STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Andrea L. Wilson, OPH/WBR No.2008-069
Complainant OPH/WBRNo.2008-098

v.

State of Connecticut Judicial Branch, June 17, 2011
Respondent

FINAL DECISION

Procedural Background

The public hearings in these two matters that were consolidated for purposes of judicial economy were held on 11 dates beginning March 5, 2010 and ending April 28, 2010. The complainant, Andrea L. Wilson, appeared pro se, and the respondent was represented by Attorney George Kelly of the law firm of Siegel, O'Connor, O'Donnell & Beck, P.C. and by Attorney Martin R. Libbin, Deputy Director of Legal Services for the respondent.

The parties have submitted post-trial briefs containing their respective proposed finding of facts and conclusions of law. Ms. Wilson has also submitted a corrected brief on her behalf as well as a reply brief dated October 15, 2010.

Prior to being consolidated for the public hearings, the complaints proceeded as follows: Case No. WBR/OPH 2008-069 was filed with the Chief Referee of the Office of Public

Hearings (hereinafter "OPH") on or about February 11, 2008. Complainant's allegations, as amended, were that she was retaliated against by the respondent on the following dates: January 14, 2008, January 17, 2008, February 4, 2008, June 5, 2008, July 7, 2008, and July 22, 2008. Then presiding Human Rights Referee Donna Maria Wilkerson-Brillant ruled on December 8, 2009, that all claims of retaliation were dismissed, except those alleged to have occurred on July 7, 2008 (complainant's return to work date following a 30 day administrative suspension) and on July 22, 2008 (the date the complainant first learned of documents provided her union representative at a Step 3 Grievance Hearing). This ruling was made based upon the complainant having made an election of remedies under the provisions of Conn. Gen. Stat. § 4-61 dd (B) (4).

The second whistleblower retaliation complaint, OPH/WBR No.2008-098, was filed with OPH on November 26, 2008. The complaint in this case was amended a second time by a motion dated April 24, 2009, to include the allegation that the complainant was retaliated against on March 24, 2009, by the respondent's representative, Attorney Eileen Meehan. Meehan had defended against both the complainant's grievance and the defense of the pending claim by complainant before OPH. As a result of Referee Wilkerson-Brillant's October 16, 2009, ruling on the motion to amend, remaining in the case were complainant's allegations set forth in Paragraph 9 C. It was subsequently determined at the public hearing that the complainant meant to amend paragraph 9A of the original complaint. and the matter was heard on that basis.

Thereafter, on June 5, 2009, complainant's employment was terminated by the respondent. Respondent's Corrected Objection To Complainant's Motion To Amend dated August 28, 2008 p.3 in OPH/WBR No. 2008-098 In August 2009, complainant again attempted to amend the second complaint, OPH/WBR No.2008-098, by adding additional claims of retaliation. On October 16, 2009, Referee Wilkerson-Brillant denied this amendment, also basing it upon complainant's prior election of remedies under the whistleblower statute.

The claims remaining to be tried at the public hearing and which were agreed to by the parties at the pre-hearing conference (see Pre-hearing Conference Order attached hereto and made a part hereof as Appendix "A") were those occurring on four (4) specific dates: 1) July 7, 2008, 2) July 22, 2008, 3) November 24, 2008, and 4) March 24, 2009.

At the public hearing, the parties disagreed on whether complainant could litigate her claims that she was subjected to a hostile work environment in retaliation for her whistleblowing activity. I allowed the complainant to offer evidence in support of this claim based upon her allegation that such actions, if proven, would constitute an adverse personnel action such that no reasonable person would be expected to endure and also based upon the conclusion that claims of a hostile work environment were still operative in Complaint OPH/WBR 2008-098 (Tr.687 ll.11-19, Tr.691 ll.1-21) because she claimed that she had agreed to withdraw Case No. OPH/WBR 2008-081 in exchange for incorporating its claims in Case No. OPH/WBR 2008-098.

Finding of Facts

Based upon a review of the pleadings, exhibits, and transcripts and an assessment of the credibility of the witnesses, the followings facts relevant to this decision are found:

1. All statutory and procedural prerequisites to the holding of the public hearing have been met and the case is properly before me as the Presiding Human Rights Referee.
2. The State of Connecticut Judicial Branch is a state agency.
3. The complainant was an employee of the State of Connecticut Judicial Branch at the time of filing of the above-captioned complaints having been hired as a law library assistant in April 1998. Tr.1070. ll.11-12.[1]
4. The respondent terminated the complainant's employment in June 2009. Respondent's Corrected Objection To Complainant's Motion To Amend dated August 28, 2008 p.3 in OPH/WBR No. 2008-098.
5. The complainant made numerous complaints to the Auditors of Public Accounts during her employment.[2]
6. The parties have stipulated that the four (4) incidents of alleged whistleblower retaliation are those which occurred on July 7, 2008, July 22, 2008, November 24, 2008, and March 24, 2009, Tr. 64 ll. 2-9.

7 The complainant testified that she had no direct evidence of retaliation as to the four (4) instances of alleged retaliation. Tr.184 ll. 17-24.

8 There was no direct evidence presented that the respondent took any retaliatory action against the complainant or caused an adverse personnel action against her as a result of the counseling session held on November 24, 2008, R-32.

9. The respondent has adopted and employs as a personnel policy a program known as “Progressive Discipline.” Tr. 1439 ll. 16-140. ll 1-9.

10. The complainant's termination of employment and thirty (30) day suspension are not issues to be litigated in this consolidated proceeding; those issues having been dismissed in these proceedings on December 8, 2009 by then presiding Human Rights Referee Donna Maria Wilkerson-Brillant in a ruling on the respondent's motion to dismiss.

11 During most of her employment by respondent, complainant was assigned to work in the Stamford law library, but occasionally worked at other law libraries. Tr.1070. ll.16-23.

12. Jonathan Stock was the supervising law librarian in Stamford at the time complainant began working there. Stock's classification was Law Librarian 2. For most of the time complainant worked there, she reported directly to Stock. .R-25, p.2.

13. On December 21, 2007, John O'Donnell began working at the Stamford Law Library. O'Donnell's classification was Law Librarian 1. He was assigned to supervise complainant. R-25, p.2.

14. During all times relevant to this action, Maureen Well was the Deputy Director, Law Libraries. Well had overall responsibility for the operation of all the law libraries. Tr.188 ll. 23-189 l. 2.

15. On December 21, 2007, Well met with Stock, complainant, and O'Donnell to inform complainant that she would now report directly to O'Donnell. C-24.

16. On December 26, 2007, at 7:24 a.m., complainant sent an e-mail with the subject: "Hopefully the truth will set us free" from her personal computer. This e-mail was sent to all 22 law library employees. Additional recipients included Maureen Well, Faith Arkin (Well's supervisor), Eileen Meehan of the Judicial Branch Human Resources Management Unit, the Commission on Human Rights and Opportunities and the Chief Justice of the Connecticut Supreme Court. R- 2.

17. Among other things, this e-mail expressed complainant's concerns and objections over the appointment of O'Donnell to supervise her, suggesting that O'Donnell might have been "offered something" to accept the position and discussing the prior claims complainant had filed against John Stock. R -2.

18. After complainant arrived at work on December 26, 2007, John O'Donnell asked her to initial a form amending her attendance record. She had taken December 24, 2007, as a vacation day, but subsequently it was decided to release all employees after a half day.

19. The purpose of the form O'Donnell asked her to sign was to reduce the amount of vacation time she was charged for December in order to treat her in the same fashion as all other Judicial Branch employees. R-25, p.9-10; R-12.

20. Complainant refused to initial the form as requested by O'Donnell and refused again when later asked by O'Donnell and Stock. R-25, p.9-10 R-12.

21. On December 26, 2007, complainant sent a total of ten (10) e-mails concerning O'Donnell and/or Stock. Most of these were sent to the law library staff. From December 27, 2007, until January 2, 2008, complainant continued to send e-mails containing similar complaints. In addition to law library staff, recipients of these e-mails included the Chief Court Administrator, the Chief Justice of the Connecticut Supreme Court, a State Senator and a State Representative. Some of these e-mails were also addressed to Patricia Wilson of the Office of the Auditors of Public Accounts, R-2.. R-12. R-25, p.2-9.

22. As a result of this conduct by complainant, the respondent, by letter dated January 11, 2008, informed her that her communications had become disruptive and sent out a list of directives for her future behavior on the job. This letter stated in part:

> This will acknowledge receipt of your multiple e-mails over the last several months and more particularly, their increased frequency over the last several weeks. Your communications have become disruptive to the operations of the Judicial Branch and have now risen to the point where they impede the operations of the function of the Judicial Branch itself. The issues include, but are not limited to the multiplicity of the communications, the broad and increasing list of people who receive copies and a singular failure to operate within the Judicial Branch's table of organization and the chain of command. To that end, the following will be implemented immediately: Strict adherence to these directions will be monitored and failure to comply will lead to appropriate discipline. R-14.

23. On December 26, 2007, complainant e-mailed Eileen Meehan stating that the decision to make John O'Donnell her supervisor was in retaliation for

complainant having filed a CHRO complaint against the respondent alleging that John Stock had harassed her. R-16.

24. This complaint was forwarded to Ann-Laurie Parent in her capacity as Affirmative Action Officer for the respondent's Human Resources Division. Id. p.1

25. Parent conducted an investigation into these allegations, which included e-mail communications with complainant (R-17-18, 20-22), a meeting with complainant and interviews of Judicial Branch employees. R-23. Parent's February 4, 2008 report of her investigation concluded that the allegation that John O'Donnell was hired as complainant's supervisor in retaliation for her filing of the CHRO complaint naming Jonathan Stock could not be substantiated. R-23.

26. As a result of complainant's conduct and e-mail messages during the period December 26, 2007, through December 31, 2007, the respondent conducted an investigation into potential work rule violations and general misconduct by complainant. R-25.

27. Eileen Meehan, respondent's personnel manager, conducted this investigation. Meehan issued her Report of Investigation on January 18, 2008, and supplemented it on January 22, 2008 and on February 1, 2008. Her report concluded that complainant had violated the following policies set forth in the Judicial Branch Administrative Policies and Procedures manual (APPM): Judicial Branch Mission, Section 101; Use of Computer Equipment and

Systems, Section 1003; and Violence in the Workplace Prevention, Section 615., R-25, p.14-16, R-26.

28. Meehan also found that complainant had repeatedly and publicly defied the directions of her supervisor and the Deputy Director of Law Libraries and that this behavior constituted insubordination. R-25, p.16.

29. Respondent's personnel manager Maria Kewer, by letter dated February 4, 2008, informed complainant that she was being placed on paid administrative leave while the respondent investigated the charges outlined by Meehan. R-27.

30. On February 27, 2008, Kewer conducted an investigatory meeting attended by complainant and two (2) of her union representatives. Kewer issued a Report of Investigative Meeting. The report summarized what occurred at the pre-disciplinary meeting and concluded as follows:

> It is recommended that Ms. Wilson be scheduled for a pre-disciplinary meeting for violating the Judicial Branch Mission, use of computer equipment and systems, violence in the workplace prevention, creating a hostile working environment, and refusing a supervisor's order.
>
> This recommendation is based on a review of Eileen Meehan's reports, a review of Ms. Wilson's e-mail account, statements made by O'Donnell and other Law Library staff, and Ms. Wilson's responses at the investigatory meeting. I agree with Ms. Meehan's findings, and Ms. Wilson has not offered any viable explanation to conclude otherwise. R-29.

31. Kewer later held a pre-disciplinary meeting with complainant at which she had a further opportunity to address the findings of the investigation. Tr.1363-1364.

32. Following her investigation and meetings with complainant, Kewer recommended to Joseph D' Alesio, Executive Director of Court Operations and Executive Secretary of the Judicial Branch, that complainant be terminated.

33. D'Alesio, who had the final decision-making authority, decided instead to impose a 30 day suspension. Tr.1364.

34. D'Alesio informed complainant, by a letter dated June 4, 2008, that she was being suspended without pay for thirty (30) working days. The letter stated, in part:

> It has been determined that your actions, e-mails, comments, behavior, and attitude toward your supervisor and others have created an unhealthy and hostile work environment. The impact of your actions proved to cause operational ramifications due to the resignation of one employee, leave of absence of another, and requests from others expressing their unwillingness to be assigned to work with you. The departure of both employees was reportedly based solely on the environment that you created in the workplace. Your egregious and intolerable behavior disrupted operations and created a hostile work environment not only for those working in the Stamford Law Library but to the unit's employees statewide.
>
> Therefore, as a result of your actions, which were threatening, intimidating, harassing, insubordinate, disruptive, challenging, unprofessional and hostile in violation of the Judicial Branch policy, you are suspended without pay for a period of 30 work days. R-31.

35. Attached to the June 4, 2008 letter was a document entitled "Expectations of Performance for Andrea Wilson June 4, 2008" ("Expectations"). The letter concluded by stating:

> Upon your return to work, you must adhere to all Judicial Branch policies and expectations in the attached directive that is being issued to you. Any future violations of policy or directives will result in more serious discipline, up to and including the termination of your employment. R-31.

36. Complainant returned to work in the Stamford Law Library on July 7, 2008. Tr.1300 l.16.

37. Following her return to work, complainant was supervised by Pamela Kaufman, who had been hired in May 2008 as a law librarian in the Stamford Law Library. Tr.617 ll. 23-618 ll. 1-2.

38. For several years prior to January 2008, complainant had been permitted to use an office on the fifth floor of the Stamford Court House. The law library is on the fourth floor. Tr. 300 ll.19-13, Tr. 1301 ll.11-18.

39. Roseanne Billias, the only other law librarian assistant as of 2008, testified that she had worked in the Waterbury Law Library for 10 years and never had a private office. Tr.747 ll.16-24.

40. Beginning in January 2008, at the direction of Maureen Well, complainant began using the workspace in the law library itself rather than the fifth floor office. Tr.1301 ll.11-18.

41. When she returned to work following her suspension, complainant's personal belongings that were stored in the fifth floor office had been placed in boxes by law library employees. Tr.1303 ll.13-20.

42. Well asked complainant to remove the boxes from the building on July 7, but because there was no room in her car, she was allowed to do so the next day. Tr. 1270 ll.14 1271. l. 3.

43. As a general practice, following complainant's return, one law librarian in addition to Pamela Kaufman was assigned to work in the Stamford Law Library when complainant was there. The individuals so assigned were either Well, as

Deputy Director for Libraries, Mary Fuller, Ann Doherty, or Claudia Jalowka, supervising law librarians who were assigned to other law libraries. OPH-1; Tr. 282 ll.3-286 l.17.

44. It was the practice for Kaufman and the other librarians assigned to Stamford to prepare notes (or "diaries") reflecting complainant's performance as it related to her compliance with the requirements set forth in the June 4, 2008, letter. (R-31). Tr. 620 ll.22 621. l.10; .C-32, C-33.

45. On July 22, 2008, complainant attended a meeting with respondent's officials to discuss the grievance she had filed challenging her 30 day suspension.

46. At this meeting, the respondent provided complainant's union representatives with copies of certain documents relating to the suspension. The parties have stipulated that these documents are contained in C-58. Tr. 1235 ll.20-1236, l.9.

47. On October 14, 2008, Well and Kaufman met with complainant to discuss her performance. This was an informal counseling session that did not result in any disciplinary action. Tr. 623 ll.14-16; Tr.1371 ll. 5-19.

48. At the October 14, 2008 meeting, Well and Kaufman discussed aspects of complainant's performance that had been found satisfactory as well as areas that needed improvement. Tr. 623 ll.18. 624. l.1.

49. On November 24, 2008, Well and Kaufman had another counseling session with complainant to discuss her performance. This counseling session also did not result in disciplinary action. R-32; Tr. 623 ll. 6-24, l.10; 1370, ll.5-19.

50. At this counseling session Well provided complainant with a 3-page memorandum addressing her performance since her return. Tr. 665 ll.12-22;

R-32. In this memorandum, Well first discussed the October meeting, and with respect to complainant's performance since that meeting, concluded as follows:

> Since our discussion on October 14, your job performance has been uneven. There have been some days when you have quietly focused on your work assignments and not been disruptive. However, the overall pattern of your behavior has not been satisfactory and is still in need of significant improvement.

After discussing specific performance issues, Well summarized complainant's overall performance in these words:

> When you are not present in the library, the atmosphere is relaxed, pleasant, and everyone can work productively. When you are present, the productivity of staff decreases and the atmosphere is tense, guarded, and stressful.
>
> As I stated on October 14, you are not meeting the performance expectations that you were given dated June 4, 2008, particularly Nos. 4, 5, and 6. Mary Fuller, Ann Doherty, Pam Kaufman and I all agree on this. You must correct your behavior. R-32.

51. Complainant had challenged the 30 day suspension under the procedures set forth in the Collective Bargaining Agreement between her union and the respondent. C-31, pp.9-12.

52. The grievance went to arbitration, and following the hearing, the arbitrator ruled that the discipline imposed was reasonable and fair. .R-40, p.15.

53. In reaching this conclusion, the arbitrator stated:

> . . .the Grievant's egregious attack against her new supervisor, old supervisors, and branch methods and operations was insubordinate and covered with mal intent. . .It is shocking that she would pour out her anger through e-mails to over 100 people, including members of the Legislature, Court Officers, and the Chief Justice. This intentional wrongful activity meant to be insubordinate could have reasonably been met with

> termination as was the recommendation by Branch personnel manager, Eileen Meehan.
>
> Therefore, the thirty day suspension without pay was certainly not excessive considering the Grievant's actions. R-40, p.15.

Preliminary Matters

The complainant has repeatedly argued that because she is a lay person, appearing pro se, she should be given special consideration and should not be held to observing the rules. Complainant's corrected post-trial brief, p. 2. In my closing remarks on Day 11, I instructed the parties, in conformity with § 4-61 dd-18 of the Whistleblower Retaliation Regulations that, "We will have post-trial briefs and these should include proposed findings of facts and conclusions of law with citations to the transcript. But if you have questions on how to do that, Ms. Wilson, the reported cases will demonstrate that." Tr. 1547 ll.13-17.

The complainant, who was employed by the Connecticut Judicial Branch as a law librarian for 11 years and who testified that she assisted library patrons doing legal research (Tr.1075 ll. 7-14), claims in her revised post-trial brief that she did not understand my instructions nor could she determine how to do this by researching the reported cases. Complainant's revised post-trial brief pp. 2-3. Complainant also claims in her revised post-trial brief that she did not understand that the allegations in Case No. OPH/WBR 2008-098 were still viable and that this led to delays in her preparation in serving counsel with her public hearing witness and exhibit list. Id. pp 3-4. Complainant

also claims that her misunderstanding of how witness subpoenas were to be served led to initial delays. Id. pp. 4-5.

While the Connecticut judicial system has traditionally been solicitous of those who appear pro se, the reported cases have also held that those who appear pro se must adhere to the rules like everyone else, especially if it impacts the rights of other parties. *Ryszard Wasilewski v. Michael Machuga, et al.* 92 Conn. App. 341, 342 (2005)

> "In reaching our decision, we are mindful that the plaintiff [is] represented himself on appeal. "this court has always been solicitous of the rights of pro se litigants and, like the trial court, will endeavor to see that such a litigant shall have the opportunity to have his case fully and fairly heard so far as such latitude is consistent with the just rights of any adverse party. Although we will not entirely disregard our rules of practice, we do give great latitude to pro se litigants in order that justice may both be done and be seen to be done." (Internal quotation marks omitted.) *Cox v. Aiken*, 86 Conn. App. 587, 594 n. 5, 862 A. 2d 319 (2004), cert. granted on other grounds. 273 Conn. 916, 871 A. 2d 370 (2005). For justice to be done, however, any latitude given to pro se litigants cannot interfere with the rights of other parties, nor can we disregard completely our rules of practice. See *New Haven v. Bonner*, 272 Conn. 489 497-98, 863 A. 2d. 680 (2005)."

Finally, despite great latitude being given to the complainant because she appeared pro se, she has complained that she was rushed through her presentation of evidence. This public hearing lasted 11 days and the complainant was given ample opportunity to present her case Tr. 88 ll.16-24 89 l. 1. Tr. 1523 ll. 18-23 Tr. 1550 ll. 3-1557 ll. 1-18. Therefore, I find these allegations without merit.

The Statutory Framework

The pertinent statute involved in these proceedings is Conn. Gen. Stat. § 4-61 dd[3], otherwise commonly known as the Connecticut Whistleblower Statute.

Applicable Decisions

Actions under the Connecticut Whistleblower Statute, § 4-61dd, are measured according to the three-step, burden-shifting analysis articulated by the United States Supreme Court in its decision in *McDonnell-Douglas Corp. v. Greene*, 411 U.S. 792 (1973). The application of McDonnell-Douglas in this context has been discussed in detail in the final decision in *Stacy v. Department of Correction*, OPH/WBR No. 2003-0032 (March 1-2004, FitzGerald HRR).

Under this approach, the complainant must first meet the three-part test for proving a prima facie case. To do so, she must prove by a preponderance of the evidence that:

1. She is a qualified individual under the whistleblower statute. This means that she was an employee of a state agency who complained about fraudulent, improper, or illegal practices to the auditors of public accounts, the Attorney General, or to her employer.
2. She was threatened with, or suffered, an adverse personnel action following these reports.
3. There is an inference of a causal connection between the adverse personnel action and the whistleblower activities. In the case of the whistleblower statute,

there is a statutory presumption of causation if the personnel action occurs within "one year after the employee first transmits facts and information concerning a matter" to the auditors or the Attorney General. § 4-61 dd (b) (5).

If the complainant satisfies each part of this test, the respondent then has the burden to come forward with a legitimate, non-discriminatory reason for the alleged adverse personnel actions. If it does so, the complainant must go on to show that the adverse personnel actions were taken in retaliation for her whistleblowing activity. *St. Mary's Honor CTR v*. *Hicks*, 509 U.S. 502,515 (1993).

Legal Analysis

A. The complainant has proven that she was an employee of the respondent and she made complaints to the Auditors of Public Accounts and to the Attorney General's office, some of which were made within the timeframe set forth in the statute.. Therefore, she satisfies the first prong of the *McDonnell-Douglas* test. However, she has failed to establish that she suffered an adverse personnel action or that any such action was caused by her whistleblowing. Therefore, she has not met her prima facie burden.

1. The complainant did not prove that she suffered an adverse personnel action.

The definition of an adverse personnel action is somewhat broader in whistleblower retaliation cases than in other types of discrimination cases. In a Title VII discrimination case, for example, an adverse employment action must result in a "materially adverse

change in the terms and conditions of employment" *Galabya v*. *New York City Bd. of Educ.* 202 F.3d 636, 640 (Second Cir. 2000). In retaliation cases, the definition of an adverse personnel action is not limited to these "tangible employment actions." Rather, the term can encompass any materially adverse action, which has been defined as one that "might have dissuaded a reasonable worker from making or supporting a charge of discrimination" *Burlington Northern and Santa Fe Railroad Co. v. White*, 548 U.S. 53, 68 (2006).

Even under this expanded test, however, complainant has failed to show that she suffered an adverse personnel action. First, complainant has admitted that the alleged retaliatory actions related to the events of July 7 and November 24, 2008, did not cause her to experience any tangible loss of employment benefits. Tr. 1286 ll. 20-1287, l.17; Tr.1302, l. 4, 1303, ll. 6-10. The documents complainant received on July 22, 2008, or the statement allegedly made by Eileen Meehan on March 24, 2009, did not in any way address any of the tangible terms or conditions of complainant's employment. Thus, to establish retaliation, complainant must prove some other action by the respondent that "under the test in *Burlington Northern*, supra, might have dissuaded a reasonable worker" from filing a whistleblower claim (emphasis added). For the following reasons, complainant has failed to meet her burden with respect to any of her specific claims of retaliation.

a. **Alleged Retaliatory Actions Relating to July 7, 2008**

Complainant testified that when she returned to the Stamford Law Library on July 7, 2008, she was not permitted to use the office on the fifth floor and was instead required to use the fourth floor office space also used by other library employees. This change would not dissuade a reasonable employee from making a whistleblower complaint. Roseanne Billias, the only other law library assistant employed by the Judicial Branch at the time, never had a private office. Tr.747 ll. 20-24. In addition, Maria Kewer testified that no Judicial Branch employee is guaranteed a particular work location, including a private office. Tr.1369 ll.1-10.

Complainant also claimed that her duties changed upon her return on July 7, 2008, but she offered no evidence to support that claim. She was expected to perform the same duties as anyone else in her position. Tr. 269 ll.6-16. In addition, complainant was subject to performance expectations she was given at the time that she was suspended. Tr. 269 ll.17-23. The suspension is not part of this case; however, the performance expectations and her efforts to meet them are helpful in understanding the issues in this case. Many courts have recognized that perceived slights, such as changes in supervisors, increased supervision, and general reprimands, do not constitute an adverse personnel action under the objective "materially adverse standard of *Burlington Northern,* supra." *Moses v. City of New York*, 2007 W.L.2600859* (S.D.N.Y. 2007); *Scott v. Cellco Partnership*, 2007 W.L.1051687* (S.D.N.Y. 2007). Complainant's claims of changes in her working conditions upon her return from suspension cannot be

substantiated. These are not actions that would deter a reasonable person in her position from filing complaints of wrongdoing.

b. **Alleged Retaliatory Actions Relating to July 22, 2008**

As to the adverse actions complainant claims to have learned of on July 22, 2008, it is clear that nothing she may have discovered in the documents contained in C-58 would have dissuaded a reasonable employee from making further whistleblowing complaints. For example, complainant places great weight on a memorandum to the file written by Maureen Well to record her recollection of John O'Donnell's first day at work as a law librarian. Tr.1240 ll.2-1241, l.9. C-24. The "adverse action" she recites is that Well informed O'Donnell of complainant's past employment history, including the complaint she had filed against John Stock. Tr.1241 ll.6-9.

c. **Alleged Retaliatory Actions Relating to March 24, 2009 Arbitration Hearing**

In her April 2009 amendment to the complaint in Case No. OPH/WBR 2008-098, complainant alleged that the statements made by Eileen Meehan at the hearing before the arbitrator on March 24, 2009, constituted an adverse employment action for purposes of her retaliation claim. Her claim apparently was that Meehan said she had not been involved in a previous investigation of one of complainant's CHRO claims, but at the hearing, she said she was. Even if true, it is difficult to see how it could possibly qualify as an adverse personnel action and certainly did not affect any of the terms of complainant's employment, and nothing in the alleged statement could deter a similarly situated employee from filing a whistleblower retaliation claim. At the public hearing,

complainant presented no evidence, and conceded that she had none to support her claims that Meehan's statements constituted an adverse employment action. Tr. 1285 ll.12-22.

d. **Hostile Work Environment**

The complainant has repeatedly claimed and attempted to establish that she was subject to a hostile work environment. R-15. R-16 R-17. In order to establish this, the complainant must establish that the harassment was intentional, severe, recurring, and pervasive and interferes with an employee's ability to perform his or her job. The complainant must reasonably believe that tolerating the hostile work environment is a condition of continued employment. In other words, the victim or witnesses typically must reasonably believe that they have no choice but to endure a hostile workplace in order to keep their jobs. *Commission on Human Rights and Opportunities ex rel. Lisa Charette v. State of Connecticut Department of Social Services*, Case Nos. 9810321 and 981081,

In these proceedings, the complainant has alleged that the respondent's actions in employing what it calls “progressive discipline” are, in her opinion, harassment and the creation of a hostile work environment. Tr. 1153 ll. 17-19 Tr. 1537 ll. 12-19.

However, the testimony of numerous witnesses at the public hearing, many of whom were called as witnesses by the complainant, was that, to the extent there existed a hostile work environment in complainant’s workplace, it was the complainant herself

who created that environment. Tr. 1355 ll. 3-9. To the same effect is the conclusion of the Arbitrator in the Step 3 Grievance Hearing decision, R-40, p.15. The evidence also shows that the actions of complainant's supervisors, which complainant characterizes as creating a hostile environment, were in fact either justifiable responses to complainant's own behavior or actions that were necessary in order to carry out their supervisory responsibilities. Complainant claims to have been treated differently from other employees in several respects. She claims she was closely monitored, that she was prevented from talking to other employees and visitors in the library and that she had more supervisors than other employees. Complainant has asserted that she was prevented from interacting with library patrons or fellow workers, but she has failed to provide any evidence to support this claim. Her witness, Jennifer Jones, admitted on cross-examination that she was never told by anyone in authority that she could not contact complainant. Tr. 966 ll. 22 967, l.1.

Complainant produced no evidence that her ability to interact with and serve library patrons was any different after July 7, 2008, than before. Her testimony seemed to suggest that she was not permitted to assist patrons with "computer-related research" after her return to work on July 7, 2008. Tr. 1075 ll.7-14. However, she clarified this by testifying that she "actively assisted with computer-related research" only from 1998 to 2002. Tr. 1076 ll. 5-20. She testified that this restriction was imposed in 2002 after she made a claim against her supervisor. Tr. 1077 ll.17-22. If there is any substance to this claim, it was imposed in 2002 rather than at any time relating to the dates involved in this whistleblower retaliation action. Tr. 1105 ll.19-24. The evidence does show that

complainant interacted with patrons conducting legal research in the same way as Roseanne Bilias, the respondent's other law library assistant. She testified she helps patrons with logging onto the research "tower" that contains the search engines and then refers them to the available research. Tr. 716 ll.17-717, l.23. Complainant's claims of being closely monitored as a form of supervision do not establish retaliation even under the relaxed Burlington Industries test. These actions are not, in themselves, retaliatory. See *Flynn v. New York State Div. of Parole*, 620 F. Supp. 2d. 463, 494 (S.D.N.Y. 2009), citing, e.g. *Moses v. City of New York*, supra, 2007 W.L.2600859 at *2 (S.D.N.Y. August 2007) ("[Increased] scrutiny does not constitute adverse action."); *Scott v. Cellco Partnership*, supra, 2007 W.L.1051687, at *2 (S.D.N.Y. April 3, 2007). See also *Oliphant v. Conn. Dep't of Transp*. No. 02CV-700, 2006 W.L.3020890 at *6 (D. Conn. Oct. 23, 2006) ("[reprimand], threats and reprimands and excessive scrutiny of an employee. . .do not constitute materially adverse employment actions [in the retaliation context]"); *Lucenti v. Potter*, 432 F.Supp. 2d 347, 362-63 (S.D.N.Y. 2006).

2. Complainant failed to prove any and all adverse employment actions were caused by her whistleblower complaint.

The third element of a prima facie case is causation. "The causal connection between a connected activity and the adverse employment action can be established indirectly with circumstantial evidence, for example, by showing that the protected activity was followed by discriminatory treatment or through evidence of disparate treatment of

employees who engaged in similar conduct or directly through evidence of retaliatory animus." *Sumner v. U.S. Postal Service*, 899 F.2d. 203, 209 (2nd Cir. 1990).

The complainant introduced no evidence of retaliatory animus. When asked directly, each of the respondent's supervisory or management witnesses testified that complainant's whistleblower activities had no effect on their dealings with her. Tr. 175 ll. 3-22. Tr. 611 ll. 3-612.

Since there is no direct evidence of retaliation, the complainant is left to prove it indirectly. One way to do so is to show a temporal connection between the whistleblowing and the alleged adverse actions. In this regard, state employee whistleblower retaliation claims differ somewhat from the other types of whistleblower retaliation claims in that the statute establishes a one year rebuttable presumption of causation. Conn. Gen. Stat. § 4-61dd(b)(5) provides in pertinent part:

> In any proceeding under subdivision (2), (3) or (4) of this subsection concerning a personnel action taken or threatened against any state. . .employee. . ., which personnel action occurs not later than one year after the employee first transmits facts and information concerning a matter under subsection (a) of this section to the Auditors of Public Accounts or the Attorney General, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section.

The evidence produced by the complainant does not substantiate this presumption. She began making complaints to the Auditors of Public Accounts as early as August 17, 2006. C-34, Aud1. She also testified that she started reporting to the auditors in 2006. Tr.1133 ll.21-23. She began reporting to the Auditors of Public Accounts approximately

18 months before she filed her first whistleblower retaliation claim. It was also nearly two years before her July 7, 2008 return to work, which is the earliest date of an alleged retaliatory act in this case. By her own testimony, the complainant began complaining about alleged abuses within the Judicial Branch as early as 1998. Tr. 1071, ll. 8-12. Since complainant cannot benefit from the statutory presumption to establish a prima facie case of causation, she must suggest some connection, temporal or otherwise, between a complaint she made and an alleged retaliatory act. At the hearing, she failed to provide evidence of any causal link. I repeatedly asked her for evidence that any particular act of retaliation related to a complaint she had made to the auditors or the Attorney General, Tr. 443 ll.13-21; Tr.1141 ll. 8-12; Tr.1144 ll.15-18; Tr.1204 ll.11-13. She was unable to do so.

Much of the complainant's testimony was speculation. For example, when asked how her complaints to the auditors about Mary Ellen Hayden's promotion were connected to any adverse treatment complainant received, she testified:

> Well, a logical person could conclude that if Maryellen went after or the people that worked for Maryellen had to deal with the consequences of questioning her promotion then anyone else in Judicial would have had to have the same thing happen. I mean, if it happened to Kathy Darling and Kathy testified to that, then it's logical to suggest or to infer that it would happen to anybody else that made similar complaints. Tr. 1205 ll.11-19.

She also attempted to link her testimony before the Public Service and Trust Commission to the alleged change in her job duties with the appointment of John O'Donnell.

She stated:

> If the hearing occurred before and there was knowledge that I complained then it would be feasible that the job changed and I was addressed for other reasons. That maybe the reasons weren't limited. Tr. 442 ll.12-15.

In addressing the fact that John O'Donnell was made aware of complainant's employment background and history when he started in the law library, complainant stated, "I believe that in part, this memo, this conversation they had, Maureen Well and John O'Donnell, that Maureen mentions here, weighed very heavily on how Mr. O'Donnell responded to me and reacted to that, to the situation." Tr. 1090 ll. 23-1091, l. 3. In an employment situation like complainant's in which she has made a steady stream of complaints over a long period of time, it is difficult to sort out whether any particular adverse action was retaliatory or merely a corrective or supervisory action and, therefore, complainant claimed it was a whistleblower retaliation situation. The Connecticut Whistleblower Statute was intended to root out corruption but not to insulate under-performing employees from any form of discipline or corrective action. *Strope v. Cummings*, 2010 W.L.2294524 at *4 (10th Cir. 2010).

An additional way that a complainant can establish a prima facie case of causation is by showing that similarly situated employees who did not make whistleblower complaints were treated differently than she was. Complainant did present evidence concerning three such purported "comparators," 1) Kathy Darling 2) Jennifer Jones and 3) Roseanne Billias. Neither Darling nor Jones could be considered "similarly situated," neither was there any evidence that they were treated differently than complainant.

Billias, although the only other library assistant in the system and, therefore, holding the same position as complainant, was not similarly situated because she did not engage in the same conduct as complainant did. Darling and Jones were court monitors in the Judicial Branch and, therefore, not in the same position as complainant. Complainant introduced no evidence that similarly situated employees who had not made complaints were treated more favorably than she was so that might raise an inference that whistleblowing retaliation was the cause for the difference in her treatment.

The third comparator complainant claims to be similarly situated to her, Roseanne Billias, held the same position as complainant and reported, like her, to a law librarian. Billias, unlike complainant, had never received a thirty day suspension for insubordination or for challenging her supervisors. In fact, she had never been disciplined in her ten years as a law library assistant. Tr. 48 ll. 6-11. Since she had no disciplinary history, there was no reason for increased supervision, performance expectations, or other working conditions which were applied to complainant but which she characterized as adverse personnel actions.

Complainant has provided no convincing evidence to link her alleged adverse treatment to her whistleblowing activities. The Second Circuit Court of Appeals has observed in Title VII context the application which is equally applicable to state employee whistleblower claims under Conn. Gen. Stat. § 4-61dd:

> [everyone] can be characterized by [their] sex, race, ethnicity or (real or perceived) disability; and many bosses are harsh, unjust, and rude. It is, therefore, important in hostile work environment cases to exclude from consideration personnel

> decisions that lack a linkage or correlation to the claimed ground of discrimination. Otherwise, the federal courts will become a court of personnel appeals.

B. The respondent has produced legitimate, non-retaliatory reasons for its actions while complainant has not met her burden of proving either that these reasons are a pretext for discriminatory retaliation or that retaliation was the real reason for these actions.

1. The respondent had legitimate job-related reasons for its actions. Assuming complainant had proven a prima facie case of retaliation, she still has the ultimate burden of proving that respondent's actions were retaliatory. The complainant's burden at this stage of the proceeding has recently been summarized as follows:

Once the plaintiff has satisfied her initial burden, the defendant must, in order to rebut the presumption of retaliation, come forward with a legitimate, non-discriminatory reason(s) for the employment action. . .assuming the Defendant does so, the burden then shifts to the Plaintiff to prove by a preponderance of evidence that the Defendant's proffered reason(s) is a pretext for unlawful discrimination. . .because the Plaintiff bears the burden of establishing pretext for discrimination, he must present significant probative evidence on the issue to avoid summary judgment. *Mayfield v. Patterson Pump Co.,* 101 F.3d 1371, 1376 (11th Cir. 1996). The testimony in this case establishes that complainant has not met her burden of proof.

On December 21, 2007, John O'Donnell began working for the respondent as a law librarian in the Stamford Law Library. Among his assigned duties was the supervision of the complainant. She apparently decided that O'Donnell was not authorized to supervise her, and while she sought at the public hearing to justify her position, the issue of whether she was right or wrong is not before this tribunal. While the complainant's suspension is not an issue in this case, the background involving her behavior is relevant to the issues remaining in this case. Thus, in order to address the non-discriminatory justification offered by the respondent for its actions, it is necessary to examine the conduct that caused complainant to be suspended.

On December 26, 2007, complainant began sending a series of e-mails to an increasing number of persons both within and outside the Judicial Branch. These e-mails raise a number of allegations, including her claim that John O'Donnell could not be appointed her supervisor. In addition, complainant refused O'Donnell's request to initial a document reducing the amount of vacation time she would be charged for December 24, 2007. The respondent determined that complainant's actions, e-mails, comments, behavior, and attitude toward [her] supervisors and others have created an unhealthy and hostile work environment. R-31, p.1. Furthermore, there was evidence that her actions have caused operational ramifications due to the resignation of one employee, the leave of absence of another, and requests from others expressing their unwillingness to work with her. Complainant was informed that her actions were threatening, intimidating, harassing, insubordinate, disruptive, challenging,

unprofessional, and hostile. Id. p. 2. As part of her notice of suspension, complainant received a list of nine "expectations of performance," R-31, p.3. These expectations were tailored to address the specific performance issues that led to the suspension. The first expectation stated that complainant was to report to Pamela Kaufman and follow instructions of her supervisor or anyone else of a higher grade in the Superior Court Operations Division. Another stated that questions concerning her status or conditions of employment were to be addressed through her union representatives as provided in the collective bargaining agreement. Id. p. 7. Respondent claims that it was necessary and reasonable to combat complainant's egregious behavior in the workplace. They were also promulgated in order for respondent to make its further efforts to help complainant correct her performance deficiencies. What the respondent characterized as performance expectations complainant saw as adverse personnel actions and retaliation. Tr. 1121 ll. 12-24. 1122 ll. 1-16., Tr.1169 ll. 11-24. Indeed, there were numerous instances in the public hearing in which it became apparent that complainant felt that her rights of privacy and rights and duties as a union official were more important than following the chain of command, and it is the pursuit of these beliefs that has caused her so much trouble. Nevertheless, it is necessary to analyze the evidence presented at the public hearing concerning the legitimate, non-discriminatory reasons set forth by the respondent for the actions it took concerning the complainant following her return from her suspension on July 7, 2008. If the respondent produces such a reason, the complainant has the burden of demonstrating, by a preponderance of the evidence, both that the proffered reason is a pretext and that retaliation was the true reason for the actions taken. Complainant has not met her

burden of proof or has not established this by a preponderance of the evidence. The evidence establishes that even assuming complainant's claims concerning respondent's actions were adverse employment actions, each stem from a legitimate reason directly related to the operational or employment needs of the respondent.. The complainant has not established the respondent's proffered reasons for its actions were pretextual or that retaliation was the real reason for those actions.

a. **Complainant's July 7, 2008, Return to Work**

Her first complaints about her return to work on July 7, 2008, have to do with the change in her workspace from the fifth-floor office she had been using to the fourth-floor workroom. Tr. 1260-1270. Rather than establishing that she was moved to the fourth floor on July 7, 2008, the evidence establishes that this occurred in January 2008 prior to her administrative leave and subsequent suspension. She also complained about having to remove her personal belongings, previously stored in the fifth-floor office, from the building. Tr.1269. Asking complainant to remove her personal property from the fifth-floor office she shared with others was not unusual. She also claimed that she was treated more harshly than other employees because Maureen Well required her to remove her items of personal property the day of her return. However, once she had explained that there was no room in her car, she was allowed to wait until the following day. Tr.1304, ll.5-22. Complainant's second claim is that once she returned to work she was "closely monitored" by her supervisors. This was so because she required greater supervision and does not appear to be retaliatory. Such a suspension is a major event, as testified to by Maria Kewer. Tr. 365 ll.8-1366, l.1. Respondent has

asserted that complainant's previous behavior called for enhanced supervision and that her previous behavior showed that she had defied her supervisors, ignored the chain of command and needlessly involved other employees in peripheral and even private matters in which they had no legitimate concern. Respondent's expectations of complainant were designed to address these and other performance issues. Respondent's personnel manager, Maria Kewer, testified that consistent human relations policies and practices in the Judicial Branch are typically given to an employee who has to meet specific expectations to keep their jobs. She testified, "The supervisors were expected to closely monitor Wilson." Tr.1639 ll.15-20. Complainant also claims that her supervisors took notes, sometimes referred to as diaries, containing their observations. Complainant sees that as a form of retaliation and harassment and other employees were not treated in the same fashion. She also complained about the diaries being shared by the various librarians who supervised her. Again, the respondent articulated legitimate reasons for these actions. Ann Doherty explained that the supervisors needed to know what had happened when they were not in Stamford in order to effectively monitor complainant's behavior and ensure compliance with the expectations when they were there. Tr. .607 l. 123. Another of complainant’s claims of retaliation is that she had five supervisors after she returned from suspension. The actual situation following July 7, 2008, was that the Stamford Library was staffed by a supervising librarian (on a rotating basis), a law librarian and a law library assistant. OPH 1 and 2. This was the same staff situation that had existed for some time in Stamford prior to complainant's return from suspension. Tr. 305 ll. 2-20.

In summary, complainant has failed to establish, by a preponderance of the evidence that the respondent's actions were a pretext and to the contrary serve to establish that these actions were directly related to the legitimate business needs of the respondent.

b. **Documents Disclosed on July 22, 2008**

During the hearing, complainant repeatedly referred to information concerning retaliatory actions that she learned of for the first time when she received a set of documents at the Step-3 Grievance Hearing on July 22, 2008. Tr.1234-1236, C-58. Respondent claims these documents are not retaliatory. These documents were produced on July 22, 2008, because they related in some way to the allegations made by complainant and her union representative at the Step-3 Grievance hearing. Some, but not all, of the documents related to the respondent's defense to those allegations. These documents were produced as evidence to justify the employer's imposition of the thirty day suspension, not as respondent asserts, to cause harm or embarrassment to the complainant. The employer's motivation seems not to retaliate but to defend its actions at the Step-3 Grievance. Complainant was unable to identify how many of these documents constituted retaliation. Tr.1236-1270. Again, complainant's claim seems to be that by telling John O'Donnell about her prior complaints against supervisors the respondent violated her privacy, prejudiced O'Donnell against her and, therefore, it was a form of retaliation. There is nothing in the record to suggest that the production of the documents included in C-58 was a pretext for unlawful retaliation or that retaliation was the real reason for these actions. *St. Mary's Honor CTR v. Hicks*, 509 U.S. 502,515 (1993). Complainant has not made a convincing claim that her

complaints about the production of documents in C-58 on July 22, 2008, was a retaliatory act on the part of her employer.

c. **November 24, 2008, Counseling Memo**

Complainant claims that the November 24, 2008, counseling session and resulting memo were acts of retaliation. The respondent has explained and introduced testimony to show that this was an informal meeting that her supervisors, Well and Kaufman, had with her as a follow-up to her informal meeting six weeks earlier. Respondent has introduced evidence that Well and Kaufman were attempting to monitor complainant's progress in meeting their expectations and pointing out to her what needed additional improvement. Tr. 623 ll.14-624 l.7. The November 24, 2008, counseling session was more formal than the one previous and was an attempt to give her an opportunity to correct her behavior. Tr.1375 ll.13-18. The respondent's witness, Maria Kewer, testified and explained that the formal counseling session on November 24, 2008, was part of a normal progressive discipline scheme used by the court operations division. Ms. Kewer explained the steps typically include "informal counseling, formal counseling, written warnings, written reprimands, and suspensions." Tr.1439 ll. 21-24. Kewer indicated, in response to my questions, that the procedures employed with regard to the complainant were no different from those in any other investigation that her office conducts. Tr.1440 ll. 4-9.She also indicated in response to my questioning that there was no intention to punish or retaliate against complainant for her whistleblowing activities. Tr. 1437 ll. 10-1440 ll. 1-17

Conclusion

Ultimately, I find an absence of proof of retaliation by the respondent. Complainant's presentation over and over again of speculation that virtually anything her employer did constituted retaliation is not convincing. Buttressing the respondent's claims was the initial rejection by Joseph D'Alesio of his staff's recommendation of termination. The respondent has presented a more credible explanation and justified its actions.

Conclusions of Law

1. The complainant has failed to prove that she was threatened with or suffered an adverse personnel action that was retaliation for her whistleblowing.
2. The thirty (30) day administrative suspension and the employment termination are arguably adverse personnel actions, but are not parts of the present proceeding having been previously dismissed by Human Rights Referee Donna Maria Wilkerson Brillant in her ruling on December 8, 2009.
3. There is a rebuttable statutory presumption, under Conn. Gen. Stat. § 4-61 dd (B) (5), of retaliation for personnel actions taken or threatened within one year after the filing of a whistleblower complaint, but this presumption was overcome by respondent which articulated legitimate non-retaliatory reasons for its actions.
4. The complainant has failed to prove that respondent created and/or subjected her to a hostile work environment.
5. The complainant has failed to sustain her burden of proof on all the allegations in this consolidated proceeding.

ORDER

I hereby order these cases dismissed.

Dated at Hartford, Connecticut this 17th day of June, 2011.

Hon. Jerome D. Levine,
Presiding Human Rights Referee

cc. Ms. Andrea Wilson, via first class mail
George Kelly, Esq. via first class mail
Martin Libbin, Esq. via first class mail

[1]Complainant's exhibits are identified as "C" followed by the exhibit number. Respondent's exhibits are identified as "R" followed by the exhibit number. Office of Public Hearings (OPH) exhibits are identified as "OPH" followed by the exhibit number. Transcript pages are identified as "Tr". followed by the page number. A single l indicates a single line of the transcript. A double l indicates multiple lines of the transcript.

[2] Complainant's Exhibit C-34 shows that the complainant made 134 complaints to the Auditors of Public Accounts for the period July 24, 2007 through May 16, 2009. C-34 Aud 1-Aud 7.

[3] Sec. 4-61dd. Whistleblowing. Disclosure of information to Auditors of Public Accounts. Investigation by Attorney General. Proceedings re alleged retaliatory personnel actions. Report to General Assembly. Large state contractors.

(a) Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation. The Attorney General shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of an investigation pursuant to this section. Upon the conclusion of the investigation, the Attorney General shall where necessary, report any findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney. In addition to the exempt records provision of section 1-210, the Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section, disclose the identity of such person without such person's consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation.

(b) (1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's disclosure of information to (A) an employee of the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section; (B) an employee of the state agency or quasi-public agency where such state officer or employee is employed; (C) an employee of a state agency pursuant to a mandated reporter statute; or (D) in the case of a large state contractor, an employee of the contracting state agency concerning information involving the large state contract.

(2) If a state or quasi-public agency employee or an employee of a large state contractor alleges that a personnel action has been threatened or taken in violation of subdivision (1) of this subsection, the employee may notify the Attorney General, who shall investigate pursuant to subsection (a) of this section.

(3) (A) Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57. The Chief Human Rights Referee shall assign the complaint to a human rights referee appointed under section 46a-57, who shall conduct a hearing and issue a decision concerning whether the officer or employee taking or threatening to take the personnel action violated any provision of this section. If the human rights referee finds such a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages. For the purposes of this subsection, such human rights referee shall act as an independent hearing officer. The decision of a human rights referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183.

(B) The Chief Human Rights Referee shall adopt regulations, in accordance with the provisions of chapter 54, establishing the procedure for filing complaints and noticing and conducting hearings under subparagraph (A) of this subdivision.

(4) As an alternative to the provisions of subdivisions (2) and (3) of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not later than thirty days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract; or (B) an employee of a large state contractor alleging that such action has

been threatened or taken may, after exhausting all available administrative remedies, bring a civil action in accordance with the provisions of subsection (c) of section 31-51m.

(5) In any proceeding under subdivision (2), (3) or (4) of this subsection concerning a personnel action taken or threatened against any state or quasi-public agency employee or any employee of a large state contractor, which personnel action occurs not later than one year after the employee first transmits facts and information concerning a matter under subsection (a) of this section to the Auditors of Public Accounts or the Attorney General, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section.

(6) If a state officer or employee, as defined in section 4-141, a quasi-public agency officer or employee, an officer or employee of a large state contractor or an appointing authority takes or threatens to take any action to impede, fail to renew or cancel a contract between a state agency and a large state contractor, or between a large state contractor and its subcontractor, in retaliation for the disclosure of information pursuant to subsection (a) of this section to any agency listed in subdivision (1) of this subsection, such affected agency, contractor or subcontractor may, not later than ninety days after learning of such action, threat or failure to renew, bring a civil action in the superior court for the judicial district of Hartford to recover damages, attorney's fees and costs.

(c) Any employee of a state or quasi-public agency or large state contractor, who is found to have knowingly and maliciously made false charges under subsection (a) of this section, shall be subject to disciplinary action by such employee's appointing authority up to and including dismissal. In the case of a state or quasi-public agency employee, such action shall be subject to appeal to the Employees' Review Board in accordance with section 5-202, or in the case of state or quasi-public agency employees included in collective bargaining contracts, the procedure provided by such contracts.

(d) On or before September first, annually, the Auditors of Public Accounts shall submit to the clerk of each house of the General Assembly a report indicating the number of matters for which facts and information were transmitted to the auditors pursuant to this section during the preceding state fiscal year and the disposition of each such matter.

(e) Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section, the contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each

violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.

(f) Each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

(g) No person who, in good faith, discloses information to the Auditors of Public Accounts or the Attorney General in accordance with this section shall be liable for any civil damages resulting from such good faith disclosure.

(h) As used in this section:

(1) "Large state contract" means a contract between an entity and a state or quasi-public agency, having a value of five million dollars or more; and

(2) "Large state contractor" means an entity that has entered into a large state contract with a state or quasi-public agency.