because he had not demonstrated the skills necessary to be retained at the end of the nine-month probationary period. Tr. 593 and 627-628. Although O'Leary had informed Carbone that Roberts was experiencing difficulties prior to November 14, 2008, Tr. 635, 910-911, he believed that it

was unfair for the respondent to have permitted the complainant to participate in the November 14, 2008 ceremony and thereafter terminate him before the end of the probation period. Tr. 593-594, 604-605, and 618.

27. Carbone made the decision to extend Roberts' probationary period for an additional three months because he felt sorry for the complainant, liked him, and wanted to give him another chance to succeed. Tr. 59,604 and 902. He thought that Roberts' performance might improve during the extension. Tr. 681-619. O'Leary believed that extending the probation period was prudent because the respondent had invested substantial time and energy to train the complainant, and she too was hopeful that given additional time his performance would improve. Tr. 903.
28. It is the supervisors' job, including the regional managers, to rate the performance of a juvenile probation officer trainee and to provide that information to their supervisor.⁹ Tr. 231 and 498-499. Carbone and O'Leary rely on the information that Roberts' supervisors provide to them because they do not witness or evaluate a JPOT's daily performance. Tr. 602, 604 and 610-611. During Roberts' initial probation, Brennan was his supervisor and responsible for evaluating his performance and reporting to Roorbach and O'Leary. Brennan is one of the finest supervisors in the state; she honestly and fairly evaluated the complainant. Tr. 633-634.
29. O'Leary received information from Brennan to determine whether to recommend that Roberts' probation be extended. Tr. 239-240. R-2, R-3, and R-4. After discussions with O'Leary, Carbone decided to extend the complainant's probation, in part because he wanted to give Roberts a chance to be successful, despite the fact that Carbone could have terminated him at that time. Tr. 604 and 606.
30. On December 29, 2008, six days before the complainant's initial nine-month probation period was to end, Brennan and Macklin met with Roberts and told him that his probation was going to be extended.¹⁰ At that meeting, they gave him a letter that explained the deficiencies in his performance. R-6.
31. After the complainant's probation was extended, O'Leary decided to change the complainant's supervisor from Brennan to Macklin after it was reported to her that Roberts

⁹ White's testimony on this point is further elucidating. He stated, "I even expressed to [the complainant] in my capacity [as a regional manager] – even if he felt something about [Brennan and Macklin], they can't do that unless they go through me. And I said, Latef, I will hold them accountable, but I'm not seeing anything here that demonstrates to me that you have the ability to do this job...If you can't show me in the work ... there's nothing I can do ... you've got to convince me." Tr. 281-283.

¹⁰ Riley testified that he was at the meeting when the complainant was told his probation was being extended; however he was not asked to name the others who participated in or the date of the meeting. Tr. 742 and 775. Roberts, Brennan, nor Macklin provided any testimony to confirm or contradict this fact.

- felt Brennan did not understand his background and culture. White discussed that decision with O'Leary. Tr. 852-853. O'Leary believed that Macklin and Roberts could work together professionally despite Macklin's remarks to her, in April 2008, that Roberts had boundary issues and should not be assigned to the Bridgeport office. Tr. 911.
32. On January 14, 2009, Macklin was made the complainant's supervisor. Tr. 396. R-1. On January 27, 2009, Roberts came to Macklin's office and, in an indirect manner, attempted to ask Macklin if he did not like the complainant because, a number of years before, Roberts' friend had been in a relationship with Macklin's current girlfriend. The complainant's communication was vague and Macklin did not understand what Roberts was talking about, but when Macklin heard his girlfriend's name, he told the complainant that if he had issues with her, he should talk to her. Macklin then said to Roberts, "I am a 16-year professional and I don't have time for he said, she said I don't want to have any other further discussion about my personal relationships." Tr. 350-351. R-26.
 33. After that conversation, Macklin continued to maintain a professional relationship with the complainant. Tr. 351-352. Macklin met with Roberts frequently providing guidance and advice to assist the complainant as he attempted learn the essential job skills. Tr. 390-391. He sat in when Robert's interviewed clients, reviewed respondent's policies with the complainant, and advised him to make good use of his mentor. Tr. 332. When Macklin identified areas where the complainant's performance needed to improve, he would address the deficiencies with Roberts. Tr. 330-332, 335-336 and 390.
 34. The complainant told Macklin that he believed that Brennan did not know where he (Roberts) was coming from. Tr. 329, 395. The complainant never said to Macklin that Brennan discriminated against him. Tr. 337-338.
 35. During the complainant's extended probation, after White became the regional manager, he spoke with Macklin and Brennan about the complainant's work performance Tr. 270-273. He also attended meetings with Brennan and Roberts to explain what the complainant needed to do to improve his work performance. Tr. 272-273.
 36. White determined that there was sufficient evidence that Roberts was not grasping the job duties and should not continue as a juvenile probation officer, but felt that the complainant possessed the skills to be successful in some other role with the respondent. Tr. 276, 278, and 290.
 37. During the extended probation, O'Leary received most of her information regarding the complainant's work performance from White; she also received information from Brennan. Tr. 855-856. White told O'Leary that he believed Roberts did not grasp various aspects of the job, and they both told Carbone that the complainant should not be retained as a probation officer. Tr. 279-280, 605, 744-745, 56-857, and 906.
 38. Although the respondent could have terminated the complainant at the end of his extended probation, Carbone did not want to fire him. Tr. 59, 857. Carbone met with O'Leary, White,

- and Riley; Carbone then made the unusual decision to identify and offer Roberts another position with the respondent.¹¹ Tr. 606-607, 611, 746 and 906. O'Leary suggested a position in detention services. Tr. 857-858. White believed the complaint was suited for either a position in detention services or as an intake, assessment and referral specialist ("IARS") trainee. Tr. 242-243, 606-607, 611, 858, and 906.
39. In April 2009, O'Leary, White, and Riley met with complainant and informed him that he was not going to pass his extended probationary period. Tr. 57-59, 742, and 858.
 40. This news upset Roberts; he felt he was being treated unfairly. Tr. 62, 742, 758. The complainant stated that he was not pleased with the supervision he received from Brennan or Macklin. Tr. 758-759.
 41. During this meeting, the complainant was offered the position as an IARS trainee. Tr. 58. Roberts was given the weekend to decide if he would accept the offer or be terminated. Tr. 59-60, 748-750, 859-860. This position paid less than the juvenile probation officer position that he had aspired to obtain. Tr. 60-61, 243 and 858. O'Leary called the complainant the following Monday, and he accepted the transfer to the IAR specialist trainee position. Tr. 61, 859, 860. Roberts was given a letter, dated April 9, 2009, appointing him to the IAR trainee position that was signed by Carbone. Tr. 63. C-6.
 42. Prior to offering the complainant the IARS trainee position, Riley had conversations with representatives of the governing union because CSSD management thought it was in the best interest of the complainant and the respondent to offer him another opportunity. Tr. 779.
 43. At the time that the complainant worked as a IARS trainee, Robert Cristiano's ("Cristiano") was Chief Probation Officer II. Tr. 415, 427. Cristiano was cc'd as "supervisor" on the April 9, 2009 letter that appointed Roberts to his new position, and the letter instructed Roberts to report to Cristiano on Monday, April 13, 2009. C-6.
 44. Although Cristiano was responsible for the Waterbury IAR Unit, where Roberts was assigned to work, he did not provide day-to-day supervision to the complainant, or any other IAR specialist that worked in Cristiano's regional offices. Tr. 427, 751. In addition to the Waterbury IAR Unit, Cristiano was responsible for five bail offices in Waterbury, Bantum, Danbury, Derby, and Milford. Tr. 427, 751, 948-949. In each of these locations, Cristiano had assigned local supervisors, who reported directly to Cristiano, and who oversaw various

¹¹ Riley testified, that the consideration given to this case about finding Roberts a suitable position with the respondent "is beyond rare....Usually when a trainee was at the end of their proverbial road, however long, whether that was at the nine month mark or the extended mark, that was it." Tr. 746. He went on to state, "It was rare for the probation extension. There aren't a whole lot of employees at the end of their nine month probation who get the opportunity.... The clear deviation from the norm for this was the opportunity for another position, and not the complete separation at the end of that extension, and continuing to offer employment in the IAR unit." Tr. 767.

aspects of the daily office operations, that included, but were not limited to, the work of IAR specialists. Tr.427-428. Tr. 752. These supervisors worked directly with the line staff. Tr. 428

45. At the time the complainant was assigned to work in the Waterbury office, the day-to-day supervisor was Heather O'Dell ("O'Dell"). Her title was lead IAR specialist. O'Dell reviewed the work of the five IAR specialists in the Waterbury office and the IAR specialist that worked in four other locations in her region. Tr. 979. She reviewed each of their respective reports daily and discussed any issues she had directly with the IAR specialists. Tr. 430, 976-977, 980. These IAR specialists knew that O'Dell was responsible for reviewing and critiquing their work product; none of the IAR specialists were confused about her role as their supervisor. Tr. 977-979.
46. Cristiano told the complainant that O'Dell was a lead IAR specialist and that she would oversee his training. Tr. 428. Cristiano considered O'Dell to be Roberts' day-to-day supervisor; he relied on her to oversee the daily operations. Tr. 430-431 and 949. No employee of the respondent specifically stated to the complainant that O'Dell was his supervisor. Tr. 428-430, 440, 947, 966.
47. The complainant would physically hand his reports to O'Dell for her to review and provide feedback to him; also O'Dell would run reports of the complainant's work. Tr. 979 and 1011. During the complainant's six-month probationary period, from April to October 2009, O'Dell communicated with the complainant on a nearly daily basis, reviewed his work product with him, provided feedback, including explaining what he needed to do to correct mistakes. O'Dell spent many hours training him; no other employee of the respondent reviewed and commented on the complainant's work product. Tr. 436, 947, 951, 954 and 979-980, 985, 988-989, 993-995. She gave Roberts the guidance, direction, tools, and information that he needed to perform the job. Tr. 962-963 and 985-986. She pointed out his successes and his errors. Tr. 994.
48. O'Dell and the complainant had a good working relationship. Tr. 966-967. She had compassion for him because she had also been given a second chance to succeed after not passing her probation period in a previous position with the respondent. Tr. 954-955, 965, 971, 1013.
49. O'Dell observed that the complainant performed his job inconsistently. He did not retain information and repeatedly asked her to go over details that she had previously provided. Tr. 954, 961-962, 963, 965, 991-992. Experienced IAR staff members reported to O'Dell that the complainant's work was inconsistent, incomplete, and unreliable. Tr. 984-985 and 1005. O'Dell's supervisor field notes indicated that the complainant was unable to demonstrate the skills required to do the IAR specialist position, including, but not limited to, repeatedly failing to fill out properly the office's case data record form ("CDR") that is used to interview a client. Tr. 438, 956-957, 990-991. O'Dell discussed with the complainant the problems

- that she identified. Tr. 960. At times, Roberts would not take responsibility for his mistakes. Tr. 960, 987, 989, 1001, 1012.
50. Cristiano did not speak directly to Roberts or any of IAR specialist regarding their work performance. Tr. 77-78, 427, 431-434, 995. O'Dell provided Cristiano feedback on the performance of Roberts and all the IAR specialists, including, but not limited to, her field supervision notes regarding the complainant. Tr. 430, 436-438, 955-956, 963, 993, 996. R-11. During the complainant's entire probationary period, O'Dell told Cristiano the she had concerns with the Roberts' performance. Tr. 430-431, 996.
 51. On one occasion, after O'Dell discussed the complainant's performance issues with Cristiano, he directed O'Dell to tell Roberts' to maintain a notebook of the instructions that she provided to him and to write down any questions that he might have for her regarding his job responsibilities. After O'Dell instructed the complainant to keep a notebook, he did not do so. Tr. 454-455, 962, 965, 987.
 52. Cristiano told O'Dell that the complainant would not successfully complete his probationary period. O'Dell asked Cristiano if it was possible to extend Roberts' probation. She made this request knowing he had not mastered the basics of the job, and being uncertain if he ultimately would be successful in the position. Tr. 969, 991, 1013. Cristiano had not asked for a recommendation with regard to whether the respondent should extend Robert's probationary period. Tr. 996.
 53. Cristiano wrote the complainant's probationary period performance appraisal based on the feedback he received from O'Dell; he determined that Roberts' performance was unsatisfactory, and told his boss, Michael Hines ("Hines"), Regional Manager at the time. Tr. 461, 463. O'Dell could not do Robert's performance appraisal because they were members of the same union – AFSCME. Tr. 462.
 54. Carbone was told by the complainant's supervisors that he was not able to perform the IAR job. Tr. 611-612. Carbone accepted the recommendation that Roberts not be allowed to pass his probationary period, and his employment was terminated. Tr. 612. The complainant met with Riley, Cristiano, and Hines and was given the letter of termination signed by Carbone. Tr. 75. R-14. Cristiano explained the reasons for the termination. Tr. 76.
 55. After Roberts reported to Cristiano in April 2009, he and Cristiano did not speak about his performance until the meeting at which Roberts was given his termination letter. Tr. 73-74, 76 and 434. Their only other communication during the probationary period had been via email and addressed attendance issues and requests for time off. Tr. 69-73 and 440-449.

Discussion and Conclusions

The undersigned has reviewed the pleadings and the evidence offered at the hearing, and has weighed the credibility of each witness to determine whether sufficient evidence has been adduced to satisfy the burden of establishing a violation of any of the claims alleged in the complaint. For the following reasons, I find that the complainant has not satisfied his burden with respect to any of his claims. Accordingly, his complaint is dismissed.¹²

Section 46a-60(a)(1) claim and Section 46a-58(a) claim based on Title VII violation¹³

The applicable test for a disparate treatment claim, brought under either section 46a-60(a)(1) or section 46a-58(a) -- based on the substantive provisions of Title VII -- is set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1983) and its progeny. "Under this analysis, the employee must first make a prima facie case of discrimination. The employer must then rebut that case by stating a legitimate, nondiscriminatory justification for the employment decision in question. Once the employer has done so, the employee must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias." Craine v. Trinity College, 259 Conn. 625, 637 (citing McDonnell Douglas Corp., at 802-804). The complainant must prove by a preponderance of the evidence that reason offered by the respondent is a pretext. Levy v. CHRO, 236 Conn. 96, 108 (1996). "This methodology is intended to provide guidance to fact finders who are faced with the difficult task of determining intent in complicated discrimination cases. It must not, however, cloud the fact that it is the [complainant's] ultimate burden to prove that the [respondent] intentionally discriminated against [him]" *Id.* (citations omitted). Additionally, the elements of proof in an employment discrimination case are flexible; they were never intended to be "rigid, mechanized or ritualistic." Furno Construction Corp. v. Waters, 438 U.S. 567, 577 (1978).

Therefore, when a plaintiff alleges disparate treatment, liability depends on evidence that the alleged protected trait actually played a role in the employer's decision making process and had a determinative influence on the outcome. Reeves v Sanderson Plumbing Products, Inc., 530 U.S. 133, 141 (2000). "The principal inquiry in a disparate treatment case is whether the plaintiff was subjected to different treatment because of his or her protected status." Levy, 236

¹² For any respective claim made, "[t]he presiding [referee] may, on his or her own or by motion of a party, dismiss a complaint ... if the complainant or the commission: ... fails to sustain his or her burden after presentation of the evidence." Regulation 46a-54-88(d).

¹³ The complainant's post-hearing brief does not address either the section 46a-60(a)(4) or the section 46a-70 claims contained in the affidavit. Pursuant to Regulation 46a-54-93a (closing arguments and briefs), "[t]he presiding officer may deem the failure to brief any claim to be a waiver of said claim." The undersigned, therefore, deems these two claims waived.

Conn. at 104. The complainant “must produce sufficient evidence to remove the [fact finder’s] function from the realm of speculation.” Craine, 259 Conn. at 636 (citation omitted).

In the instant case, the complainant was appointed to two distinct trainee positions. At the end of the respective probationary periods for each position, the respondent would evaluate whether the complainant had acquired and demonstrated the requisite knowledge and skills to be deemed qualified for permanent employment; promoting the trainee to fulltime status and, in essence, hiring him for the job he had been provided the opportunity to learn during his probationary period.

Under this scenario, the complainant may establish that the respondent discriminated against him in two ways. First, the complainant can attempt to prove that during either of his two probationary periods, he was subjected to discriminatory treatment based on his race or color. Second, he can demonstrate that the respondent’s determination that he was not qualified for either or both of the positions, at the end his respective probationary periods, was somehow based on a discriminatory motive.

In the former scenario, to establish a prima facie case on the complainant must show that (1) he belongs to a protected class, (2) he was discriminated against in terms and/or conditions of employment, and (3) such discrimination was based up his protected class. In the latter, he may establish a prima facie case by demonstrating that (1) he belongs to a protected class, (2) he met the qualifications for either or both of the positions for which he had trained during the probationary period, (3) he was not hired for the job, and (4) the respondent’s refusal to hire him occurred in circumstances giving rise to an inference of discrimination on the basis of his membership in that class.

Under both scenarios, the burden to establish a prima facie case is minimal and is not the level of proof required to establish a violation of the law. Craine at 638. “The burden of establishing a prima facie case is a burden of production, not of proof, and therefore involves no credibility assessment by the fact finder.” Craine at 638 (citing Reeves at 142).

The complainant is a member of a protected class; he is an African-American. The issue is whether there is sufficient evidence to support a determination that the complainant has satisfied his remaining burden to establish a prima facie case under either of the scenarios applicable to this dispute.

The complainant’s brief asserts that he was qualified for the two positions for which the respondent determined he was not qualified – a permanent, fulltime, juvenile probation officer or an intake, assessment and referral specialist. C-brief p.14. However, the complainant offered no evidence to establish that he possessed the qualifications to perform those duties. The fact

that the respondent deemed the complainant qualified to be appointed to the respective probationary trainee positions is not proof that he was qualified at the end of his probation period to be made a permanent employee.

The respondent, on the other hand, offered significant uncontroverted evidence that the complainant was not qualified for either of the two permanent positions at the end of each respective probationary period. This evidence also satisfies the respondent's burden of establishing its legitimate business reason for declining to make the complainant a permanent employee. Therefore, the complainant cannot satisfy the *de minimus prima facie* burden under the evidentiary framework that requires proof that the complainant was qualified for the position sought and was subsequently discriminated against because of his protected trait.

The inquiry, however, does not end here. The complainant correctly asserts that proof that a similarly situated employee was treated more favorably is relevant to establishing that an employer has engaged in discriminatory conduct. C-brief 15. The complainant may establish a violation if he proves that the respondent's actions during his probationary periods amount to discriminatory treatment in terms and conditions of employment.

To do so, after stating that all of the other juvenile probation officer trainees ("JPOT") in his class successfully completed their probationary periods and were made permanent employees, the complainant argues that three other juvenile probation officers (not in Robert's 2008 training class), who had successfully completed their respective probationary periods, "clearly manifested problematic deficiencies in their performance during their probation...." C-brief 15-16. Two of the three were Caucasian and one African American. C-brief at 16. Specifically, the complainant's brief named the purported comparators and noted that Carbone testified that it is unusual for a person to complete the pre-service training offered at the academy, but then fail to successfully complete probation. *Id.*

The complainant failed to cite any evidence to establish that the respondent observed performance deficiencies regarding any of the three officers during their probationary period sufficient to qualify any one of them to be similarly situated to the complainant. The undersigned reviewed the record for such evidence and found nothing to indicate that the respondent had improperly determined that any of the three probation officers were qualified to be promoted to permanent status at the end of their respective probationary periods. The complainant failed to adduce any evidence that established the nature and severity of the

purported respective deficiencies of the comparators before the respondent determined each was qualified for the juvenile probation officer position.¹⁴

The complainant then argues that the respondent's employee responsible for coordinating the delivery of pre-service training at the academy, Shepard, did not perceive any difficulties with the complainant's ability to comprehend the concepts that she taught at the academy. C-brief 16. The complainant, however, cites no evidence, and the undersigned found none in the record, that Shepard had received any feedback about the complainant's performance from the instructors who taught Roberts and his fellow JPOTs. Additionally, Shepard's testimony was that she was not always in class while the trainees received instruction and that she could only speak to Roberts' comprehension of the training that she provided to him. She was not asked what course she taught. The record contains no evidence that Shepard supervised Roberts at any time during his tenure with the respondent or that she evaluated his performance after he left the academy.

As proof of disparate treatment, the complainant alluded to discriminatory conduct by Brennan. Roberts asserts that he did not obtain adequate supervision from her. C-brief 23.¹⁵ The only evidence offered to support this assertion was Roberts' testimony that he believed that Brennan was culturally insensitive. *Id.* The complainant, however, offered insufficient evidence that Brennan's supervision was deficient. There is no evidence to support the conclusion that Brennan acted in a discriminatory manner.

¹⁴ Shepard testified that she was the supervisor of one of purported comparators, who had successfully completing probation after an extension. His performance issues were attendance, appearance, late and incomplete work assignments, and alleged substance abuse. Tr. 677-678, 682-683. Additionally, Shepard testified that she had recommended that this particular JPOT be given an extended probation "because there were aspects of the job that he was doing, and doing well, and we felt that some additional time was needed to help him get up to par with the remaining aspects of the job" Tr. 687. During the extended probation, this JPOT's performance improved and he was allowed to become a permanent employee. Tr. 688. Shepard, and, Ms. Miayno, Supervisor II, who was in charge of the New Britain office, met with this JPOT and explained, verbally and in writing, where his performance was deficient and, therefore, needed to improve during his extended probation to be made a permanent employee. Tr. 688-690. This practice was essentially identical to the one use by the respondent to extend the complainant's probation.

¹⁵ Additionally, as proof of disparate treatment, the complainant also asserts that unlike another JPOT, he was not given adequate opportunity to learn an important component of the JPO job, specifically during his extended probationary period. C-brief 17. This is essentially another argument that his supervision was inadequate. As discussed *infra*, the undersigned finds no evidence to support this argument.

Brennan was happy that Roberts was assigned to her office. Given the composition of the client population served by her office, she believed that African-American male probation officers could be role models to and better engage some of those clients. She was motivated to help the complainant succeed. Brennan provided guidance and direction to the complainant to assist him attain the skills and knowledge needed to perform the functions of the job. She frequently provided verbal and written guidance to Roberts, explaining what he needed to do to address his deficiencies. She told him he could speak with her at any time for assistance. Brennan had the complainant take a course to help his report writing skills. She worked with the complainant closely to help him understand the job. She made unprecedented efforts to train the complainant; steps that she had never taken with any other JPOT. Brennan hoped that Roberts would benefit from the extended probation period.

Additionally, on or about November 17, 2008, Brennan had been instructed, by O'Leary and White, to do all she could to help Roberts succeed. In this effort, O'Leary directed Brennan to meet with the complainant weekly. She, in fact, had been and continued to meet with the complainant more frequently than directed.

The only evidence offered by the complainant to establish that Brennan possessed a discriminatory animus was that she criticized some comments made by Roberts while he interviewed a 15-year-old client in October 2008. After Brennan raised her concerns with Roberts, he said that she did not and could not understand the communication between the complainant and the youth. Then, on November 17, 2008, after Brennan informed Roberts that O'Leary directed her to meet with him weekly, the complainant communicated to Carbone that he believed Brennan was not objective. Subsequently, in January 2009, Roberts communicated to White that Brennan was not culturally competent or sensitive. White worked with Brennan for many years and that he disagreed with the complainant's assessment.

Next, the complainant asserts that O'Leary had unwarranted misgiving about the complainant, that began in early April 2008, a few weeks after she had interviewed him and offered him the JPOT position. C-brief 17. The complainant argues that O'Leary was unfair to him, commencing on or about April 9, 2008 and throughout his entire 12 month probationary period at as a JPOT.

The complainant asserts that, because O'Leary possessed a discriminatory animus toward the complainant, she misconstrued Macklin's comments to her that the complainant had "boundary issues" to mean that Macklin was insinuating that Roberts had engaged in inappropriate contact with some person prior to applying for the JPOT position and subjected the complainant to unwarranted and humiliating questioning. Id. 17-18. The complaint asserts that this unfair treatment continued when O'Leary refused to reassign him to an office other than Bridgeport, where Macklin worked as a supervisor. Id. 19.

It is not clear exactly what motivated O'Leary to ask the complainant whether he had engage in inappropriate contact at the April 9, 2008 meeting, after Macklin said that Roberts had boundary issues. (Macklin never accused Roberts of inappropriate contact when he raised his concerns with O'Leary; she never asked Macklin to explain what he meant.) The fact remains, however, that after the meeting, the complainant retained his appointment as a JPOT, commenced his employment on April 11, 2008, and was provided the opportunity to acquire the skills and knowledge to become a juvenile probation officer.

Furthermore, the evidence regarding O'Leary's decisions about Roberts' continued employment shows that they were based solely on feedback that O'Leary received from Brennan and White. The evidence also shows that O'Leary believed that extending Robert's probation was in the respondent's best interest because it had invested much effort and resources in him and could not replace him if he did not succeed. O'Leary directed Brennan to work with him to achieve that end. There is no evidence that O'Leary, Brennan, or White possessed a discriminatory animus toward the complainant.

The complainant also argues that O'Leary's decision, in January 2009, to replace his supervisor, Brennan, with Macklin, knowing that Macklin had asked in April 2008 that Roberts be assigned to any office other than Bridgeport because of his boundary issues, is also evidence of her discriminatory animus.¹⁶ C-brief 19. O'Leary credibly testified that Macklin was a professional and would appropriately supervise Roberts.

The complainant states that Macklin was unable to remediate any of the Roberts' deficiencies during the extended probation. C-brief 20. The apparent argument is that because Macklin had expressed an aversion to working with the complainant in April 2008, he was not capable of providing unbiased supervision to him. However, there is no evidence that Macklin provided inadequate supervision. In fact, the evidence reveals that Macklin properly advised and

¹⁶ In January 2009, two weeks after the complainant's probation period was extended, Macklin became his direct supervisor, notwithstanding the fact that Macklin had asked O'Leary, in April 2008, if she could change Roberts assignment to any office other than Bridgeport. Macklin's reason for this had nothing to do with the complainant's race or color, but instead was motivated by previous personal interactions with Roberts. White and O'Leary thought this best, in light allegations by Roberts that Brennan was culturally insensitive after she disagreed with some language he had used while interviewing a teenager in October 2008. White was not aware that, in April 2008, Macklin had asked O'Leary to change Roberts' assignment to any other office except Bridgeport.

supervised Roberts. Lastly, there is no evidence that Macklin discriminated against the complainant because of his race or color.

The complainant then argues that after he accepted the IAR trainee position, he was informed that Cristiano was his supervisor; and subsequently, failed to supervise or communicate with Roberts. The complainant argues that this failure is evidence of discrimination. C-brief 20. Additionally, the complainant argues that Cristiano's refusal to extend his probation, after O'Dell raised the possibility, was based on a "discriminatory stigma of incompetence which invariably followed [Roberts] from his initial assignment with Juvenile Probation over to the Bail Commissioner's Office." C-brief 24-25. The complainant argues that this evidence, taken together, establishes that Cristiano had discriminated against him based on race or color. C-brief 25.

The record, however, does not support complainant's argument. It is clear that O'Dell was the complainant's actual supervisor. During his entire 6-month probation period, on nearly a daily basis, Roberts received direction and feedback on his work from O'Dell. She supervised not only Roberts, but also every IAR specialist who worked in the Waterbury office along with the complainant, as well as in the other four offices in the region. Cristiano did not supervise any of them. There is no evidence that O'Dell discriminated against Roberts.

At the end of the complainant's probationary period as an IAR specialist trainee, the respondent was not required to extend his probation. The respondent elected not to do so. There was no evidence presented to support the conclusion that Cristiano's determination that the complainant had not acquired the necessary skills to be retained as a permanent employee was a pretext. No evidence was presented to support the conclusion that that the complainant was treated in a discriminatory manner based on his race or color.

Final Decision and Order


In light of the foregoing, I find in favor of the Respondent. It is hereby ordered, in accordance with the provisions of subdivision (4) of subsection (d) of section 46a-54-88a of the Regulations of Connecticut State Agencies, that the complaint be, and hereby is, dismissed in its entirety.

It is so ordered this 13th day of June 2014.

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Alvin R. Wilson, Jr.
Presiding Human Rights Referee

¹ White said that Carbone conveyed to him that Roberts “made a statement that he was not getting a fair shake.” Tr. 236. White met with Roberts the next day. White testified that complainant said repeatedly to him that he was not getting a fair shake. Tr. 221-222. White testified that the complainant did not mention to him that he felt he was being discriminated against or that he had information that Macklin had violated the respondent’s employee conduct policy. Tr. 221-222. White told Roberts to call him any time for assistance. Tr. 222.

White also stated that, after speaking with Roberts, he spoke with Brennan. White testified that at that time, he and Brennan did not discuss the complainant’s initial probation period or its potential extension. Tr. 235-236. White did not testify that anyone had told him that the complainant had been told by Brennan, or any other person, that he had not graduated from the training academy.

On cross-examination by complainant’s attorney, Carbone testified that he specifically recalled that Roberts called him in the office after graduation, and that it was unusual for a probation office to call him directly. Carbone thought that it was at this time that the complainant began to question Brennan’s objectivity, and asked White to investigate the claims and get back to Carbone. Tr. 635-637. Carbone stated that, among other things, Roberts expressed concerns about his extended probation during this initial call. Tr. 598-600. Carbone testified that the call occurred shortly after the complainant’s extended probationary period began. Tr. 602. However, Carbone’s decision to extend the complainant’s probation occurred sometime after November 17, 2008, and likely in December 2008. Tr. 901.

O’Leary testified that Carbone told her that the complainant had contacted him and was upset that he had to meet with Brennan. Tr. 834. She also testified that, as of November 17, 2008, neither she nor Brennan had made any determination that Roberts would not successfully complete his probationary period. Tr. 843. Brennan testified she had not discussed the extension of Roberts’ probation when she met with him on November 17, 2008. Tr. 507.

Roberts testified that no one said anything to him about his probation period on November 17, 2008. Tr. 41. The complainant testified that on December 29, 2008, Brennan and Macklin told him his probation was going to be extended – six working days before his probation was scheduled to end. Tr. 50-51.

Roberts, instead, insisted that he told Carbone, on November 17, 2008, that Brennan told him that he did not graduate. Tr. 33. She did not. Tr. 490. 501-503, and 507-508. Roberts also testified that, on November 17, 2008, he told Carbone that his supervisor was Macklin and that Carbone knew that Macklin had made allegations of inappropriate contact with a student at his former employer because Roberts knew about an office relationship that Macklin was involved in between 2003 and 2006, which purportedly violated a policy of the respondent. Tr. 186, 191 and 200. Macklin was made Roberts’ supervisor on January 14, 2009. Tr. 396. R-1.

Carbone testified that after Macklin was made Roberts’ supervisor, Roberts called Carbone and complained that Macklin was being “deliberately unfair to him because he had information about [an inappropriate] relationship that [Macklin] had with another probation officer.” Tr. 600-601. White testified, that in late January or early February 2009, after Roberts made this complaint to Carbone, Carbone asked White to intervene. Tr. 246. Once again White met with the complainant. *Id.* (After an initial investigation, it was determined that Macklin’s relationship did not violate respondent’s policy

because he never supervised the employee who Roberts alleged to be Macklin's subordinate. Tr. 642-643. Tr. 339 and 366. It is also worth noting that Macklin testified that at the time Roberts was hired in April 2008, that the relationship cited by Roberts was not a secret. Tr. 340-341.)

The complainant testified that he told White the allegation regarding Macklin's relationship on or about November 17, 2008. Tr. 35-36. White testified that, after he learned of this allegation in early 2009, he was upset that Roberts had never disclosed, in their prior conversations, his belief that Macklin had, in April 2008, allegedly attempted to sabotage the complainant's employment with the respondent by accusing Roberts of inappropriate contact with a student because Macklin allegedly was aware of Roberts' knowledge of Macklin's allegedly inappropriate relationship with a subordinate.

White testified further that he was committed to helping the complainant succeed; they knew each other from childhood in New Haven and shared a common "Elm Street loyalty." White had recommended that Roberts' be supervised by Macklin, after Roberts complained to him that Brennan was culturally insensitive. He would not have done so if Roberts previous had disclosed to White his concerns about Macklin. Tr. 246-249, 283. Tr. 132. Tr. 852-853.