

Connecticut General Assembly
Logistics
Subcommittee
Police Transparency & Accountability Task Force

Rep. Joshua Hall, Chairperson



c/o Judiciary Committee, Room 2500
Legislative Office Building
300 Capitol Avenue
Hartford, Ct 06106

Minutes
Tuesday, October 20, 2020
5:00 p.m., via Zoom

***Attendees:** Joshua Hall (Chair), Chief William Wright, Tanya Hughes, Ken Green, John Szewczyk, Melvin Medina, Shafiq Abdussabur, Stephen Saloom, Cheryl Sharp, Bishop Jon Selders*

***Others:** Ken Barone (CCSU), Deb Blanchard (Judiciary Committee), Andrew Clark (CCSU), Renee LaMark Muir (CCSU), Sharad Samy (Guest), Patrick Hulin (Governor's Office), Anna Marie Puryear, Jeff "Zeke" Zyjeski; George Welch (CHRO); CT-N*

***Presenters:** UCONN Insurance Law Center (Professors Peter Siegelman and Peter Kochenburger); CBA Task Force (Former US Atty Deidre Daly)*

- I.** Convene meeting and welcome
 - a. Chair Hall convened the meeting at 5:02pm. At the request of the chair, members and guests introduced themselves.
- II.** Approve October 13, 2020 meeting minutes
 - a. Upon a motion and second, the minutes were approved via voice vote.
- III.** Recommendation for partnership with the Insurance Law Center at UCONN Law School
 - a. Chair Hall introduced Professors Peter Sigelman and Peter Kochenburger from the Insurance Law Center at the UCONN Law School. The Insurance Law Center is the preeminent academic center for insurance law and risk regulation. The subcommittee contacted the center to inquire if they would be interested in helping the Task Force review the issue of police and municipal liability insurance. Peter Sieglman and Peter Kochenburger made brief introductions and shared additional information about the center.
 - b. A motion was made by Stephen Saloom: The Logistics subcommittee will formally partner with the Insurance Law Center at UCONN Law to consult with the

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subcommittee on issues related to liability insurance and other insurance related questions that may arise. The motion was seconded by Chief William Wright. The motion was approved unanimously by a voice vote.

- IV.** Presentation: CBA committee draft presentation regarding “Qualified Immunity”
- a. *Deidre Daly, Co-Chair of the CBA Policing Task Force provided members with a presentation on the background of the CBA Task Force. Atty. Daly also presented on the CBA task force draft assessment of Section 41 of the Police Accountability bill.*

The presentation included on draft recommendation that the one-year statute of limitations for bringing an action pursuant to Section 41 be extended to three years.

The rationale for this recommendation includes: Three reasons support extending the statute of limitations to three years.

First, the rationale for the one-year limitations period is tied to the period of time police departments are required by statute to keep body camera video. At first blush this seems logical. However, our research shows that as a matter of custom and policy, police departments retain body camera video that involves an incident involving the use of force for up to four years. Moreover, an aggrieved citizen contemplating a lawsuit can put the department on notice and request that the department retain its body camera footage beyond the one-year statutory floor.

Second, the one-year statute is very short. On the one hand, the quick time limit could act as a premature bar for legitimate cases and, on the other hand, it could force plaintiff’s counsel to file lawsuits prematurely to avoid exceeding the limitations period.

*Third, the limitations period established in Section 41(g) will likely become the limitations period followed by the federal district court in civil rights suits brought pursuant to 42 U.S.C. § 1983. Currently, plaintiffs have three years to file a federal civil right claim in the District of Connecticut. “Since Congress did not enact a statute of limitations governing actions brought under § 1983, the courts must borrow a state statute of limitations.” *Lounsbury v. Jeffries*, 25 F.3d 131, 133 (2d Cir. 1994). “In Connecticut, the three-year limitations period set forth in Conn. Gen.*

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*Stat. § 52–577 is applicable to claims asserted under section 1983.” Harnage v. Shari, No. 3:16CV1576 (AWT), 2020 WL 5300913, at *3 (D. Conn. Sept. 4, 2020).*

- b. *Atty. Daly also raised another item for discussion but did not provide a recommendation. Section 41(d) explicitly prohibits interlocutory appeals of denials of the governmental immunity defense.*

Under Connecticut common law, interlocutory appeals are the exception and not the rule. In State v. Curcio, 191 Conn. 27 (1983), the Supreme Court held that an interlocutory appeal is allowable only when the trial court’s order: (1) terminates a separate and distinct proceeding, and (2) so concludes the rights of the parties that further proceedings cannot affect them. These circumstances are rarely met. Section 41(d) precludes interlocutory appeals in those few situations where they might be warranted.

Like Connecticut appellate courts, the federal courts similarly frown upon interlocutory appeals. However, the federal courts allow for interlocutory appeals from the denial of a qualified immunity defense in limited circumstances where the district court’s ruling turns on an issue of law. Mitchell v. Forsyth, 472 U.S. 511, 530, 105 S.Ct. 2806 (1985). By contrast, where there remains a genuine factual dispute, a federal appellate court lacks jurisdiction to review the district court’s denial of qualified immunity. See Reyes v. Fischer, 934 F.3d 97, 106–07 (2d Cir. 2019) (dismissing interlocutory appeal for lack of jurisdiction because “[f]actual questions that are crucial to the disposition of the defendants’ qualified immunity defense remain[.]”); Brown v. Halpin, 885 F.3d 111, 117 (2d Cir. 2018) (per curiam) (concluding “that we lack jurisdiction to consider the qualified immunity defense at this time . . . because it depends on the resolution of factual disputes”); Ellington v. Whiting, 807 F. App’x 67, 69 (2d Cir. 2020) (summary order) (concluding that the district court’s resolution of the qualified immunity determination “depends on disputed matters of fact and thus we lack jurisdiction”).

Federal defendants wishing to obtain immediate review of a denial of qualified immunity can do so by accepting, for purposes of the appeal only, the plaintiff’s version of the disputed facts. See Tooly v. Schwaller, 919 F.3d 165, 172 (2d Cir. 2019). At that point, the appellate court is in position to determine the application of the law to the agreed upon facts.

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There should be consideration given to whether Connecticut's appellate courts should be allowed to serve as the gatekeeper to determine if an interlocutory appeal is based on undisputed facts, and if so, leaving the court to apply the law to those facts. This model will allow for appeals in a limited set of circumstances involving legal – as opposed to factual – disputes, and save the parties litigation expense and attendant costs.

Members asked questions.

V. General Discussion

- a. Next meeting will discuss liability insurance – CIRMA. Continuation of the information gathering phase on three major issues: 1) Decertification; 2) Qualified Immunity and 3) Liability Insurance.*
- b. The presentation from Chief Mello on Decertification has not yet been voted on by POSTC. It will be available once the vote is held.*

VI. Announcement of time and date of next meeting.

- a. Next Tuesday, October 27 at 5pm*

VII. Adjournment

Meeting adjourned at 6:06pm.