CASE NO. 6454 CRB-8-21-11 : COMPENSATION REVIEW BOARD
CLAIM NO. 601046789

FRANCESCA PELC : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

and

FRANCESCA PELC : JULY 21, 2023
APPELLANT
INTERESTED PARTY

v.

SOUTHINGTON DENTAL ASSOCIATES, P.C.
EMPLOYER

and

THE HARTFORD
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Martin McQuillan, Esq., Januszewski, McQuillan & DeNigris, L.L.P., P.O. Box 150, New Britain, CT 06050.

The Law Offices of Levine & Levine were represented by Jennifer B. Levine, Esq., and Harvey L. Levine, Esq., Law Offices of Levine & Levine, 754 West Main Street, New Britain, CT 06053.

Walker, Feigenbaum & Cantarella Law Group, L.L.C., was represented by John B. Cantarella, Esq., Walker, Feigenbaum & Cantarella, L.L.C., One Northwestern Drive, Suite 304, Bloomfield, CT 06002.

The respondents did not appear at oral argument.

This Petition for Review from the November 3, 2021 Finding and Order of David W. Schoolcraft, Administrative Law Judge acting for the Eighth District, was heard on October 28, 2022 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Carolyn M. Colangelo and Toni M. Fatone.[1]

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The Law Offices of Levine & Levine (appellant) has petitioned for review from the November 3, 2021 Finding and Order (finding) of David W. Schoolcraft, Administrative Law Judge acting for the Eighth District. We find no error and accordingly affirm the decision.[2]

The administrative law judge made the following factual findings which are pertinent to our review. The claimant sustained work-related injuries to her knees, ankles and back; by agreement, October 24, 2006, was deemed the date of injury for her compensable claim. The first informal hearing was held on September 10, 2007, at which time the claimant was represented by the appellant. The appellant remained counsel of record until May 2018 and attended thirty-nine informal or preformal hearings. The hearings were held before various commissioners sitting in the sixth district, including former Commissioner Ernie Walker.

[1] Effective October 21, 2021, the Connecticut legislature directed that the phrase "administrative law judge" be substituted when referencing a workers' compensation commissioner. See Public Acts 2021, No. 18, § 1.

[2] We note that one motion for extension of time and two motions for continuance were granted during the pendency of this appeal. Two motions to stay were denied.

By January 2016, the claimant had been collecting weekly temporary total incapacity benefits pursuant to General Statutes § 31-307[3] for approximately seven years. In correspondence dated December 28, 2015, the claimant requested that the respondent-insurer begin sending her weekly incapacity checks directly to the appellant so that it could "deduct their fee from each of my checks." Administrative Notice Exhibit 3. At an informal hearing held on January 28, 2016, this request was approved and the respondent-insurer was verbally directed to comply. Although "[t]here were missteps in implementing [this directive], … ultimately the weekly checks were sent consistently to [the appellant]." Findings, ¶ 3.

On April 1, 2018, Commissioner Walker retired and ceased to hear matters for the commission.

On May 10, 2018, an informal hearing was held which was attended by the appellant and an attorney for the respondent-insurer. The commissioner's notes reflect that the parties were discussing settlement and mediation. On May 29, 2018, the claimant filed a notice of appearance in lieu of the appellant. On that same date, the appellant filed a hearing request entitled "RE: Administration of Permanent TT Benefits & Legal Fees in lieu [sic] of new NOA." Findings, ¶ 7, *quoting* Administrative Notice Exhibit 10.

[3] General Statutes § 31-307 (a) states in relevant part: "If any injury for which compensation is provided under the provisions of this chapter results in total incapacity to work, the injured employee shall be paid a weekly compensation equal to seventy-five per cent of the injured employee's average weekly earnings as of the date of the injury …. No employee entitled to compensation under this section shall receive less than twenty per cent of the maximum weekly compensation rate, as provided in section 31-309, provided the minimum payment shall not exceed seventy-five per cent of the employee's average weekly wage, as determined under section 31-310, and the compensation shall not continue longer than the period of total incapacity."

On June 14, 2018, a representative of Walker, Feigenbaum & Cantarella Law Group, L.L.C., (appellee), John B. Cantarella, Esq., filed a notice of appearance in lieu of the self-represented claimant. Cantarella is a principal of the appellee, as is former Commissioner Walker. On that same date, Cantarella sent correspondence to the respondent-insurer advising of the change in representation and requesting that the adjuster send 20 percent of the claimant's weekly compensation to the appellant and 80 percent to the claimant.

On June 28, 2018, an informal hearing was held. The commissioner's notes from that hearing state that 20 percent of the weekly checks would be sent to the appellant and 80 percent would be sent to the appellee, who would turn the entire check over to the claimant without taking a fee "at this time." Findings, ¶ 10, *quoting* Administrative Notice Exhibit 12. At an informal hearing held on July 20, 2018, in response to a request by the parties, the commissioner issued an order stating "[t]he claimant is currently receiving weekly TT checks, 80% of said amount weekly is to be paid to the claimant directly and 20% of said weekly amount to be paid directly to [the appellant] …." Findings, ¶ 11, *quoting* Administrative Notice Exhibit 13. See also June 23, 2021 Transcript, p. 14.

On April 17, 2019, Cantarella wrote to the appellant indicating that a tentative settlement agreement had been reached and requesting that the firm provide its costs. On April 26, 2019, the commission received a two-page letter from the appellant requesting that a formal hearing be held prior to the approval of any settlement. On June 6, 2019, the commission approved a full and final stipulated settlement of the case that allocated a lump sum for indemnity benefits, a lump sum for future non-Medicare expenses, and a

Medicare set-aside account that consisted of a lump sum and a structured payment. The value of the settlement over time was estimated at $1,037,570. The commissioner presiding over the stipulation hearing approved attorney's fees in the amount of $185,247 and ordered the appellee to hold the entire fee in escrow pending either an agreement relative to the fee allocation or, failing that, additional litigation. The approved fee was deposited into the appellee's clients' funds account and remained there as of the date of the finding.

On July 11, 2019, an informal hearing was held to discuss resolution of the attorney fee dispute. Subsequently, a series of informal and preformal hearings were held, and the issue was twice scheduled for a formal hearing, only to be postponed, on at least one occasion due to arguments over discovery. In addition, the appellant filed multiple motions, including inter alia a motion to disqualify all commissioners on grounds of bias and a motion requesting that the file be "transferred" to the superior court.[4] Administrative Notice Exhibit 23.

Although the commissioner who had approved the final settlement did not recuse himself, he ordered that the file be transferred to a different district. Pending the transfer, another commissioner ordered both parties to produce "Affidavits of Fees & Expenses" by March 13, 2020. See Administrative Notice Exhibit 26. On March 12, 2020, the appellant filed an affidavit recounting the various actions the appellant had been involved in prior to May 25, 2018. On March 13, 2020, Cantarella submitted an affidavit listing time spent on the file from July 20, 2018, through August 19, 2019.

[4] In his decision, the administrative law judge noted that "[t]here is no legal mechanism for a Connecticut workers' compensation commissioner to transfer a case to the Superior Court. There was no pending civil action at that time." Findings, ¶ 17.

On April 30, 2020, a preformal hearing was held, at which time "the parties agreed from the outset that no resolution could be reached and that a formal hearing would be necessary." Findings, ¶ 21. The parties also agreed that the administrative law judge presiding over the preformal hearing would preside over the formal hearing but "collectively requested that it not be scheduled in the near future …." Id. On June 16, 2020, the appellant filed a civil action in superior court consisting of counts against: (1) the claimant; (2) the Law Office of Kevin C. Ferry, L.L.C., and its named principal; and (3) the appellee and its named principals.[5] The superior court has imposed a stay on its proceedings pending a decision from this commission.

On February 3, 2021, the appellant filed with this commission motions to stay all proceedings and to dismiss the matter for lack of subject matter jurisdiction, to which the claimant and appellee filed objections. Rulings on both motions were deferred pending formal proceedings. Findings, ¶ 24. The formal hearing was scheduled for March 11, 2021; a motion for continuance was filed by the appellant, which motion was granted over the claimant's objection, and the formal was postponed until June. On June 10, 2021, the appellant filed a motion to bifurcate, to which the appellee objected. A ruling on that motion was deferred pending formal proceedings.

The formal hearing commenced on June 23, 2021, via Microsoft Teams. While attempting to mark exhibits, the administrative law judge determined that the identification of material evidence could not occur until the issues subject to litigation at the hearing had been identified. The marking of exhibits was suspended pending a ruling on the appellant's motions to stay, dismiss for lack of subject matter jurisdiction, and

[5] The lawsuit, which was filed in superior court for the New Britain Judicial District, is entitled "Harvey L. Levine, et. al., vs. Francesca M. Pelc, et. al.," and bears docket number HHB CV20-6060229-S.

bifurcate, and all exhibits which had been offered by the parties were designated for identification only.

Although the parties filed various documents relative to the appellant's challenge to the commission's subject matter jurisdiction, the administrative law judge ordered additional briefing addressing the appellant's allegations relative to General Statutes § 1-84b (b)[6]. At the request of the parties, he provided follow-up correspondence on June 28, 2021.[7] Following the submission of briefs, the record was deemed closed for the purposes of the appellant's motions.

On the basis of the foregoing, the administrative law judge determined that in 2016, when the commissioner authorized the respondent-insurer to mail the claimant's weekly temporary total incapacity benefits directly to the appellant so that it could deduct its 20 percent fee, she exercised her authority pursuant to General Statutes § 31-327 (b).[8] The subsequent orders issued by the commission directing the respondent-insurer to send 20 percent of the weekly amount directly to the appellant did not constitute an award of attorney's fees against an employer or insurer as contemplated by General Statutes

[6] General Statutes § 1-84b (b) states in relevant part: "No former executive branch or quasi-public agency public official or state employee shall, for one year after leaving state service, represent anyone, other than the state, for compensation before the department, agency, board, commission, council or office in which he served at the time of his termination of service, concerning any matter in which the state has a substantial interest…."

[7] In his correspondence of June 28, 2021, the administrative law judge requested that the parties address the following three inquiries:

"Would a § 1-84b (b) violation, if it occurred, be material to distribution of fees in this forum? Put another way: if the firm was disqualified from representing Ms. Pelc under § 1-84b (b), would that mean no portion of the escrowed fee could be awarded to Attorney Cantarella by a commissioner?

Assuming determination of whether there was a violation of § 1-84b (b) were necessary before allocation of fees, is that a factual question that can be determined by a workers' compensation commissioner, for the limited purposes presented in this case?

Did the undertaking of representation by Cantarella violate § 1-84b (b)?"

Administrative Notice Exhibit 44.

[8] General Statutes § 31-327 (b) states: "All fees of attorneys, physicians, podiatrists or other persons for services under this chapter shall be subject to the approval of the administrative law judge."

§ 31-327 (a).[9] Given that the 20 percent represented a fee owed by the claimant to her attorney, the order that the respondent-insurer mail checks directly to the appellant "was simply an administrative accommodation … [which] had been requested by the claimant for the sole purpose of facilitating performance of her obligation to the attorney." Conclusion, ¶ B.

The trier further concluded that the authorization to take 20 percent of the claimant's incapacity benefits "was expressly confined" to the weekly checks which were being paid to the claimant pursuant to § 31-307. Conclusion, ¶ C. Moreover, the trier concluded that the approval of the full and final stipulated settlement, "liquidated all future entitlement to weekly benefits and ended the payment of any weekly benefits at the moment of settlement." Id. As such, any prior order, by any commissioner, which allowed the appellant to deduct 20 percent of the claimant's weekly payments "became moot when the payment of weekly checks stopped upon settlement." Id.

The trier, having noted that the appellant had been paid 20 percent of the claimant's weekly incapacity benefits from 2016 until the approval of the full and final settlement on June 6, 2019, also concluded that when the commissioner approved the attorney's fee, "[h]e did so pursuant to his powers and duties under § 31-327 (b). That approval superseded any prior order and, vis-à-vis the claimant, liquidated all past and future claims for attorney's fees arising out of her workers' compensation claim." Conclusion, ¶ E.

[9] General Statutes § 31-327 (a) states: "Whenever any fees or expenses are, under the provisions of this chapter, to be paid by the employer or insurer and not by the employee, the administrative law judge may make an award directly in favor of the person entitled to the fees or expenses, which award shall be filed in court, shall be subject to appeal and shall be enforceable by execution as in other cases. The award may be combined with an award for compensation in favor of or against the injured employee or the dependent or dependents of a deceased employee or may be the subject of an award covering only the fees and expenses."

The trier observed that at the time of settlement, the commissioner ordered that the entire attorney's fee be placed in escrow pending resolution of the dispute regarding the allocation of the fee. Moreover, as of June 6, 2019, through the date of the decision on November 3, 2021, "the only extant award of attorney's fees [was the] order that the claimant pay an attorney's fee of $185,247, and that the funds to satisfy that obligation be placed in escrow." Conclusion, ¶ G. The funds were deposited into an escrow account maintained by the appellee and remained there on November 3, 2021. The trier concluded that:

> With the deposit of the funds into the escrow account, *all* of the claimant's obligations for attorney's fees on account of her workers' compensation claim – to any and all of her counsel – were fully satisfied. She is not liable, nor can she be held liable, for payment of any additional attorney's fees on account of her workers' compensation claim. (Emphasis in the original.)

Conclusion, ¶ H.

In addition, the trier stated that the claimant has no right to pay any portion of the approved attorney's fees to the appellant; nor can she authorize the appellee to take any portion of the funds as a fee. The claimant "was ordered to pay those funds as attorney's fees and has done so. Those escrowed funds do not belong to [the claimant]; she has no ownership interest in those funds." Conclusion, ¶ I.

Citing Frantzen v. Davenport Electric, 179 Conn. App. 846 (2018), the trier determined that the appellant's contentions relative to this commission's lack of subject matter jurisdiction to allocate attorney's fees between successive counsel "is directly contrary to well-established law." Conclusion, ¶ J. Given that the allocation of the disputed attorney's fee "can only be determined by an administrative law judge of this commission," the trier denied the appellant's motion to dismiss for lack of subject matter

jurisdiction. Id. In addition, having concluded that this commission had jurisdiction to allocate the fee, the trier denied the appellant's motion to stay proceedings in the workers' compensation forum.

The administrative law judge further found that "[t]here is no basis for disqualification of this entire commission simply because of Walker's past membership." Conclusion, ¶ L. As such, he denied any motions pertaining to disqualification alleged to still be outstanding. The trier also concluded that the "[d]etermination of whether former Commissioner Walker violated § 1-84b (b) is not a question that can be litigated before this commission and, in any event, such an allegation would be immaterial to this commission's allocation of the awarded fee." Conclusion, ¶ M. Finally, the trier noted that the appellant's objection to the claimant's further participation in formal proceedings regarding the allocation of the attorney's fee was "well taken," in that the claimant did not, and never would, have any additional exposure for the payment of attorney's fees to either the appellant or the appellee and, as such, she lacked standing to participate in the formal proceedings. Conclusion, ¶ N.

On November 22, 2021, the appellant filed a voluminous motion to correct, which was denied save for the correction of three scrivener's errors.[10] Also on November 22, 2021, the appellant filed its petition for review; on December 2, 2021, a "Motion to Stay Petition for Review Filed in CRB" was filed by the appellee requesting that the matter be allowed to proceed directly to formal proceedings so that any and all subsequent appellate issues could be addressed at the same time. On December 6, 2021,

[10] In addition to two minor corrections, the administrative law judge granted the appellant's request to remove the letters "L.L.C." from the reference to its firm in the list of appearing parties, explaining that he had utilized the "L.L.C." designation because that is the way the firm is listed in the public records on file with the Secretary of State.

the appellant filed an objection to the motion to stay, which was sustained.[11] On March 25, 2022, the appellant filed a motion for continuance, which was granted, and oral argument was rescheduled for August 26, 2022. Oral argument was again postponed following the granting of a motion for continuance filed by claimant's counsel, but ultimately took place on October 28, 2022.[12]

On April 18, 2022, the appellant filed a motion to stay pending its appeal with this board, indicating that the matter had been set down for a formal hearing on May 5, 2022, and arguing that "[a] stay of the proceedings will promote judicial economy and serves the interests of both parties in this case." April 18, 2022 Motion to Stay Pending Appeal, p. 1. Noting that the pending formal had been set down for procedural issues only, the board denied the motion, stating that "[a]ny future requests for a stay of proceedings regarding the underlying merits of the case will be left to the discretion of the trial judge."[13] Id., p. 5.

This appeal ensued, in which the appellant raises multiple claims of error, several of which are not germane to the issue before this board; to wit, whether the administrative law judge has subject matter jurisdiction to allocate the disputed attorney's fee between counsel. As such, we decline at the outset to review any allegations implicating the

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[11] On March 10, 2022, the appellee filed a motion for dismissal on the basis that the appellant had failed to file its brief. Having determined that the hearing notice for oral argument scheduled for April 22, 2022, had inadvertently omitted a briefing schedule for the appellant's appearance as an interested party, the briefing schedule was corrected and reissued.

[12] The appellant subsequently attempted to withdraw the March 25, 2022, motion for continuance, which request was deemed moot as the matter had already been removed from the board's April docket.

[13] Following the procedural formal hearing held on May 5, 2022, the administrative law judge issued "Trial Management Orders and Ruling on Motion to Stay" relative to the continuation of the formal proceedings concerning the allocation of the disputed attorney's fee. While the parameters set forth by the trier to ensure the orderly progression of those proceedings are not germane to this appeal, we would note that the trier agreed to stay the continuation of formal proceedings for either six months, or until the issuance of a decision by this board, whichever occurs first. The trier stated that "[i]f the appeal has been timely pursued but the CRB has not issued a ruling within six months, a motion to extend the stay may be made." July 19, 2022 Trial Management Orders and Ruling on Motion to Stay, ¶ II.

underlying merits of the fee allocation, given that such claims are beyond the scope of the instant matter in view of the trier's bifurcation of the procedural issues. Similarly, we decline to review any claims of error implicating alleged violations of § 1-84b (b) on the part of the appellee. The administrative law judge ultimately concluded that allegations concerning alleged violations of § 1-84b (b) are governed by General Statutes § 1-82[14], which:

> sets out a comprehensive procedure involving, inter alia, investigation by the ethics enforcement officer of the Office of State Ethics, a trial before the Citizen's Ethics Advisory Board (overseen by a judge-trial referee appointed by the Chief Court Administrator) and various rules protecting the due process rights of the respondent.[15]

November 3, 2021 Memorandum, p. 21.

The administrative law judge concluded that in raising these allegations before the commission, the appellant was essentially seeking to nullify a fee agreement to protect its own pecuniary interest. In so doing, it:

> is attempting to bypass the exclusive, legislatively established process for addressing such ethical violations. No matter whether the Levine firm seeks to litigate the alleged violation of §1-84b (b) here or in Superior Court, its purpose is clear: To litigate alleged ethical wrongdoing in a forum that has no jurisdiction over such conduct because the remedy it seeks – on its own behalf – does not

[14] General Statutes § 1-82 (a) (1) states in relevant part: "Upon the complaint of any person on a form prescribed by the board, signed under penalty of false statement, or upon its own complaint, the ethics enforcement officer of the Office of State Ethics shall investigate any alleged violation of this part, section 1-101bb or section 1-101nn.

[15] The administrative law judge also noted that "[t]he process of investigating and trying an alleged violation is initiated by the filing of a complaint with the Office of State Ethics. If, in the end, that complaint turns out to be "without foundation," the respondent is entitled to sue the complainant for double damages." November 3, 2021 Memorandum, p. 21, *quoting* General Statutes § 1-82 (c), which states in relevant part: "If any complaint brought under the provisions of this part, section 1-101bb or section 1-101nn is made with the knowledge that it is made without foundation in fact, the respondent shall have a cause of action against the complainant for double the amount of damage caused thereby and, if the respondent prevails in such action, the respondent may be awarded by the court the costs of such action together with reasonable attorneys' fees." In addition, General Statutes §§ 1-88 and 1-89 set out the statutory remedies which can be imposed by the Office of State Ethics when a violation of § 1-84b (b) is found.

> exist in the forum where the matter should be litigated, the Citizen's Ethics Advisory Board.

Id., 23.

We agree, and therefore decline to review the appellant's allegations relative to the purported ethical violations of § 1-84b (b) by the appellee.[16] As such, the claims of error which we will address are as follows:

1) The administrative law judge violated the appellant's right to due process and fundamental fairness "by failing to hold an evidentiary hearing to establish critical jurisdictional facts."[17] Appellant's Brief, p. 22.
2) This commission lacks subject matter jurisdiction to enforce an approved attorney's fee pursuant to § 31-327 (a) or to modify the attorney's fee approved pursuant to § 31-327 (b) on January 28, 2016.
3) The appellant's experience of bias from this commission necessitates the removal of litigation concerning the fee dispute from this forum.
4) The administrative law judge erred in denying the motion to correct.

The standard for appellate review which we are obliged to apply to a trier's findings and legal conclusions is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), citing Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988).

[16] In its own brief, the appellant acknowledges that this commission lacks "the jurisdictional authority to hear matters involving the adjudication of alleged violations of any of the provisions of the Code of Ethics for Public Officials." Appellant's Brief, p. 28.

[17] On March 18, 2022, the appellant filed its brief in this matter. On August 23, 2022, the appellant filed an amended brief, which was "intended to be the now operative appellant's brief." August 23, 2022 Amended Brief of the Appellant – Levine & Levine. As such, all references herein are to the amended brief.

Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [trier] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair v. People's Savings Bank, 207 Conn. 535, 540 (1988), *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

We begin our analysis with the appellant's claim that the administrative law judge deprived the appellant of due process and fundamental fairness by failing to hold an evidentiary hearing to establish critical jurisdictional facts. The appellant contends that "the factual basis relied upon by the commissioner is derived from his own creation of the evidentiary record, whereby he chose which facts he would consider by way of administrative notice and did so with the express exclusion of the parties' ability to present evidence or cross examine adverse witnesses." Appellant's Brief, p. 22. The appellant complains that the trier's decision to mark both parties' proffered exhibits for identification "excluded material evidence necessary to render a fair and just decision." Id., 25. As such, in concluding that the commission had subject matter jurisdiction to allocate the attorney's fee, "the commissioner made a jurisdictional determination that is dependent on his resolution of a critical factual dispute, namely, the nature of the benefit that [the commissioner] approved for the payment of attorney's fees on January 28, 2016." Id., 22.

We do not find these contentions persuasive. First, as the trier pointed out in his November 3, 2021 Memorandum (memorandum), a preformal hearing was held on April 30, 2020, at which time the parties were "hopelessly deadlocked" and requested that the matter move to a formal hearing but that the hearing "be scheduled far out into the future." Memorandum, p. 3. The appellant raised this issue at trial, at which time the trier pointed out that a preformal hearing had been held in the prior year, and the parties had requested that the formal "be kicked back."[18] June 23, 2021 Transcript, p. 29. See also Administrative Notice Exhibit 30. The trier did agree that no preformal hearing had been held during calendar year 2021.

Second, our review of the record indicates that at the trial, the administrative law judge, following "lengthy discussions and argument," Memorandum, p. 6, decided to bifurcate the procedural issues. It was at that point that the trier:

> stated on the record that *all* exhibits offered that day would now be deemed exhibits for identification only…. For purposes of ruling on the pending motions, none of the exhibits proffered by the parties at the June 23, 2021 formal hearing will be considered, regardless of how they were initially marked, even if they had been previously marked as full exhibits by agreement." (Emphasis in the original.)

Id.

The appellant has asserted that the trier, in so doing, "rashly" converted what had been fully marked exhibits into exhibits marked for identification only. Appellant's Brief, p. 25. The appellant further contends that when the trier requested of the parties

[18] The sole issue for discussion listed on the April 30, 2020 preformal hearing notice was attorney's fees pursuant to General Statutes § 31-327. See Administrative Notice Exhibit 30. In light of this notation and the procedural history described herein, we find unpersuasive the appellant's contention that it sought a continuance of the March 11, 2021 formal hearing in part because it was "unaware of exactly what issues intend [sic] on being tried." Administrative Notice Exhibit 37; see also Appellant's Brief, p. 6.

whether there were any specific exhibits of which they wanted him to take administrative notice, they were unaware:

> that they were waiving or foregoing the right to introduce their evidence by not requesting additional administrative notices in lieu of their exhibits, as at that point in time they had no way of knowing that the commissioner would eventually strip the parties of their right to introduce exhibits by the end of the formal hearing.

Id., 24-25.

We are not persuaded. It is well-settled that General Statutes §§ 31-278[19] and 31-298[20] afford an administrative law judge considerable discretion regarding the conduct of hearings and the admission of evidence. In addition, it should be noted that the trier explained that his decision to mark all exhibits for identification stemmed at least in part from the fact that when he began to mark the appellant's exhibit, which consisted of "two large three ring binders, each containing a stack of documents approximately three inches thick," Memorandum, p. 5, "[i]t immediately became clear that … [the appellee] had not been provided with a complete copy of the exhibit." Id., 6. See also June 23, 2021 Transcript, pp. 50-67.

In addition, our review of the transcript for the formal proceedings reveals that appellee's counsel objected to the proffer of "all pleadings, documents and exhibits filed

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[19] General Statutes § 31-278 states in relevant part: "Each administrative law judge shall, for the purposes of this chapter, have power to summon and examine under oath such witnesses, and may direct the production of, and examine or cause to be produced or examined, such books, records, vouchers, memoranda, documents, letters, contracts or other papers in relation to any matter at issue *as he may find proper*, and shall have the same powers in reference thereto as are vested in magistrates taking depositions and shall have the power to order depositions pursuant to section 52-148." (Emphasis added.)

[20] General Statutes § 31-298 states in relevant part: "In all cases and hearings under the provisions of this chapter, the administrative law judge shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter."

in New Britain Superior Court" on the grounds of relevance and hearsay. June 23, 2021 Transcript, p. 62. Moreover, the transcript provides no basis for the inference that had either of the parties sought the submission of additional exhibits into the record for the trier's administrative notice, such a request would have been automatically denied. This is particularly so given that during the trial, the administrative law judge specifically gave the parties the opportunity to bring additional exhibits to his attention.[21]

In light of the foregoing, we find that the administrative law judge's decisions in this matter relative to the admission of exhibits were consistent with the powers afforded him by §§ 31-278 and 31-298. Having decided to limit his initial rulings to the appellant's motions to dismiss/bifurcate/stay proceedings, it was well within his prerogative to determine which exhibits would be necessary to that endeavor. In fact, consistent with his statutory obligations, the trier sought additional information from the parties in the form of briefs relative to the impact of § 1-84b (b) on the subject matter jurisdiction of this commission to allocate the attorney's fee.

Featured prominently in the appellant's claim of error relative to the trier's decision to mark all exhibits for identification is the trier's decision to exclude from the record a copy of the claimant's weekly benefit check, introduced by appellee's counsel, describing the benefits as permanent total disability. The appellant asserts that "the weight of the evidence presented to the commissioner at the formal hearing unequivocally shows that the claimant was receiving permanent total disability benefits." Appellant's Brief, p. 26. The appellant regards the distinction between permanent total

[21] At trial, the administrative law judge stated: "This is the part where I normally ask if parties can think of anything else from the file that they would like me to take notice of. I suspect most of the things that you would like for me to take notice of are already proposed as exhibits, but is there anything specific that any of the parties can think of at this time?" June 23, 2021 Transcript, p. 28.

disability and temporary total disability as critical, in light of its position that the trier's designation of the weekly benefits as permanent, rather than temporary, would justify the removal of the litigation relative to the allocation of the disputed attorney's fee to Superior Court pursuant to § 31-327 (a).

As the trier explained:

> the Levine firm had a 2016 order that the claimant must pay it 20% of her weekly TTD entitlement, which order it is currently seeking to enforce in the Superior Court under §31-327 (a) and, because in that action it seeks satisfaction of damages from the escrowed funds at issue here, this commission cannot allocate the escrowed fees without impairing its rights.

Memorandum, p. 4.

The appellant therefore cites as error the trier's alleged mischaracterization of the benefits being paid to the claimant in 2016 and further asserts that the trier's refusal to allow the appellant to call a representative from the respondent-insurer to testify regarding the type of benefits being paid to the claimant likewise constituted error. The appellant argues:

> By not commanding [the adjuster's] attendance, the commissioner deprived [the appellant] of demanding all records of [the respondent-insurer] which bear on the issue of permanent total disability. Further, this action was in concert with depriving [the appellant] of an evidentiary hearing on the outcome determinative issue of total temporary disability vs. permanent total disability.

Id., 14-15.

There is no question that in his finding, the administrative law judge repeatedly referred to the claimant's payment as temporary total disability benefits. See Findings, ¶ 3; Conclusion, ¶¶ A, C. However, in his memorandum, he specifically rejected the appellant's claim that "it was undisputed" that the claimant had been receiving permanent

total incapacity benefits since the fee authorization of 2016. Memorandum, p. 8. Rather, he explained:

> It is undisputed that the Levine firm was getting 20% of Ms. Pelc's weekly total incapacity checks until the point of settlement; that was stipulated by the parties on the record and will be so found on that basis. As for the assertion that the claimant was on "permanent total disability," however, that is not something of which I could take notice because there is no award in the file to which I might refer.

Id.

We agree. It is well-settled that the class of injuries generally contemplated as causing "permanent total disability" in the workers' compensation forum has been narrowly defined by statute as follows:

> The following injuries of any person shall be considered as causing total incapacity and compensation shall be paid accordingly: (1) Total and permanent loss of sight of both eyes, or the reduction to one-tenth or less of normal vision; (2) the loss of both feet at or above the ankle; (3) the loss of both hands at or above the wrist; (4) the loss of one foot at or above the ankle and one hand at or above the wrist; (5) any injury resulting in permanent and complete paralysis of the legs or arms or of one leg and one arm; (6) any injury resulting in incurable imbecility or mental illness.

General Statutes § 31-307 (c).

As the administrative law judge noted, the evidentiary record is devoid of evidence that the claimant was ever deemed permanently totally disabled.[22] The commissioner's notes for the informal hearing held on January 28, 2016, state that the claimant had been receiving "T.T" for more than seven years and was currently receiving

[22] In its brief, the appellee also indicates that "[i]t is important to note that there was no formal hearing or any evidentiary hearing declaring [the claimant] … totally [disabled] on a permanent basis." (Emphasis omitted.) Appellee's Brief, p. 3. In addition, as discussed previously herein, a preformal hearing in this matter was held on April 30, 2020, and the formal hearing was not held until June 23, 2021. If, as the appellant contends, the claimant's disability status was in fact "outcome determinative," it would seem that fourteen months should have been a more-than-sufficient time period to secure a medical report attesting to that status. Appellant's Brief, p. 14.

"T.T" with cost-of-living adjustments. Administrative Notice Exhibit 3. Appended to this note was the December 28, 2015 correspondence from the claimant to the respondent-insurer stating inter alia:

> The purpose of this letter is to direct and instruct you to send my weekly workers compensation checks and any other workers' compensation benefits to which I may be entitled including any lump sum benefits care of the Law Offices of Levine & Levine, 754 West Main Street, New Britain, CT 06053. The purpose of this change is so that Levine & Levine can deduct their fee from each of my checks. This directive on my part is to continue indefinitely.

Id.

Our review of this exhibit reveals two salient points. First, the commissioner consistently referred to the claimant's payments as "T.T.," a/k/a, temporary total disability. Second, in the attached correspondence, the claimant did not allude to the type of benefits at all. As such, this exhibit fails to provide a basis for an inference that the claimant was collecting permanent total disability benefits.[23]

Moreover, the voluntary agreement approved on August 11, 2016, describes the claimant's injuries as "Left Knee Strain/Sprain, Right Knee Strain/Sprain, Bilateral Ankle Strain/Sprain, Depression." Administrative Notice Exhibit 1. None of these injuries satisfy the statutory requirements for permanent total disability. The appellant also points out that as of the 2016 fee authorization, the claimant had been receiving disability benefits for more than seven years and was under consideration for transfer to an assisted living facility. The appellant further notes that the claimant's neurosurgeon "was contemplating a third surgery to her accepted lower back." (Emphasis omitted.)

[23] It should be noted that in the July 20, 2018 Order, the commissioner also referred to the payments as "TT," or temporary total disability benefits. See Administrative Exhibit 13.

Appellant's Brief, p. 2. Nevertheless, while the severity of the claimant's condition could give rise to an inference that her incapacity will, unfortunately, continue into the foreseeable future, such an inference does not inexorably lead to the conclusion that the claimant has satisfied the statutory requirements to be deemed permanently totally disabled as contemplated by § 31-307 (c).

The appellant also indicates that the claimant had qualified for cost-of-living adjustments pursuant to General Statutes § 31-307a (c), which extends such benefits "to any employee who was adjudicated to be totally incapacitated permanently subsequent to the date of his or her injury or is totally incapacitated permanently due to the fact that the employee has been totally incapacitated by such an injury for a period of five years or more ...." However, in Fiorillo v. Bridgeport, 4585 CRB-4-02-11 (December 17, 2003), *appeal dismissed for lack of a final judgment*, A.C. 24991 (May 5, 2004), this board expressly rejected the inference urged by the appellant in this regard, stating that:

> a claimant who is deemed "totally incapacitated permanently" under § 31-307a (c) by virtue of having been totally incapacitated for five years or more only maintains that designation as long as she is in fact entitled to total disability benefits pursuant to § 31-307 C.G.S. *The five-year provision has no bearing on such a disability status....* The terminology used in § 31-307a (c) should not be construed as having the power to redefine a claimant's medical disability status for purposes of § 31-307; rather, it should be construed as creating categories that exist solely to determine entitlement to COLAs. (Emphasis added.)

Id.

Finally, the fact that the weekly checks described the benefits as "permanent total disability," and the administrative law judge noted that the adjuster had designated the benefits in that manner, is not dispositive of the nature of those benefits. See June 23, 2021 Transcript, p. 48. It may be reasonably inferred that the trier did not

believe that testimony on the issue from a representative of the respondent-insurer would be illuminative.[24] As such, we reject the appellant's contention that a separate evidentiary hearing was required and affirm the findings of the administrative law judge relative to his conclusion that the claimant was not permanently totally disabled.

Moreover, even if the claimant had been deemed permanently totally disabled, we would still not find persuasive the appellant's arguments relative to the effect of § 31-327 (a) on this commission's subject matter jurisdiction over the fee allocation. The appellant appears to be claiming that the 2016 authorization for the appellant to receive 20 percent of the claimant's ongoing weekly benefits constituted an award which would result in an attorney's fee predicated on the life expectancy of the claimant if the benefits are deemed permanent in nature.[25] Given that the appellant "has already obtained a commissioner's approval of their claimed attorney's fee [relative to the 2016 fee authorization], § 31-327 (b) is inapplicable." Appellant's Brief, p. 40. The appellant therefore contends that the 2016 fee authorization, subject to enforcement solely pursuant to § 31-327 (a) and to which § 31-327 (b) is inapplicable, must be distinguished from the 2019 fee approval, which is subject to commission review pursuant to § 31-327 (b).

In furtherance of this argument, the appellant argues that the trier erroneously commingled the two contingent fee agreements entered into by the claimant and the

[24] In its brief, the appellant points to the claimant's statement in the December 28, 2015 fee agreement wherein she indicated that "[now] things have progressed where you have advised me that because I am a permanent tt and probably will not be settling this matter, that you are entitled to a fee for representing me to that point…." (Emphasis omitted.) Appellant's Brief, pp. 8, 15. It may be reasonably inferred that the administrative law judge also did not find this statement by the claimant particularly illuminative.

[25] The administrative law judge observed that "the Levine firm has calculated out the value of such weekly fees over the claimant's life expectancy and come up with something on the order of $85,000." Memorandum, p. 14. He also observed that, "[g]iven the remedial nature of our act, the notion that a commissioner would allow an attorney to take a fee from [temporary total disability] checks ad infinitum is highly improbable. At the very least, it is an utterly speculative notion." Id. 18.

appellant, asserting that in so doing, the trier was "able to describe the pending fee dispute as a single fee dispute between successive counsel rather than two fee disputes, one involving the fully performed fee agreement with the dispute between claimant and the undersigned based on C.G.S. §31-327, and the second involving an open fee agreement dispute between the undersigned and [the appellee] based on quantum meruit." Id., 26. As such, the fee dispute properly before this commission implicates "fees arising from the undersigned's performance of legal services under the second fee agreement," id., 39, and should not "be confused with the fee dispute at issue before the Superior Court, which implicates § 31-327 (b)." Id.

The administrative law judge did not find this interpretation of the 2016 fee authorization persuasive, and neither do we. As the trier observed:

> The authorization for an attorney to take a fee from a claimant is subject to "approval" by the commissioner because subsection (b) was meant to be a grant of ongoing oversight authority not necessarily tied to any single event or payment…. *When a commissioner is called upon to authorize the taking of a fee from periodic indemnity payments during the life of an open and ongoing claim, that authorization is subject to change at any time*…. In short, the language of subsection (b) is necessarily a general grant of authority conferring upon commissioners a supervisory role to determine, when called upon, what a claimant must pay his/her attorney. (Emphasis added.)

Memorandum, p. 16.

The administrative law judge further noted that the appellant, in construing the authorization in the manner suggested, "takes the concept of 'approval' from subsection (b) and substitutes it for 'award' in its reading of subsection (a). I do not believe this confabulation of the words 'award' and 'approval' is justified." Id.

> [T]he instructions that [the respondent-insurer] was to send 20% of the weekly [temporary total disability benefits] it owed the

> claimant directly to [the appellant] were not awards of attorney's fees against the employer or insurer for purposes of § 31-327 (a). That 20% was a fee owed by the claimant to her attorney. The 2016 order merely approved the taking of 20% of the claimant's money by her attorney.

Memorandum, p. 17.

The administrative law judge pointed out that:

> With the exception of lump-sum stipulated settlements (and sometimes awards for closed periods of past-due benefits), this general authority to approve fees rarely can be translated into a specified dollar amount that one might take to court for enforcement…. Therein lies a key practical difference between subsection (b) and subsection (a). (Footnote omitted.)

Id., 16.

Moreover, § 31-327 (a) "does not apply to just *any* award of 'fees or expenses.' Rather, it applies only to awards of such fees or expenses to '*be paid by the employer or insurer and not by the employee.*'"[26] (Emphasis in the original.) Id., 17, *quoting* General Statutes § 31-327 (a). In the present matter, the transfer of funds contemplated by both the 2016 fee authorization and the 2019 fee approval flowed directly from the claimant to her attorneys. Thus, even if the trier had chosen to construe the 2016 fee authorization as an "award," it would still not be subject to enforcement in superior court pursuant to § 31-327 (a) because that subsection only pertains to awards of fees or expenses "paid by the employer or insurer and not by the employee." General Statutes § 31-327 (a).

Given that the condition precedent for the invocation of § 31-327 (a) was not met, we affirm the trier's finding that under the circumstances of this matter, the 2016 fee authorization did not constitute an "award" subject to enforcement in superior court

[26] As an example, the administrative law judge points to the commission's authority to award an attorney's fee directly to an attorney in the form of a sanction pursuant to General Statutes § 31-300, which award can then be enforced by execution in superior court.

pursuant to § 31-327 (a).[27] Rather, the arrangement by which the respondent-insurer would mail 20 percent of the claimant's weekly payments to the appellant "was simply an administrative accommodation allowing variance from the rule on direct payment set out in § 31-302 – an accommodation that had been requested by the claimant for the sole purpose of facilitating compliance with her obligation to the attorney."[28] Memorandum, p. 17.

We also affirm the trier's conclusion that the fee allocation dispute implicated in the present matter cannot be distinguished from the fee allocation dispute which was the gravamen of our Supreme Court's decisions in Frantzen v. Davenport Electric, 179 Conn. App. 846, *cert. denied*, 328 Conn. 928 (2018) (Frantzen I), and Frantzen v. Davenport Electric, 206 Conn. App. 359, *cert. denied*, 339 Conn. 914 (2021) (Frantzen II). The appellant asserts, as the basis for the distinction, that in both of those decisions, "neither counsel had obtained a commissioner's award of attorney's fees prior to the stipulation of the case." Appellant's Brief, p. 39. We find no merit in this distinction, having affirmed the trier's conclusion that the 2016 fee arrangement did not constitute an award subject to enforcement pursuant to § 31-327 (a).

The Frantzen decisions concerned appeals brought by successive counsel relative to the allocation of an approved attorney's fee following settlement of the underlying claim by way of a full and final stipulation. In Frantzen I, the appellant, who appeared in

[27] In light of our affirmance of the administrative law judge's conclusion that the 2016 fee authorization did not constitute an award, final or otherwise, we decline to address the appellant's arguments relative to whether the trier's actions constituted an erroneous modification (or interpretation) of an award pursuant to General Statutes § 31-315.

[28] General Statutes § 31-302 states in relevant part: "Compensation payable under this chapter shall be paid at the particular times in the week and in the manner the administrative law judge may order, and shall be paid directly to the persons entitled to receive them unless the administrative law judge, for good reason, orders payment to those entitled to act for such persons …."

the underlying action as counsel for the claimant, challenged the jurisdiction of this commission to allocate the attorney's fee and asserted a constitutional right to have the factual issues heard by a jury. In rejecting this argument, our Appellate Court remarked that "[t]he commissioner generally is in the best position to evaluate the relative contributions of counsel to the ultimate result, and resolution by the commissioner is likely to be more efficient than a second court proceeding, which likely would subject all parties and attorneys to additional time and aggravation." Frantzen I, supra, 854. Accordingly, the court held that:

> under a plain reading of § 31–327 (b), we conclude that the statute unambiguously provides that the division of attorney's fees between successive counsel is subject to the commissioner's approval. Accordingly, the commissioner, and by extension the commission, had the authority to direct the division of the attorney's fees award.

Frantzen I, supra, 853.

In Frantzen II, the law firm which had appeared as the appellee in Frantzen I appealed a subsequent decision by this board remanding the matter for an evidentiary hearing on the basis that there was insufficient evidence in the record to support the commissioner's fifty-fifty allocation of the disputed fee.[29] The court reversed this board's decision, holding that "[i]t was well within the commissioner's authority to award attorney's fees on the basis of the evidence presented at the hearing." Frantzen II, supra, 370. In so doing, the court affirmed its earlier holding in Frantzen I that

[29] In Frantzen II, the court noted that the appellee attorney had faxed into the commission a request for a continuance of the formal hearing on the issue of the fee allocation which was never granted. The attorney "did not appear, formally request a continuance, or otherwise communicate to the commissioner regarding his purported scheduling conflict with the hearing date." Frantzen v. Davenport Electric, 206 Conn. App. 359, 364, *cert. denied*, 339 Conn. 914 (2021). The formal hearing proceeded as scheduled, and the commissioner subsequently divided the escrowed attorney's fee in a fifty-fifty split.

"§ 31-327 (b) grants the commission the authority to adjudicate fee disputes between successive counsel concerning their representations of a claimant before the commission." Id., *quoting* Frantzen I, supra, 855.

In the present matter, the administrative law judge, in reliance upon both Frantzen decisions, rejected the appellant's challenge to the commission's subject matter jurisdiction, stating that "[t]he assertion that this commission does not have jurisdiction to determine allocation of approved attorney's fees is directly contrary to long-standing practice and well-established case law." Memorandum, p. 18. Noting that the appellant has filed a civil action in superior court, the allegations of which "run the gamut from breach of contract, to unfair trade practices, to fraud," id., the trier recognized that this commission lacks jurisdiction over the civil action. However, as he accurately observed:

> it is equally true that an attorney cannot deprive this commission of its clearly established jurisdiction over attorney's fees by the simple act of filing an action for damages in the Superior Court. Indeed, in this case the Superior Court has stayed its own proceedings pending action in this commission. Simply put, the allocation of approved contingency fees between sequential counsel is a task that lies solely within the jurisdiction of this commission and is a responsibility that can neither be evaded nor farmed out.

Id., 18.

We agree.

We turn next to the appellant's allegations of bias as reflected in its assertion that "[t]here is an inherent and actual bias from the entire panel of workers' compensation commissioners because this dispute involves recently retired workers' compensation commissioner Ernie R. Walker."[30] Appellant's Brief, p. 5. The appellant contends that

[30] As noted previously herein, former Commissioner Walker retired on April 1, 2018.

"[t]his commission lacks subject matter jurisdiction over the adjudication of any issues involving recently retired workers' compensation commissioner Ernie R. Walker as doing so violates [the appellant's] due process rights and their right to fundamental fairness in administrative hearings …." Id., 6. According to the appellant, this is particularly so given that the fee dispute in the present matter implicates public policy concerns as evidenced by §§ 1-84 (b), 1-84 (c) and 1-84b (b).[31]

We are not persuaded. As previously discussed herein, the administrative law judge presiding over this matter correctly concluded that the responsibility to investigate the appellee's entitlement to any portion of the approved attorney's fee in this matter rests with the Office of State Ethics. Moreover, apart from its allegations, the appellant has offered no proof that every, or even any, administrative law judge affiliated with this commission is biased against the appellant. Even if we were persuaded that this unfounded claim is valid, we are aware of no authority, and the appellant has provided none, which would allow for the removal of matters properly reserved to the jurisdiction of this commission to superior court or any other court.

The appellant also points to several purported examples of bias on the part of the trier, stating that "it is important to note that the commencement of the formal hearing on this matter on June 23, 2021, and Commissioner Schoolcraft's follow up correspondence are all evidence of this commission's continuing presumptive and actual biasness against the undersigned." Appellant's Brief, p. 35. The reference to the "commencement of the formal hearing" appears to implicate the appellant's allegations relative to the trier's

[31] As the administrative law judge points out, "[w]hen the Levine firm seeks to have Cantarella's fee agreement with [the claimant] declared void on grounds of public policy, whose interest is it seeking to protect? Certainly not that of the client it no longer represents and is, in fact, suing." Memorandum, p. 22.

decision to mark all of the exhibits in this matter for identification only. The appellant contends that the administrative law judge entered the submissions proffered by the appellee as full exhibits but "when it came to any of Levine & Levine's proffered exhibits, they were entered as 'ID' or put to the side." (Emphasis omitted.) Id., 7. The appellant asserts that "[c]onveniently, when considering the issues of subject matter jurisdiction, [the appellee] has the benefit of having *all* of its proffered exhibits entered as full exhibits in the record while the undersigned has *no* exhibits entered the record …." (Emphasis in the original). Id., 35.

This statement is false. As the administrative law judge explained, once it became clear that the matter would require bifurcation on the issue of the commission's subject matter jurisdiction to allocate the fee, all of the exhibits in this matter were designated for identification only. In addition, our review of the transcript for the formal proceedings held on June 23, 2021, reflects that while the introduction of several of the appellee's proposed submissions did elicit some discussion among the parties, those exhibits (initially designated as Claimant's Exhibits E-K) were eventually entered into the record without objection. See June 23, 2021 Transcript, pp. 42-49.

However, as previously discussed herein, when the administrative law judge turned to the exhibits proffered by the appellant, there was an immediate objection from appellee's counsel on the basis that neither he nor the appellee had received copies of the binders. Although the parties attempted to review the individual materials contained in the binders to determine whether opposing counsel had been given adequate access, the process quickly bogged down, finally prompting the trier to inquire, relative to the contents of the second binder, "if they weren't shared with the other parties, how can I

mark them as an exhibit at this time?" Id., 58. Subsequently, appellee's counsel raised additional objections on the grounds of relevance and hearsay. See id., 62. Thus, in light of the lack of objections posed by the appellant to the appellee's exhibits, and the objections by the appellee to the appellant's exhibits, we find the claim of bias relative to the submission of exhibits in this matter without merit, particularly as *all* of the parties' exhibits were ultimately designated for identification only.[32]

With regard to the follow-up correspondence referenced by the appellant, the administrative law judge, in the exercise of the authority afforded to him pursuant to §§ 31-278 and 31-298, requested a post-trial briefing from the parties relative to the effect of the appellant's claims of ethical violations against the appellee on the appellant's motions to dismiss and/or stay the proceedings for the allocation of the attorney's fee. As previously discussed herein, the correspondence briefly summarized the results of the formal hearing and requested that the appellee address the following three inquiries: whether (1) an § 1-84b violation, if found, would be material to the distribution of the fee in this forum; (2) a workers' compensation administrative law judge has the authority to determine if a § 1-84b (b) violation occurred; and (3) the appellee's decision to represent the claimant constituted a violation of § 1-84b (b).[33]

We are not entirely clear how these post-trial inquiries, which were germane to the issues at bar, could constitute bias. However, we note that in its brief, the appellant, in reciting the contents of this correspondence, repeatedly emphasized in bold typeface the trier's references to Cantarella. See Appellant's Brief, p. 12. It therefore may be

[32] The appellant also points out that an unapproved voluntary agreement filed on August 21, 2014, was "notably" omitted from the administrative notice exhibit items. Appellant's Brief, p. 7 n.2. We find nothing "notable" about the trier's omission of an unapproved document.
[33] See footnote seven, supra.

reasonably inferred that this claim of bias is associated with the allegations relative to the trier's use of Cantarella's name rather than "Walker, Feigenbaum & Cantarella Law Group" during the trial. Consistent with this argument, the appellant also states that the transcript and follow-up correspondence reflect that the administrative law judge "improperly refers to Pelc's successor counsel as either Attorney Cantarella or Cantarella's firm" rather than Walker, Feigenbaum & Cantarella Law Group, L.L.C. Appellant's Brief, p. 36.

We are not persuaded by this allegation. Every participant in this litigation was well aware that Cantarella is a principal of the appellee and practices with former Commissioner Walker.[34] No one has suggested that Cantarella represented Pelc in his individual capacity, apart from the appellant, who made the allusion at trial. The transcript for the formal proceedings also reflects that when the administrative law judge began reviewing the appellee's proposed submissions, he stated that from "this point forward, I may just say Cantarella in the interest of keeping this brief."[35] Id., 42. As such, we decline to discern a nefarious motive in the trier's choosing to refer to the appellee as "Cantarella's firm" during the trial rather than constantly repeating "Walker, Feigenbaum & Cantarella Law Group."

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[34] In reviewing the administrative notice exhibits, the administrative law judge stated that the appellee's June 14, 2018 notice of appearance had been filed "specifically by Attorney Cantarella of the firm Walker, Feigenbaum and Cantarella on behalf of Francesca Pelc, and in lieu of her as a pro se." June 23, 2021 Transcript, p. 13. See also Administrative Notice Exhibit 11. Moreover, at the outset of the formal hearing, appellee's counsel stated that he was appearing for "Walker, Feigenbaum & Cantarella Law Group, L.L.C., under a limited purpose notification of appearance, limited to the proceedings before you here today." June 23, 2021 Transcript, p. 7.

[35] In his memorandum, the trier explained that "[t]he decision to use some shortened reference is both practical and my standard practice. As for [the] choice of 'Cantarella' as my short-form reference, while they are both members of firms the combatants arguing before me are Attorney Levine and Attorney Cantarella. I understand that the use of 'Walker Law Firm' fits in with the Levine firm's narrative of bias, but my only interest is clarity…. Given that the connection between Walker and Cantarella is at the very heart of what we have been addressing, the suggestion that [the] use of 'Cantarella' is intended to hide something is not merely argumentative, it is illogical." Memorandum, p. 19 n.16.

The appellant also contends that the administrative law judge exhibited bias when he "omitted from his administrative notice the most important written statement from [the commissioner] in her January 28, 2016 informal hearing note, i.e., "I approve same." Appellant's Brief, p. 35. As discussed previously herein, the trier declined to interpret the 2016 fee arrangement as an award subject to enforcement pursuant to § 31-327 (a) and we have affirmed the trier's conclusions in this regard. Relative to the allegation of bias, we note that in his memorandum, the trier explained that:

> When taking notice of documents in the file it is my practice to give a summary description of the item rather than reading each word into the record. Unless otherwise specified, once I have taken notice of an item in the commission's file all the contents of that filing are available for argument. (Footnote omitted.)

Memorandum, p. 7.

The trier also pointed out that the fact that the appellant was authorized to take 20 percent of the claimant's weekly checks has never been in dispute and was "expressly admitted" by the appellee. Id., 8. As such, we find nothing talismanic about the words "I approve same" and the administrative law judge's omission of those words when entering the exhibit into the record is devoid of any significance. The approval of the 2016 fee arrangement was implicit, and this implicit approval was reflected in the subsequent June 28, 2018 handwritten order and July 20, 2018 order. There was no need for the administrative law judge to state on the record that the commissioners had approved their own authorization or orders, and we are not persuaded that any claim of bias can attach to the fact that he did not do so.

The appellant has also raised, in her post-trial brief and on appeal, a claim of bias against the presiding administrative law judge on the basis of his relationship with former Commissioner Walker.[36] In her brief, the appellant asserts that:

> It is significant that Commissioner Schoolcraft made no mention of his relationship to former Commissioner Walker through the formal hearing. Although the undersigned mentioned on several occasions of their contention [sic] that the commission is presumptively and actively biased against the undersigned and indicated that a canvassing of the presiding commissioner's relationship with former Commissioner Walker should be done, no such canvassing actually occurred.

Appellant's Brief, pp. 36-37.

In his memorandum, the trier addressed this allegation as follows:

> While the remedy [the appellant] seeks is disqualification of the entire commission, and while the words have been carefully chosen, this cannot be read as anything other than a suggestion of personal bias and manipulation on my part. An allegation that the commissioner or judge hearing a case has a personal bias – whether that assertion is sincerely felt or merely a trial tactic – is a very serious matter. It is not a matter that I would have ignored had it been clearly asserted and pursued at the time of the hearing.

Memorandum, p. 10.

Our review of this claim of bias indicates that it was not only untimely but is inconsistent with record. The transcript for the June 23, 2021 formal hearing reflects that the following colloquy occurred between the trier and the appellant:

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[36] The appellant's September 9, 2021 post-trial brief, entitled "Reply to Walker, Feigenbaum & Cantarella's Firm's Objection to Levine & Levine's Motion to Dismiss for Lack of Subject Matter Jurisdiction Over Commissioner Approved Escrowed Attorney's Fees from June 6, 2019 Settlement," was not entered into the evidentiary record. However, our authority to take judicial notice of this document is predicated on our Supreme Court's observation in Moore v. Moore, 173 Conn. 120 (1977), wherein the court explained that "[n]otice to the parties is not always required when a court takes judicial notice. Our own cases have attempted to draw a line between matters susceptible of explanation or contradiction, of which notice should not be taken without giving the affected party an opportunity to be heard ... and matters of established fact, the accuracy of which cannot be questioned, such as court files, which may be judicially noticed without affording a hearing." (Internal citations omitted.) Id., 121-22.

Ms. Levine: I'm also arguing that there [is] an impairment of my due process rights because of the biasness that I believe that I've already experienced throughout the course that you took administrative notice of, and the fact –

Commissioner: Are you alleging bias on my part?

Ms. Levine: Well, I didn't even get to canvass you on your involvement with Commissioner Walker, because Commissioner Walker is a member of the firm that's going to be seeking the fee. My motion to disqualify was for the entire commission because of biasness –

Commissioner: Okay, I think we need to get into that because I wasn't clear. You said your motion [was] to disqualify anyone with an appearance of bias. You disqualified the commissioner, it was sent down here.[37] We had a pre-formal, we agreed that I would try it on the merits. I'm trying to determine whether or not you are not raising bias on my part.

Ms. Levine: Okay. I am not now raising it. I have always been arguing that because of Commissioner Walker's involvement in this case.

Commissioner: That the commission in general should not be hearing this matter.

Ms. Levine: Yes, that is correct.

Commissioner: That's fine. I know you've made that argument in there.

Ms. Levine: Okay.

Commissioner: I assume you'll repeat the same argument in the closing.

Ms. Levine: Yeah.

Commissioner: Again, that's fine. Okay.

June 23, 2021 Transcript, pp. 106-107.

[37] The administrative law judge is referring to the appellant's January 22, 2020 motion to disqualify and the subsequent transfer of the file from the sixth district to the eighth district. See Administrative Notice Exhibits 23, 27.

Having reviewed this exchange, we agree with the trier's observation that "it is worth noting that counsel does not state that I refused to allow such a canvass or, for that matter, that she even *asked* for such a canvass." (Emphasis in the original.) Memorandum, p. 10. Moreover, we would posit that had the appellant continued to harbor doubts regarding the trier's impartiality in light of his relationship with former Commissioner Walker, the end of this colloquy provided the opportunity to further explore the parameters of this relationship. This was not done. Rather, as the trier points out:

> Based on the above exchange, and Attorney Levine's failure to follow up or ask me any specific questions about my degree of familiarity with Walker, I was left with the understanding that there was no claim being asserted that I might have a personal bias that should prevent me ruling on the motions – motions upon which Attorney Levine had expressly asked me to rule.

Id., 11.

In reviewing the substance of these allegations in his memorandum, the trier noted at the outset that he had seen no need to "mention" his relationship with Walker given that the fact that both he and Walker were members of this commission was well-known to all the participants in this matter. Id., 10 n.10; see also Appellant's Brief, p. 36. He also described his relatively limited professional association with Walker, and his practically non-existent social relationship.[38]

[38] The administrative law judge explained that when he first joined the commission, his schedule was divided between the Norwich and New Britain offices, and for the first few months of this time period, Walker was the full-time commissioner in New Britain. Although both he and Walker would attend quarterly commissioner meetings, and occasionally run into each other at seminars or symposia, they did not interact on a weekly or even monthly basis. The administrative law judge further noted that he and Walker "have never interacted in a social setting outside the context of a couple commission-related events or holiday parties. Indeed, while I recall that he had a retirement party when he left the commission, I did not attend." Id., 12. The trier indicated that apart from Walker's "occasional representation of parties on our informal and pre-formal hearing dockets," id., he has never been to Walker's home, does not know his address or the town in which he lives, "what type of car he drives or whether he has any hobbies." Id.

In assessing the merits of this claim of bias, we note that Canon 3 (c) of the Code of Judicial Conduct states in part:

> (1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
>
> (A) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

Consistent with this directive, in State v. Bunker, 89 Conn. App. 605 (2005), *appeal dismissed as improvidently granted*, 280 Conn. 512 (2006), our Supreme Court held that:

> The standard for determining whether a judge should recuse himself or herself pursuant to canon 3 (c) is well established. "The standard to be employed is an objective one, not the judge's subjective view as to whether he or she can be fair and impartial in hearing the case.... Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's impartiality might reasonably be questioned is a basis for the judge's disqualification. Thus, an impropriety or the appearance of impropriety ... that would reasonably lead one to question the judge's impartiality in a given proceeding clearly falls within the scope of the general standard.... The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his [or her] ... impartiality, on the basis of all of the circumstances. (Citation omitted; internal quotation marks omitted.)

Id., 612-613, *quoting* State v. Shabazz, 246 Conn. 746, 768–69, (1998), *cert. denied*, 525 U.S. 1179 (1999).

In light of this well-settled case law, we do not find that the trier's professional relationship with former Commissioner Walker, as set forth in his memorandum, provides a basis for the reasonable inference that this relationship in any way affected the trier's impartiality to hear the present matter. The administrative law judge saw no basis

for recusal on this basis and, appellant's untimely protestations to the contrary notwithstanding, neither do we. Rather, the appellant's "[v]ague and unverified assertions of opinion, speculation and conjecture" are insufficient to support either her allegation of bias or a motion for disqualification. (Internal quotation marks omitted.) Advanced Financial Services, Inc. v. Associated Appraisal Services, Inc., 79 Conn. App. 22, 50 (2003), *quoting* State v. Montini, 52 Conn. App. 682, 695, *cert. denied,* 249 Conn. 909 (1999).

Moreover, as previously discussed herein, we are aware of no other tribunal which has the jurisdiction to hear this matter, as it falls well within the province of the Workers' Compensation Act, and the superior court has stayed its proceedings pending a decision by this commission. In Dacey v. Connecticut Bar Assn., 170 Conn. 520 (1976), our Supreme Court stated:

> There is a limitation upon the right or duty of judges to disqualify themselves. "Disqualification must yield to necessity where to disqualify would destroy the only tribunal in which relief could be had and thus preclude determination of the issue. In such case it has been held, consistently, the court must act no matter how disagreeable its task may be."

Id., 524, *quoting* New Jersey State Bar Assn. v. New Jersey Assn. of Realtor Boards, 118 N.J. Super. 203, 209 (1972); see also Memorandum, p. 12.

As the administrative law judge accurately concluded:

> That which this commission has jurisdiction to decide, it has an obligation to decide. Allocation of an approved contingency attorney's fee between sequential counsel is a responsibility that rest solely with this commission, and there is no legal or procedural mechanism by which this commission may farm out that responsibility to the Superior Court. The fact that one of the competing firms has filed a lawsuit against its former client and her subsequent counsel – no matter how many allegations and legal theories the complaint might contain – does not rob this

> commission of its jurisdiction over allocation of fees, or relieve it of its legal obligation to do so.

Memorandum, p. 23.

We agree.

Finally, the appellant has filed a 118-page motion to correct, incorporating within that motion a "[request] to entirely delete and correct … those findings, conclusions and order" of the finding along with a motion to strike the trier's conclusion as set forth in his memorandum. November 22, 2021 Motion to Correct, pp. 1-2. The appellant contends that the trier's denial of this motion, save for three scrivener's corrections, constituted error. In attempting to review this document, we would note at the outset that in Testone v. C.R. Gibson Co., 114 Conn. App. 210, *cert. denied*, 292 Conn. 914 (2009), our Appellate Court stated:

> As this court has noted previously when a multitude of issues are raised on appeal, "pursuit of so large a number of issues forecloses the opportunity for a fully reasoned discussion of pivotal substantive concerns [by the plaintiff]. A shotgun approach does a disservice both to this court and to the party on whose behalf it is presented.... Multiplicity hints at lack of confidence in any one [issue]...." (Citation omitted; internal quotation marks omitted.)

Id., 214 n.5, *quoting* LaBow v. LaBow, 65 Conn. App. 210, 211, *cert. denied*, 258 Conn. 943 (2001).

Our review of the balance of the proposed corrections indicates that the appellant was merely reiterating arguments made at trial which ultimately proved unavailing. As such, we find no error in the trier's decision to deny the motion to correct.[39] See

[39] On September 14, 2022, claimant's current counsel filed a brief in opposition to this appeal, adopting in full the trier's Finding and Order and Memorandum and requesting that this board uphold the trier's factual findings, "Conclusions and Findings and Decrees and Orders dated November 3, 2021." September 14, 2020 Claimant/Appellee Francesca Pelc's Brief in Opposition to Law Office of Levine & Levine's appeal dated November 30, 2021.

D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).

There is no error; the November 3, 2021 Finding and Order of David W. Schoolcraft, Administrative Law Judge acting for the Eighth District, is accordingly affirmed.

Administrative Law Judges Carolyn M. Colangelo and Toni M. Fatone concur in this Opinion.