STATE OF CONNECTICUT
HUMAN RIGHTS REFEREES

INDEX OF "WHISTLEBLOWER RETALIATION" DECISIONS AND RULINGS (General Statues § 4-61dd)

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Asante, Michael v. University of Connecticut
2006-031
FitzGerald, 03/02/07

Motion to dismiss denied. Respondent filed a motion to dismiss and a supplement asserting that the complaint should be dismissed for failure to state a cause of action. Respondent argued that the complainant was not a state employee, and had not disclosed or transmitted information to the attorney general, the auditors of public accounts or any of the respondent's employees prior to filing his complaint. The motion was denied. Complainant produced a payroll stub issued by the respondent identifying him as an employee and P.A. 05-287 eliminated the requirement of disclosing information to the attorney general or the auditors prior to filing a complaint. The complainant was ordered to amend his complaint to provide additional information including identifying the employees of the respondent to whom he had disclosed information, the date(s) of the disclosure and a description of the information he had disclosed.

Asante, Michael v. University of Connecticut
2006-031
FitzGerald, 06/04/07

Motion to dismiss granted. Following the complainant's presentation of his case-in-chief, the respondent moved to dismiss the complaint on the ground that the complainant had failed to sustain his evidentiary burden. Motion granted. The complainant failed to establish a prima facie case (1) that the information he disclosed to the respondent was protected under §4-61dd (a) and (2) that his termination was causally related to his disclosure.

Bagnaschi-Maher, Mary v. Torrington Housing Authority
2005-013
Knishkowy, 03/3/06

Motion to dismiss granted. Because the named respondent is neither a state agency, a large state contractor, or, as complainant particularly argues, a quasi-public agency, this tribunal lacks jurisdiction over the respondent (as well as its two employees who are named as co-respondents). The complainant, likewise, is not an employee of a state agency, quasi-public agency, or large state contractor and thus not entitled to the relief afforded to whistleblowers under §4-61dd. Finally, while the complainant has raised specific concerns and complaints with numerous entities, she has failed to satisfy the statutory prerequisite of disclosing information to (1) the auditors of public accounts or the attorney general, as set forth in §4-61dd (a); (2) the state agency or quasi-public agency where the retaliating person or persons are employed; (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state

agency concerning information involving the large state contract. See §4-61dd (b) (1). For each of these reasons, this tribunal lacks jurisdiction over this matter.

Ballint, Lisa Jane v. UCONN Managed Health Care
2010-126
Austin, 02/24/10

Motion to dismiss granted. The respondent moved to dismiss the complaint arguing, inter alia, that the complaint was time barred. The complainant countered the respondent's argument by proffering that her untimely filing should be excused as she was pro se at the time of filing and she acted in good faith in attempting to comply with the 30-day filing requirement. The complainant further argued that she was unaware that she have a claim pursuant to § 4-61dd until having met with an employee of the Commission on Human Rights and Opportunities 42 days after the filing requirement had expired. Held: the complainant's pro se status and/or ignorance of the whistleblower retaliation statute will not support a finding of equitable tolling and will not excuse the untimely filing.

Banks, Pamela v. Civil Service Commission
2006-017
Knishkowy, 03/21/06

Motion to dismiss granted. The respondent moved to dismiss this §4-61dd(b)((3) whistleblower retaliation complaint because (1) neither the respondents nor the complainant were covered by the statute; (2) the complainant did not disclose information to the appropriate entities identified in the statute; and (3) the complaint was not timely filed. The complainant filed no objections and conceded that the respondent was correct that this tribunal lacked jurisdiction.

Bathgate, David M. v. Securitas Security Services, USA, Inc.
2011-159
FitzGerald, 6/21/11

Motion to dismiss denied. The respondent moved to dismiss for lack of subject matter jurisdiction because the amended complaint failed to allege that the respondents were aware of the complainant's whistleblowing. This argument relates not to subject matter jurisdiction but to the complainant's ability to meet his evidentiary burdens in proving retaliation, which is an evidentiary matter for the public hearing.

Beecher, Bradley v. Dept. of Transportation
2008-078
Knishkowy, 01/7/09

Motion to dismiss granted. Complainant filed complaint on July 17, 2008 claiming that he was terminated because of his whistleblowing disclosures. The record shows that the

complainant was terminated in late August or early September 2007 and that he learned of his termination at that time or not later than November 2007. All of his arguments designed to toll the statute of limitations are unsuccessful, notably his claim that approximately eight months of negotiations for reinstatement should toll the limitations period, as well as his claim that information from his attorney, local selectmen and the CHRO should toll the period. None of these arguments warrants tolling the statute of limitations and the complainant is dismissed for untimely filing.

In his amended complaint, the complainant alleged that after he made further disclosures to the attorney general on June 24, 2008, the respondent changed the requirements for his former position to render him unqualified in the event he should reapply. Because the complainant was not an employee of the state at the time he made the disclosures, he is not covered by the statute. Furthermore, the respondent changed the job specifications prior to the whistleblowing, so there can be no causal nexus between the two.

Bowman, Leon v. Connecticut Container
2009-115
Levine, 12/23/2009

Motion to dismiss granted. Held: (1) General Statutes § 4-61dd requires that the that respondent be "a state agency, a quasi-public agency, or a large state contractor;" (2) pursuant to § 4-61dd-14 (b) of the Regulations of Connecticut State Agencies, a response to respondent's motion to dismiss was due from the complainant within ten days of the filing; (3) despite two extensions of the filing deadline to oppose the entry of dismissal, the complainant failed to file a response; and (4) absent any objection to the motion to dismiss, dismissal was appropriate under the statute and applicable case law.

Cassidy, Katherine v. University of Connecticut Health Ctr.
2008-072
Knishkowy, 06/05/08

Motion to dismiss granted as untimely filed and barred by the "prior pending action doctrine" (complainant filed a similar discrimination claim with CHRO four weeks earlier). (1) The whistleblower retaliation claim was filed approximately four months after the adverse action alleged in the complaint (termination, or threat thereof), and the complainant has not argued tolling the limitation period because of waiver, consent or equitable estoppel. Although she suggested that she held off on filing because the parties were discussing amicable resolution, she provided no specific facts to support an equitable basis for tolling the filing period. Discussion (and hope) of settlement is not a reason to ignore legal deadlines. The complaint was not filed in a timely fashion. (2) In her objection to the motion to dismiss, the complainant stated that she no longer considered her threatened termination to be the adverse action triggering the filing period. Instead, she argued that the respondent is ignoring its own policy re placement of medical personnel in prison settings; this, she claims, is an ongoing adverse action, extending the filing period as long

as such practice remains in effect. Even if complainant were correct that respondent's indifference constitutes an abuse of authority and poses a safety risk, it is not a retaliatory adverse action triggering the filing period. Instead, such indifference could be (and, in this case, actually was) the subject of complainant's § 4-61dd (a) whistleblowing prior to any adverse action. (3) In light of the first two reasons for dismissal, referee did not need to address "prior pending action" argument.

Cayer, Paul v. Western Connecticut State University
(rev'd in part, see ruling on motion in limine)
2003-001
Wilkerson**,** 12/12/03

Motion to dismiss granted in part, denied in part. The respondents argued that the human rights referee did not have jurisdiction pursuant to General Statutes Section 4-61dd (b) (2) over the complainant's whistleblower retaliation complaint that stemmed from information that was not transmitted to the auditors of public accounts but transmitted to the respondents' administration, the chancellor and to the commission on human rights and opportunities. The human rights referee lacked jurisdiction because the complainant did not comply with the requirements of § 4-61dd (a) that provided that information be transmitted to the Auditors of Public Accounts.

In addition, the respondents contended that § 4-61dd (b) (2) must be applied prospectively and thus, the human rights referee did not have jurisdiction over the whistleblower retaliation complaints that stemmed from information transmitted to the auditors of public accounts pursuant to § 4-61dd (a) prior to the effective date, June 2, 2002, of § 4-61dd (b) (2). Section 4-61dd (b) (2) is to be applied prospectively as it related to the compliance of its new requirements that notice may be given to the attorney general and a complaint may be filed with the chief human rights referee and applied retroactively as it related to § 4-61dd (a)-requirements already in existence. Also, the plain language interpretation of § 4-61dd (b) (2) provides for inclusion of all whistleblower retaliation complaints whether initiated pursuant to § 4-61dd (a) before or after the effective date of § 4-61dd (b) (2). The legislative history referred to by the respondent was unclear on this matter. The human rights referee did have jurisdiction of the whistleblower retaliation complaints initiated pursuant to § 4-61dd (a) prior to the effective date of § 4-61dd (b) (2).

Cayer, Paul v. Western Connecticut State University .
2003-001
Wilkerson**,** 09/21/05

Motion in limine. The respondent moved that the complainant be prohibited from offering evidence or attempting to litigate matters that were previously dismissed. The complainant objected and argued that PA 05-287 (§ 4-61dd (b) (1) (ii)) should be applied retroactively to allow for the adjudication of some of his previously dismissed claims. Order: P.A. 05-287 would be applied prospectively to the complainant's previously dismissed claims.

Cayer, Paul v. Western Connecticut State University .
2003-001
Wilkerson**,** 12/06/05

Articulation of dismissal. At the public hearing, the presiding human rights referee ordered the complainant to prepare his direct examination questions during the recess and to return to the public hearing to present pro se testimony. The complainant failed to appear after the recess. Held: The complaint was dismissed pursuant to Regulations of Connecticut State Agencies § 4-61dd-15 (c) (3) as stated orally on the record because the complainant failed to appear at the hearing.

Cipriani, Janet v. Town of Sprague Board of Education .
2006-019
Kerr, 06/01/06

Motion to dismiss granted. Complaint dismissed because the respondents were not quasi-public agencies as alleged by the complainant. Quasi-public agencies are specifically listed in General Statutes § 1-120, and the respondents are not listed therein.

Coggins, Arden M. v. Dept. of Correction
2010-127
FitzGerald, 03/03/10

Motion to dismiss granted. The complainant alleged that the respondent improperly terminated his employment. He grieved his termination through the applicable collective bargaining agreement (termination grievance). Following the issuance of the arbitration award, the complainant filed a second grievance pursuant to the collective bargaining agreement alleging that the respondent had not complied with the arbitration award (arbitration award grievance). The complainant also filed a whistleblower retaliation complaint contending that the respondent failed to comply with the arbitration award in retaliation for his whistleblowing, Held: As provided in § 4-61dd, even though a grievance may involve contractual claims while a complaint may involve statutory claims of retaliation and even though remedies may differ between a grievance and a complaint, a complainant cannot file both a grievance and a complaint challenging the same specific personnel action. Because both the arbitration award grievance and the complaint challenge the same specific act (the respondent's noncompliance with the arbitration award) and because the arbitration award grievance was filed before the complaint was filed, the complaint is dismissed.

Dabre-Rufus, Shefau v. New Haven Board of Education
2010-148
FitzGerald, 10/14/10

Motion to dismiss granted. The respondent moved to dismiss, asserting that it was not, as alleged by the complainant, a quasi-state agency or a large state contractor. The complainant did not file a response to the motion. There being no objection, the motion was granted.

Dax, James v Baran Institute of Technology
2008-068
Knishkowy, 03/04/08

Motion to dismiss granted. The respondent is not a large state contractor (as alleged), nor is it a state or quasi-public agency or an appointing authority. Thus, it is not an employer regulated by the whistleblower retaliation statute. Moreover, although the complainant "blew the whistle" internally and to an out-of-state regulatory entity, he failed to satisfy the statutory prerequisite of disclosing information to (1) the auditors of public accounts or the attorney general, as set forth in § 4-61dd (a); (2) the state or quasi-public agency where the retaliating person is employed; (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state agency. For each of these reasons, this tribunal lacks jurisdiction.

Dutkiewicz, Aimee v Home Depot, U.S.A., Inc.
2006-015
Kerr, 03/21/06

Motion to dismiss granted. In an amended complaint, filed pursuant to General Statutes 4-61dd, the complainant eliminated her whistleblower allegations and made a complaint under General Statutes §§ 46a-58 (a), 45a-60, 46a-60 (a) (1) and 45a-60 (a) (4). There is no procedure which warrants the filing of such allegations initially and directly with the office of public hearings, and the as a result of respondent's filing a motion to dismiss, the complaint was dismissed.

Duhaney, Damion L. v. Birk Manufacturing
2005-014
FitzGerald, 01/12/06

Motion to dismiss granted: (1) complainant failed to appear at the initial conference and (2) complaint filed more than thirty days after the allegedly retaliatory termination.

Fields, Tanya v. Dattco, Inc.
2006-036
Wilkerson, 02/15/07

Motion to dismiss granted. The respondents moved to dismiss the complaint claiming that this tribunal lacks jurisdiction over the complainant's allegations because, among other reasons, they are not large state contractors (or employees thereof) as defined by § 4-61dd. The respondents' motion to dismiss contained two supporting affidavits that attested to the fact that the respondents were not large state contractors or employees thereof. The complainant did not file an objection or response to the motion to dismiss to refute these facts. Hence, the motion to dismiss contained undisputed facts that the respondents were not large state contractors and, therefore, the individual respondents (employees of Dattco and CES) were not employed by large state contractors. This tribunal lacks jurisdiction to hear the complaint.

Flint, Kira D. v. Eastern Community Development Corp.
2010-128
FitzGerald, 04/19/2010

Motion to dismiss granted. The complaint was untimely filed and there was evidence to support the tolling of the thirty-day statute of limitations.

Floyd, Kenneth v. Dept. of Correction
2008-085
Knishkowy, 10/29/08

Motion to dismiss granted. Respondent moved to dismiss this complaint, asserting that (1) the complainant did not make the requisite disclosures under §4-61dd(a) and thus no "whistleblower retaliation" occurred; (2) the complaint was untimely for eight of the nine alleged retaliatory acts, and he made no claim of a continuing violation; (3) the sole timely action—a superior closed the door in complainant's face—does not rise to the level of an adverse personnel action. The complainant filed no response to the motion. Complaint dismissed both on the merits of the respondent's arguments and on the complainant's failure to respond to the motion.

Freeman, Theresa v. State Police, Lieutenant Newland
2007-038
Wilkerson, 01/14/08

Motion to dismiss granted. On the first day of the public hearing on the record, the respondent moved to dismiss the complaint because neither the complainant nor her attorney appeared at the public hearing. Held*:* complaint dismissed for failure to appear. The public hearing date of January 14, 2008 had been scheduled on December 13, 2007 at

the pretrial conference, at which time the parties were notified of the date and ordered to appear for the public hearing.

Freeman, Theresa v. State Police (Reconsideration)
2007-038
(appeal withdrawn)
Wilkerson, 05/01/08

Final decision/Order on motion for reconsideration. The complainant requested reconsideration of the order of dismissal for failure to appear arguing good cause exists for vacating the dismissal. The complainant's attorney argued he could not appear at the public hearing because of childcare responsibilities and he told his client also to not appear. The complainant argued (1) that the presiding referee abused her discretion by not conducting a telephone conference call with the parties and herself the morning of the public hearing at the request of the complainant's attorney; (2) that the presiding referee should not have relied on the respondents' attorneys' representations that the complainant's attorney intended to appear in superior court the same day as the public hearing to request a stay of the present matter and to move to compel documents from the Attorney General's office that were previously ruled by the presiding referee as being inadmissible. Held: The complainant's attorney did not show good cause to vacate the order of dismissal. The complainant's attorney was given an opportunity during a recess of the public hearing to speak via telephone with the respondents' attorneys to discuss his absence and to agree on a continuance to be represented to the presiding referee. The complainant's attorney was unable to accomplish this. The complainant had no intention on proceeding with the public hearing on the scheduled public hearing dates because he, in fact, had appeared in superior court on the day of the public hearing requesting a stay of the present matter and to compel documents from the Attorney General's office.

Gorski, Christopher v. Dept. of Environmental Protection
2007-061
Wilkerson, 01/31/08

Motion to dismiss denied. The respondents moved to dismiss the complaint claiming the complaint: 1) was filed beyond the thirty-day statute of limitations and 2) failed to state a claim for which relief can be granted because the complainant did not disclose information that was protected under § 4-61dd. Held*:* Equitable tolling applied because the complainant reasonably relied on the U. S. postal service in delivering the mail to the chief human rights referee in a timely fashion. The complainant mailed the complaint three business days prior to the filing deadline but the complaint was not received until two days past the filing deadline. A reasonable person would expect in-state mail delivery to take no more than three days. The complainant stated a claim for which relief can be granted because his disclosure of violations of the computer software policy, which referenced the State’s software manuals and code of ethics, constituted the protected activity of disclosing mismanagement, abuse of authority and unethical practices.

Gorski, Christopher v. Dept. of Environmental Protection
2007-061
(appeal dismissed)
Wilkerson, 01/23/09

Final decision. Complaint dismissed. The complainant alleged that the respondents retaliated against him when they terminated him because he disclosed information that the respondents had committed unethical practices, violated state laws/regulations, mismanaged and abused authority in violation of General Statutes §§ 4-61dd et seq. Held: The complainant established a prima facie case of retaliation. However, the complainant provided no additional credible evidence to rebut the respondents' persuasive evidence supporting their legitimate business reasons for the termination. The respondents provided persuasive legitimate, non-retaliatory reasons for terminating the complainant and, therefore, rebutted the statutory rebuttable presumption of an inference of causation. The complainant has not proven by direct or indirect evidence that the respondents' proffered business reasons were not worthy of credence or were pretext for retaliation.

Gorski, Christopher v. Dept. of Environmental Protection, .
2007-061
(appeal dismissed)
Wilkerson Brillant, 03/13/09

Decision on reconsideration: final decision affirmed. The complainant argued that the final decision should be reversed because this tribunal committed errors of fact, good cause had been shown, and new evidence existed as bases for his reconsideration request. The complainant also amended his reconsideration request to add he was prejudiced by the ineffective assistance of his counsel. Held*:* Final decision is affirmed. The complainant's failed to show errors of fact, to provide a reason why he did not present the new evidence at the public hearing, or show good cause. Additionally, his complaints about his attorney's representation do not provide a basis for reversing or modifying the final decision. There is no Sixth Amendment right to effective counsel in civil cases, thus a party is bound by the acts of his attorney.

Irwin, Shawn v. Dept. of Correction, Theresa Lantz, .
2007-040 through 2007-046
Kerr, 05/15/07

Motion to dismiss denied. Respondent claimed res judicata, collateral estoppel and untimeliness. Held*:* While the "whistleblower" disclosure was the same as in a previous action between the parties, the retaliatory acts were new, and hence not precluded. Although the complaints were filed more than thirty days from the allegedly retaliatory hirings (retaliatory in that the complainant was wrongfully bypassed), it took a freedom of information request to obtain enough information about the hirings (the respondents would

not disclose it) for the complainant to reasonably conclude that they were retaliatory and he therefore claimed his complaints were timely. The respondents did not contest this assertion in their reply to his response to their motion and the complainant is therefore entitled to a favorable inference.

Irwin, Shawn v Dept. of Correction
2007 040-42, 44-46, 51-56
FitzGerald, 05/09/08

Final decision. Complaints dismissed. The complainant alleged that the respondents failed to promote him to the position of corrections lieutenant in retaliation for his reports of employee misconduct. Held: Complaint 2007-054 dismissed as untimely filed; remainder of complaints dismissed as the complainant did not sustain his burden of persuasion that the respondent's articulated reasons for promoting the successful candidates, specifically identified by the complainant in his complaints were a pretext for not promoting the complainant.

Jackson, Linda v. Carole Antonetz
2006-030
Knishkowy, 10/05/06

Motion to dismiss granted. The complainant is not an employee of a state agency, a quasi-public agency, or a large state contractor. The respondent is not an employee or officer of a state or quasi-public agency or large state contractor; the respondent also is not an "appointing authority," despite complainant's allegation. (The term "appointing authority" refers to an authority that appoints an employee to a position with a state or quasi-public agency or a large state contractor; the complainant, however, was employed by a private business entity.) Moreover, the complainant "blew the whistle" only to the federal OSHA, and thus failed to satisfy the statutory prerequisite of disclosing information to (1) the auditors of public accounts or the attorney general, as set forth in § 4-61dd (a); (2) the state or quasi-public agency where the retaliating person is employed; (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state agency. For each of these reasons, this tribunal lacks jurisdiction.

Jiantonio, Christopher v Goodwin College
2007-074
FitzGerald, 05/08/08

Final decision. Complaint dismissed for lack of jurisdiction. According to the complaint, the respondent was not a state agency, quasi-public agency or large state contractor.

Jones, Jennifer v. Judicial Dept.
2006-032
Knishkowy, 11/09/06

Motion to dismiss granted. General Statutes § 4-61dd provides several ways a state or quasi-public employee can seek relief from retaliation for her whistleblowing activities: a complaint filed with the chief referee at CHRO's office of public hearings, a complaint filed with the employee review board, or the grievance procedure pursuant to a collective bargaining unit. The plain language of the statute reveals these alternatives to be mutually exclusive. Although it is unnecessary to look beyond the statutory language, the legislative history would confirm this reading. Because the complainant sought relief via a grievance pending prior to the filing of this action, she cannot maintain this action.

Kulish, Thomas v. Perez Arroyo, Elisa Valez & the Dept. of Motor Vehicles
2006-021 through 023
Austin, 10/10/2006

Motion to dismiss denied. The respondents argued that he alleged acts of retaliation were mandated under Connecticut law and as such could not form the basis for a whistleblower retaliation complaint. Held: the respondents' motion argued facts not alleged by the complainant. The respondents appeared to be arguing a motion to strike by contesting the sufficiency of the complaint.

LeGrier, III, Richard v. City of Hartford, Police Dept.
2008-083
Austin, 12/11/08

Motion to dismiss granted. The complainant did not qualify for protection as a whistleblower per the statutory requirements found in § 4-61dd. Specifically, the complainant was an employee of the Hartford Police Department as opposed to state agency, a quasi-public agency (as defined by § 1-120 (1)) or a large state contractor. Furthermore, even if the complainant been an employee of one of the requisite entities he did not transmit information to any of the following: auditors of public accounts; attorney general or an employee of the state agency or quasi-public agency where he was employed which was the cause of the alleged retaliating personnel action.

Lorenzi, Lina v. Latino & Puerto Rican Affairs Commission
2009-110
FitzGerald, 4/26/11

The respondents' motion to amend the case caption was denied as the individuals named in the complaint remain as respondents in their official capacities.

Lueder, Sandra v Southern Connecticut State University
2005-011
FitzGerald, 03/16/06

Motion to dismiss denied. Respondent alleged that complainant lacked standing because, having previously retired from state service, she was not an active state employee at the time of the alleged retaliatory action (respondent's refusal to rehire her). Ruling*:* motion to dismiss denied because refusal to rehire can constitute a basis for a claim of retaliation.

Lueder, Sandra v. Southern Connecticut State University
2005-011
FitzGerald, 08/07/06

Final decision. Complaint dismissed. The complainant alleged that she was not hired as an adjunct professor for the 2005 summer session, the 2005 fall semester and the 2006 spring semester in retaliation for her March 19, 2002 complaint to SCSU's administration regarding the management and business practices of the chairman of the marketing department. Held: 1. The inclusion, under P.A. 02-91, of the human rights referees as an additional venue to adjudicate whistleblower retaliation complaints is procedural rather than substantive legislation and may be applied retrospectively. Therefore, the human rights referees have jurisdiction to adjudicate whistleblower retaliation complaints arising from disclosures of information made to the auditor of public auditors or the attorney general pursuant to § 4-61dd (a), even if those disclosures occurred prior to June 3, 2002 (the effective date of P.A. 02-91). 2. The prohibition, under P. A. 05-287, that a state agency may not retaliate against an employee who discloses information to the agency in which the employee is employed (internal whistleblower complaint) is substantive legislation to be applied prospectively. Therefore, the human rights referees have jurisdiction to adjudicate whistleblower retaliation complaints arising from such internal disclosure provided that both the disclosure and the retaliatory act occurred after July 13, 2005 (the effective date of P. A. 05-287). 3. The human rights referees do not have jurisdiction to adjudicate this complaint because the complainant did not make her disclosure of information to the public auditors or the attorney general and because her disclosure of information to SCSU's administration occurred prior to July 13, 2005.

Mack, Maureen v. Stone Ridge Assisted Living LLC
2010-146
FitzGerald, 11/12/2010

Motion to dismiss granted. The complaint was not filed within thirty days of the adverse action and there is no evidence that would toll the filing deadline.

Malensek, Anton v. Anthony's Autobody, Inc. & Dept. of Labor
2007-039
FitzGerald, 03/15/07

Complaint dismissed sua sponte by presiding human rights referee for lack of jurisdiction. As to the complainant's allegations against his former employer, Anthony's Autobody, the complaint was untimely filed. In addition, according to the complaint, Anthony's Autobody is not a state agency, a quasi-public agency or a large state contractor. As to his allegations against the Department of Labor, the complainant was not an employee of the department.

Matthews, Andrew v. State Police, Col. Edward Lynch, Maj. Christopher Arciero & Lt. William Podgorski
2006-029
Kerr, 05/18/07

The complainant moved for the dismissal of his complaint on the basis that he had filed an action in federal court and that his claim was moot as a result of the release of the attorney general's investigative report finding he had been retaliated against. *Order*: The complaint was dismissed and the parties are to return to the producing party the transcripts produced pursuant to the terms of a protective order previously issued.

Matthews, Andrew N. v. Commissioner John Danaher, III
2007-62
FitzGerald, 02/08/08

Motion to amend his complaint granted. The complainant seeks to amend his complaint to add as a retaliatory act the respondents' tenth affirmative defense. In their tenth affirmative defense, the respondents alleged that the human rights referees lack subject matter jurisdiction over this matter because the complainant is properly subject to discipline under § 4-61dd for knowingly and maliciously making false charges of retaliation under § 4-61dd (a). According to the complainant, the respondents' defense is a threat to take a personnel action against him for exercising his right to make a complaint of retaliation, pursuant § 4-61dd (b). The factors to consider in granting a proposed amendment are whether the amendment would unreasonable delay the hearing on the merits, fairness to the respondents and the negligence, if any, of the complainant in offering the amendment. In this case, granting the amendment would not cause a delay in the hearing or be unfair to the respondents. The respondents have adequate time to prepare their defense to the amendment as requests for production of documents are not due to be served until February 28, 2008 and the hearing is not scheduled until August 19-21, 26-28, 2008. Also, the complainant was not negligent in filing his motion as he could not have filed it until after the respondents had filed their affirmative defense and he filed his motion within the deadline for the filing of his response to the respondent's motion to dismiss.

Matthews, Andrew N. v. Commissioner John Danaher, III
2007-062
FitzGerald, 02/20/08
Motion to dismiss denied. The complainant alleged that the respondents retaliated against him for his protected disclosure of information by (A) transferring him into a hostile work environment and (B) threatening, in their tenth affirmative defense, to take personnel action against him. With respect to the complainant's allegation that his transfer was retaliatory, the respondents argue that the allegation should be dismissed because the human rights referees lack jurisdiction as: (1) the complainant filed grievances pursuant to his collective bargaining agreement prior to filing his whistleblower retaliation complaint; (2) an investigation of the transfer is currently being conducted by the attorney general at the complainant's request; and (3) the complainant failed to provide requisite information in his whistleblower retaliation complaint form. Ruling*:* (1) Pursuant to the clear statutory language, the complainant cannot simultaneously pursue claims arising from this specific incident by both a grievance through his collective bargaining agreement and also a whistleblower retaliation complaint with the chief human rights referee. The complainant required to file and serve a withdrawal either of the grievance or his allegation that the transfer was retaliatory claim; (2) Public Act 05-287 eliminated the previous requirement that an employee had to wait until the conclusion of an investigation by the attorney general before he could file a complaint; and (3) the whistleblower retaliation complaint and its attachments provide the respondents with clear and unambiguous notice of the complainant's allegations.

The respondents also argue that the allegation as to their tenth affirmative defense fails to state a claim upon which relief can be granted because: (1) the defense it is not a threat of a retaliatory act but a defense that the complainant's misconduct removes him from the protections of § 4-61dd and (2) they were unaware that the tenth affirmative defense had been asserted until after it was filed. Ruling: (1) Construing the allegations in a light most favorable to the complainant, in the tenth affirmative defense is a threat in which the respondents are charging the complainant with making unspecified false charges and committing indeterminate misconduct that warrants unidentified discipline; and (2) the respondents have offered no authority that parties are not responsible for the information contained in their own pleadings.

Matthews, Andrew N. v. Commissioner John Danaher, III
2007-062
FitzGerald, 03/07/08

Motion to amend affirmative defense denied. Respondents' proposal to substitute their proposed tenth affirmative defense for the existing defense is an attempt to retract an alleged threatened personnel action and circumvent the ruling granting the complainant's motion to amend his complaint.

Matthews, Andrew N. v. Commissioner John Danaher, III
2007-062
FitzGerald, 03/27/08

Motion to reconsider the denial of motion to amend affirmative defense is denied. The respondents' proposed substitution of affirmative defenses would unfairly prejudice the complainant the substitution proposed to withdraw factual and legal issues raised by the complaint.

Miller, Beth v. University of Connecticut Health Center
2008-073
Wilkerson Brillant, 07/25/08

Motion to dismiss denied. Held: (1) to prove a prima facie case, the complainant is not required to inform the Attorney General or the respondent's employees of the retaliatory acts or to wait for the Attorney General to conclude its investigation before filing a complaint with the chief human rights referee; 2) the complainant suffered an adverse employment action when her health benefits were cancelled and she suffered a hostile work environment by having alleged numerous actions taken against her; and (3) The complainant has established a causal connection between the alleged retaliatory act and the transmittal of information a) by her having disclosed information and allegedly having been retaliated against, less than thirty days later and b) because the alleged adverse personnel action occurred within one year of the complainant's transmittal of information to the Auditors of Public Accounts.

O'Sullivan, Mary K. v. Dept. of Mental Health & Addition Services
2008-086
FitzGerald, 11/20/08

Motion to dismiss denied. Complainant ordered to amend complaint. The respondents argued that the complaint did not allege sufficient facts to satisfy all the elements necessary for a prima facie case and that, as to respondent Stuart Forman, the complaint did not allege any retaliatory conduct committed by him. Held: (1) the complaint satisfied the de minimis standard for a prima facie case and (2) as the complaint did not allege any specific threats of adverse personnel action made by Forman, the complainant directed to amend her complaint to specify the retaliatory threats he made.

O'Sullivan, Mary K. v. Dept. of Mental Health & Addiction Services
2008-086
FitzGerald, 02/20/09

Motion to modify an order to compel granted. Ruling*:* (1) a complainant's mental and psychological condition are not elements in a garden variety emotional distress damage

claim sought under § 4-61dd; (2) the confidentiality privileges of §§ 52-146c, 52-146f and 52-146o apply to garden variety emotional distress damages sought in a whistleblower retaliation complaint brought under § 4-61dd; and (3) such communications and records are excepted from disclosure under § 4-177c.

Paone, Melissa v. Mr. Rooter Plumbing
2009-101
FitzGerald, 03/30/09

Final decision. Complaint dismissed for lack of jurisdiction. According to the complaint, the whistleblowing was not made to the auditors, the attorney general, the state or quasi-public agency that employs the person who retaliated or threatened retaliation; a state agency pursuant to a mandated reporter statute; or, in the case of a large state contractor, to an employee of the contracting state agency. The whistleblowing was, instead, made to the state Department of Labor. Second, the respondent is not a state agency, a quasi-public agency, a large state contractor or employees thereof.

Peterson, Sr., Stewart E v. City of Danbury
2010-135
FitzGerald, 07/23/2010

Motion to dismiss granted. The complaint was untimely filed and there was evidence to support the tolling of the thirty-day statute of limitations.

Proietto, Joann v. Whitney Manor Convalescent Center
2005-009
Knishkowy, 03/01/06

Motion to dismiss granted. The complainant, an employee of a large state contractor, claims that she was retaliated against after complaining and disclosing certain information to contractor's management. Section §4-61dd (b) (1) requires, as a condition precedent to filing a claim of retaliation under §4-61dd (b) (3) (A), that the requisite disclosure be made to (1) the auditors of public accounts or the attorney general, as set forth in 4-61dd (a); (2) the state agency or quasi-public agency where the retaliating person or persons are employed [unequivocally not applicable in this case]; (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state agency concerning information involving the large state contract. The complainant's disclosure to the respondent's management does not satisfy any of these four options and this tribunal, accordingly, lacks jurisdiction over this case.

Reyes, Claudio v. Office of the Comptroller, Retirement & Benefit Services Unit
2004-006
FitzGerald, 03/18/04

Motion to dismiss granted. The complainant failed to comply with the statutory requirements of § 4-61dd in that, prior to filing his complaint with the chief human rights referee, the complainant (1) did not transmit information to the auditors of public accounts, (2) did not notify the attorney general of retaliatory personnel action taken or threatened against him after he notified the auditors, and (3) did not wait for the conclusion of the attorney general's investigation of the alleged retaliatory personnel action.

Ribeiro, Mitchell v. Osborn Correctional Institute
2008-066
Austin, 04/07/08

Motion to dismiss granted. The respondent moved to dismiss the whistleblower retaliation complaint as a consequence of complainant neither alleging nor being an employee of the state, a quasi-public agency or a large state contractor. The complainant filed no response to the respondents' motion.

Richardson, Elaine v. Autotote Enterprises, Inc.
2009-107
Austin, 12/31/09

Motion to dismiss granted. Held: The respondent is not a large state contractor as was alleged in the complaint. Large state contractors are statutorily defined in CGS §4-61dd (h) (2) as an entity that has entered into a large state contract with a state or quasi-public agency. As the respondent did not qualify as a large state contractor, this tribunal lacks jurisdiction.

Rodriguez, Jeannette v. Bd. of Education & Services for the Blind
2007-065
FitzGerald, 02/06/08

Motion to dismiss denied. The respondents first claimed that the complaint was untimely filed. The complainant argued that the respondent used their power and authority to intimidate, harass and discriminate against her, making it very difficult to file such charges. Held*:* Because, in limited circumstances, an employer's behavior in delaying the filing of a complaint will toll a statute of limitations, the complainant given additional time to file and serve a supplement to her objection detailing the specific actions the respondents took to delay her filing her retaliation complaint. The respondents next argued that the complainant's communication was not a disclosure of information within § 4-61dd but rather an unprotected discussion with a clerical co-employee. Held*:* The statute does not limit the

complainant's protection only to disclosures initially made directly by her to supervisory or management personnel. Whether information disclosed to a co-employee is subsequently transmitted to the personnel who made the allegedly retaliatory decision is an evidentiary matter for the hearing.

Rodriguez, Jeannette v Bd. of Educ. & Services for the Blind
2007-065
FitzGerald, 04/10/08

Motion to dismiss granted. Respondent moved to dismiss the complaint as untimely filed. Complainant filed an objection claiming that the respondent's actions caused her to delay the filing of her complaint. Complainant was given additional time to file a supplement detailing the specific actions taken by the respondent that caused her to delay filing her complaint. Complainant's supplement failed to provide any specific information of action by the respondent that would constitute equitable estoppel or equitable tolling.

Romanko, Todd v. Dept. of Unemployment Security Appeals Division
2010-133
Levine, 05/17/10

Motion to dismiss granted. Complainant failed to respond to the respondent's motion to dismiss and, without a showing of good cause, failed to appear at the initial conference.

Saeedi, Mehdi M. v. Dept. of Mental Health & Addiction Services
2008-090
(interlocutory appeal dismissed)
FitzGerald, 07/28/09

Articulation of the order granting the complainant's motion to compel the production of documents granted. Under federal and state statutes and case law, medical records redacted in accordance 45 C.F.R. § 164.514 do not disclose individual patient-identifying information, are exempt from federal and state physician-patient privilege statutes and, therefore, may be produced pursuant to General Statutes § 4-177c (a) and §§ 4-61dd-16 (a) and (b) and 4-61dd-17 of the Regulations of Connecticut State Agencies. Also, because federal and state laws do not preclude the production of the redacted documents, there is no requirement to notify patients or to obtain their consent prior to the production of the redacted documents.

Saeedi, Mehdi M. v. Dept. of Mental Health & Addiction Services
2008-090
FitzGerald, 11/04/09

Petition to intervene denied. The Connecticut Legal Rights Project, Inc. (CLRP) filed a petition to intervene pursuant to General Statutes § 4-177a (b) to protect the privacy and

confidentiality of impatient psychiatric and substance abuse records. The petition was denied as the interests of justice did not require the CLRP's participation because: (1) as the records were no longer being sought by the complainant, the matter was moot; (2) no psychiatric or impatient records were identified on the parties' proposed exhibit lists and no patients were identified as witnesses on the parties' proposed witness lists; and (3) the focus of the hearing is not on patient care but on whether the respondents took or threatened to take personnel action against the complainant in violation of § 4-61dd.

Saeedi, Mehdi M. v. Department of Mental Health and Addiction Services
2009-090 (appeal pending)
FitzGerald, 12/09/10

Final decision. Judgment for the complainant. The complainant established by a preponderance of the evidence that the respondents violated General Statutes § 4-61dd. The complainant is awarded damages including $12,000 in lost salary resulting from two unpaid suspensions; $40,000 in emotional distress damages; $123,355 in attorneys' fees, $410.25 in costs and $2,641 in prejudgment interest.

In addition: (1) A complainant is not precluded from pursuing both a whistleblower retaliation complaint and a grievance, provided that the grievance does not also allege that the personnel action was in retaliation for whistleblowing. (2) The doctrine of "continuing course of conduct" applies to toll the thirty-day statute of limitations. The statute does not begin to run until the course of conduct is completed. Nevertheless, the complaint must be filed with the chief human rights referee within thirty days after a complainant learns of a specific incident giving rise to a claim that a retaliatory personnel action has been threatened or has occurred. As provided by the continuing course of conduct doctrine, the complainant may collect damages that flow from a respondent's initial retaliatory conduct as well as those that flow from a respondent's continuing retaliatory conduct. (3) The anti-retaliatory provision of § 4-61dd is not limited to actions that affect the terms and conditions of employment. The anti-retaliatory provisions of § 4-61dd are broader in scope and provide protection from a greater degree of harms than the substantive anti-discrimination provisions of Title VII and the Connecticut Fair Employment Practices Act.

Samson, Stephen v. Dept. of Public Safety
2007-064
Knishkowy, 04/10/08

Motion to amend affirmative defense denied. The respondent's motion to amend one of its special defenses is denied. The respondent moved to amend special defense, in part, with claim that Office of Public Hearing lacked subject matter jurisdiction "to the extent it determines that complainant has knowingly and maliciously made false charges of retaliation," pursuant to General Statutes § 4-61dd(c). Held: (1) As the respondent's own language acknowledges, whether complainant made false charges cannot be determined until after adjudication of the pertinent facts. While it may be possible to rely on § 4-61dd(c) as a defense or even as a justification for subsequent discipline, the subsection is not a

basis for a jurisdictional claim. (2) The precise language of 4-61dd(c) applies to those employees who have knowingly and maliciously made false charges under § 4-61dd(a)—that is, false disclosure of fraud, corruption, mismanagement, etc. Subsection (c) does not apply to a false charge of retaliation under §4-61dd(b)(3).

Samson, Stephen v. Dept. of Public Safety
2007-064
Knishkowy, 06/20/08

Motion to dismiss granted. (1) The whistleblower retaliation claim was predicated upon six specific acts that occurred after his whistleblowing. These are discrete acts and four of them unquestionably occurred more than thirty days before the filing of the whistleblower retaliation complaint. The other two appeared to be untimely as well. When afforded an opportunity to amend his complaint by identifying the dates he learned of the other two acts, the complainant filed an amended complaint, yet failed to provide the critical information. Accordingly, the referee concluded that all six were untimely and thus barred by the thirty-day statute of limitations. (2) Although a hostile work environment claim could survive a "timeliness" challenge as long as one of the related acts occurred in a timely fashion, since none of the acts was timely, the hostile work environment claim likewise was time-barred. (3) In light of the first two reasons for dismissal, referee did not need to address whether the complainant stated a claim for which relief could be granted.

Samson, Stephen J. v. State Police
2010-134
FitzGerald, 06/28/10

Motion to strike denied. The respondent moved to strike the complaint because it failed to plead the necessary facts establishing a causal connection between the complainant's disclosure of information and the adverse personnel action. Ruling: the respondent's arguments are not directed at the adequacy of the pleadings but rather to the complainant's ability to meet his evidentiary burden at the public hearing. The complaint sufficiently alleges facts that, if proved, would support a cause of action for retaliation.

Scherban, Dwight v. Central Connecticut State University
2006-035
Knishkowy, 06/29/07

In December 2004, the complainant, a state employee, disclosed information re certain misconduct to his superiors pursuant to §4-61dd. He alleges that he was subsequently subjected to adverse personnel actions in retaliation for this whistleblowing. Prior to July 13, 2005, a state employee was protected from retaliation if he disclosed the information to the auditor of public accounts. Not until July 13, 2005 was internal whistleblowing— for example, to one's own employer—given statutory protection by §4-61dd. The 2005 amendment was a substantive, rather than procedural, change in the law, and therefore

could not be applied retroactively to whistleblowing taking place in December 2004. Because the statute did not protect the complainant's actions, this tribunal lacked jurisdiction and the complaint was dismissed.

Even if this deficiency were not a jurisdictional matter, the complaint also could be, and accordingly was, dismissed for the complainant's failure to sustain his evidentiary burden following the presentation of evidence. Specifically, the complainant failed to prove the first element of his prima facie case—that he engaged in a protected activity—because, under the law existing at the time, internal whistleblowing was not a protected act.

Schwartz, Daniel v. Michael Eagen
2008-095
Knishkowy, 03/17/09

Motion to dismiss/strike. The respondent moved to dismiss whistleblower complaint for failure to state a claim for which relief can be granted. Revised whistleblower retaliation regulations (effective 12/30/08) are applied retroactively by virtue of specific language to that effect. Under revised regulations, "failure to state a claim" is no longer the subject of a motion to dismiss but of a motion to strike, with a right to revise stricken pleadings. (Regulations of Conn. State Agencies, § 4-61dd-15(d).)

A complainant must adequately plead all elements of his prima facie case, but a motion to strike is properly granted if the complainant alleges mere conclusory statements without supporting facts. Here, the complaint provides overreaching, general conclusions but lacks any factual bases for the alleged adverse personnel actions he suffered. Accordingly, the complaint is stricken and the complainant directed to file a revised complaint with factual allegations to support that element of his prima facie case.

Schwartz, Daniel v. Michael Eagen
2008-095
FitzGerald, 02/18/10

Final decision. The complainant, a former employee of the University of Connecticut, filed a whistleblower retaliation complaint against the respondent, an employee of the University. Held: Dr. Schwartz established by a preponderance of the evidence that, in retaliation for his whistleblowing, the respondent failed to return to him all of his personal belongings from his office. Dr. Schwartz is awarded $5,000 in emotional distress damages. He did not establish by a preponderance of the evidence that the other alleged acts either were committed by the named respondent or, if they were committed by the respondent, were committed with a retaliatory animus.

Stacy, Joseph v. Dept. of Correction
2003-002
FitzGerald, 09/15/03

Motion to dismiss denied. Respondent claimed that the complainant cannot prove a prima facie case because he had not pled that he suffered an adverse employment action. Held*:* The complainant pled that he had been terminated from his employment action and termination is an adverse employment action.

Stacy, Joseph v. Dept. of Correction
2003-002
FitzGerald, 03/01/04

Final decision. Judgment for the respondent. The complainant alleged that the respondent retaliated against him for calling the respondent's security hotline. Held: The complainant did not meet his prima facie burden of establish both (1) that the respondent took or threatened to take adverse personnel action against him in retaliation for his transmittal of information to the auditors of public accounts and (2) an inference of causation. Even if he established a prima facie case, the complainant did not establish that the respondent's articulated non-retaliatory reason was a pretext for retaliation for his transmittal of information to the auditors.

Stutts, Rachel v. David Frost
2008-089
Knishkowy, 10/27/08

Motion to dismiss granted. Both the complainant and the respondent are employees of the Manchester Board of Education. Although a municipal board of education may be deemed an agent of the state for some purposes and an agent of the municipality for others, the distinction is unnecessary in light of established case law. According to the Conn. Superior Court, even if the board is an agent of the state when implementing state mandates, its members and employees are municipal officers and employees, and thus lack standing to pursue a retaliation complaint under §4-61dd. The complainant also seeks protection from retaliation by citing to the CHRO sexual harassment policy. Her reliance on this policy is misplaced, as it only applies to situations involving CHRO as the employer. Finally, complainant's reliance on the CHRO website is inappropriate. The website is a general tool geared, for the most part, to lay readers. It is not a substitute for the actual language of the statutes and regulations that govern proceedings such as this, and contains numerous disclaimers to that effect. In fact, a thorough review of applicable laws—which are available on the website—would have revealed the legal mechanism appropriate to the facts of her case.

Talmor, Ariel v. Rushford Center, Inc.
2008-097
Kerr, 03/10/09

Motion to dismiss granted. Although the complaint was filed with OPH thirty- two days after the complainant having learned of the retaliatory incident, inasmuch as the thirtieth day was a Saturday, it was timely filed as it was filed on the first business day subsequent to the "Saturday deadline." However, the complaint is nonetheless dismissed because of a second defect, that being that the complainant (an employee of a large state contractor) failed to provide the whistleblower information to the Auditors of Public Accounts, the Attorney General or an employee of the contracting state agency. He provided it only to employees of the large state contractor, which does not meet the statutory requirement.

Taylor, David v. Dept. of Correction
2007-059
Austin, 09/12/08

Motion to dismiss granted. The respondent moved to dismiss the complaint arguing, inter alia, that as a consequence of the complainant's untimely filing this tribunal lacked jurisdiction. The complainant responded by arguing that 1) as a sentenced prisoner he had limited resources; and 2) he acted in good faith in attempting to comply with the filing requirement. Neither of the complainant's arguments could support a finding of consent, waiver or equitable tolling, which if proven could explain and excuse the delay in filing beyond the 30 thirty day period.

Taylor, David v. Dept. of Correction
2009-113
Kerr, 01/29/10

Motion to dismiss granted. The complainant, an inmate at a Connecticut state correctional facility, claims that he was retaliated against in being denied the opportunity to perform services in the prison print shop for having disclosed evidence concerning unsafe work conditions as well as unethical and illegal practices to the auditor of public accounts and others. Upon a review of applicable authorities it was determined that the complainant was not an employee within the context envisioned by General Statutes § 4-61dd, as the "work" in question was essentially penological, not pecuniary, and was performed as a matter of "grace", not "right". It was stated also that the complainant remained free to exercise his rights as a "whistleblower" under General Statutes § 4-61dd, and that he would undoubtedly be protected in doing so, simply not under the provisions of the statute that provide "employees" with protection from retaliation against them in that capacity.

Teal, Joseph v. Johnette Tolliver
2008-077, 080
Levine, 12/16/08

Motion to dismiss granted. Held: (1) the tribunal lacked subject matter jurisdiction because the respondents were not employees of the same state agency as the complainant and were not agents for the agency employing the complainant; and (2) the complaint did not meet the statutory requirement claiming an adverse personnel action taken or threatened by the respondents.

Teal, Joseph v. Dept. of Public Heath, Galvin, J. Robert
2008-096
Levine, 03/05/09

Motion to dismiss granted, in part, Held: (1) the tribunal lacked jurisdiction because of the untimely filing (failure to act within the statutory thirty day period) of a complaint as to all alleged instances of whistleblower retaliation, except the last one; (2) Equitable tolling applies only to unusual circumstances, not entirely within the claimant's control; a situation that does not exist in this case; and (3) § 4-61dd (b) (4) provides an alternative to proceeding under the provisions of § 5-202 before the Employee Review Board, but these statutory remedies are mutually exclusive and therefore the employee must make an election of forum.

Torres, Wanda v. Dept. of Environmental Protection
2008-87
Wilkerson, 04/14/09

Motion to dismiss denied. The complainant first filed a whistleblower retaliation complaint pursuant to General Statutes § 4-61dd (b) (3) (A) with the chief human rights referee and subsequently filed two union grievances regarding similar claims as in the whistleblower retaliation complaint. Section 4-61dd (b) (4) provides the complainant with mutually exclusive alternatives to filing her claims, and thus she cannot proceed with her complaint in two forums. The issue is not where in the process lie her grievances but whether the complainant pursued her claims simultaneously in more than one forum. The fact that she chose one forum first and then subsequently chose another forum to appeal similar adverse personnel action/s taken against her is prohibited by General Statutes § 4-61dd (b) (4).The filing of her grievances could have been done only in the alternative to filing with the chief human rights referee; hence, the complainant must withdraw her grievances or her complaint shall be dismissed.

Walsh, Christopher v. Dept. of Developmental Services
2009-123
Levine, 06/16/2010

Motion to adopt testimony and exhibits from a labor department proceeding denied. The complainant moved to adopt testimony in this whistleblower retaliation proceeding that had been presented in a previous labor department proceeding. The complainant claimed this would simplify the proceeding and save costs. Since complainant cited no legal authority for such a procedure and the presiding referee concluded there was no such authority, the motion was denied.

Walsh, Christopher P. v. Dept. of Developmental Services
2009-123
FitzGerald, 4/20/11

The respondents filed motions to dismiss asserting that: (1) the board of labor relations is an exclusive alternative forum to the filing of a whistleblower retaliation complaint with the chief human rights referee; (2) the complaint is untimely; (3) the chief human rights referee lacks subject matter jurisdiction to the extent that the individuals named as respondents are being sued in their individual capacity and (4) the complaint fails to state a claim as to an adverse personnel action.

The motions to dismiss were denied because: (1) (a) the board of labor relations is not an exclusive alternative forum to the filing of a whistleblower retaliation complaint with the chief human rights referee and (b) a complainant is not precluded from filing a whistleblower retaliation complaint with the chief human rights referee while pursuing non-whistleblower retaliation claims in other forums, even if the whistleblower retaliation and non-retaliation claims arise from the same set of facts; (2) the complaint is not untimely; (3) the individuals named as respondents are not being sued in their individual capacity; and (4) the complaint states a claim upon which relief could be granted.

Wilson, Andrea v Judicial Dept.
2008-098
Wilkerson Brillant, 10/16/09

Motion to amend to allege additional claims denied. The complainant was given a date by which to file a motion to amend her whistleblower retaliation complaint to add the allegation of termination only. The complainant moved to amend her complaint to add, in addition to a claim of retaliatory termination, allegations of a negative performance review, additional respondents and various other dates and incidents regarding harassment and threatening behavior to support her termination and performance review claims. Grievances for the complainant's termination and performance review were filed (pursuant to the collective bargaining agreement) prior to the amendment to add these claims to the complainant's complaint. General Statutes § 4-61dd (b) (4) provides the complainant with mutually

exclusive alternative venues for filing her claims. Because the complainant's grievances were filed prior to her amendment to add the same claims to her complaint, the complainant's motion to amend to add these claims is denied. The motion to amend is also denied as to her other allegations as being superfluous and noncompliant with the tribunal's previous order to allege termination only.

Wilson, Andrea v. Judicial Dept.
2008-069
Wilkerson Brillant, 12/08/09

Motion to dismiss granted. The respondent filed a motion to dismiss on the grounds that this tribunal lacks subject matter jurisdiction of the complaint allegations that were part of a grievance filed on behalf of the complainant and an arbitration proceeding. A written arbitration decision was issued resolving the grievance. Pursuant to General Statutes § 4-61dd (b) (4), which provides the complainant with mutually exclusive alternatives to filing her claims, the complainant cannot pursue the same claims with this tribunal. The fact that the complainant chose one forum first and then subsequently chose another forum to appeal the same adverse personnel actions taken against her is prohibited by General Statutes § 4-61dd (b) (4). Assuming the complainant filed her claims with this tribunal first, withdrawing her grievances was not an option because an arbitration decision already had been issued on the same claims. Hence, the complainant's claims are hereby dismissed.

Wilson, Andrea v. Judicial Dept.
2008-069
Wilkerson Brillant, 01/06/10

Motion to reconsider denied. The complainant filed a motion to reconsider (motion) the order granting the respondent's motion to dismiss (order). The order dismissed certain claims alleged by the complainant that were also pursued through the grievance process pursuant to her collective bargaining agreement, because pursuing claims in two forums is prohibited by General Statutes § 4-61dd (b) (4). In her motion, she argued, pursuant to General Statute § 4-181a, that an error of fact or law should be corrected, that new evidence had been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding, and other good cause for reconsideration had been shown. Section 4-181a (a) (1) only applies to matters regarding a final decision and § 4-166 (3) defines "final decision" by specifically excluding preliminary or intermediate rulings or orders. The order was an intermediate ruling as it did not terminate the proceedings because other allegations in the complaint are still pending. Therefore, the motion was reviewed as a reconsideration of an intermediate ruling not a final decision. The complainant had failed to file a response to the respondent's motion to dismiss prior to the deadline. The complainant argued that she should have been given additional time to respond to the motion to dismiss because she had experienced personal problems. This tribunal had provided her with four months to respond to the motion to dismiss and she failed to request an extension prior to the deadline for filing a response.

III. Index of decisions/rulings listed alphabetically by respondent

Anthony's Autobody, Inc. & Dept. of Labor, Anton Malensek v.
2007-039
FitzGerald, 03/15/07

Complaint dismissed sua sponte by presiding human rights referee for lack of jurisdiction. As to the complainant's allegations against his former employer, Anthony's Autobody, the complaint was untimely filed. In addition, according to the complaint, Anthony's Autobody is not a state agency, a quasi-public agency or a large state contractor. As to his allegations against the Department of Labor, the complainant was not an employee of the department.

Antonetz, Carole, Linda Jackson v.
2006-030
Knishkowy, 10/05/06

Motion to dismiss granted. The complainant is not an employee of a state agency, a quasi-public agency, or a large state contractor. The respondent is not an employee or officer of a state or quasi-public agency or large state contractor; the respondent also is not an "appointing authority," despite complainant's allegation. (The term "appointing authority" refers to an authority that appoints an employee to a position with a state or quasi-public agency or a large state contractor; the complainant, however, was employed by a private business entity.) Moreover, the complainant "blew the whistle" only to the federal OSHA, and thus failed to satisfy the statutory prerequisite of disclosing information to (1) the auditors of public accounts or the attorney general, as set forth in § 4-61dd (a); (2) the state or quasi-public agency where the retaliating person is employed; (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state agency. For each of these reasons, this tribunal lacks jurisdiction.

Autotote Enterprises, Inc., Elaine Richardson v
2009-107
Austin, 12/31/09

Motion to dismiss granted. Held: The respondent is not a large state contractor as was alleged in the complaint. Large state contractors are statutorily defined in CGS §4-61dd (h) (2) as an entity that has entered into a large state contract with a state or quasi-public agency. As the respondent did not qualify as a large state contractor, this tribunal lacks jurisdiction.

Baran Institute of Technology, James Dax v
2008-068
Knishkowy, 03/04/08

Motion to dismiss granted. The respondent is not a large state contractor (as alleged), nor is it a state or quasi-public agency or an appointing authority. Thus, it is not an employer regulated by the whistleblower retaliation statute. Moreover, although the complainant "blew the whistle" internally and to an out-of-state regulatory entity, he failed to satisfy the statutory prerequisite of disclosing information to (1) the auditors of public accounts or the attorney general, as set forth in § 4-61dd (a); (2) the state or quasi-public agency where the retaliating person is employed; (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state agency. For each of these reasons, this tribunal lacks jurisdiction.

Birk Manufacturing, Damion L. Duhaney. v.
2005-014
FitzGerald, 01/12/06

Motion to dismiss granted. (1) The complainant failed to appear at the initial conference and (2) complaint filed more than thirty days after the allegedly retaliatory termination.

Bd. of Education & Services for the Blind, Jeannette Rodriguez v.
2007-065
FitzGerald, 02/06/08

Motion to dismiss denied. The respondents first claimed that the complaint was untimely filed. The complainant argued that the respondent used their power and authority to intimidate, harass and discriminate against her, making it very difficult to file such charges. Held*:* Because, in limited circumstances, an employer's behavior in delaying the filing of a complaint will toll a statute of limitations, the complainant given additional time to file and serve a supplement to her objection detailing the specific actions the respondents took to delay her filing her retaliation complaint. The respondents next argued that the complainant's communication was not a disclosure of information within § 4-61dd but rather an unprotected discussion with a clerical co-employee. Held*:* The statute does not limit the complainant's protection only to disclosures initially made directly by her to supervisory or management personnel. Whether information disclosed to a co-employee is subsequently transmitted to the personnel who made the allegedly retaliatory decision is an evidentiary matter for the hearing.

Bd. of Education & Services for the Blind, Jeannette Rodriguez v.
2007-065
FitzGerald, 04/10/08

Motion to dismiss granted. Respondent moved to dismiss the complaint as untimely filed. Complainant filed an objection claiming that the respondent's actions caused her to delay the filing of her complaint. Complainant was given additional time to file a supplement detailing the specific actions taken by the respondent that caused her to delay filing her complaint. Complainant's supplement failed to provide any specific information of action by the respondent that would constitute equitable estoppel or equitable tolling.

Central Connecticut State University, Dwight Scherban v.
2006-035
Knishkowy, 06/29/07

Motion to dismiss granted. In December 2004, the complainant, a state employee, disclosed information re certain misconduct to his superiors pursuant to §4-61dd. He alleges that he was subsequently subjected to adverse personnel actions in retaliation for this whistleblowing. Prior to July 13, 2005, a state employee was protected from retaliation if he disclosed the information to the auditor of public accounts. Not until July 13, 2005 was internal whistleblowing— for example, to one's own employer—given statutory protection by §4-61dd. The 2005 amendment was a substantive, rather than procedural, change in the law, and therefore could not be applied retroactively to whistleblowing taking place in December 2004. Because the statute did not protect the complainant's actions, this tribunal lacked jurisdiction and the complaint was dismissed.

Civil Service Commission, Pamela Banks v.
2006-017
Knishkowy, 03/21/06

Motion to dismiss granted. The respondent moved to dismiss this §4-61dd(b)((3) whistleblower retaliation complaint because (1) neither the respondents nor the complainant were covered by the statute; (2) the complainant did not disclose information to the appropriate entities identified in the statute; and (3) the complaint was not timely filed. The complainant filed no objections and conceded that the respondent was correct that this tribunal lacked jurisdiction.

Comptroller, Office of, Retirement & Benefit Services Unit, Claudio Reyes v.
2004-006
FitzGerald, 03/18/04

Motion to dismiss granted. The complainant failed to comply with the statutory requirements of § 4-61dd in that, prior to filing his complaint with the chief human rights referee, the complainant (1) did not transmit information to the auditors of public accounts, (2) did not notify the attorney general of retaliatory personnel action taken or threatened against him after he notified the auditors, and (3) did not wait for the conclusion of the attorney general's investigation of the alleged retaliatory personnel action.

Connecticut Container, Bowman, Leon v.
2009-115
Levine, 12/23/2009

Motion to dismiss granted. Held: (1) General Statutes § 4-61dd requires that the that respondent be "a state agency, a quasi-public agency, or a large state contractor;" (2) pursuant to § 4-61dd-14 (b) of the Regulations of Connecticut State Agencies, a response to respondent's motion to dismiss was due from the complainant within ten days of the filing; (3) despite two extensions of the filing deadline to oppose the entry of dismissal, the complainant failed to file a response; and (4) absent any objection to the motion to dismiss, dismissal was appropriate under the statute and applicable case law.

Correction, Dept. of – see also Lantz, Commissioner Theresa; Osborn Correctional Institute

Correction, Dept. of, Joseph Stacy v.
2003-002
FitzGerald, 09/15/03

Motion to dismiss denied. Respondent claimed that the complainant cannot prove a prima facie case because he had not pled that he suffered an adverse employment action. Held*:* The complainant pled that he had been terminated from his employment action and termination is an adverse employment action.

Correction, Dept. of; *Joseph Stacy v.*
2003-002
FitzGerald, 03/01/04

Final decision. Judgment for the respondents. The complainant alleged that the respondents retaliated against him for calling the respondents' security hotline. Held: The complainant did not meet his prima facie burden of establish both (1) that the respondents took or threatened to take adverse personnel action against him in retaliation for his transmittal of information to the Auditors and (2) an inference of causation. Even if he

established a prima facie case, the complainant did not establish that the respondents' articulated non-retaliatory reason was a pretext for retaliation for his transmittal of information to the Auditors.

Correction, Dept. of, Shawn Irwin v.
2007-040 through 2007-046
Kerr, 05/15/07

Motion to dismiss denied. Respondent claimed res judicata, collateral estoppel and untimeliness. Held*:* While the "whistleblower" disclosure was the same as in a previous action between the parties, the retaliatory acts were new, and hence not precluded. Although the complaints were filed more than thirty days from the allegedly retaliatory hirings (retaliatory in that the complainant was wrongfully bypassed), it took a freedom of information request to obtain enough information about the hirings (the respondents would not disclose it) for the complainant to reasonably conclude that they were retaliatory and he therefore claimed his complaints were timely. The respondents did not contest this assertion in their reply to his response to their motion and the complainant is therefore entitled to a favorable inference.

Correction, Dept of, Shawn Irwin v
2007 040-42, 44-46, 51-56
FitzGerald, 05/09/08

Final decision. Complaints dismissed. The complainant alleged that the respondents failed to promote him to the position of corrections lieutenant in retaliation for his reports of employee misconduct. Held: Complaint 2007-054 dismissed as untimely filed; remainder of complaints dismissed as the complainant did not sustain his burden of persuasion that the respondent's articulated reasons for promoting the successful candidates, specifically identified by the complainant in his complaints were a pretext for not promoting the complainant.

Correction, Dept. of, Kenneth Floyd v.
2008-085
Knishkowy, 10/29/08

Motion to dismiss granted. Respondent moved to dismiss this complaint, asserting that (1) the complainant did not make the requisite disclosures under §4-61dd (a) and thus no "whistleblower retaliation" occurred; (2) the complaint was untimely for eight of the nine alleged retaliatory acts, and he made no claim of a continuing violation; (3) the sole timely action—a superior closed the door in complainant's face—does not rise to the level of an adverse personnel action. The complainant filed no response to the motion. Complaint dismissed both on the merits of the respondent's arguments and on the complainant's failure to respond to the motion.

Correction, Dept. of, David Taylor
2007-059
Austin, 09/12/08

Motion to dismiss granted. The respondent moved to dismiss the complaint arguing, inter alia, that as a consequence of the complainant's untimely filing this tribunal lacked jurisdiction. The complainant responded by arguing that 1) as a sentenced prisoner he had limited resources; and 2) he acted in good faith in attempting to comply with the filing requirement. Neither of the complainant's arguments could support a finding of consent, waiver or equitable tolling, which if proven could explain and excuse the delay in filing beyond the 30 thirty day period.

Correction, Dept of, David Taylor v.
2009-113
Kerr, 01/29/10

Motion to dismiss granted. The complainant, an inmate at a Connecticut state correctional facility, claims that he was retaliated against in being denied the opportunity to perform services in the prison print shop for having disclosed evidence concerning unsafe work conditions as well as unethical and illegal practices to the auditor of public accounts and others. Upon a review of applicable authorities it was determined that the complainant was not an employee within the context envisioned by General Statutes § 4-61dd, as the "work" in question was essentially penological, not pecuniary, and was performed as a matter of "grace", not "right". It was stated also that the complainant remained free to exercise his rights as a "whistleblower" under General Statutes § 4-61dd, and that he would undoubtedly be protected in doing so, simply not under the provisions of the statute that provide "employees" with protection from retaliation against them in that capacity.

Correction, Dept. of, Arden M. Coggins. v.
2010-127
FitzGerald, 03/03/10

Motion to dismiss granted. The complainant alleged that the respondent improperly terminated his employment. He grieved his termination through the applicable collective bargaining agreement (termination grievance). Following the issuance of the arbitration award, the complainant filed a second grievance pursuant to the collective bargaining agreement alleging that the respondent had not complied with the arbitration award (arbitration award grievance). The complainant also filed a whistleblower retaliation complaint contending that the respondent failed to comply with the arbitration award in retaliation for his whistleblowing, Held: As provided in § 4-61dd, even though a grievance may involve contractual claims while a complaint may involve statutory claims of retaliation and even though remedies may differ between a grievance and a complaint, a complainant cannot file both a grievance and a complaint challenging the same specific personnel action. Because both the arbitration award grievance and the complaint challenge the same

specific act (the respondent's noncompliance with the arbitration award) and because the arbitration award grievance was filed before the complaint was filed, the complaint is dismissed.

Danaher III, Commissioner John – see also Public Safety, Dept. of, and State Police

Danaher III, Commissioner John, Andrew N. Matthews v.
2007-62
FitzGerald, 02/08/08

Motion to amend his complaint is granted. The complainant seeks to amend his complaint to add as a retaliatory act the respondents' tenth affirmative defense. In their tenth affirmative defense, the respondents alleged that human rights referees lack subject matter jurisdiction because the complainant is properly subject to discipline under § 4-61dd for knowingly and maliciously making false charges of retaliation under subsection (a). According to the complainant, the respondents' defense is a threat to take a personnel action against him for exercising his right to make a complaint of retaliation, pursuant to § 4-61dd (b)." The factors to consider in granting a proposed amendment are whether the amendment would unreasonable delay the hearing on the merits, fairness to the respondents and the negligence, if any, of the complainant in offering the amendment. In this case, granting the amendment would not cause a delay in the hearing or be unfair to the respondents. The respondents have adequate time to prepare their defense to the amendment as requests for production of documents are not due to be served until February 28, 2008 and the hearing is not scheduled until August 19-21, 26-28, 2008. Also, the complainant was not negligent in filing his motion as he could not have filed it until after the respondents had filed their affirmative defense and he filed his motion within the deadline for the filing of his response to the respondent's motion to dismiss.

Danaher III, Commissioner John, Andrew N. Matthews v.
2007-062
FitzGerald, 02/20/08

Motion to dismiss denied. The complainant alleged that the respondents retaliated against him for his protected disclosure of information by (A) transferring him into a hostile work environment and (B) threatening, in their tenth affirmative defense, to take personnel action against him. With respect to the complainant's allegation that his transfer was retaliatory, the respondents argue that the allegation should be dismissed because the human rights referees lack jurisdiction as: (1) the complainant filed grievances pursuant to his collective bargaining agreement prior to filing his whistleblower retaliation complaint; (2) an investigation of the transfer is currently being conducted by the attorney general at the complainant's request; and (3) the complainant failed to provide requisite information in his whistleblower retaliation complaint form. Ruling*:* (1) Pursuant to the clear statutory language, the complainant cannot simultaneously pursue claims arising from this specific incident by both a grievance through his collective bargaining agreement and also a

whistleblower retaliation complaint with the chief human rights referee. The complainant required to file and serve a withdrawal either of the grievance or his allegation that the transfer was retaliatory claim; (2) Public Act 05-287 eliminated the previous requirement that an employee had to wait until the conclusion of an investigation by the attorney general before he could file a complaint; and (3) the whistleblower retaliation complaint and its attachments provide the respondents with clear and unambiguous notice of the complainant's allegations.

The respondents also argue that the allegation as to their tenth affirmative defense fails to state a claim upon which relief can be granted because: (1) the defense it is not a threat of a retaliatory act but a defense that the complainant's misconduct removes him from the protections of § 4-61dd and (2) they were unaware that the tenth affirmative defense had been asserted until after it was filed. Ruling: (1) Construing the allegations in a light most favorable to the complainant, in the tenth affirmative defense is a threat in which the respondents are charging the complainant with making unspecified false charges and committing indeterminate misconduct that warrants unidentified discipline; and (2) the respondents have offered no authority that parties are not responsible for the information contained in their own pleadings.

Danaher, III, Commissioner John, Andrew N. Matthews
2007-062
FitzGerald, 03/07/08

Motion to amend affirmative defense denied. Respondents' proposal to substitute their proposed tenth affirmative defense for the existing defense is an attempt to retract an alleged threatened personnel action and circumvent the ruling granting the complainant's motion to amend his complaint.

Danaher, III, Commissioner John, Andrew N. Matthews v.
2007-062
FitzGerald, 03/27/08

Motion to reconsider the denial of their motion to amend affirmative defense is denied. The proposed substitution of affirmative defenses would unfairly prejudice the complainant the substitution proposed to withdraw factual and legal issues raised by the complaint.

Danbury, City of, Stewart E. Peterson, Sr. v.
2010-135
FitzGerald, 07/23/2010

Motion to dismiss granted. The complaint was untimely filed and there was evidence to support the tolling of the thirty-day statute of limitations.

Dattco, Inc., Tanya Fields v.
2006-036
Wilkerson, 02/15/07

Motion to dismiss granted. The respondents moved to dismiss the complaint claiming that this tribunal lacks jurisdiction over the complainant's allegations because, among other reasons, they are not large state contractors (or employees thereof) as defined by § 4-61dd. The respondents' motion to dismiss contained two supporting affidavits that attested to the fact that the respondents were not large state contractors or employees thereof. The complainant did not file an objection or response to the motion to dismiss to refute these facts. Hence, the motion to dismiss contained undisputed facts that the respondents were not large state contractors and, therefore, the individual respondents (employees of Dattco and CES) were not employed by large state contractors. This tribunal lacks jurisdiction to hear the complaint.

Developmental Services, Dept. of, Christopher Walsh v.
2009-123
Levine, 6/16/2010

Motion to adopt testimony and exhibits from a labor department proceeding denied. The complainant moved to adopt testimony in this whistleblower retaliation proceeding that had been presented in a previous labor department proceeding. The complainant claimed this would simplify the proceeding and save costs. Since complainant cited no legal authority for such a procedure and the presiding referee concluded there was no such authority, the motion was denied

Developmental Services, Dept. of, Christopher P. Walsh v.
2009-123
FitzGerald, 4/20/11

The respondents filed motions to dismiss asserting that: (1) the board of labor relations is an exclusive alternative forum to the filing of a whistleblower retaliation complaint with the chief human rights referee; (2) the complaint is untimely; (3) the chief human rights referee lacks subject matter jurisdiction to the extent that the individuals named as respondents are being sued in their individual capacity and (4) the complaint fails to state a claim as to an adverse personnel action.

The motions to dismiss were denied because: (1) (a) the board of labor relations is not an exclusive alternative forum to the filing of a whistleblower retaliation complaint with the chief human rights referee and (b) a complainant is not precluded from filing a whistleblower retaliation complaint with the chief human rights referee while pursuing non-whistleblower retaliation claims in other forums, even if the whistleblower retaliation and non-retaliation claims arise from the same set of facts; (2) the complaint is not untimely; (3)

the individuals named as respondents are not being sued in their individual capacity; and (4) the complaint states a claim upon which relief could be granted.

Eagen, Michael, Daniel Schwartz v.
2008-095
FitzGerald, 02/18/10

Final decision. The complainant, a former employee of the University of Connecticut, filed a whistleblower retaliation complaint against the respondent, an employee of the University. Held: Dr. Schwartz established by a preponderance of the evidence that, in retaliation for his whistleblowing, the respondent failed to return to him all of his personal belongings from his office. Dr. Schwartz is awarded $5,000 in emotional distress damages. He did not establish by a preponderance of the evidence that the other alleged acts either were committed by the named respondent or, if they were committed by the respondent, were committed with a retaliatory animus.

Eastern Community Development Corp., Kira D. Flint v.
2010-128
FitzGerald, 04/19/2010

Motion to dismiss granted. The complaint was untimely filed and there was evidence to support the tolling of the thirty-day statute of limitations.

Environmental Protection, Dept. of, Christopher Gorski v.
2007-061
Wilkerson, 01/31/08

Motion to dismiss denied. The respondents moved to dismiss the complaint claiming the complaint: 1) was filed beyond the thirty-day statute of limitations and 2) failed to state a claim for which relief can be granted because the complainant did not disclose information that was protected under § 4-61dd. Held*:* Equitable tolling applied because the complainant reasonably relied on the U. S. postal service in delivering the mail to the chief human rights referee in a timely fashion. The complainant mailed the complaint three business days prior to the filing deadline but the complaint was not received until two days past the filing deadline. A reasonable person would expect in-state mail delivery to take no more than three days. The complainant stated a claim for which relief can be granted because his disclosure of violations of the computer software policy, which referenced the State's software manuals and code of ethics, constituted the protected activity of disclosing mismanagement, abuse of authority and unethical practices.

Environmental Protection, Dept. of, Christopher Gorski v.
2007-061
(appeal dismissed)
Wilkerson, 01/23/09

Final decision. Complaint dismissed. The complainant alleged that the respondents retaliated against him when they terminated him because he disclosed information that the respondents had committed unethical practices, violated state laws/regulations, mismanaged and abused authority in violation of General Statutes §§ 4-61dd et seq. Held: The complainant established a prima facie case of retaliation. However, the complainant provided no additional credible evidence to rebut the respondents' persuasive evidence supporting their legitimate business reasons for the termination. The respondents provided persuasive legitimate, non-retaliatory reasons for terminating the complainant and, therefore, rebutted the statutory rebuttable presumption of an inference of causation. The complainant has not proven by direct or indirect evidence that the respondents' proffered business reasons were not worthy of credence or were pretext for retaliation.

Environmental Protection, Dept. of, Christopher Gorski v
2007-061
(appeal dismissed)
Wilkerson Brillant, 03/13/09

Decision on reconsideration: final decision affirmed. The complainant argued that the final decision should be reversed because this tribunal committed errors of fact, good cause had been shown, and new evidence existed as bases for his reconsideration request. The complainant also amended his reconsideration request to add he was prejudiced by the ineffective assistance of his counsel. Held*:* Final decision is affirmed. The complainant's failed to show errors of fact, to provide a reason why he did not present the new evidence at the public hearing, or show good cause. Additionally, his complaints about his attorney's representation do not provide a basis for reversing or modifying the final decision. There is no Sixth Amendment right to effective counsel in civil cases, thus a party is bound by the acts of his attorney.

Environmental Protection, Dept. of, Wanda Torres v.
2008-87
Wilkerson, 04/14/09

Motion to dismiss denied. The complainant first filed a whistleblower retaliation complaint pursuant to General Statutes § 4-61dd (b) (3) (A) with the chief human rights referee and subsequently filed two union grievances regarding similar claims as in the whistleblower retaliation complaint. Section 4-61dd (b) (4) provides the complainant with mutually exclusive alternatives to filing her claims, and thus she cannot proceed with her complaint in two forums. The issue is not where in the process lie her grievances but whether the

complainant pursued her claims simultaneously in more than one forum. The fact that she chose one forum first and then subsequently chose another forum to appeal similar adverse personnel action/s taken against her is prohibited by General Statutes § 4-61dd (b) (4). The filing of her grievances could have been done only in the alternative to filing with the chief human rights referee; hence, the complainant must withdraw her grievances or her complaint shall be dismissed.

Frost, David, Rachel Stutts v.
2008-089
Knishkowy, 10/27/08

Motion to dismiss granted. Both the complainant and the respondent are employees of the Manchester Board of Education. Although a municipal board of education may be deemed an agent of the state for some purposes and an agent of the municipality for others, the distinction is unnecessary in light of established case law. According to the Conn. Superior Court, even if the board is an agent of the state when implementing state mandates, its members and employees are municipal officers and employees, and thus lack standing to pursue a retaliation complaint under §4-61dd. The complainant also seeks protection from retaliation by citing to the CHRO sexual harassment policy. Her reliance on this policy is misplaced, as it only applies to situations involving CHRO as the employer. Finally, complainant's reliance on the CHRO website is inappropriate. The website is a general tool geared, for the most part, to lay readers. It is not a substitute for the actual language of the statutes and regulations that govern proceedings such as this, and contains numerous disclaimers to that effect. In fact, a thorough review of applicable laws—which are available on the website—would have revealed the legal mechanism appropriate to the facts of her case.

Goodwin College, Christopher Jiantonio v.
2007-074
FitzGerald, 05/08/08

Final decision. Complaint dismissed for lack of jurisdiction. According to the complaint, the respondent was not a state agency, quasi-public agency or large state contractor.

City of Hartford, Police Dept., Richard LeGrier, III v.
2008-083
Austin, 12/11/08

Motion to dismiss granted. The complainant did not qualify for protection as a whistleblower per the statutory requirements found in § 4-61dd. Specifically, the complainant was an employee of the Hartford Police Department as opposed to state agency, a quasi-public agency (as defined by § 1-120 (1)) or a large state contractor. Furthermore, even if the complainant been an employee of one of the requisite entities he did not transmit information to any of the following: auditors of public accounts; attorney general or an

employee of the state agency or quasi-public agency where he was employed which was the cause of the alleged retaliating personnel action.

Home Depot, U.S.A., Inc., Aimee Dutkiewicz v.
2006-015
Kerr, 03/21/06

Motion to dismiss granted. In an amended complaint, filed pursuant to General Statutes 4-61dd, the complainant eliminated her whistleblower allegations and made a complaint under General Statutes §§ 46a-58 (a), 45a-60, 46a-60 (a) (1) and 45a-60 (a) (4). There is no procedure which warrants the filing of such allegations initially and directly with the office of public hearings, and the as a result of respondent's filing a motion to dismiss, the complaint was dismissed.

Judicial Dept., Jennifer Jones v.
2006-032
Knishkowy, 11/09/06

Motion to dismiss granted. General Statutes § 4-61dd provides several ways a state or quasi-public employee can seek relief from retaliation for her whistleblowing activities: a complaint filed with the chief referee at CHRO's office of public hearings, a complaint filed with the employee review board, or the grievance procedure pursuant to a collective bargaining unit. The plain language of the statute reveals these alternatives to be mutually exclusive. Although it is unnecessary to look beyond the statutory language, the legislative history would confirm this reading. Because the complainant sought relief via a grievance pending prior to the filing of this action, she cannot maintain this action.

Judicial Dept., Andrea Wilson v.
2008-098
Wilkerson Brillant, 10/16/09

Motion to amend to allege additional claims denied. The complainant was given a date by which to file a motion to amend her whistleblower retaliation complaint to add the allegation of termination only. The complainant moved to amend her complaint to add, in addition to a claim of retaliatory termination, allegations of a negative performance review, additional respondents and various other dates and incidents regarding harassment and threatening behavior to support her termination and performance review claims. Grievances for the complainant's termination and performance review were filed (pursuant to the collective bargaining agreement) prior to the amendment to add these claims to the complainant's complaint. General Statutes § 4-61dd (b) (4) provides the complainant with mutually exclusive alternative venues for filing her claims. Because the complainant's grievances were filed prior to her amendment to add the same claims to her complaint, the complainant's motion to amend to add these claims is denied. The motion to amend is also

denied as to her other allegations as being superfluous and noncompliant with the tribunal's previous order to allege termination only.

Judicial Dept., Andrea Wilson v.
2008-069
Wilkerson Brillant, 12/08/09

Motion to dismiss granted. The respondent filed a motion to dismiss on the grounds that this tribunal lacks subject matter jurisdiction of the complaint allegations that were part of a grievance filed on behalf of the complainant and an arbitration proceeding. A written arbitration decision was issued resolving the grievance. Pursuant to General Statutes § 4-61dd (b) (4), which provides the complainant with mutually exclusive alternatives to filing her claims, the complainant cannot pursue the same claims with this tribunal. The fact that the complainant chose one forum first and then subsequently chose another forum to appeal the same adverse personnel actions taken against her is prohibited by General Statutes § 4-61dd (b) (4). Assuming the complainant filed her claims with this tribunal first, withdrawing her grievances was not an option because an arbitration decision already had been issued on the same claims. Hence, the complainant's claims are hereby dismissed.

Judicial Dept., Andrea Wilson v.
2008-069
Wilkerson Brillant, 01/06/10

Motion to reconsider denied. The complainant filed a motion to reconsider (motion) the order granting the respondent's motion to dismiss (order). The order dismissed certain claims alleged by the complainant that were also pursued through the grievance process pursuant to her collective bargaining agreement, because pursuing claims in two forums is prohibited by General Statutes § 4-61dd (b) (4). In her motion, she argued, pursuant to General Statute § 4-181a, that an error of fact or law should be corrected, that new evidence had been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding, and other good cause for reconsideration had been shown. Section 4-181a (a) (1) only applies to matters regarding a final decision and § 4-166 (3) defines "final decision" by specifically excluding preliminary or intermediate rulings or orders. The order was an intermediate ruling as it did not terminate the proceedings because other allegations in the complaint are still pending. Therefore, the motion was reviewed as a reconsideration of an intermediate ruling not a final decision. The complainant had failed to file a response to the respondent's motion to dismiss prior to the deadline. The complainant argued that she should have been given additional time to respond to the motion to dismiss because she had experienced personal problems. This tribunal had provided her with four months to respond to the motion to dismiss and she failed to request an extension prior to the deadline for filing a response.

Latino & Puerto Rican Affairs Commission, Lina Lorenzi v.
2009-110
FitzGerald, 4/26/11

The respondents' motion to amend the case caption was denied as the individuals named in the complaint remain as respondents in their official capacities.

Mental Health & Addiction Services, Dept. Of, Mary K. O'Sullivan v.
2008-086
FitzGerald, 11/20/08

Motion to dismiss denied. Complainant ordered to amend complaint. The respondents argued that the complaint did not allege sufficient facts to satisfy all the elements necessary for a prima facie case and that, as to respondent Stuart Forman, the complaint did not allege any retaliatory conduct committed by him. Held: (1) the complaint satisfied the de minimis standard for a prima facie case and (2) as the complaint did not allege any specific threats of adverse personnel action made by Forman, the complainant directed to amend her complaint to specify the retaliatory threats he made.

Mental Health & Addiction Services, Dept. of, Mary K. O'Sullivan
2008-086
FitzGerald, 02/20/09

The complainant's motion to modify an order to compel granted. Ruling*:* (1) a complainant's mental and psychological condition are not elements in a garden variety emotional distress damage claim sought under § 4-61dd; (2) the confidentiality privileges of §§ 52-146c, 52-146f and 52-146o apply to garden variety emotional distress damages sought in a whistleblower retaliation complaint brought under § 4-61dd; and (3) such communications and records are excepted from disclosure under § 4-177c.

Mental Health & Addiction Services, Dept. of, Mehdi M. Saeedi v.
2008-090
(interlocutory appeal dismissed)
FitzGerald, 07/28/09

Articulation of the order granting the complainant's motion to compel the production of documents granted. Under federal and state statutes and case law, medical records redacted in accordance 45 C.F.R. § 164.514 do not disclose individual patient-identifying information, are exempt from federal and state physician-patient privilege statutes and, therefore, may be produced pursuant to General Statutes § 4-177c (a) and §§ 4-61dd-16 (a) and (b) and 4-61dd-17 of the Regulations of Connecticut State Agencies. Also, because federal and state laws do not preclude the production of the redacted documents, there is

no requirement to notify patients or to obtain their consent prior to the production of the redacted documents.

Mental Health & Addiction Services, Dept. of, Mehdi M. Saeedi
2008-090
FitzGerald, 11/04/09

Petition to intervene denied. The Connecticut Legal Rights Project, Inc. (CLRP) filed a petition to intervene pursuant to General Statutes § 4-177a (b) to protect the privacy and confidentiality of impatient psychiatric and substance abuse records. The petition was denied as the interests of justice did not require the CLRP's participation because: (1) as the records were no longer being sought by the complainant, the matter was moot; (2) no psychiatric or impatient records were identified on the parties' proposed exhibit lists and no patients were identified as witnesses on the parties' proposed witness lists; and (3) the focus of the hearing is not on patient care but on whether the respondents took or threatened to take personnel action against the complainant in violation of §4-61dd.

Mental Health & Addiction Services, Dept. of, Mehdi Saeedi
2009-090 (appeal pending)
FitzGerald, 12/09/10

Final decision. Judgment for the complainant. The complainant established by a preponderance of the evidence that the respondents violated General Statutes § 4-61dd. The complainant is awarded damages including $12,000 in lost salary resulting from two unpaid suspensions; $40,000 in emotional distress damages; $123,355 in attorneys' fees, $410.25 in costs and $2,641 in prejudgment interest.

In addition: (1) A complainant is not precluded from pursuing both a whistleblower retaliation complaint and a grievance, provided that the grievance does not also allege that the personnel action was in retaliation for whistleblowing. (2) The doctrine of "continuing course of conduct" applies to toll the thirty-day statute of limitations. The statute does not begin to run until the course of conduct is completed. Nevertheless, the complaint must be filed with the chief human rights referee within thirty days after a complainant learns of a specific incident giving rise to a claim that a retaliatory personnel action has been threatened or has occurred. As provided by the continuing course of conduct doctrine, the complainant may collect damages that flow from a respondent's initial retaliatory conduct as well as those that flow from a respondent's continuing retaliatory conduct. (3) The anti-retaliatory provision of § 4-61dd is not limited to actions that affect the terms and conditions of employment. The anti-retaliatory provisions of § 4-61dd are broader in scope and provide protection from a greater degree of harms than the substantive anti-discrimination provisions of Title VII and the Connecticut Fair Employment Practices Act.

Motor Vehicles, Dept. of, Perez Arroyo, Elisa Valez, Kulish, Thomas v.
2006-021 through 023
Austin, 10/10/2006

Motion to dismiss denied. The respondents argued that he alleged acts of retaliation were mandated under Connecticut law and as such could not form the basis for a whistleblower retaliation complaint. Held: the respondents' motion argued facts not alleged by the complainant. The respondents appeared to be arguing a motion to strike by contesting the sufficiency of the complaint.

Mr. Rooter Plumbing, Melissa Paone v.
2009-101
FitzGerald, 03/30/09

Final decision. Complaint dismissed for lack of jurisdiction. According to the complaint, the whistleblowing was not made to the auditors, the attorney general, the state or quasi-public agency that employs the person who retaliated or threatened retaliation; a state agency pursuant to a mandated reporter statute; or, in the case of a large state contractor, to an employee of the contracting state agency. The whistleblowing was, instead, made to the state Department of Labor. Second, the respondent is not a state agency, a quasi-public agency, a large state contractor or employees thereof.

New Haven Board of Education, Shefau Dabre-Rufus v.
2010-148
FitzGerald, 10/14/10

Motion to dismiss granted. The respondent moved to dismiss, asserting that it was not, as alleged by the complainant, a quasi-state agency or a large state contractor. The complainant did not file a response to the motion. There being no objection, the motion was granted.

Osborn Correctional Institute, Mitchell Ribeiro v.
2008-066
Austin, 04/07/08

Motion to dismiss granted. The respondent moved to dismiss the whistleblower retaliation complaint as a consequence of complainant neither alleging nor being an employee of the state, a quasi-public agency or a large state contractor. The complainant filed no response to the respondents' motion.

Public Health, Dept. of, Robert J. Galvin, Joseph Teal v.
2008-096
Levine, 03/05/09

Motion to dismiss granted, in part, Held: (1) the tribunal lacked jurisdiction because of the untimely filing (failure to act within the statutory thirty day period) of a complaint as to all alleged instances of whistleblower retaliation, except the last one; (2) Equitable tolling applies only to unusual circumstances, not entirely within the claimant's control; a situation that does not exist in this case; and (3) § 4-61dd (b) (4) provides an alternative to proceeding under the provisions of § 5-202 before the Employee Review Board, but these statutory remedies are mutually exclusive and therefore the employee must make an election of forum.

Public Safety, Dept. of – see also Danaher III, Commissioner John; State Police

Public Safety, Dept. of, Stephen Samson
2007-064
Knishkowy, 04/10/08

Motion to amend affirmative defense denied. The respondent's motion to amend one of its special defenses is denied. The respondent moved to amend special defense, in part, with claim that Office of Public Hearing lacked subject matter jurisdiction "to the extent it determines that complainant has knowingly and maliciously made false charges of retaliation," pursuant to General Statutes § 4-61dd(c). Held: (1) As the respondent's own language acknowledges, whether complainant made false charges cannot be determined until after adjudication of the pertinent facts. While it may be possible to rely on § 4-61dd(c) as a defense or even as a justification for subsequent discipline, the subsection is not a basis for a jurisdictional claim. (2) The precise language of 4-61dd(c) applies to those employees who have knowingly and maliciously made false charges under § 4-61dd(a)—that is, false disclosure of fraud, corruption, mismanagement, etc. Subsection (c) does not apply to a false charge of retaliation under §4-61dd(b)(3).

Public Safety, Dept. of, Stephen Samson
2007-064
Knishkowy, 06/20/08

Motion to dismiss granted. (1) The whistleblower retaliation claim was predicated upon six specific acts that occurred after his whistleblowing. These are discrete acts and four of them unquestionably occurred more than thirty days before the filing of the whistleblower retaliation complaint. The other two appeared to be untimely as well. When afforded an opportunity to amend his complaint by identifying the dates he learned of the other two acts, the complainant filed an amended complaint, yet failed to provide the critical

information. Accordingly, the referee concluded that all six were untimely and thus barred by the thirty-day statute of limitations. (2) Although a hostile work environment claim could survive a "timeliness" challenge as long as one of the related acts occurred in a timely fashion, since none of the acts was timely, the hostile work environment claim likewise was time-barred. (3) In light of the first two reasons for dismissal, referee did not need to address whether the complainant stated a claim for which relief could be granted.

Rushford Center, Inc., Ariel Talmor v.
2008-097
Kerr, 03/10/09

Motion to dismiss is granted. Although the complaint was filed with OPH thirty- two days after the complainant having learned of the retaliatory incident, inasmuch as the thirtieth day was a Saturday, it was timely filed as it was filed on the first business day subsequent to the "Saturday deadline." However, the complaint is nonetheless dismissed because of a second defect, that being that the complainant (an employee of a large state contractor) failed to provide the whistleblower information to the Auditors of Public Accounts, the Attorney General or an employee of the contracting state agency. He provided it only to employees of the large state contractor, which does not meet the statutory requirement.

Securitas Security Services, USA, Inc., David M. Bathgate v.
2011-159
FitzGerald, 6/21/11

Motion to dismiss denied. The respondent moved to dismiss for lack of subject matter jurisdiction because the amended complaint failed to allege that the respondents were aware of the complainant's whistleblowing. This argument relates not to subject matter jurisdiction but to the complainant's ability to meet his evidentiary burdens in proving retaliation, which is an evidentiary matter for the public hearing.

Southern Connecticut State University, Sandra Lueder v.
2005-011
FitzGerald, 03/16/06

Motion to dismiss denied. Respondent alleged that complainant lacked standing because, having previously retired from state service, she was not an active state employee at the time of the alleged retaliatory action (respondent's refusal to rehire her). Ruling*:* motion to dismiss denied because refusal to rehire can constitute a basis for a claim of retaliation.

Southern Connecticut State University, Sandra Lueder v.
2005-011
FitzGerald, 08/07/06

Final decision. Complaint dismissed. The complainant alleged that she was not hired as an adjunct professor for the 2005 summer session, the 2005 fall semester and the 2006 spring semester in retaliation for her March 19, 2002 complaint to SCSU's administration regarding the management and business practices of the chairman of the marketing Dept..

Held: 1. The inclusion, under P.A. 02-91, of the human rights referees as an additional venue to adjudicate whistleblower retaliation complaints is procedural rather than substantive legislation and may be applied retrospectively. Therefore, the human rights referees have jurisdiction to adjudicate whistleblower retaliation complaints arising from disclosures of information made to the auditor of public auditors or the attorney general pursuant to § 4-61dd (a), even if those disclosures occurred prior to June 3, 2002 (the effective date of P.A. 02-91). 2. The prohibition, under P. A. 05-287, that a state agency may not retaliate against an employee who discloses information to the agency in which the employee is employed (internal whistleblower complaint) is substantive legislation to be applied prospectively. Therefore, the human rights referees have jurisdiction to adjudicate whistleblower retaliation complaints arising from such internal disclosure provided that both the disclosure and the retaliatory act occurred after July 13, 2005 (the effective date of P. A. 05-287). 3. The human rights referees do not have jurisdiction to adjudicate this complaint because the complainant did not make her disclosure of information to the public auditors or the attorney general and because her disclosure of information to SCSU's administration occurred prior to July 13, 2005.

Sprague, Town of, Board of Education; Janet Cipriani v.
2006-019
Kerr, 06/01/06

Motion to dismiss granted. Complaint dismissed because the respondents were not quasi-public agencies as alleged by the complainant. Quasi-public agencies are specifically listed in General Statutes § 1-120, and the respondents are not listed therein.

State Police – see also Public Safety, Dept. of, and Danaher, Commissioner John

State Police, Col. Edward Lynch, Maj. Christopher Arciero & Lt. William Podgorski, Matthews, Andrew v.
2006-029
Kerr, 05/18/07

The complainant moved for the dismissal of his complaint on the basis that he had filed an action in federal court and that his claim was moot as a result of the release of the attorney general's investigative report finding he had been retaliated against. *Order*: The complaint

was dismissed and the parties are to return to the producing party the transcripts produced pursuant to the terms of a protective order previously issued.

State Police, Lieutenant Newland, Theresa Freeman v.
2007-038
Wilkerson, 01/14/08

Motion to dismiss is granted. On the first day of the public hearing on the record, the respondent moved to dismiss the complaint because neither the complainant nor her attorney appeared at the public hearing. Held*:* Complaint dismissed for failure to appear. The public hearing date of January 14, 2008 had been scheduled on December 13, 2007 at the pretrial conference, at which time the parties were notified of the date and ordered to appear for the public hearing.

State Police, Theresa Freeman v.
2007-038
(appeal withdrawn)
Wilkerson, 05/01/08

Final decision/Order on motion for reconsideration. The complainant requested reconsideration of the order of dismissal for failure to appear arguing good cause exists for vacating the dismissal. The complainant's attorney argued he could not appear at the public hearing because of childcare responsibilities and he told his client also to not appear. The complainant argued (1) that the presiding referee abused her discretion by not conducting a telephone conference call with the parties and herself the morning of the public hearing at the request of the complainant's attorney; (2) that the presiding referee should not have relied on the respondents' attorneys' representations that the complainant's attorney intended to appear in superior court the same day as the public hearing to request a stay of the present matter and to move to compel documents from the Attorney General's office that were previously ruled by the presiding referee as being inadmissible. Held: The complainant's attorney did not show good cause to vacate the order of dismissal. The complainant's attorney was given an opportunity during a recess of the public hearing to speak via telephone with the respondents' attorneys to discuss his absence and to agree on a continuance to be represented to the presiding referee. The complainant's attorney was unable to accomplish this. The complainant had no intention on proceeding with the public hearing on the scheduled public hearing dates because he, in fact, had appeared in superior court on the day of the public hearing requesting a stay of the present matter and to compel documents from the Attorney General's office.

State Police, Stephen J. Samson v.
2010-134
FitzGerald, 06/28/10

Motion to strike denied. The respondent moved to strike the complaint because it failed to plead the necessary facts establishing a causal connection between the complainant's disclosure of information and the adverse personnel action. Ruling: the respondent's arguments are not directed at the adequacy of the pleadings but rather to the complainant's ability to meet his evidentiary burden at the public hearing. The complaint sufficiently alleges facts that, if proved, would support a cause of action for retaliation.

Stone Ridge Assisted Living LLC, Maureen Mack v.
2010-146
FitzGerald, 11/12/2010

Motion to dismiss granted. The complaint was not filed within thirty days of the adverse action and there is no evidence that would toll the filing deadline.

Tolliver, Johnette, Joseph Teal v.
2008-077, 080
Levine, 12/16/08

Motion to dismiss granted. Held: (1) the tribunal lacked subject matter jurisdiction because the respondents were not employees of the same state agency as the complainant and were not agents for the agency employing the complainant; and (2) the complaint did not meet the statutory requirement claiming an adverse personnel action taken or threatened by the respondents.

Torrington Housing Authority, Mary Bagnaschi v.
2005-013
Knishkowy, 03/03/06

Motion to dismiss granted. Because the named respondent is neither a state agency, a large state contractor, or, as complainant particularly argues, a quasi-public agency, this tribunal lacks jurisdiction over the respondent (as well as its two employees who are named as co-respondents). The complainant, likewise, is not an employee of a state agency, quasi-public agency, or large state contractor and thus not entitled to the relief afforded to whistleblowers under §4-61dd. Finally, while the complainant has raised specific concerns and complaints with numerous entities, she has failed to satisfy the statutory prerequisite of disclosing information to (1) the auditors of public accounts or the attorney general, as set forth in §4-61dd (a); (2) the state agency or quasi-public agency where the retaliating person or persons are employed; (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state

agency concerning information involving the large state contract. See §4-61dd (b) (1). For each of these reasons, this tribunal lacks jurisdiction over this matter.

Transportation, Dept of, Bradley Beecher v.
2008-078
Knishkowy, 01/07/09

Motion to dismiss granted. Complainant filed complaint on July 17, 2008 claiming that he was terminated because of his whistleblowing disclosures. The record shows that the complainant was terminated in late August or early September 2007 and that he learned of his termination at that time or not later than November 2007. All of his arguments designed to toll the statute of limitations are unsuccessful, notably his claim that approximately eight months of negotiations for reinstatement should toll the limitations period, as well as his claim that information from his attorney, local selectmen and the CHRO should toll the period. None of these arguments warrants tolling the statute of limitations and the complainant is dismissed for untimely filing.

In his amended complaint, the complainant alleged that after he made further disclosures to the attorney general on June 24, 2008, the respondent changed the requirements for his former position to render him unqualified in the event he should reapply. Because the complainant was not an employee of the state at the time he made the disclosures, he is not covered by the statute. Furthermore, the respondent changed the job specifications prior to the whistleblowing, so there can be no causal nexus between the two.

UCONN Managed Health Care, Lisa Jane Ballint v.
2010-126
Austin, 02/24/10

Motion to dismiss granted. The respondent moved to dismiss the complaint arguing, inter alia, that the complaint was time barred. The complainant countered the respondent's argument by proffering that her untimely filing should be excused as she was pro se at the time of filing and she acted in good faith in attempting to comply with the 30-day filing requirement. The complainant further argued that she was unaware that she have a claim pursuant to § 4-61dd until having met with an employee of the Commission on Human Rights and Opportunities 42 days after the filing requirement had expired. Held: the complainant's pro se status and/or ignorance of the whistleblower retaliation statute will not support a finding of equitable tolling and will not excuse the untimely filing.

Unemployment Security Appeals Division, Dept. of, Todd Romanko v.
2010-133
Levine, 05/17/10

Motion to dismiss granted. Complainant failed to respond to the respondent's motion to dismiss and, without a showing of good cause, failed to appear at the initial conference.

University of Connecticut, Michael Asante v.
2006-031
FitzGerald, 03/02/07

Motion to dismiss denied. Respondent filed a motion to dismiss and a supplement asserting that the complaint should be dismissed for failure to state a cause of action. Respondent argued that the complainant was not a state employee, and had not disclosed or transmitted information to the attorney general, the auditors of public accounts or any of the respondent's employees prior to filing his complaint. The motion was denied. Complainant produced a payroll stub issued by the respondent identifying him as an employee and P.A. 05-287 eliminated the requirement of disclosing information to the attorney general or the auditors prior to filing a complaint. The complainant was ordered to amend his complaint to provide additional information including identifying the employees of the respondent to whom he had disclosed information, the date(s) of the disclosure and a description of the information he had disclosed.

University of Connecticut, Michael Asante v.
2006-031
FitzGerald, 06/04/07

Motion to dismiss granted. Following the complainant's presentation of his case-in-chief, the respondent moved to dismiss the complaint on the ground that the complainant had failed to sustain his evidentiary burden. Motion granted. The complainant failed to establish a prima facie case (1) that the information he disclosed to the respondent was protected under §4-61dd (a) and (2) that his termination was causally related to his disclosure.

University of Connecticut Health Ctr., Katherine Cassidy v.
2008-072
Knishkowy, 06/05/08

Motion to dismiss granted. The respondent moved to dismiss whistleblower complaint as untimely filed and barred by the "prior pending action doctrine" (complainant filed a similar discrimination claim with CHRO four weeks earlier). Motion granted: (1) The whistleblower retaliation claim was filed approximately four months after the adverse action alleged in the complaint (termination, or threat thereof), and the complainant has not argued tolling the limitation period because of waiver, consent or equitable estoppel. Although she suggested that she held off on filing because the parties were discussing amicable resolution, she provided no specific facts to support an equitable basis for tolling the filing period. Discussion (and hope) of settlement is not a reason to ignore legal deadlines. The complaint was not filed in a timely fashion. (2) In her objection to the motion to dismiss, the complainant stated that she no longer considered her threatened termination to be the adverse action triggering the filing period. Instead, she argued that the respondent is ignoring its own policy re placement of medical personnel in prison settings; this, she

claims, is an ongoing adverse action, extending the filing period as long as such practice remains in effect. Even if complainant were correct that respondent's indifference constitutes an abuse of authority and poses a safety risk, it is not a retaliatory adverse action triggering the filing period. Instead, such indifference could be (and, in this case, actually was) the subject of complainant's § 4-61dd (a) whistleblowing prior to any adverse action. (3) In light of the first two reasons for dismissal, referee did not need to address "prior pending action" argument.

University of Connecticut Health Center, Beth Miller v,
2008-073
Wilkerson Brillant, 07/25/08

Motion to dismiss denied. Held: (1)to prove a prima facie case, the complainant is not required to inform the Attorney General or the respondent's employees of the retaliatory acts or to wait for the Attorney General to conclude its investigation before filing a complaint with the chief human rights referee; 2) the complainant suffered an adverse employment action when her health benefits were cancelled and she suffered a hostile work environment by having alleged numerous actions taken against her; and (3) The complainant has established a causal connection between the alleged retaliatory act and the transmittal of information a) by her having disclosed information and allegedly having been retaliated against, less than thirty days later and b) because the alleged adverse personnel action occurred within one year of the complainant's transmittal of information to the Auditors of Public Accounts.

Western Connecticut State University, Paul Carver v.
(rev'd in part, see ruling on motion in limine)
2003-001
Wilkerson**,** 12/12/03

Motion to dismiss is granted in part; denied in part. The Respondents argued that the Human Rights Referee did not have jurisdiction pursuant to §4-61dd (b) (2) over the complainant's whistleblower retaliation complaint that stemmed from information that was not transmitted to the auditors of public accounts but transmitted to the respondents' administration, the chancellor and to the commission on human rights and opportunities. The human rights referee lacked jurisdiction because the complainant did not comply with the requirements of § 4-61dd (a) that provided that information be transmitted to the auditors of public accounts.

In addition, the respondents contended that § 4-61dd (b) (2) must be applied prospectively and thus, the human rights referee did not have jurisdiction over the whistleblower retaliation complaints that stemmed from information transmitted to the auditors of public accounts pursuant to § 4-61dd (a) prior to the effective date, June 2, 2002, of § 4-61dd (b) (2). Section 4-61dd (b) (2) is to be applied prospectively as it related to the compliance of its new requirements that notice may be given to the attorney general and a complaint may be filed with the chief human rights referee and applied retroactively

as it related to § 4-61dd (a)-requirements already in existence. Also, the plain language interpretation of the § 4-61dd (b) (2) provides for inclusion of all whistleblower retaliation complaints whether initiated pursuant to § 4-61dd (a) before or after the effective date of § 4-61dd (b) (2). The legislative history referred to by the respondent was unclear on this matter. The human rights referee did have jurisdiction of the whistleblower retaliation complaints initiated pursuant to § 4-61dd (a) prior to the effective date of § 4-61dd (b) (2).

Western Connecticut State University, Paul Carver v.
2003-001
Wilkerson**,** 09/21/05

Motion in limine. The respondent moved that the complainant be prohibited from offering evidence or attempting to litigate matters that were previously dismissed. The complainant objected and argued that PA 05-287 (§ 4-61dd (b) (1) (ii)) should be applied retroactively to allow for the adjudication of some of his previously dismissed claims. Order: P.A. 05-287 would be applied prospectively to the complainant's previously dismissed claims.

Western Connecticut State University, Paul Carver v.
2003-001
Wilkerson**,** 12/06/05

Articulation of dismissal. At the public hearing, the presiding human rights referee ordered the complainant to prepare his direct examination questions during the recess and to return to the public hearing to present pro se testimony. The complainant failed to appear after the recess. Held: The complaint was dismissed pursuant to Regulations of Connecticut State Agencies § 4-61dd-15 (c) (3) as stated orally on the record because the complainant failed to appear at the hearing.

Whitney Manor Convalescent Center, Joann Proietto v.
2005-009
Knishkowy, 03/01/06

Motion to dismiss granted. The complainant, an employee of a large state contractor, claims that she was retaliated against after complaining and disclosing certain information to contractor's management. Section §4-61dd (b) (1) requires, as a condition precedent to filing a claim of retaliation under §4-61dd (b) (3) (A), that the requisite disclosure be made to (1) the auditors of public accounts or the attorney general, as set forth in 4-61dd (a); (2) the state agency or quasi-public agency where the retaliating person or persons are employed [unequivocally not applicable in this case]; (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state agency concerning information involving the large state contract. The complainant's disclosure to the respondent's management does not satisfy any of these four options and this tribunal, accordingly, lacks jurisdiction over this case.

IV. Index of decisions/ruling issued by the presiding human rights referee

Austin, 10/10/06
Kulish, Thomas v. Perez Arroyo, Elisa Valez & the Dept. of Motor Vehicles
2006-021 through 023

Motion to dismiss denied. The respondents argued that he alleged acts of retaliation were mandated under Connecticut law and as such could not form the basis for a whistleblower retaliation complaint. Held: the respondents' motion argued facts not alleged by the complainant. The respondents appeared to be arguing a motion to strike by contesting the sufficiency of the complaint.

Austin, 04/07/08
Ribeiro, Mitchell v. Osborn Correctional Institute
2008-066

Motion to dismiss granted. The respondent moved to dismiss the whistleblower retaliation complaint as a consequence of complainant neither alleging nor being an employee of the state, a quasi-public agency or a large state contractor. The complainant filed no response to the respondents' motion.

Austin, 09/12/08
Taylor, David v. Dept. of Correction
2007-059

Motion to dismiss granted. The respondent moved to dismiss the complaint arguing, inter alia, that as a consequence of the complainant's untimely filing this tribunal lacked jurisdiction. The complainant responded by arguing that 1) as a sentenced prisoner he had limited resources; and 2) he acted in good faith in attempting to comply with the filing requirement. Neither of the complainant's arguments could support a finding of consent, waiver or equitable tolling, which if proven could explain and excuse the delay in filing beyond the 30 thirty day period.

Austin, 12/11/08
LeGrier, III, Richard v. City of Hartford, Police Dept.
2008-083

Motion to dismiss granted. The complainant did not qualify for protection as a whistleblower per the statutory requirements found in § 4-61dd. Specifically, the complainant was an employee of the Hartford Police Department as opposed to state agency, a quasi-public agency (as defined by § 1-120 (1)) or a large state contractor. Furthermore, even if the complainant been an employee of one of the requisite entities he did not transmit

information to any of the following: auditors of public accounts; attorney general or an employee of the state agency or quasi-public agency where he was employed which was the cause of the alleged retaliating personnel action.

Austin, 12/31/09
Richardson, Elaine v. Autotote Enterprises, Inc.
2009-107

Motion to dismiss granted. Held: The respondent is not a large state contractor as was alleged in the complaint. Large state contractors are statutorily defined in CGS §4-61dd (h) (2) as an entity that has entered into a large state contract with a state or quasi-public agency. As the respondent did not qualify as a large state contractor, this tribunal lacks jurisdiction.

Austin, 02/24/10
Ballint, Lisa Jane v. UCONN Managed Health Care
2010-126

Motion to dismiss granted. The respondent moved to dismiss the complaint arguing, inter alia, that the complaint was time barred. The complainant countered the respondent's argument by proffering that her untimely filing should be excused as she was pro se at the time of filing and she acted in good faith in attempting to comply with the 30-day filing requirement. The complainant further argued that she was unaware that she have a claim pursuant to § 4-61dd until having met with an employee of the Commission on Human Rights and Opportunities 42 days after the filing requirement had expired. Held: the complainant's pro se status and/or ignorance of the whistleblower retaliation statute will not support a finding of equitable tolling and will not excuse the untimely filing.

FitzGerald, 09/15/03
Stacy, Joseph v. Dept. of Correction
2003-002

Motion to dismiss denied. Respondent claimed that the complainant cannot prove a prima facie case because he had not pled that he suffered an adverse employment action. Held*:* The complainant pled that he had been terminated from his employment action and termination is an adverse employment action.

FitzGerald, 03/01/04
Stacy, Joseph v. Dept. of Correction
2003-002

Final decision. Judgment for the respondent. The complainant alleged that the respondent retaliated against him for calling the respondent's security hotline. Held: The complainant did not meet his prima facie burden of establish both (1) that the respondent took or

threatened to take adverse personnel action against him in retaliation for his transmittal of information to the auditors of public accounts and (2) an inference of causation. Even if he established a prima facie case, the complainant did not establish that the respondent's articulated non-retaliatory reason was a pretext for retaliation for his transmittal of information to the auditors.

FitzGerald, 03/18/04
Reyes, Claudio v. Office of the Comptroller, Retirement & Benefit Services Unit
2004-006

Motion to dismiss granted. The complainant failed to comply with the statutory requirements of § 4-61dd in that, prior to filing his complaint with the chief human rights referee, the complainant (1) did not transmit information to the auditors of public accounts, (2) did not notify the attorney general of retaliatory personnel action taken or threatened against him after he notified the auditors, and (3) did not wait for the conclusion of the attorney general's investigation of the alleged retaliatory personnel action.

FitzGerald, 01/12/06
Duhaney, Damion L. v. Birk Manufacturing
2005-014

Motion to dismiss granted. (1) The complainant failed to appear at the initial conference and (2) complaint filed more than thirty days after the allegedly retaliatory termination.

FitzGerald, 03/16/06
Lueder, Sandra v Southern Connecticut State University
2005-011

Motion to dismiss denied. Respondent alleged that complainant lacked standing because, having previously retired from state service, she was not an active state employee at the time of the alleged retaliatory action (respondent's refusal to rehire her). Ruling*:* motion to dismiss denied because refusal to rehire can constitute a basis for a claim of retaliation.

FitzGerald, 08/07/06
Lueder, Sandra v. Southern Connecticut State University
2005-011

Final decision. Complaint dismissed. The complainant alleged that she was not hired as an adjunct professor for the 2005 summer session, the 2005 fall semester and the 2006 spring semester in retaliation for her March 19, 2002 complaint to SCSU's administration regarding the management and business practices of the chairman of the marketing Dept..

Held: 1. The inclusion, under P.A. 02-91, of the human rights referees as an additional venue to adjudicate whistleblower retaliation complaints is procedural rather than substantive legislation and may be applied retrospectively. Therefore, the human rights

referees have jurisdiction to adjudicate whistleblower retaliation complaints arising from disclosures of information made to the auditor of public auditors or the attorney general pursuant to § 4-61dd (a), even if those disclosures occurred prior to June 3, 2002 (the effective date of P.A. 02-91). 2. The prohibition, under P. A. 05-287, that a state agency may not retaliate against an employee who discloses information to the agency in which the employee is employed (internal whistleblower complaint) is substantive legislation to be applied prospectively. Therefore, the human rights referees have jurisdiction to adjudicate whistleblower retaliation complaints arising from such internal disclosure provided that both the disclosure and the retaliatory act occurred after July 13, 2005 (the effective date of P. A. 05-287). 3. The human rights referees do not have jurisdiction to adjudicate this complaint because the complainant did not make her disclosure of information to the public auditors or the attorney general and because her disclosure of information to SCSU's administration occurred prior to July 13, 2005.

FitzGerald, 03/02/07
Asante, Michael v. University of Connecticut
2006-031

Motion to dismiss denied. Respondent filed a motion to dismiss and a supplement asserting that the complaint should be dismissed for failure to state a cause of action. Respondent argued that the complainant was not a state employee, and had not disclosed or transmitted information to the attorney general, the auditors of public accounts or any of the respondent's employees prior to filing his complaint. The motion was denied. Complainant produced a payroll stub issued by the respondent identifying him as an employee and P.A. 05-287 eliminated the requirement of disclosing information to the attorney general or the auditors prior to filing a complaint. The complainant was ordered to amend his complaint to provide additional information including identifying the employees of the respondent to whom he had disclosed information, the date(s) of the disclosure and a description of the information he had disclosed.

FitzGerald, 03/15/07
Malensek, Anton v. Anthony's Autobody, Inc. & Dept. of Labor
2007-039

Complaint dismissed sua sponte by presiding human rights referee for lack of jurisdiction. As to the complainant's allegations against his former employer, Anthony's Autobody, the complaint was untimely filed. In addition, according to the complaint, Anthony's Autobody is not a state agency, a quasi-public agency or a large state contractor. As to his allegations against the Department of Labor, the complainant was not an employee of the department.

FitzGerald, 06/04/07
Asante, Michael v. University of Connecticut
2006-031

Motion to dismiss granted. Following the complainant's presentation of his case-in-chief, the respondent moved to dismiss the complaint on the ground that the complainant had failed to sustain his evidentiary burden. Motion granted. The complainant failed to establish a prima facie case (1) that the information he disclosed to the respondent was protected under §4-61dd (a) and (2) that his termination was causally related to his disclosure.

FitzGerald, 02/06/08
Rodriguez, Jeannette v. Bd. of Education & Services for the Blind
2007-065

Motion to dismiss denied. The respondents first claimed that the complaint was untimely filed. The complainant argued that the respondent used their power and authority to intimidate, harass and discriminate against her, making it very difficult to file such charges. Held*:* Because, in limited circumstances, an employer's behavior in delaying the filing of a complaint will toll a statute of limitations, the complainant given additional time to file and serve a supplement to her objection detailing the specific actions the respondents took to delay her filing her retaliation complaint. The respondents next argued that the complainant's communication was not a disclosure of information within § 4-61dd but rather an unprotected discussion with a clerical co-employee. Held*:* The statute does not limit the complainant's protection only to disclosures initially made directly by her to supervisory or management personnel. Whether information disclosed to a co-employee is subsequently transmitted to the personnel who made the allegedly retaliatory decision is an evidentiary matter for the hearing.

FitzGerald, 02/08/08
Matthews, Andrew N. v. Commissioner John Danaher III
2007-62

Motion to amend his complaint is granted. The complainant seeks to amend his complaint to add as a retaliatory act the respondents' tenth affirmative defense. In their tenth affirmative defense, the respondents alleged that the human rights referees lack subject matter jurisdiction over this matter because the complainant is properly subject to discipline under § 4-61dd for knowingly and maliciously making false charges of retaliation under subsection (a). According to the complainant, the respondents' defense is threatens to take a personnel action against him for exercising his right to make a complaint of retaliation, pursuant to § 4-61dd (b). The factors to consider in granting a proposed amendment are whether the amendment would unreasonable delay the hearing on the merits, fairness to the respondents and the negligence, if any, of the complainant in offering the amendment. In this case, granting the amendment would not cause a delay in the hearing or be unfair to

the respondents. The respondents have adequate time to prepare their defense to the amendment as requests for production of documents are not due to be served until February 28, 2008 and the hearing is not scheduled until August 19-21, 26-28, 2008. Also, the complainant was not negligent in filing his motion as he could not have filed it until after the respondents had filed their affirmative defense and he filed his motion within the deadline for the filing of his response to the respondent's motion to dismiss.

FitzGerald, 02/20/08
Matthews, Andrew M. v. Commissioner John Danaher, III
2007-062

Motion to dismiss denied. The complainant alleged that the respondents retaliated against him for his protected disclosure of information by (A) transferring him into a hostile work environment and (B) threatening, in their tenth affirmative defense, to take personnel action against him. With respect to the complainant's allegation that his transfer was retaliatory, the respondents argue that the allegation should be dismissed because the human rights referees lack jurisdiction as: (1) the complainant filed grievances pursuant to his collective bargaining agreement prior to filing his whistleblower retaliation complaint; (2) an investigation of the transfer is currently being conducted by the attorney general at the complainant's request; and (3) the complainant failed to provide requisite information in his whistleblower retaliation complaint form. Ruling*:* (1) Pursuant to the clear statutory language, the complainant cannot simultaneously pursue claims arising from this specific incident by both a grievance through his collective bargaining agreement and also a whistleblower retaliation complaint with the chief human rights referee. The complainant required to file and serve a withdrawal either of the grievance or his allegation that the transfer was retaliatory claim; (2) Public Act 05-287 eliminated the previous requirement that an employee had to wait until the conclusion of an investigation by the attorney general before he could file a complaint; and (3) the whistleblower retaliation complaint and its attachments provide the respondents with clear and unambiguous notice of the complainant's allegations.

The respondents also argue that the allegation as to their tenth affirmative defense fails to state a claim upon which relief can be granted because: (1) the defense it is not a threat of a retaliatory act but a defense that the complainant's misconduct removes him from the protections of § 4-61dd and (2) they were unaware that the tenth affirmative defense had been asserted until after it was filed. Ruling: (1) Construing the allegations in a light most favorable to the complainant, in the tenth affirmative defense is a threat in which the respondents are charging the complainant with making unspecified false charges and committing indeterminate misconduct that warrants unidentified discipline; and (2) the respondents have offered no authority that parties are not responsible for the information contained in their own pleadings.

FitzGerald, 03/07/08
Matthews, Andrew N. v. Commissioner John Danaher, III
2007-062

Motion to amend affirmative defense denied. Respondents' proposal to substitute their proposed tenth affirmative defense for the existing defense is an attempt to retract an alleged threatened personnel action and circumvent the ruling granting the complainant's motion to amend his complaint.

FitzGerald, 03/27/08
Matthews, Andrew N. v. Commissioner John Danaher, III
2007-062

Respondents' motion to reconsider the denial of their motion to amend affirmative defense is denied. The proposed substitution of affirmative defenses would unfairly prejudice the complainant the substitution proposed to withdraw factual and legal issues raised by the complaint.

FitzGerald, 04/10/08
Rodriguez, Jeannette v Board of Educ. & Services for the Blind
2007-065

Motion to dismiss granted. Respondent moved to dismiss the complaint as untimely filed. Complainant filed an objection claiming that the respondent's actions caused her to delay the filing of her complaint. Complainant was given additional time to file a supplement detailing the specific actions taken by the respondent that caused her to delay filing her complaint. Complainant's supplement failed to provide any specific information of action by the respondent that would constitute equitable estoppel or equitable tolling.

FitzGerald, 05/08/08
Jiantonio, Christopher v Goodwin College 2007-074

Final decision. Complaint dismissed for lack of jurisdiction. According to the complaint, the respondent was not a state agency, quasi-public agency or large state contractor.

FitzGerald, 05/10/08
Irwin, Shawn v Dept. of Correction
2007 040-42, 44-46, 51-56

Final decision. Complaints dismissed. The complainant alleged that the respondents failed to promote him to the position of corrections lieutenant in retaliation for his reports of employee misconduct. Held: Complaint 2007-054 dismissed as untimely filed; remainder of

complaints dismissed as the complainant did not sustain his burden of persuasion that the respondent's articulated reasons for promoting the successful candidates specifically identified by the complainant in his complaints were a pretext for not promoting the complainant.

FitzGerald, 11/20/08
O'Sullivan, Mary K. v. Dept. of Mental Health & Addition Services
2008-086

Motion to dismiss denied. Complainant ordered to amend complaint. The respondents argued that the complaint did not allege sufficient facts to satisfy all the elements necessary for a prima facie case and that, as to respondent Stuart Forman, the complaint did not allege any retaliatory conduct committed by him. Held: (1) the complaint satisfied the de minimis standard for a prima facie case and (2) as the complaint did not allege any specific threats of adverse personnel action made by Forman, the complainant directed to amend her complaint to specify the retaliatory threats he made.

FitzGerald, 02/20/09
O'Sullivan, Mary K. v. Dept. of Mental Health & Addiction Services
2008-086

Motion to reconsider order to produce documents granted. The complainant's motion to modify an order to compel granted. Ruling*:* (1) a complainant's mental and psychological condition are not elements in a garden variety emotional distress damage claim sought under § 4-61dd; (2) the confidentiality privileges of §§ 52-146c, 52-146f and 52-146o apply to garden variety emotional distress damages sought in a whistleblower retaliation complaint brought under § 4-61dd; and (3) such communications and records are excepted from disclosure under § 4-177c.

FitzGerald, 03/30/09
Paone, Melissa v. Mr. Rooter Plumbing
2009-101

Final decision. Complaint dismissed for lack of jurisdiction. According to the complaint, the whistleblowing was <u>not</u> made to the auditors, the attorney general, the state or quasi-public agency that employs the person who retaliated or threatened retaliation; a state agency pursuant to a mandated reporter statute; or, in the case of a large state contractor, to an employee of the contracting state agency. The whistleblowing was, instead, made to the state Department of Labor. Second, the respondent is not a state agency, a quasi-public agency, a large state contractor or employees thereof.

FitzGerald, 07/28/09
Saeedi, Mehdi M. v. Dept. of Mental Health & Addiction Services
2008-090
(interlocutory appeal dismissed)

Articulation of the order granting the complainant's motion to compel the production of documents granted. Under federal and state statutes and case law, medical records redacted in accordance 45 C.F.R. § 164.514 do not disclose individual patient-identifying information, are exempt from federal and state physician-patient privilege statutes and, therefore, may be produced pursuant to General Statutes § 4-177c (a) and §§ 4-61dd-16 (a) and (b) and 4-61dd-17 of the Regulations of Connecticut State Agencies. Also, because federal and state laws do not preclude the production of the redacted documents, there is no requirement to notify patients or to obtain their consent prior to the production of the redacted documents.

FitzGerald, 11/04/09
Saeedi, Mehdi M. v. Dept. of Mental Health & Addiction Services
2008-090

Petition to intervene denied. The Connecticut Legal Rights Project, Inc. (CLRP) filed a petition to intervene pursuant to General Statutes § 4-177a (b) to protect the privacy and confidentiality of impatient psychiatric and substance abuse records. The petition was denied as the interests of justice did not require the CLRP's participation because: (1) as the records were no longer being sought by the complainant, the matter was moot; (2) no psychiatric or impatient records were identified on the parties' proposed exhibit lists and no patients were identified as witnesses on the parties' proposed witness lists; and (3) the focus of the hearing is not on patient care but on whether the respondents took or threatened to take personnel action against the complainant in violation of §4-61dd.

FitzGerald, 02/18/10
Schwartz, Daniel v. Michael Eagen
2008-095

Final decision. The complainant, a former employee of the University of Connecticut, filed a whistleblower retaliation complaint against the respondent, an employee of the University. Held: Dr. Schwartz established by a preponderance of the evidence that, in retaliation for his whistleblowing, the respondent failed to return to him all of his personal belongings from his office. Dr. Schwartz is awarded $5,000 in emotional distress damages. He did not establish by a preponderance of the evidence that the other alleged acts either were committed by the named respondent or, if they were committed by the respondent, were committed with a retaliatory animus.

FitzGerald, 03/03/10
Coggins, Arden M. v. Dept. of Correction
2010-127

Motion to dismiss granted. The complainant alleged that the respondent improperly terminated his employment. He grieved his termination through the applicable collective bargaining agreement (termination grievance). Following the issuance of the arbitration award, the complainant filed a second grievance pursuant to the collective bargaining agreement alleging that the respondent had not complied with the arbitration award (arbitration award grievance). The complainant also filed a whistleblower retaliation complaint contending that the respondent failed to comply with the arbitration award in retaliation for his whistleblowing, Held: As provided in § 4-61dd, even though a grievance may involve contractual claims while a complaint may involve statutory claims of retaliation and even though remedies may differ between a grievance and a complaint, a complainant cannot file both a grievance and a complaint challenging the same specific personnel action. Because both the arbitration award grievance and the complaint challenge the same specific act (the respondent's noncompliance with the arbitration award) and because the arbitration award grievance was filed before the complaint was filed, the complaint is dismissed.

FitzGerald, 04/19/2010
Flint, Kira D. v. Eastern Community Development Corp.
2010-128

Motion to dismiss granted. The complaint was untimely filed and there was evidence to support the tolling of the thirty-day statute of limitations.

FitzGerald, 06/28/10
Samson, Stephen J. v. State Police
2010-134

Motion to strike denied. The respondent moved to strike the complaint because it failed to plead the necessary facts establishing a causal connection between the complainant's disclosure of information and the adverse personnel action. Ruling: the respondent's arguments are not directed at the adequacy of the pleadings but rather to the complainant's ability to meet his evidentiary burden at the public hearing. The complaint sufficiently alleges facts that, if proved, would support a cause of action for retaliation.

FitzGerald, 07/23/10
Peterson, Sr., Stewart E v. City of Danbury
2010-135

Motion to dismiss granted. The complaint was untimely filed and there was evidence to support the tolling of the thirty-day statute of limitations.

FitzGerald, 10/14/10
Dabre-Rufus, Shefau v. New Haven Board of Education
2010-148

Motion to dismiss granted. The respondent moved to dismiss, asserting that it was not, as alleged by the complainant, a quasi-state agency or a large state contractor. The complainant did not file a response to the motion. There being no objection, the motion was granted.

FitzGerald, 11/12/2010
Mack, Maureen v. Stone Ridge Assisted Living LLC
2010-146

Motion to dismiss granted. The complaint was not filed within thirty days of the adverse action and there is no evidence that would toll the filing deadline.

FitzGerald, 12/09/10
Saeedi, Mehdi M. v. Department of Mental Health and Addiction Services
2009-090 (appeal pending)

Final decision. Judgment for the complainant. The complainant established by a preponderance of the evidence that the respondents violated General Statutes § 4-61dd. The complainant is awarded damages including $12,000 in lost salary resulting from two unpaid suspensions; $40,000 in emotional distress damages; $123,355 in attorneys' fees, $410.25 in costs and $2,641 in prejudgment interest.

In addition: (1) A complainant is not precluded from pursuing both a whistleblower retaliation complaint and a grievance, provided that the grievance does not also allege that the personnel action was in retaliation for whistleblowing. (2) The doctrine of "continuing course of conduct" applies to toll the thirty-day statute of limitations. The statute does not begin to run until the course of conduct is completed. Nevertheless, the complaint must be filed with the chief human rights referee within thirty days after a complainant learns of a specific incident giving rise to a claim that a retaliatory personnel action has been threatened or has occurred. As provided by the continuing course of conduct doctrine, the complainant may collect damages that flow from a respondent's initial retaliatory conduct as well as those that flow from a respondent's continuing retaliatory conduct. (3) The anti-retaliatory provision of § 4-61dd is not limited to actions that affect the terms and conditions

of employment. The anti-retaliatory provisions of § 4-61dd are broader in scope and provide protection from a greater degree of harms than the substantive anti-discrimination provisions of Title VII and the Connecticut Fair Employment Practices Act.

FitzGerald, 4/20/11
Walsh, Christopher P. v. Dept. of Developmental Services
2009-123

The respondents filed motions to dismiss asserting that: (1) the board of labor relations is an exclusive alternative forum to the filing of a whistleblower retaliation complaint with the chief human rights referee; (2) the complaint is untimely; (3) the chief human rights referee lacks subject matter jurisdiction to the extent that the individuals named as respondents are being sued in their individual capacity and (4) the complaint fails to state a claim as to an adverse personnel action.

The motions to dismiss were denied because: (1) (a) the board of labor relations is not an exclusive alternative forum to the filing of a whistleblower retaliation complaint with the chief human rights referee and (b) a complainant is not precluded from filing a whistleblower retaliation complaint with the chief human rights referee while pursuing non-whistleblower retaliation claims in other forums, even if the whistleblower retaliation and non-retaliation claims arise from the same set of facts; (2) the complaint is not untimely; (3) the individuals named as respondents are not being sued in their individual capacity; and (4) the complaint states a claim upon which relief could be granted.

FitzGerald, 4/26/11
Lorenzi, Lina v. Latino & Puerto Rican Affairs Commission.
2009-110

The respondents' motion to amend the case caption was denied as the individuals named in the complaint remain as respondents in their official capacities.

FitzGerald, 6/21/11
Bathgate, David M. v. Securitas Security Services, USA, Inc.
2011-159

Motion to dismiss denied. The respondent moved to dismiss for lack of subject matter jurisdiction because the amended complaint failed to allege that the respondents were aware of the complainant's whistleblowing. This argument relates not to subject matter jurisdiction but to the complainant's ability to meet his evidentiary burdens in proving retaliation, which is an evidentiary matter for the public hearing.

Kerr, 03/21/06
Dutkiewicz, Aimee v Home Depot, U.S.A., Inc.
2006-015

In an amended complaint, filed pursuant to General Statutes 4-61dd, the complainant eliminated her whistleblower allegations and made a complaint under General Statutes §§ 46a-58 (a), 45a-60, 46a-60 (a) (1) and 45a-60 (a) (4). There is no procedure which warrants the filing of such allegations initially and directly with the office of public hearings, and the as a result of respondent's filing a motion to dismiss, the complaint was dismissed.

Kerr, 06/01/06
Cipriani, Janet v. Town of Sprague Board of Education .
2006-019

Motion to dismiss granted. Complaint dismissed because the respondents were not quasi-public agencies as alleged by the complainant. Quasi-public agencies are specifically listed in General Statutes § 1-120, and the respondents are not listed therein.

Kerr, 05/15/07
Irwin, Shawn v. Dept. of Correction, Theresa Lantz, .
2007-040 through 2007-046

Motion to dismiss denied. Respondent claimed res judicata, collateral estoppel and untimeliness. Held*:* While the "whistleblower" disclosure was the same as in a previous action between the parties, the retaliatory acts were new, and hence not precluded. Although the complaints were filed more than thirty days from the allegedly retaliatory hirings (retaliatory in that the complainant was wrongfully bypassed), it took a freedom of information request to obtain enough information about the hirings (the respondents would not disclose it) for the complainant to reasonably conclude that they were retaliatory and he therefore claimed his complaints were timely. The respondents did not contest this assertion in their reply to his response to their motion and the complainant is therefore entitled to a favorable inference.

Kerr, 05/18/07
Matthews, Andrew v. State Police, Col. Edward Lynch, Maj. Christopher Arciero & Lt. William Podgorski
2006-029

The complainant moved for the dismissal of his complaint on the basis that he had filed an action in federal court and that his claim was moot as a result of the release of the attorney general's investigative report finding he had been retaliated against. *Order*: The complaint was dismissed and the parties are to return to the producing party the transcripts produced pursuant to the terms of a protective order previously issued.

Kerr, 03/10/09
Talmor, Ariel v. Rushford Center, Inc.
2008-097

Motion to dismiss granted. Although the complaint was filed with OPH thirty- two days after the complainant having learned of the retaliatory incident, inasmuch as the thirtieth day was a Saturday, it was timely filed as it was filed on the first business day subsequent to the "Saturday deadline." However, the complaint is nonetheless dismissed because of a second defect, that being that the complainant (an employee of a large state contractor) failed to provide the whistleblower information to the Auditors of Public Accounts, the Attorney General or an employee of the contracting state agency. He provided it only to employees of the large state contractor, which does not meet the statutory requirement.

Kerr, 01/29/10
Taylor, David v. Dept. of Correction
2009-113

Motion to dismiss granted. The complainant, an inmate at a Connecticut state correctional facility, claims that he was retaliated against in being denied the opportunity to perform services in the prison print shop for having disclosed evidence concerning unsafe work conditions as well as unethical and illegal practices to the auditor of public accounts and others. Upon a review of applicable authorities it was determined that the complainant was not an employee within the context envisioned by General Statutes § 4-61dd, as the "work" in question was essentially penological, not pecuniary, and was performed as a matter of "grace", not "right". It was stated also that the complainant remained free to exercise his rights as a "whistleblower" under General Statutes § 4-61dd, and that he would undoubtedly be protected in doing so, simply not under the provisions of the statute that provide "employees" with protection from retaliation against them in that capacity.

Knishkowy, 03/01/06
Proietto, Joann v. Whitney Manor Convalescent Center
2005-009

Motion to dismiss granted. The complainant, an employee of a large state contractor, claims that she was retaliated against after complaining and disclosing certain information to contractor's management. Section § 4-61dd (b) (1) requires, as a condition precedent to filing a claim of retaliation under § 4-61dd (b) (3) (A), that the requisite disclosure be made to (1) the auditors of public accounts or the attorney general, as set forth in 4-61dd (a); (2) the state agency or quasi-public agency where the retaliating person or persons are employed [unequivocally not applicable in this case]; (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state agency concerning information involving the large state contract. The complainant's disclosure to the respondent's management does not satisfy any of these four options and this tribunal, accordingly, lacks jurisdiction over this case.

Knishkowy, 03/03/06
Bagnaschi-Maher, Mary v. Torrington Housing Authority
2005-013

Motion to dismiss granted. Because the named respondent is neither a state agency, a large state contractor, or, as complainant particularly argues, a quasi-public agency, this tribunal lacks jurisdiction over the respondent (as well as its two employees who are named as co-respondents). The complainant, likewise, is not an employee of a state agency, quasi-public agency, or large state contractor and thus not entitled to the relief afforded to whistleblowers under §4-61dd. Finally, while the complainant has raised specific concerns and complaints with numerous entities, she has failed to satisfy the statutory prerequisite of disclosing information to (1) the auditors of public accounts or the attorney general, as set forth in §4-61dd (a); (2) the state agency or quasi-public agency where the retaliating person or persons are employed; (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state agency concerning information involving the large state contract. See §4-61dd (b) (1). For each of these reasons, this tribunal lacks jurisdiction over this matter.

Knishkowy, 03/21/06
Banks, Pamela v. Civil Service Commission
2006-017

Motion to dismiss granted. The respondent moved to dismiss this §4-61dd (b) (3) whistleblower retaliation complaint because (1) neither the respondents nor the complainant were covered by the statute; (2) the complainant did not disclose information to the appropriate entities identified in the statute; and (3) the complaint was not timely filed. The complainant filed no objections and conceded that the respondent was correct that this tribunal lacked jurisdiction.

Knishkowy, 10/5/06
Jackson, Linda v. Carole Antonetz
2006-030

Motion to dismiss granted. The complainant is not an employee of a state agency, a quasi-public agency, or a large state contractor. The respondent is not an employee or officer of a state or quasi-public agency or large state contractor; the respondent also is not an "appointing authority," despite complainant's allegation. (The term "appointing authority" refers to an authority that appoints an employee to a position with a state or quasi-public agency or a large state contractor; the complainant, however, was employed by a private business entity.) Moreover, the complainant "blew the whistle" only to the federal OSHA, and thus failed to satisfy the statutory prerequisite of disclosing information to (1) the auditors of public accounts or the attorney general, as set forth in § 4-61dd (a); (2) the state or quasi-public agency where the retaliating person is employed; (3) a state agency

pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, to an employee of the contracting state agency. For each of these reasons, this tribunal lacks jurisdiction.

Knishkowy, 11/09/06
Jones, Jennifer v. Judicial Dept.
2006-032

Motion to dismiss granted. General Statutes § 4-61dd provides several ways a state or quasi-public employee can seek relief from retaliation for her whistleblowing activities: a complaint filed with the chief referee at CHRO's office of public hearings, a complaint filed with the employee review board, or the grievance procedure pursuant to a collective bargaining unit. The plain language of the statute reveals these alternatives to be mutually exclusive. Although it is unnecessary to look beyond the statutory language, the legislative history would confirm this reading. Because the complainant sought relief via a grievance pending prior to the filing of this action, she cannot maintain this action.

Knishkowy, 06/29/07
Scherban, Dwight v. Central Connecticut State University
2006-035

Motion to dismiss granted. n December 2004, the complainant, a state employee, disclosed information re certain misconduct to his superiors pursuant to § 4-61dd. He alleges that he was subsequently subjected to adverse personnel actions in retaliation for this whistleblowing. Prior to July 13, 2005, a state employee was protected from retaliation if he disclosed the information to the Auditor of Public Accounts. Not until July 13, 2005 was internal whistleblowing— for example, to one's own employer—given statutory protection by § 4-61dd. The 2005 amendment was a substantive, rather than procedural, change in the law, and therefore could not be applied retroactively to whistleblowing taking place in December 2004. Because the statute did not protect the complainant's actions, this tribunal lacked jurisdiction and the complaint was dismissed.

Knishkowy, 03/04/08
Dax, James v Baran Institute of Technology
2008-068

Motion to dismiss granted. The respondent is not a large state contractor (as alleged), nor is it a state or quasi-public agency or an appointing authority. Thus, it is not an employer regulated by the whistleblower retaliation statute. Moreover, although the complainant "blew the whistle" internally and to an out-of-state regulatory entity, he failed to satisfy the statutory prerequisite of disclosing information to (1) the auditors of public accounts or the attorney general, as set forth in § 4-61dd (a); (2) the state or quasi-public agency where the retaliating person is employed; (3) a state agency pursuant to a mandated reporter statute;

or (4) in the case of a large state contractor, to an employee of the contracting state agency. For each of these reasons, this tribunal lacks jurisdiction.

Knishkowy, 04/10/08
Samson, Stephen v. Dept. of Public Safety
2007-064

Motion to amend affirmative defense denied. The respondent moved to amend special defense, in part, with claim that Office of Public Hearing lacked subject matter jurisdiction "to the extent it determines that complainant has knowingly and maliciously made false charges of retaliation," pursuant to General Statutes § 4-61dd(c). Held: (1) As the respondent's own language acknowledges, whether complainant made false charges cannot be determined until after adjudication of the pertinent facts. While it may be possible to rely on § 4-61dd(c) as a defense or even as a justification for subsequent discipline, the subsection is not a basis for a jurisdictional claim. (2) The precise language of 4-61dd(c) applies to those employees who have knowingly and maliciously made false charges under § 4-61dd(a)—that is, false disclosure of fraud, corruption, mismanagement, etc. Subsection (c) does not apply to a false charge of retaliation under §4-61dd(b)(3).

Knishkowy, 06/05/08
Cassidy, Katherine v. University of Connecticut Health Ctr.
2008-072

Motion to dismiss granted. The respondent moved to dismiss whistleblower complaint as untimely filed and barred by the "prior pending action doctrine" (complainant filed a similar discrimination claim with CHRO four weeks earlier). (1) The whistleblower retaliation claim was filed approximately four months after the adverse action alleged in the complaint (termination, or threat thereof), and the complainant has not argued tolling the limitation period because of waiver, consent or equitable estoppel. Although she suggested that she held off on filing because the parties were discussing amicable resolution, she provided no specific facts to support an equitable basis for tolling the filing period. Discussion (and hope) of settlement is not a reason to ignore legal deadlines. The complaint was not filed in a timely fashion. (2) In her objection to the motion to dismiss, the complainant stated that she no longer considered her threatened termination to be the adverse action triggering the filing period. Instead, she argued that the respondent is ignoring its own policy re placement of medical personnel in prison settings; this, she claims, is an ongoing adverse action, extending the filing period as long as such practice remains in effect. Even if complainant were correct that respondent's indifference constitutes an abuse of authority and poses a safety risk, it is not a retaliatory adverse action triggering the filing period. Instead, such indifference could be (and, in this case, actually was) the subject of complainant's § 4-61dd (a) whistleblowing prior to any adverse action. (3) In light of the first two reasons for dismissal, referee did not need to address "prior pending action" argument.

Knishkowy, 06/20/08
Samson, Stephen v. Conn. Dept. of Public Safety
2007-064

Motion to dismiss granted: (1) The whistleblower retaliation claim was predicated upon six specific acts that occurred after his whistleblowing. These are discrete acts and four of them unquestionably occurred more than thirty days before the filing of the whistleblower retaliation complaint. The other two appeared to be untimely as well. When afforded an opportunity to amend his complaint by identifying the dates he learned of the other two acts, the complainant filed an amended complaint, yet failed to provide the critical information. Accordingly, the referee concluded that all six were untimely and thus barred by the thirty-day statute of limitations. (2) Although a hostile work environment claim could survive a "timeliness" challenge as long as one of the related acts occurred in a timely fashion, since none of the acts was timely, the hostile work environment claim likewise was time-barred. (3) In light of the first two reasons for dismissal, referee did not need to address whether the complainant stated a claim for which relief could be granted.

Knishkowy, 10/27/08
Stutts, Rachel v. David Frost
2008-089

Motion to dismiss is granted. Both the complainant and the respondent are employees of the Manchester Board of Education. Although a municipal board of education may be deemed an agent of the state for some purposes and an agent of the municipality for others, the distinction is unnecessary in light of established case law. According to the Conn. Superior Court, even if the board is an agent of the state when implementing state mandates, its members and employees are municipal officers and employees, and thus lack standing to pursue a retaliation complaint under §4-61dd. The complainant also seeks protection from retaliation by citing to the CHRO sexual harassment policy. Her reliance on this policy is misplaced, as it only applies to situations involving CHRO as the employer. Finally, complainant's reliance on the CHRO website is inappropriate. The website is a general tool geared, for the most part, to lay readers. It is not a substitute for the actual language of the statutes and regulations that govern proceedings such as this, and contains numerous disclaimers to that effect. In fact, a thorough review of applicable laws—which are available on the website—would have revealed the legal mechanism appropriate to the facts of her case.

Knishkowy, 10/29/08
Floyd, Kenneth v. Dept. of Correction
2008-085

Motion to dismiss is granted. Respondent moved to dismiss this complaint, asserting that (1) the complainant did not make the requisite disclosures under §4-61dd(a) and thus no "whistleblower retaliation" occurred; (2) the complaint was untimely for eight of the nine alleged retaliatory acts, and he made no claim of a continuing violation; (3) the sole timely action—a superior closed the door in complainant's face—does not rise to the level of an adverse personnel action. The complainant filed no response to the motion. Complaint dismissed both on the merits of the respondent's arguments and on the complainant's failure to respond to the motion.

Knishkowy, 01/07/09
Beecher, Bradley v. Dept. of Transportation
2008-078

Motion to dismiss granted. Complainant filed complaint on July 17, 2008 claiming that he was terminated because of his whistleblowing disclosures. The record shows that the complainant was terminated in late August or early September 2007 and that he learned of his termination at that time or not later than November 2007. All of his arguments designed to toll the statute of limitations are unsuccessful, notably his claim that approximately eight months of negotiations for reinstatement should toll the limitations period, as well as his claim that information from his attorney, local selectmen and the CHRO should toll the period. None of these arguments warrants tolling the statute of limitations and the complainant is dismissed for untimely filing.

In his amended complaint, the complainant alleged that after he made further disclosures to the attorney general on June 24, 2008, the respondent changed the requirements for his former position to render him unqualified in the event he should reapply. Because the complainant was not an employee of the state at the time he made the disclosures, he is not covered by the statute. Furthermore, the respondent changed the job specifications prior to the whistleblowing, so there can be no causal nexus between the two.

Knishkowy, 03/17/09
Schwartz, Daniel v. Michael Eagen
2008-095

Motion to dismiss/strike. The respondent moved to dismiss whistleblower complaint for failure to state a claim for which relief can be granted. Revised whistleblower retaliation regulations (effective 12/30/08) are applied retroactively by virtue of specific language to that effect. Under revised regulations, "failure to state a claim" is no longer the subject of a

motion to dismiss but of a motion to strike, with a right to revise stricken pleadings. (Regulations of Conn. State Agencies, § 4-61dd-15(d).)

A complainant must adequately plead all elements of his prima facie case, but a motion to strike is properly granted if the complainant alleges mere conclusory statements without supporting facts. Here, the complaint provides overreaching, general conclusions but lacks any factual bases for the alleged adverse personnel actions he suffered. Accordingly, the complaint is stricken and the complainant directed to file a revised complaint with factual allegations to support that element of his prima facie case.

Levine, 12/16/08
Teal, Joseph v. Johnette Tolliver
2008-077, 080

Motion to dismiss granted. Held: (1) the tribunal lacked subject matter jurisdiction because the respondents were not employees of the same state agency as the complainant and were not agents for the agency employing the complainant; and (2) the complaint did not meet the statutory requirement claiming an adverse personnel action taken or threatened by the respondents.

Levine, 03/05/09
Teal, Joseph v. Dept. of Public Heath, Galvin, J. Robert
2008-096

Motion to dismiss granted, in part, Held: (1) the tribunal lacked jurisdiction because of the untimely filing (failure to act within the statutory thirty day period) of a complaint as to all alleged instances of whistleblower retaliation, except the last one; (2) Equitable tolling applies only to unusual circumstances, not entirely within the claimant's control; a situation that does not exist in this case; and (3) § 4-61dd (b) (4) provides an alternative to proceeding under the provisions of § 5-202 before the Employee Review Board, but these statutory remedies are mutually exclusive and therefore the employee must make an election of forum.

Levine, 12/23/2009
Bowman, Leon v. Connecticut Container
2009-115

Motion to dismiss granted. Held: (1) General Statutes § 4-61dd requires that the that respondent be "a state agency, a quasi-public agency, or a large state contractor;" (2) pursuant to § 4-61dd-14 (b) of the Regulations of Connecticut State Agencies, a response to respondent's motion to dismiss was due from the complainant within ten days of the filing; (3) despite two extensions of the filing deadline to oppose the entry of dismissal, the complainant failed to file a response; and (4) absent any objection to the motion to dismiss, dismissal was appropriate under the statute and applicable case law.

Levine, 05/17/10
Romanko, Todd v. Dept. of Unemployment Security Appeals Division
2010-133

Motion to dismiss granted. Complainant failed to respond to the respondent's motion to dismiss and, without a showing of good cause, failed to appear at the initial conference.

Levine, 06/16/10
Walsh, Christopher v. Depart. of Developmental Services
2009-123

Motion to adopt testimony and exhibits from a labor department proceeding denied. The complainant moved to adopt testimony in this whistleblower retaliation proceeding that had been presented in a previous labor department proceeding. The complainant claimed this would simplify the proceeding and save costs. Since complainant cited no legal authority for such a procedure and the presiding referee concluded there was no such authority, the motion was denied

Wilkerson, 12/12/03
Cayer, Paul v. Western Connecticut State University .
2003-001 (rev'd in part, see ruling on motion in limine)

Motion to dismiss granted in part; denied in part. The respondents argued that the human rights referee did not have jurisdiction pursuant to General Statutes Section 4-61dd (b) (2) over the complainant's whistleblower retaliation complaint that stemmed from information that was not transmitted to the auditors of public accounts but transmitted to the respondents' administration, the chancellor and to the commission on human rights and opportunities. The human rights referee lacked jurisdiction because the complainant did not comply with the requirements of § 4-61dd (a) that provided that information be transmitted to the auditors of public accounts.

In addition, the respondents contended that § 4-61dd (b) (2) must be applied prospectively and thus, the human rights referee did not have jurisdiction over the whistleblower retaliation complaints that stemmed from information transmitted to the auditors of public accounts pursuant to § 4-61dd (a) prior to the effective date, June 2, 2002, of § 4-61dd (b) (2). Section 4-61dd (b) (2) is to be applied prospectively as it related to the compliance of its new requirements that notice may be given to the attorney general and a complaint may be filed with the chief human rights referee and applied retroactively as it related to § 4-61dd (a)-requirements already in existence. Also, the plain language interpretation of the § 4-61dd (b) (2) provides for inclusion of all whistleblower retaliation complaints whether initiated pursuant to § 4-61dd (a) before or after the effective date of § 4-61dd (b) (2). The legislative history referred to by the respondent was unclear on this matter. The human rights referee did have jurisdiction of the whistleblower retaliation complaints initiated pursuant to § 4-61dd (a) prior to the effective date of § 4-61dd (b) (2).

Wilkerson**,** 09/21/05
Cayer, Paul v. Western Connecticut State University .
2003-001

Motion in limine. The respondent moved that the complainant be prohibited from offering evidence or attempting to litigate matters that were previously dismissed. The complainant objected and argued that PA 05-287 (§ 4-61dd (b) (1) (ii)) should be applied retroactively to allow for the adjudication of some of his previously dismissed claims. Order: P.A. 05-287 would be applied prospectively to the complainant's previously dismissed claims.

Wilkerson, 12/06/05
Cayer, Paul v. Western Connecticut State University .
2003-001

Articulation of dismissal. At the public hearing, the presiding human rights referee ordered the complainant to prepare his direct examination questions during the recess and to return to the public hearing to present pro se testimony. The complainant failed to appear after the recess. Held: The complaint was dismissed pursuant to Regulations of Connecticut State Agencies § 4-61dd-15 (c) (3) as stated orally on the record because the complainant failed to appear at the hearing.

Wilkerson, 02/15/07
Fields, Tanya v. Dattco, Inc.
2006-036

Motion to dismiss granted. The respondents moved to dismiss the complaint claiming that this tribunal lacks jurisdiction over the complainant's allegations because, among other reasons, they are not large state contractors (or employees thereof) as defined by § 4-61dd. The respondents' motion to dismiss contained two supporting affidavits that attested to the fact that the respondents were not large state contractors or employees thereof. The complainant did not file an objection or response to the motion to dismiss to refute these facts. Hence, the motion to dismiss contained undisputed facts that the respondents were not large state contractors and, therefore, the individual respondents (employees of Dattco and CES) were not employed by large state contractors. This tribunal lacks jurisdiction to hear the complaint.

Wilkerson Brillant, 01/14/08
Freeman, Theresa v. State Police, Lieutenant Newland
2007-038

Motion to dismiss granted. On the first day of the public hearing on the record, the respondent moved to dismiss the complaint because neither the complainant nor her attorney appeared at the public hearing. Held*:* Complaint dismissed for failure to appear. The public hearing date of January 14, 2008 had been scheduled on December 13, 2007 at

the pretrial conference, at which time the parties were notified of the date and ordered to appear for the public hearing.

Wilkerson Brillant, 01/31/08
Gorski, Christopher v. Dept. of Environmental Protection
2007-061

Motion to dismiss denied. The respondents moved to dismiss the complaint claiming the complaint: 1) was filed beyond the thirty-day statute of limitations and 2) failed to state a claim for which relief can be granted because the complainant did not disclose information that was protected under § 4-61dd. Held*:* Equitable tolling applied because the complainant reasonably relied on the U. S. postal service in delivering the mail to the chief human rights referee in a timely fashion. The complainant mailed the complaint three business days prior to the filing deadline but the complaint was not received until two days past the filing deadline. A reasonable person would expect in-state mail delivery to take no more than three days. The complainant stated a claim for which relief can be granted because his disclosure of violations of the computer software policy, which referenced the State's software manuals and code of ethics, constituted the protected activity of disclosing mismanagement, abuse of authority and unethical practices.

Wilkerson Brillant, 05/01/08
Freeman, Theresa v. State Police
2007-038
(appeal withdrawn)

Final decision/Order on motion for reconsideration. The complainant requested reconsideration of the order of dismissal for failure to appear arguing good cause exists for vacating the dismissal. The complainant's attorney argued he could not appear at the public hearing because of childcare responsibilities and he told his client also to not appear. The complainant argued (1) that the presiding referee abused her discretion by not conducting a telephone conference call with the parties and herself the morning of the public hearing at the request of the complainant's attorney; (2) that the presiding referee should not have relied on the respondents' attorneys' representations that the complainant's attorney intended to appear in superior court the same day as the public hearing to request a stay of the present matter and to move to compel documents from the Attorney General's office that were previously ruled by the presiding referee as being inadmissible. Held: The complainant's attorney did not show good cause to vacate the order of dismissal. The complainant's attorney was given an opportunity during a recess of the public hearing to speak via telephone with the respondents' attorneys to discuss his absence and to agree on a continuance to be represented to the presiding referee. The complainant's attorney was unable to accomplish this. The complainant had no intention on proceeding with the public hearing on the scheduled public hearing dates because he, in fact, had appeared in superior court on the day of the public hearing requesting a stay of the present matter and to compel documents from the Attorney General's office.

Wilkerson Brillant, 07/25/08
Miller, Beth v. University of Connecticut Health Center
2008-073

Motion to dismiss denied. Held: (1) to prove a prima facie case, the complainant is not required to inform the Attorney General or the respondent's employees of the retaliatory acts or to wait for the Attorney General to conclude its investigation before filing a complaint with the chief human rights referee; (2) the complainant suffered an adverse employment action when her health benefits were cancelled and she suffered a hostile work environment by having alleged numerous actions taken against her; and (3) The complainant has established a causal connection between the alleged retaliatory act and the transmittal of information a) by her having disclosed information and allegedly having been retaliated against, less than thirty days later and b) because the alleged adverse personnel action occurred within one year of the complainant's transmittal of information to the Auditors of Public Accounts.

Wilkerson Brillant, 01/23/09
Gorski, Christopher v. Dept. of Environmental Protection
2007-061
(appeal dismissed)

Final decision. Complaint dismissed. The complainant alleged that the respondents retaliated against him when they terminated him because he disclosed information that the respondents had committed unethical practices, violated state laws/regulations, mismanaged and abused authority in violation of General Statutes §§ 4-61dd et seq. Held: The complainant established a prima facie case of retaliation. However, the complainant provided no additional credible evidence to rebut the respondents' persuasive evidence supporting their legitimate business reasons for the termination. The respondents provided persuasive legitimate, non-retaliatory reasons for terminating the complainant and, therefore, rebutted the statutory rebuttable presumption of an inference of causation. The complainant has not proven by direct or indirect evidence that the respondents' proffered business reasons were not worthy of credence or were pretext for retaliation.

Wilkerson Brillant, 03/13/09
Gorski, Christopher v. Dept. of Environmental Protection
2007-061
(appeal dismissed)

Decision on reconsideration: final decision affirmed. The complainant argued that the final decision should be reversed because this tribunal committed errors of fact, good cause had been shown, and new evidence existed as bases for his reconsideration request. The complainant also amended his reconsideration request to add he was prejudiced by the ineffective assistance of his counsel. Held: Final decision is affirmed. The complainant's

failed to show errors of fact, to provide a reason why he did not present the new evidence at the public hearing, or show good cause. Additionally, his complaints about his attorney's representation do not provide a basis for reversing or modifying the final decision. There is no Sixth Amendment right to effective counsel in civil cases, thus a party is bound by the acts of his attorney.

Wilkerson Brillant, 04/14/09
Torres, Wanda v. Dept. of Environmental Protection
2008-87

Motion to dismiss denied. The complainant first filed a whistleblower retaliation complaint pursuant to General Statutes § 4-61dd (b) (3) (A) with the chief human rights referee and subsequently filed two union grievances regarding similar claims as in the whistleblower retaliation complaint. Section 4-61dd (b) (4) provides the complainant with mutually exclusive alternatives to filing her claims, and thus she cannot proceed with her complaint in two forums. The issue is not where in the process lie her grievances but whether the complainant pursued her claims simultaneously in more than one forum. The fact that she chose one forum first and then subsequently chose another forum to appeal similar adverse personnel action/s taken against her is prohibited by General Statutes § 4-61dd (b) (4). The filing of her grievances could have been done only in the alternative to filing with the chief human rights referee; hence, the complainant must withdraw her grievances or her complaint shall be dismissed.

Wilkerson Brillant, 10/16/09
Wilson, Andrea v Judicial Dept.
2008-098

Motion to amend to allege additional claims denied. The complainant was given a date by which to file a motion to amend her whistleblower retaliation complaint to add the allegation of termination only. The complainant moved to amend her complaint to add, in addition to a claim of retaliatory termination, allegations of a negative performance review, additional respondents and various other dates and incidents regarding harassment and threatening behavior to support her termination and performance review claims. Grievances for the complainant's termination and performance review were filed (pursuant to the collective bargaining agreement) prior to the amendment to add these claims to the complainant's complaint. General Statutes § 4-61dd (b) (4) provides the complainant with mutually exclusive alternative venues for filing her claims. Because the complainant's grievances were filed prior to her amendment to add the same claims to her complaint, the complainant's motion to amend to add these claims is denied. The motion to amend is also denied as to her other allegations as being superfluous and noncompliant with the tribunal's previous order to allege termination only.

Wilkerson Brillant, 12/08/09
Wilson, Andrea v. Judicial Dept.
2008-069

Motion to dismiss granted. The respondent filed a motion to dismiss on the grounds that this tribunal lacks subject matter jurisdiction of the complaint allegations that were part of a grievance filed on behalf of the complainant and an arbitration proceeding. A written arbitration decision was issued resolving the grievance. Pursuant to General Statutes § 4-61dd (b) (4), which provides the complainant with mutually exclusive alternatives to filing her claims, the complainant cannot pursue the same claims with this tribunal. The fact that the complainant chose one forum first and then subsequently chose another forum to appeal the same adverse personnel actions taken against her is prohibited by General Statutes § 4-61dd (b) (4). Assuming the complainant filed her claims with this tribunal first, withdrawing her grievances was not an option because an arbitration decision already had been issued on the same claims. Hence, the complainant's claims are hereby dismissed.

Wilkerson Brillant, 01/06/10
Wilson, Andrea v. Judicial Dept
2008-069

Motion to reconsider denied. The complainant filed a motion to reconsider (motion) the order granting the respondent's motion to dismiss (order). The order dismissed certain claims alleged by the complainant that were also pursued through the grievance process pursuant to her collective bargaining agreement, because pursuing claims in two forums is prohibited by General Statutes § 4-61dd (b) (4). In her motion, she argued, pursuant to General Statute § 4-181a, that an error of fact or law should be corrected, that new evidence had been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding, and other good cause for reconsideration had been shown. Section 4-181a (a) (1) only applies to matters regarding a final decision and § 4-166 (3) defines "final decision" by specifically excluding preliminary or intermediate rulings or orders. The order was an intermediate ruling as it did not terminate the proceedings because other allegations in the complaint are still pending. Therefore, the motion was reviewed as a reconsideration of an intermediate ruling not a final decision. The complainant had failed to file a response to the respondent's motion to dismiss prior to the deadline. The complainant argued that she should have been given additional time to respond to the motion to dismiss because she had experienced personal problems. This tribunal had provided her with four months to respond