DANIEL GROSS ET AL. *v.* M. JODI RELL ET AL.
(SC 18548)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper, Js.

Argued October 24, 2011—officially released April 3, 2012

Sally R. Zanger, with whom was *Thomas Behrendt*, for the appellants (plaintiffs).

Louis B. Blumenfeld, with whom was *Lorinda S. Coon*, for the appellee (defendant Jonathan Newman).

Richard A. Roberts, with whom were *James P. Sexton*, and, on the brief, *Nadine M. Pare* and *James R. Fiore*, for the appellee (defendant Kathleen Donovan).

Jeffrey R. Babbin, for the appellee (defendant Grove Manor Nursing Home, Inc.).

Daniel J. Klau filed a brief for the Connecticut Probate Assembly as amicus curiae.

Stacy Canan and *Daniel S. Blinn* filed a brief for the National Senior Citizens Law Center et al. as amici curiae.

Stephen Wizner and *Amanda Machin*, law student intern, filed a brief for the Jerome N. Frank Legal Services Organization et al. as amici curiae.

James G. Felakos, *Jane Monteith Hudson*, *Terri A. Mazur*, *Jeffrey F. Tougas* and *Christine A. Walsh* filed a brief for the National Disability Rights Network et al. as amici curiae.

Opinion

ROGERS, C. J. This case comes before us upon our acceptance of certified questions of law from the United States Court of Appeals for the Second Circuit pursuant to General Statutes § 51-199b (d).[1] The certified questions are: (1) Under Connecticut law, does absolute quasi-judicial immunity extend to conservators appointed by the Connecticut Probate Court?; (2) Under Connecticut law, does absolute quasi-judicial immunity extend to attorneys appointed to represent respondents in conservatorship proceedings or to attorneys appointed to represent conservatees?; and (3) What is the role of conservators, court-appointed attorneys for conservatees, and nursing homes in the Connecticut probate court system, in light of the six factors for determining quasi-judicial immunity outlined in *Cleavinger* v. *Saxner*, 474 U.S. 193, 201–202, 106 S. Ct. 496, 88 L. Ed. 2d 507 (1985). We conclude that: (1) absolute quasi-judicial immunity extends to a conservator appointed by the Probate Court only when the conservator is executing an order of the Probate Court or the conservator's actions are ratified by the Probate Court; (2) absolute quasi-judicial immunity does not extend to attorneys appointed to represent respondents in conservatorship proceedings or conservatees; and (3) our analysis of the first and second certified questions is responsive to the third certified question as it relates to the roles of conservators and court-appointed attorneys; with respect to nursing homes caring for conservatees, we conclude that their function does not entitle them to quasi-judicial immunity under any circumstances.

The opinion of the United States Court of Appeals for the Second Circuit sets forth the following facts and procedural history. "In 2005, [the named plaintiff] Daniel Gross,[2] a life-long New York resident, was discharged from a hospital in New York after treatment for a leg infection. Shortly thereafter, he went to Waterbury . . . where his daughter [the plaintiff] lived, to convalesce. On August 8, 2005, he was admitted to Waterbury Hospital because of complications from his previous treatment. Nine days later, on August 17, 2005, Barbara F. Limauro, a hospital employee, filed an application for appointment of conservator in Waterbury Probate Court. The record does not indicate what prompted Limauro to file this application.

"The pertinent statute requires the [P]robate [C]ourt, as a threshold matter, to give the respondent seven days' notice in any application for an involuntary conservatorship. [General Statutes (Rev. to 2005)] § 45a-649 (a).[3] In addition, the notice must be served on the respondent or, if doing so 'would be detrimental to the health or welfare of the respondent,' his attorney. [General Statutes (Rev. to 2005)] § 45a-649 (a) (1) (A). The statute makes no provision for giving notice to the

respondent other than by personal service or service upon his attorney.

"On August 25, 2005, [Probate Court] Judge Thomas P. Brunnock issued an order of notice of a hearing to be held on September 1, 2005, in connection with Limauro's application. On August 30, 2005, the notice was served on Limauro. However, as the Connecticut Superior Court pointed out in the subsequent habeas proceeding, there was no indication that Gross himself ever received notice of the September 1 proceeding. The parties do not dispute that (1) Gross was entitled to notice of the hearing, (2) he should have been given at least seven days' notice, pursuant to [§] 45a-649 (a), and (3) the order dated August 25, 2005, specified that Gross should be served by *August 24*.

"Also on August 25, 2005, Brunnock appointed [Attorney] Jonathan Newman to represent Gross in the involuntary conservatorship action. Newman interviewed Gross, who told Newman that he opposed the conservatorship. Newman described Gross as alert and intelligent and stated in a report that Gross wanted to live at home and manage his own affairs. Nevertheless, Newman concluded that he could not 'find any legal basis [on] which to object to the appointment of a conservator of . . . Gross' person and estate.' Newman also signed the form 'attorney for ward.' The relevant statute defines a 'ward' as 'a person for whom involuntary representation is *granted*' pursuant to statute. [General Statutes (Rev. to 2005)] § 45a-644 (h) . . . . At the time Newman signed the form, no such representation had been granted; Gross was not a 'ward' but rather a 'respondent.' [General Statutes (Rev. to 2005)] § 45a-644 (f).

"A Superior Court judge would later say that Newman's conclusion that there was no legal basis for objecting to the involuntary conservatorship 'completely blows my mind,' that there was '[n]o support for it,' and that 'it just defies imagination. . . . This was counsel for . . . Gross and it is obvious to me that he grossly under and misrepresented . . . Gross at the time.' . . .

"The respondent also has a right to attend any hearing on the application. [General Statutes (Rev. to 2005)] § 45a-649 (b) (2). If he wishes to attend 'but is unable to do so because of physical incapacity, the court *shall* schedule the hearing . . . at a place which would facilitate attendance . . . but if not practical, then *the judge shall visit the respondent*' before the hearing, if he is in the state. Id. . . . The next section reiterates that a judge could 'hold the hearing on the application at a place within the state other than its usual courtroom if it would facilitate attendance by the respondent.' [General Statutes (Rev. to 2005)] § 45a-650 (c). The parties do not dispute that (1) Judge Brunnock never visited Gross, (2) the hearing was not held at a location

that would facilitate Gross's attendance, and (3) Gross was not personally present at the hearing.

"Furthermore, Connecticut law at the time only permitted a conservatorship for those who were residing or domiciled in Connecticut, [General Statutes (Rev. to 2005)] § 45a-648 (a); Gross was neither a resident nor a domiciliary. It is undisputed that Newman failed to bring this jurisdictional defect to the court's attention. (As will be explained . . . it was on the basis of this defect that the Connecticut Superior Court eventually granted Gross's petition for a writ of habeas corpus and held the conservatorship void ab initio.)

"On September 1, 2005, Brunnock appointed Kathleen Donovan as conservator to manage Gross's person and estate. Connecticut state law provides that the [P]robate [C]ourt must require a probate bond [when it appoints a conservator of the estate] and, 'if it deems it necessary for the protection of the respondent, [it may] require a bond of any conservator [of the person]' as well. [General Statutes (Rev. to 2005)] § 45a-650 (g). Donovan never posted a bond.

"A week or two later, Donovan placed Gross in the 'locked ward' of [Grove Manor Nursing Home, Inc. (Grove Manor)]. Gross alleges in his complaint that his roommate was a confessed robber who threatened and assaulted him. Gross also claims that Grove Manor, with the knowledge and consent of Donovan, kept him in a room with the violent roommate after it learned of the assault, which was not reported to the police.

"In April of 2006, Gross was on an authorized day visit to Long Island. While there, he experienced chest pains and was admitted to a hospital. According to the complaint, Donovan came to Long Island with an ambulance and insisted that Gross be returned to Connecticut. When the doctor indicated that this was medically unwise, Donovan nonetheless removed Gross from the hospital against his wishes and returned him to the locked ward at Grove Manor.

"Gross alleges in his complaint that there was no reason to put him in the locked ward. He further alleges that [Maggie] Ewald, [the former acting long-term care ombudsman of the Connecticut department of social services] and Donovan, the conservator, were aware of these problems but failed to take steps to alleviate them. The parties do not dispute that Donovan obtained from Brunnock ex parte orders limiting Gross's contact with family and with counsel; Gross claims that there was no evidence suggesting that such contact was harmful to him. . . . According to Gross's complaint, [one such] order restricted [the plaintiff's] ability to visit him: the visits were required to be on-premises, only once per day, for no longer than one hour. . . . [I]t also [prohibited] her from bringing 'any recording devices (visual and/or audio) into Grove Manor.' . . .

"On June 9, 2006, Gross filed a petition for a writ of habeas corpus in Connecticut Superior Court. A hearing was held on July 12. Brunnock moved to dismiss, making the . . . argument that habeas relief was unnecessary because, if the Probate Court acted without jurisdiction, the conservatorship was void ab initio and Gross could leave Grove Manor at any time. The Superior Court granted the writ: '[O]ut of an absolute caution that somebody else may come in and file [an] appearance in this case, I'm going to grant the writ of habeas corpus . . . . I'm going to find in accordance with the statute that he has—is and has been, since September 1, been deprived of his liberty. And at the time of his—of his appointment of the conservator of both his person and his estate, [the] Probate Court lacked the jurisdiction on the basis that he was not a domiciliary and/or a resident of the [s]tate of Connecticut. The conservatorship is terminated as a result of the decision on the habeas corpus and . . . Gross is free to leave here today.' The court also halted all pending transactions involving Gross's property, saying 'that nothing [is to] be done with the sale of [Gross'] house in New York,' and that 'any previous orders of the Probate Court with reference to that real property in New York are also terminated, so there is nothing in New York.' The Superior Court said there had been 'a terrible miscarriage of justice.'

"Upon returning to New York, Gross found that his house had been, in his words, 'ransacked.' The complaint alleges that a chandelier and some furniture were missing. Gross lived independently in his home from the time of his release at least until the time of the complaint, and apparently until the time of his death in 2007.

"In 2007, [Gross] brought [a] complaint [in the United States District Court for the District of Connecticut] and the District Court dismissed it as to all defendants.[4] The District Court found that Brunnock was entitled to judicial immunity. The court went on to reason that [Donovan], [Newman], and [Grove Manor] were entitled to immunity because they were serving the judicial process. However, the District Court reasoned that [Grove Manor] was *not* entitled to derivative, quasi-judicial immunity for discretionary acts that were not performed specifically for the purpose of complying with a Probate Court order. Thus, [Grove Manor's] decision to leave Gross in a room with his roommate for several days, after his roommate attacked him, was held to be discretionary and not protected by quasi-judicial immunity. This left statutory and tort claims against [Grove Manor]. The District Court dismissed the statutory claims on the basis of waiver, leaving only the tort claims, which consisted of claims for intentional and negligent infliction of emotional distress.

"The District Court also dismissed all claims against

[M. Jodi Rell, then governor of the state of Connecticut] and most claims against [Ewald], essentially on failure to prosecute or waiver grounds. However, it initially let stand the claims against [Ewald] for failure to investigate complaints about Gross's detention in [Grove Manor]. Thus, there were two sets of claims remaining: intentional and negligent infliction of emotional distress against [Grove Manor] regarding the violent roommate and intentional infliction of emotional distress against [Ewald] for failure to investigate.

"Then, at the end of a telephone conference about discovery and the course of the lawsuit, the District Court announced that it did not think those remaining claims would exceed $75,000 and said it would dismiss the case. Counsel did not object to this dismissal, and those claims were dismissed without prejudice. Once these were dismissed, there were no remaining claims. Gross's timely appeal followed." (Emphasis in original.) *Gross* v. *Rell*, 585 F.3d 72, 75–79 (2d Cir. 2009).

On appeal, the United States Court of Appeals for the Second Circuit concluded that, with respect to the state law claims against Donovan and Newman, because the question of whether they were entitled to quasi-judicial immunity must be decided on the basis of state law; id., 80; and "because there is no controlling appellate decision, constitutional provision, or statute in Connecticut that explains whether conservators and court-appointed attorneys for conservatees enjoy quasi-judicial immunity"; id., 96; the Court of Appeals would submit the first two questions regarding the quasi-judicial immunity of conservators and attorneys for respondents and conservatees under state law to this court for certification pursuant to § 51-199b (d). Id. With respect to the federal civil rights claims against Donovan, Newman and Grove Manor, the Court of Appeals concluded that, although the issue of quasi-judicial immunity from the claims was a question of federal law; id., 80; because the resolution of the question implicated unsettled questions of state law regarding the roles of court-appointed conservators, court-appointed attorneys and nursing homes under our statutory scheme governing conservatorship, it would submit a third certified question on that issue to this court.[5] Id., 96. This court granted certification on all three questions, as previously set forth.[6]

I

With this background in mind, we address the first certified question: Under Connecticut law, does absolute quasi-judicial immunity extend to conservators appointed by the Connecticut Probate Court? The plaintiff contends that conservators are not entitled to quasi-judicial immunity under any circumstances. Donovan contends that: (1) conservators are generally entitled to quasi-judicial immunity from claims against conservatees; or (2) if conservators are not generally entitled

to quasi-judicial immunity, they are entitled to immunity when their conduct is authorized or approved by the Probate Court. We agree with Donovan's second claim.

Because any immunity accorded to conservators appointed pursuant to § 45a-650 would be derived from judicial immunity, "we first examine the policy reasons underlying judicial immunity. It is well established that a judge may not be civilly sued for judicial acts he undertakes in his capacity as a judge. . . . This role of judicial immunity serves to promote principled and fearless decision-making by removing a judge's fear that unsatisfied litigants may hound him with litigation charging malice or corruption . . . . Although we have extended judicial immunity to protect other officers in addition to judges, that extension generally has been very limited. This fact reflects an [awareness] of the salutary effects that the threat of liability can have . . . as well as the undeniable tension between official immunities and the ideal of the rule of law . . . . The protection extends only to those who are intimately involved in the judicial process, including judges, prosecutors and judges' law clerks. Absolute judicial immunity, however, does not extend to every officer of the judicial system. . . . Furthermore, even judges are not entitled to immunity for their administrative actions, but only for their judicial actions. . . .

"We repeatedly have recognized that [a]bsolute immunity . . . is strong medicine . . . . Therefore, not every category of persons protected by immunity [is] entitled to absolute immunity. In fact, just the opposite presumption prevails—categories of persons protected by immunity are entitled only to the scope of immunity that is necessary to protect those persons in the performance of their duties. [T]he presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties. . . . In limited circumstances, however, courts have extended absolute judicial immunity to officials insofar as they perform actions that are integral to the judicial process. . . . For example, because prosecutors are such an integral part of the judicial system . . . this court has repeatedly recognized that they are entitled to absolute immunity for their conduct as participants in the judicial proceeding. . . . By contrast, we declined to extend immunity to public defenders, reasoning that, unlike a prosecutor, who is a representative of the state, and has a duty to see that impartial justice is done to the accused as well as to the state, a public defender's role is that of an adversary and his function does not differ from that of a privately retained attorney. . . . In legislatively overruling [this determination], the legislature granted public defenders only qualified immunity, impliedly deeming that level of protection to be sufficient to protect them in the exercise of their duties."[7] (Citations omitted; internal quotation marks omitted.) *Carrubba* v. *Moskowitz*, 274 Conn. 533,

539–42, 877 A.2d 773 (2005).

"Although the presumption is that qualified immunity is sufficient to protect most government officials in the justified performance of their duties, courts have extended absolute immunity to a variety of judicial and quasi-judicial officers. See, e.g., *Babcock* v. *Tyler*, 884 F.2d 497 (9th Cir. 1989) (court-appointed social worker), cert. denied, 493 U.S. 1072, 110 S. Ct. 1118, 107 L. Ed. 2d 1025 (1990) [overruled in part by *Miller* v. *Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (social workers are entitled to quasi-judicial immunity from suit only for certain activities)]; *Moses* v. *Parwatikar*, 813 F.2d 891 (8th Cir.) (court-appointed psychologist), cert. denied, 484 U.S. 832, 108 S. Ct. 108, 98 L. Ed. 2d 67 (1987); *Demoran* v. *Witt*, 781 F.2d 155 (9th Cir. 1986) (probation officer); *Boullion* v. *McClanahan*, 639 F.2d 213 (5th Cir. 1981) (bankruptcy trustee); *T & W Investment Co.* v. *Kurtz*, 588 F.2d 801 (10th Cir. 1978) (court-appointed receiver); *Burkes* v. *Callion*, 433 F.2d 318 (9th Cir. 1970) (court-appointed medical examiner), cert. denied, 403 U.S. 908, 91 S. Ct. 2217, 29 L. Ed. 2d 685 (1971). The determining factor in all these decisions is whether the official was performing a function that was integral to the judicial process.

"In considering whether [persons] . . . should be accorded absolute judicial immunity, the United States Supreme Court has applied a three factor test, which we now adopt . . . under our state common law. In its immunity analysis, the court has inquired: [1] whether the official in question perform[s] functions sufficiently comparable to those of officials who have traditionally been afforded absolute immunity at common law . . . [2] whether the likelihood of harassment or intimidation by personal liability [is] sufficiently great to interfere with the official's performance of his or her duties . . . [and 3] whether procedural safeguards [exist] in the system that would adequately protect against [improper] conduct by the official. C. English, 'Mediator Immunity: Stretching the Doctrine of Absolute Quasi-judicial Immunity: *Wagshal* v. *Foster*,' 63 Geo. Wash. L. Rev. 759, 766 (1995), citing to *Butz* v. *Economou*, 438 U.S. 478, 513–17, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978)." (Internal quotation marks omitted.) *Carrubba* v. *Moskowitz*, supra, 274 Conn. 542–43.

Similarly, the United States Supreme Court stated in *Cleavinger* v. *Saxner*, supra, 474 U.S. 201–202, that, "in general our cases have followed a functional approach to immunity law. . . . [O]ur cases clearly indicate that immunity analysis rests on functional categories, not on the status of the defendant. . . . Absolute immunity flows not from rank or title or location within the [g]overnment . . . but from the nature of the responsibilities of the individual official. And in *Butz* the [c]ourt mentioned the following factors, among others, as characteristic of the judicial process and to be considered

in determining absolute as contrasted with qualified immunity: (a) the need to assure that the individual can perform his functions without harassment or intimidation; (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (c) insulation from political influence; (d) the importance of precedent; (e) the adversary nature of the process; and (f) the correctability of error on appeal." (Citations omitted; internal quotation marks omitted.)

Thus, to determine whether court-appointed conservators are entitled to absolute quasi-judicial immunity, we must initially determine whether they perform "functions sufficiently comparable to those of officials who have traditionally been afforded absolute immunity at common law . . . ."[8] (Internal quotation marks omitted.) *Carrubba* v. *Moskowitz*, supra, 274 Conn. 542. The primary duties of court-appointed conservators at the time of the underlying events in the present case are set forth in General Statutes (Rev. to 2005) §§ 45a-655[9] and 45a-656.[10] In general terms, a conservator of the estate is required to manage the conservatee's estate for the benefit of the conservatee; General Statutes (Rev. to 2005) § 45a-655 (a); and a conservator of the person is required to provide for the care, comfort and maintenance of the conservatee. General Statutes (Rev. to 2005) § 45a-656 (a).

We have repeatedly recognized, however, that when the Probate Court has expressly authorized or approved specific conduct by the conservator, the conservator is not acting on behalf of the conservatee, but as an agent of the Probate Court. See *Elmendorf* v. *Poprocki*, 155 Conn. 115, 120, 230 A.2d 1 (1967) ("the conservatrix is an agent of the Probate Court and not of the ward"); id., 118 (The Probate Court "is primarily entrusted with the care and management of the ward's estate, and, in many respects, the conservator is but the agent of the court. . . . A conservator has only such powers as are expressly or impliedly given to him by statute. . . . In exercising those powers, he is under the supervision and control of the Probate Court." [Citations omitted.]); id. ("authorization or approval by the Probate Court . . . is essential, and without it the ward's estate is not liable"); *Johnson's Appeal from Probate*, 71 Conn. 590, 598, 42 A. 662 (1899) ("under our law the custody of the ward . . . is primarily intrusted to the Court of Probate, and the conservator is, in many respects, but the arm or agent of the court in the performance of the trust and duty imposed upon it"); *Johnson's Appeal from Probate*, supra, 598 (if conservator "exercises his statutory power . . . he does this subject to [the Probate Court's] power to approve or disapprove of his action").[11] Accordingly, when the conservator has obtained the authorization or approval of the Probate Court for his or her actions on behalf of the conservatee's estate, the conservator cannot be held personally

liable. See *Zanoni* v. *Hudon*, 48 Conn. App. 32, 37–38, 708 A.2d 222 (when Probate Court has approved conservator's action, conservator is agent for Probate Court and "[a]n authorized agent for a disclosed principal, in the absence of circumstances showing that personal responsibility was incurred, is not personally liable to the other contracting party" [internal quotation marks omitted]), cert. denied, 244 Conn. 928, 711 A.2d 730 (1998); see also General Statutes § 45a-202.[12]

Although *Zanoni* was based purely on principles of agency, we conclude that principles of quasi-judicial immunity require the same result. Because conservators are acting as the agents of the Probate Court when their acts are authorized or approved, their function is not merely "*comparable* to those of officials who have traditionally been afforded absolute immunity at common law"; (emphasis added; internal quotation marks omitted) *Carrubba* v. *Moskowitz*, supra, 274 Conn. 542; rather, they function *as* the Probate Court. Accordingly, imposing liability on a conservator for acts authorized or approved by the Probate Court would chill that court's ability to make and carry out fearless and principled decisions regarding the conservatee's care and the management of his or her estate.[13] See id.; cf. *Kermit Construction Corp.* v. *Banco Credito y Ahorro Ponceno*, 547 F.2d 1, 3 (1st Cir. 1976) ("At the least, a receiver who faithfully and carefully carries out the orders of his appointing judge must share the judge's absolute immunity. To deny him this immunity would seriously encroach on the judicial immunity already recognized by the Supreme Court. . . . It would make the receiver a lightning rod for harassing litigation aimed at judicial orders. In addition to the unfairness of sparing the judge who gives an order while punishing the receiver who obeys it, a fear of bringing down litigation on the receiver might color a court's judgment in some cases; and if the court ignores the danger of harassing suits, tensions between receiver and judge seem inevitable." [Citation omitted.]). Quasi-judicial immunity for acts by a conservator that are authorized or approved by the Probate Court is also appropriate because "[a]ny person aggrieved by any order, denial or decree of a court of probate in any matter . . . may appeal therefrom to the Superior Court . . . ." General Statutes (Rev. to 2005) § 45a-186 (a); see *Butz* v. *Economou*, supra, 438 U.S. 512 (judicial immunity is appropriate when official's decision can be corrected on appeal). Accordingly, we conclude that conservators are entitled to quasi-judicial immunity from liability for acts that are authorized or approved by the Probate Court. See *Collins* v. *West Hartford Police Dept.*, 380 F. Sup. 2d 83, 91 (D. Conn. 2005) (conservator is entitled to quasi-judicial immunity for "actions as an agent of the Probate Court, taken under the orders or direction of [that court]").

When the conservator's acts are not authorized or

approved by the Probate Court, however, we see no reason to depart from the common-law rule that the conservator of the estate is not acting as the agent of that court, but as the fiduciary of the conservatee, and, as such, may be held personally liable. *Elmendorf* v. *Poprocki*, supra, 155 Conn. 120 (conservator is personally liable for services provided to conservatee until they are approved by Probate Court); *Zanoni* v. *Hudon*, supra, 48 Conn. App. 37 ("[a] conservator is a fiduciary and acts at his peril and on his own responsibility unless and until his actions in the management of the ward's estate are approved by the Probate Court" [internal quotation marks omitted]); see also *Murphy* v. *Wakelee*, 247 Conn. 396, 398–99, 721 A.2d 1181 (1998) (plaintiff had burden of proving that conservator's negligence had injured conservatee's estate). Indeed, we have held that, even if expenditures on behalf of the estate are *proper and necessary*, liability for them "rest[s] on [the conservator] . . . until they [are] subsequently approved by the Probate Court"; *Elmendorf* v. *Poprocki*, supra, 120; although the conservator may be entitled to reimbursement for proper expenditures from the estate after they are approved. Id. Because holding conservators of the estate personally liable under these circumstances does not undermine the independence and integrity of the Probate Court's decisions regarding the conservatee, and because fiduciaries generally may be held liable for their conduct, we conclude that conservators are not entitled to judicial immunity when their acts on behalf of the conservatee are not authorized or approved by the Probate Court.[14]

The District Court in the present case concluded that *Zanoni* applies only to conservators of the estate, not to conservators of the person, because, pursuant to General Statutes § 45a-164, "the Probate Court must approve the sale of the ward's real property" and "[c]ompleting such a transaction without the Probate Court's approval would clearly be ultra vires and is patently distinguishable from the allegations against Donovan." *King* v. *Rell*, United States District Court, Docket No. 3:06-cv-1703(VLB) (D. Conn. March 24, 2008); see also General Statutes § 45a-177 (conservator of estate must submit periodic accounts of trust to Probate Court). In contrast, conservators of the person have the statutory authority to take steps to care for the conservatee without the authorization or approval of the Probate Court; see General Statutes (Rev. to 2005) § 45a-656; although the conservator must report at least annually to the Probate Court regarding the conservatee's condition. See General Statutes (Rev. to 2005) § 45a-656 (a) (6). Thus, the District Court appears to have concluded that a conservator can be held personally liable for his or her conduct on behalf of the conservatee only when the conservator fails to obtain from the Probate Court an approval that is *statutorily required*.[15] We see no reason, however, why the holding

of *Zanoni*, that a conservator is acting as the agent for the Probate Court only when it obtains court authorization or approval for his or her action, should not apply to all actions taken by a conservator on the conservatee's behalf, regardless of whether approval by the Probate Court is statutorily required. Accordingly, we can perceive no reason why conservators of the person should not be liable for actions taken without the authorization or approval of the Probate Court.

Our conclusion that both conservators of the estate and of the person may be held personally liable for actions that are not authorized or approved by the Probate Court is bolstered by General Statutes (Rev. to 2005) § 45a-650 (g), which provides: "If the court appoints a conservator of the estate of the respondent, it shall require a probate bond. The court may, if it deems it necessary for the protection of the respondent, require a bond of any conservator of the person appointed under this section." See also General Statutes § 45a-152 (governing procedure for bringing action against conservator). There would be little point to requiring a probate bond or providing procedures for bringing an action against conservators if they were entitled to absolute quasi-judicial immunity for *all* of their conduct on behalf of conservatees. Thus, § 45a-650 (g) evinces a legislative policy that conservators should not be entitled to quasi-judicial immunity when they are not acting as agents for the Probate Court.

To the extent that Donovan argues that conservators are entitled to quasi-judicial immunity even when their acts were not authorized or approved by the Probate Court, because there are ample statutory safeguards to ensure proper behavior by the conservator, we disagree. In support of this argument, Donovan relies on *Carrubba* v. *Moskowitz*, supra, 274 Conn. 543 (quasi-judicial immunity may be appropriate when "procedural safeguards [exist] in the system that would adequately protect against [improper] conduct by the official" [internal quotation marks omitted]), and *Murphy* v. *Wakelee*, supra, 247 Conn. 406 (because conservator's duties and conduct are prescribed by statute and carried out under supervision of Probate Court "there is less reason for concern" about improper conduct than for fiduciaries generally). In *Murphy*, however, we merely noted that a fiduciary generally need not prove fair dealing by clear and convincing evidence in the absence of a threshold showing of "suspicious circumstances"; (internal quotation marks omitted) id., 405–406; and there was even less reason to impose such a burden on conservators. Id., 406. We did not suggest that conservators should always be *immune* from suit because of the statutory safeguards. We further note that, although there are statutory safeguards in place, many of the safeguards enumerated by the court in *Butz* v. *Economou*, supra, 438 U.S. 512, such as the official's insulation from outside influence, an adversarial decision-making process

and the correctability of improper decisions through an appeal process do not apply when the conservator's acts are not authorized or approved by the Probate Court. Finally, we find it significant that the statutory safeguards governing conservators of the person were not adequate in the present case to prevent what the trial court in the habeas proceeding characterized as " 'a terrible miscarriage of justice,' " even though many of the conservator's acts *were* authorized by the Probate Court.

Donovan also argues that conservators are entitled to quasi-judicial immunity for their discretionary acts because they serve a similar function to guardians ad litem, who are entitled to "absolute immunity for their actions that are integral to the judicial process." *Carrubba* v. *Moskowitz*, supra, 274 Conn. 547. The role of a guardian ad litem for children in the inherently hostile setting of a marital dissolution proceeding, which was the setting in *Carrubba*, is distinguishable, however, from the role of a court-appointed conservator. It is all but inevitable that, in a dissolution proceeding, at least one of the parties will be disgruntled by the guardian ad litem's conduct toward the children and his or her recommendations concerning their best interests. Accordingly, without immunity, the guardians would "act like litigation lightning rods." (Internal quotation marks omitted.) Id., 547–48. In contrast, it is not all but inevitable that conservators will act as "litigation lightning rods" for third party claims because there is no such inherent conflict between the conservatee's interests and the interests of others. Moreover, there is no inherent conflict between the conservatee and the conservator. Although an involuntary conservatee might be hostile toward the Probate Court, it does not necessarily follow that he or she would be hostile toward the court-appointed conservator, who could well be a family member or friend.[16] See General Statutes (Rev. to 2005) § 45a-650 (e) ("[t]he respondent may . . . nominate a conservator who shall be appointed unless the court finds the appointment of the nominee is not in the best interests of the respondent"). Accordingly, we reject this claim.

II

We next address the second certified question: Under Connecticut law, does absolute quasi-judicial immunity extend to attorneys appointed to represent respondents in conservatorship proceedings or to attorneys appointed to represent conservatees? The plaintiff contends that, because the primary function of attorneys appointed pursuant to § 45a-649 (b)[17] is to advocate for their clients' expressed wishes and not to determine their best interests, they are not acting in a judicial capacity and are not entitled to quasi-judicial immunity. Newman contends that, to the contrary, attorneys for respondents and conservators are entitled to quasi-judi-

cial immunity because their primary function is to assist the Probate Court to ascertain and to serve the best interests of their clients. We agree with the plaintiff.

Again, this question turns on whether such attorneys perform "functions sufficiently comparable to those of officials who have traditionally been afforded absolute immunity at common law . . . ." (Internal quotation marks omitted.) *Carrubba* v. *Moskowitz*, supra, 274 Conn. 542. At the time of the underlying events in the present case, rule 1.14 of the Rules of Professional Conduct (2005) governed the duties of attorneys to clients with impaired capacity. That rule provides that "[w]hen a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." Rules of Professional Conduct (2005) 1.14 (a). In a normal client-lawyer relationship, "a lawyer [must] zealously [assert] the client's position under the rules of the adversary system." Rules of Professional Conduct (2005), preamble. In addition, "[t]he normal client-lawyer relationship is based on the assumption that the client [with impaired capacity], when properly advised and assisted, is capable of making decisions about important matters." Rules of Professional Conduct (2005) 1.14, commentary; see also *In re M.R.*, 135 N.J. 155, 176, 638 A.2d 1274 (1994) (under Rules of Professional Conduct, "[t]he attorney's role is not to determine whether the client is competent to make a decision, but to advocate the decision that the client makes"); P. Tremblay, "On Persuasion and Paternalism: Lawyer Decisionmaking and the Questionably Competent Client," 1987 Utah L. Rev. 515, 548–49 (1987) ("Even though this choice [between advocating for the client's wishes and protecting the client's best interests] may be difficult to make personally, its resolution among courts and writers has been rather uniform. Most favor advocacy. The most significant reason is the belief that a lawyer using a more selective approach usurps the function of the judge or jury by deciding her client's fate."); Office of the Probate Court Administrator, "Performance Standards Governing Representation of Clients in Conservatorship Proceedings," (1998) p. 1 ("The attorney is to represent the client zealously within the bounds of the law. . . . The attorney must advocate the client's wishes at all hearings even if the attorney personally disagrees with those wishes.").

Under rule 1.14 (b), "[a] lawyer may seek the appointment of a guardian or take other protective action with respect to a client," but "only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest." Rules of Professional Conduct (2005) 1.14 (b); see also Office of the Probate Court Administrator, supra, p. 2 (attorney should seek appointment of guardian for impaired client "[only] in

extraordinary situations . . . because the effect will be that no one in the courtroom will be expressing the respondent's strongly held view"). "Ordinarily, if a client is opposed to the [conservatorship] application, the attorney must be also." Office of the Probate Court Administrator, supra, p. 2; see also *In re J.C.T.*, 176 P.3d 726, 735 (Colo. 2007) (American Bar Association has taken position that "a lawyer . . . should not . . . seek to have himself appointed guardian except in the most exigent of circumstances" [internal quotation marks omitted]); P. Tremblay, supra, 1987 Utah L. Rev. 552 ("[T]he [legal] profession seeks to adhere to the underlying ideology of informed consent while permitting exceptions to that doctrine. This is especially true in commitment-type cases that stress the client's right to decide."); V. Gottlich, "The Role of the Attorney for the Defendant in Adult Guardianship Cases: An Advocate's Perspective," 7 Md. J. Contemp. Legal Issues 191, 201–202 (1996) (under rule 1.14, "even if an attorney thinks the guardianship would be in the client's best interest, the attorney whose client opposes guardianship is obligated . . . to defend against the guardianship petition").

We recognize that the commentary to rule 1.14 of the Rules of Professional Conduct (2005) provides: "If the person has no guardian or legal representative, the lawyer often must act as de facto guardian." This commentary has been criticized, however, on the ground that, "[t]o the extent it permits ad hoc decisionmaking by the lawyer without either consent or court approval, the [r]ule reincorporates the tension [between the ethical requirement that a lawyer must obtain the client's informed consent for any decision and the reality that an incapacitated client may not be able to grant consent] that has received so much attention in the medical field, but it offers no meaningful assistance regarding how to resolve the tension in practice. In a technical but perhaps significant way, it also violates the law by authorizing action in the absence of direct or proxy consent." P. Tremblay, supra, 1987 Utah L. Rev. 546. In addition, the commentary is problematic because "[t]he [common-law] presumption of competence . . . can easily be construed to mean that all persons are legally competent to make decisions until the presumption has been overcome in a judicial proceeding. . . . Any third party usurpation of authority without judicial approval or prior consent violates this principle." (Citations omitted.) Id., 546 n.130. In light of these concerns, it is reasonable to conclude that, like the commentary recognizing that an attorney may be required to seek the appointment of a guardian, the commentary recognizing that an attorney may have to act as the client's de facto guardian applies only in exceptional cases where it is inescapably clear that the client is unable to make reasonable and informed decisions and immediate action is required to protect an important interest of

the client. See *In re J.C.T.*, supra, 176 P.3d 735 (although commentary to rule 1.14 stated in 2005 that "the lawyer must often act as de facto guardian," American Bar Association has taken position that "a lawyer . . . should not act as . . . guardian except in the most exigent of circumstances, that is, where immediate and irreparable harm will result from the slightest delay" [internal quotation marks omitted]).[18]

On the basis of the foregoing, we conclude that, with respect to attorneys for respondents in conservatorship proceedings, the primary function of such attorneys under rule 1.14 of the Rules of Professional Conduct is to advocate for the client's express wishes. Although an attorney might be required in an exceptional case to act as the client's de facto guardian, that is not the attorney's primary role.

With respect to attorneys for conservatees, "[i]f a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client." Rules of Professional Conduct (2005) 1.14, commentary. Thus, if a conservatee has expressed a preference for a course of action, the conservator has determined that the conservatee's expressed preference is unreasonable, and the attorney agrees with that determination, the attorney should be guided by the conservator's decisions and is not required to advocate for the expressed wishes of the conservatee regarding matters within the conservator's authority. If the attorney believes that the conservatee's expressed wishes are not unreasonable, however, the attorney may advocate for those wishes and is not bound by the conservator's decision. Rules of Professional Conduct (2005) 1.14, commentary ("[e]ven if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication"); *Schult* v. *Schult*, 241 Conn. 767, 783, 699 A.2d 134 (1997) ("[T]he rules . . . recognize that there will be situations in which the positions of the child's attorney and the guardian may differ. . . . Although we agree that *ordinarily* the attorney should look to the guardian, we do not agree that the rules require such action in every case." [Citation omitted; emphasis in original.]). In addition, if an attorney knows that the conservator is acting adversely to the client's interest, the attorney may have an obligation to rectify the misconduct. See Rules of Professional Conduct (2005) 1.14, commentary.[19]

We conclude, therefore, that attorneys for conservatees ordinarily are required to act on the basis of the conservator's decisions. If the conservator's decision is contrary to the conservatee's express wishes, however, and the attorney believes that the conservatee's expressed wishes are not unreasonable, the attorney may advocate for them.

Thus, as a general rule, attorneys for respondents and attorneys for conservatees are not ethically permitted, much less required, to make decisions on the basis of their personal judgment regarding a respondent's or a conservatee's best interests, although they may be required to do so in an exceptional case. These ethical principles clearly would apply to an attorney personally retained by a respondent or conservatee to represent him or her in conservatorship proceedings at his or her own expense; see General Statutes (Rev. to 2005) § 45a-649 (b) (2) ("the respondent has a right to be present at the hearing and has a right to be represented by an attorney at his or her own expense"); and nothing in the language of § 45a-649 (b) suggests that an attorney appointed by the Probate Court pursuant to the statute would have a different role. Accordingly, we conclude that the primary purpose of the statutory provision of § 45a-649 requiring the Probate Court to appoint an attorney if the respondent is unable to obtain one is to ensure that respondents and conservatees are fully informed of the nature of the proceedings and that their articulated preferences are zealously advocated by a trained attorney both during the proceedings and during the conservatorship. The purpose is not to authorize the Probate Court to obtain the assistance of an attorney in ascertaining the respondent's or conservatee's best interests. Because the function of such court-appointed attorneys generally does not differ from that of privately retained attorneys in other contexts, this consideration weighs heavily against extending quasi-judicial immunity to them. See *Carrubba* v. *Moskowitz*, supra, 274 Conn. 541 (because function of public defender does not differ from privately retained attorney, public defender is not entitled to quasi-judicial immunity).

Moreover, in part I of this opinion we concluded that conservators are not entitled to quasi-judicial immunity when their acts are not authorized or approved by the Probate Court because: (1) they are not acting as agents of the Probate Court, but as fiduciaries, which generally are not entitled to quasi-judicial immunity; (2) their role is distinguishable from the role of guardians ad litem in marital dissolution proceedings because it is less likely that they will be litigation lightning rods; and (3) safeguards such as insulation from outside influence, an adversarial decision-making process and the correctability of improper decisions through an appeal are lacking. Similarly, attorneys for respondents and conservatees act as their fiduciaries; see *Matza* v. *Matza*, 226 Conn. 166, 178–79, 627 A.2d 414 (1993); attorneys for respondents and conservatees are no more likely to act as litigation lightning rods than other privately retained attorneys in contested adversarial proceedings involving conflicting rights and interests; and the decisions of such attorneys lack the procedural safeguards of judicial decision-making.[20] Accordingly, we conclude that a court-appointed attorney for a respondent in a

conservatorship proceeding or a conservatee is not entitled to quasi-judicial immunity from claims arising from his or her representation.[21]

Newman argues that this conclusion is inconsistent with this court's conclusion in *Carrubba* v. *Moskowitz*, supra, 274 Conn. 547–48, that attorneys appointed to represent minors in dissolution proceedings pursuant to General Statutes § 46b-54 are entitled to quasi-judicial immunity. We disagree. In *Carrubba*, we acknowledged "the dual responsibilities of the court-appointed attorney for a minor child both to safeguard the child's best interests and to act as an advocate for the child"; id., 539; but concluded that, "[b]ecause . . . [§ 46b-54] provides that the appointment is for the purpose of promoting the best interests of the child, the representation of the child must always be guided by that overarching goal, despite the dual role required of the attorney for the minor child. Thus, the appointed attorney's duty to secure the best interests of the child dictates that she must be more objective than a privately retained attorney. Furthermore, because the overall goal of serving the best interests of the child always guides the representation of the child, the dual obligations imposed on the attorney for a minor child, namely, to assist the court in serving the best interests of the child and to function as the child's advocate, are not easily disentangled. In other words, the duty to secure the best interests of the child does not cease to guide the actions of the attorney for the minor child, even while she is functioning as an advocate." Id., 544–45. Because the *primary* role of the attorney in this context is to "assist the court in determining and serving the best interests of the child"; id., 546; the attorney is entitled to quasi-judicial immunity. Id.

Unlike children, however, who are not presumed to be competent,[22] impaired adults are presumed to be competent under rule 1.14 until incompetence is established. See Rules of Professional Conduct (2005) 1.14, commentary ("[t]he normal client-lawyer relationship is based on the assumption that the [impaired] client, when properly advised and assisted, is capable of making decisions about important matters").[23] Indeed, even after an adult client's inability to care for himself or his affairs is established, the attorney can make decisions on the basis of the client's reasonable and informed decisions. Id. ("[e]ven if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client").

The different presumptions that apply to children and adults with impaired capacity are reflected by the relevant statutes. Section 46b-54 expressly provides that the trial court may appoint an attorney for the child if doing so is in the child's best interests. In addition, children do not have a right under § 46b-54 to representation in dissolution proceedings; rather, attorneys

appointed pursuant to § 46b-54 serve at the discretion of the trial court. General Statutes § 46b-54 (a) ("[t]he court *may* appoint counsel for any minor child or children" [emphasis added]); *Carrubba* v. *Moskowitz*, supra, 274 Conn. 544 (attorney appointed under § 46b-54 serves at discretion of court). This supports a conclusion that the controlling factor in deciding whether to appoint an attorney pursuant to § 46b-54 is the court's need for objective assistance in determining the children's best interests, not the children's interest in having an independent advocate. In contrast, § 45a-649 (b) does not refer to the best interests of the respondent or conservatee, and an attorney appointed pursuant to the statute does not serve at the discretion of the Probate Court. Rather, respondents in conservatorship proceedings have the *right* to be *represented* by an attorney, which supports the conclusion that the purpose of appointing an attorney is to provide the client with an independent, zealous advocate, rather than to provide the Probate Court with objective guidance. See General Statutes (Rev. to 2005) § 45a-649 (b) (2) ("[T]he respondent . . . has a *right* to be *represented* by an attorney . . . . If the respondent is unable to request or obtain counsel for any reason, the court *shall* appoint an attorney to *represent* the respondent . . . ." [Emphasis added.]). Accordingly, our conclusion in the present case that attorneys for respondents and conservatees are not entitled to quasi-judicial immunity is not inconsistent with *Carrubba*.

Newman also relies on *Lesnewski* v. *Redvers*, 276 Conn. 526, 886 A.2d 1207 (2005), to support his argument that attorneys for respondents and conservatees are entitled to quasi-judicial immunity because they are expected to act in the client's best interests. See id., 540 ("for both a minor and an adult incapable person, the court's purpose in providing them with representation is to ensure that their legal disability will not undermine the adequate protection of their interests"). In *Lesnewski*, this court concluded that the plaintiff, a conservatee, could bring an appeal from an order of the Probate Court in her own name only if her attorney could convince the court that the appeal was in the plaintiff's best interests. Id., 541. This court also concluded that, if a conservatee's articulated preference conflicted with his or her best interests, the attorney could not bring an appeal, but the appeal must be brought through a guardian ad litem or next friend. Id. In support of this conclusion we relied on our decision in *Newman* v. *Newman*, 235 Conn. 82, 100, 663 A.2d 980 (1995), in which we concluded that the minor children in a marital dissolution proceeding can appeal in their own name only if they can persuade the trial court that an appeal is in their best interests. This is because, as we have explained, "the governing standard [with respect to the representation of minor children in dissolution proceedings] is the best interests of the minor

children." Id. As we also have explained, however, the governing standard for the representation of impaired adult clients is not the protection of their best interests, but, to the extent possible, the zealous advocacy of their expressed preferences. This is true even if the Probate Court has appointed a conservator for the client. See Rules of Professional Conduct (2005) 1.14, commentary ("[e]ven if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client"); *Schult* v. *Schult*, supra, 241 Conn. 783 ("[T]he rules . . . recognize that there will be situations in which the positions of the child's attorney and the guardian may differ. . . . Although we agree that *ordinarily* the attorney should look to the guardian, we do not agree that the rules require such action in every case." [Citation omitted; emphasis in original.]). Accordingly, we now clarify that, if a conservatee expresses a preference to appeal from an order of the Probate Court, and the attorney believes and can persuade the trial court that the conservatee's preference is reasonable and informed, the trial court should allow the appeal even if the attorney does not prove that an appeal would be in the client's best interests.[24] Only upon determining that the conservatee's preference to appeal is unreasonable would the court be required to determine whether an appeal would be in the conservatee's best interest.[25] To the extent that *Lesnewski* held that a conservatee may file an appeal in his or her own name *only* when the conservatee's attorney persuades the court that an appeal is in the conservatee's best interests, it is hereby overruled. Accordingly, the case no longer supports Newman's claim that attorneys for respondents and conservatees generally must act to protect their clients' best interests, and not to advocate their articulated preferences.

Newman also argues that, even if attorneys for conservatees are not entitled to quasi-judicial immunity, attorneys for respondents in conservatorship proceedings are entitled to such immunity because, "unless and until the court finds that the statutory prerequisites are met and appoints a conservator, the attorney is the only one who can act for the respondent." As we have indicated, it is true that, if an important right or interest of the client is at stake and immediate action is required, the attorney for a respondent may be required to act as a de facto guardian to protect that specific interest. It does not follow, however, that an attorney for a respondent should act as the client's *general* de facto guardian during that period or that the attorney generally should rely solely on his or her own judgment regarding the client's best interests in deciding whether to oppose an involuntary conservatorship. As we have indicated, an attorney may act as the de facto guardian of an impaired client only in exceptional circumstances, and whether a conservatorship is in the client's best

interests is for the Probate Court to decide, not the attorney. It would be anomalous to conclude that, when an individual is facing one of the most serious infringements on personal liberty and autonomy authorized by law; see *Edward W.* v. *Lamkins*, 99 Cal. App. 4th 516, 530–31, 122 Cal. Rptr. 2d 1 (2002) ("commitment is a deprivation of [constitutional due process right to] liberty [and] is incarceration against one's will, whether it is called criminal or civil"; [internal quotation marks omitted]; and committed person faces possible loss of right to be free of physical restraint, right to practice profession, right to hold public office, right to marry, right to refuse certain types of medical treatment, right to vote, right to contract, and loss of reputation); V. Gottlich, supra, 7 Md. J. Contemp. Legal Issues 197 (guardianship "is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen");[26] the attorney is least obligated to advocate for the individual's express wishes.[27]

Finally, Newman argues that, because the 2007 amendments to the statutory scheme governing conservatorship proceedings; see Public Acts 2007, No. 07-116; clarified that a court-appointed attorney is "closer to (but still not entirely) an independent advocate, more responsive to the wishes of the proposed conservatee and with a less objective role in the process," the amendments support a conclusion that, under the 2005 statutory scheme, attorneys were expected to act as advocates for their client's best interests. See *Chatterjee* v. *Commissioner of Revenue Services*, 277 Conn. 681, 693, 894 A.2d 919 (2006) ("[w]hen the legislature amends the language of a statute, it is presumed that it intended to change the meaning of the statute and to accomplish some purpose" [internal quotation marks omitted]). It does not follow from the fact that the legislature has provided new additional rights to respondents and conservatees,[28] however, that the legislature previously intended that a court-appointed attorney would not act primarily as a zealous advocate for their clients' expressed wishes, but would assist the Probate Court in determining the clients' best interests. Accordingly, we reject this claim.[29]

III

Finally, we address the third certified question: What is the role of conservators, court-appointed attorneys for conservatees, and nursing homes in the Connecticut probate court system, in light of the six factors for determining quasi-judicial immunity outlined in *Cleavinger* v. *Saxner*, supra, 474 U.S. 202 Because parts I and II of this opinion are responsive to the portions of this question relating to conservators and court-appointed attorneys, we focus our analysis in part III of our opinion exclusively on the role of nursing homes with respect to conservatees.[30] The District Court found that "Judge Brunnock ordered Gross be placed in a

nursing home, issued an order approving the disbursement of Gross's assets to cover his costs of living and ordered the restrictions placed on [the plaintiff's] visitation rights."[31] *King* v. *Rell*, supra, United States District Court, Docket No. 3:06-cv-1703(VLB). The District Court concluded that Grove Manor was entitled to quasi-judicial immunity to the extent that it was executing these orders.[32] Id. We conclude that Grove Manor was neither executing the orders of the Probate Court nor performing a function comparable to that of the Probate Court when it admitted and cared for Gross, but was merely following the instructions of the conservator and performing its ordinary function as a nursing home. Accordingly, we conclude that it was not entitled to quasi-judicial immunity.

General Statutes § 45a-98 provides in relevant part: "(a) Courts of probate in their respective districts shall have the power to . . . (7) make any lawful orders or decrees to carry into effect the power and jurisdiction conferred upon them by the laws of this state." This court previously has recognized, however, that "[t]he [P]robate [C]ourt is a court of limited jurisdiction and has only such powers as are given it by statute or are reasonably to be implied in order to carry out its statutory powers." *Prince* v. *Sheffield*, 158 Conn. 286, 293–94, 259 A.2d 621 (1969). We also have held that "[t]he situation . . . in which the Probate Court may exercise equitable jurisdiction must be one which arises within the framework of a matter already before it, and wherein the application of equity is but a necessary step in the direction of the final determination of the entire matter." *Palmer* v. *Hartford National Bank & Trust Co.*, 160 Conn. 415, 429, 279 A.2d 726 (1971). The Probate Court "does not have plenary powers in equity and cannot adjudicate questions affecting persons who are strangers to the issues involved . . . ." *Delaney* v. *Kennaugh*, 105 Conn. 557, 562–63, 136 A.108 (1927); cf. *Union & New Haven Trust Co.* v. *Sherwood*, 110 Conn. 150, 161, 147 A. 562 (1929) (Probate Courts "possess certain incidental powers beyond the scope of those expressly confided to them, where such powers become necessary in the discharge of duties imposed upon them or are necessary for the adjustment of the equitable rights before the court" [internal quotation marks omitted]). This is because, "in an equitable action, facts must often be found. . . . Yet no jury trial is permitted in cases of this type, in either the Probate Court or in the Superior Court on an appeal from probate. . . . The Probate Court may not adjudicate complex legal questions which are subject to the broad jurisdiction of a general court of equity. . . . Thus, the Probate Court lacks essential powers necessary to handle independent equitable actions . . . ." (Citations omitted.) *Palmer* v. *Hartford National Bank & Trust Co.*, supra, 430.

In the present case, Grove Manor has provided no

support for the proposition that the Probate Court has the statutory authority in conservatorship proceedings to issue an order to an entity that was not a party to the conservatorship proceeding, such as a nursing home, that has the force of an injunction.[33] Rather, the authority of the Probate Court with respect to conservators of the person is to appoint the conservator; see General Statutes (Rev. to 2005) § 45a-650 (d); and to receive the reports of the conservator regarding the conservatee's condition. See General Statutes (Rev. to 2005) § 45a-656 (a) (6). In addition, the Probate Court has general supervisory authority over the conservator; see *Elmendorf* v. *Poprocki*, supra, 155 Conn. 118; and, if requested by the conservator, may authorize or approve the conservator's decisions regarding the care of the conservatee; see footnote 15 of this opinion; in which case the conservator is deemed to be acting as the court's agent. See *Murphy* v. *Wakelee*, supra, 247 Conn. 406–407. The apparent purpose of these provisions is to authorize the Probate Court, with the assistance of the conservator, to make decisions regarding the care and maintenance of a person who is incapable of making such decisions on his or her own behalf, not to authorize the court to impose duties on third parties, such as a nursing home. Moreover, the power to issue injunctive orders to third parties regarding the conservatee's care is not necessary or incidental to the Probate Court's authority to make such decisions, any more than the power to issue injunctions is necessary or incidental to the right of a competent person to make decisions regarding his or her own care. Accordingly, we conclude that the Probate Court does not have the statutory authority to issue injunctive orders to third parties to carry out its decisions on behalf of a conservatee.

It follows that, although a conservator is acting as an agent of the Probate Court when it gives court-approved instructions to the nursing home regarding the conservatee's admission and care, the nursing home is not acting as the Probate Court's agent when it complies with the conservator's instructions. Rather, it would appear that nursing homes have essentially the same relationship with conservators that they have with competent persons who are seeking admission or are admitted to the nursing home, and are bound by the court-approved instructions of conservators only to the same extent that they are bound by the instructions of competent clients.[34] Although a nursing home may have a legal obligation to honor the instructions of a competent client, and although the fact that it was following the client's instructions may be raised as a defense in an action arising from its conduct, the nursing home is not entitled to quasi-judicial immunity from such an action. Similarly, a nursing home confronted with a claim that it admitted and held a conservatee against his or her will in violation of federal civil rights law

generally should be entitled to raise the defense that it was acting in reasonable reliance on the conservator's instructions, and reasonable reliance generally may be established by showing that the conservator's instructions were expressly authorized by the Probate Court.[35] Because a nursing home is simply functioning in its ordinary role as a nursing home when it complies with a conservator's court-approved instructions regarding the admission and care of a conservatee, however, and is not performing the judicial function of the Probate Court, it is not entitled to absolute quasi-judicial immunity from suit under federal law.[36] See *Miller* v. *Gammie*, supra, 335 F.3d 897 ("[A]bsolute immunity shields only those who perform a function that enjoyed absolute immunity at common law. Even actions taken with court approval or under a court's direction are not in and of themselves entitled to quasi-judicial, absolute immunity.").

In support of its claim that nursing homes are performing a judicial function when they admit residents pursuant to the order of the Probate Court, Grove Manor relies primarily on *Miller* v. *Director*, *Middletown State Hospital*, 146 F. Sup. 674, 676 (S.D.N.Y. 1956), in which the plaintiff was committed to a state mental hospital pursuant to the New York rules of criminal procedure. Although it is not entirely clear from the opinion, it is reasonable to conclude that the institution was designated by the state as the place at which committed criminal defendants would be confined, and that the institution had no discretion to refuse to accept the plaintiff.[37] The plaintiff "escaped" from the hospital and sought damages from the director of the hospital for his illegal confinement and an injunction against further confinement. Id. With respect to the claim for damages, the court held that, "[t]o the extent that the director was called upon to exercise discretion in determining when the plaintiff should be discharged, he was exercising a quasi-judicial role and is therefore immune. To the extent that he was merely executing the order of the [s]tate Supreme Court justice his immunity is equally clear." Id., 678.

As we have indicated, in the present case, Grove Manor has pointed to no authority for the proposition that a conservatee can be "committed" by the Probate Court to a nursing home or the proposition that a nursing home could be bound by an order of the Probate Court to confine a conservatee. Thus, private nursing homes are not in the same position as a state-run institution designated by the state as the place where committed criminal defendants are to be confined. Indeed, Grove Manor has not cited, and our research has not revealed, a single case in which a private nursing home claimed that it was entitled to quasi-judicial immunity from an action arising from its care of a conservatee. Accordingly, we find *Miller* to be of limited persuasive value.

The certified questions are answered as follows: (1) absolute quasi-judicial immunity extends to a conservator appointed by the Probate Court only when the conservator is executing an order of the Probate Court or the conservator's actions are ratified by the Probate Court; (2) absolute quasi-judicial immunity does not extend to attorneys appointed to represent respondents in conservatorship proceedings or conservatees; and (3) our analysis of the first and second certified questions is responsive to the third certified question as it relates to the roles of conservators and court-appointed attorneys; with respect to nursing homes caring for conservatees, we conclude that their function does not entitle them to quasi-judicial immunity under any circumstances.

No costs shall be taxed in this court to the parties.

In this opinion PALMER, EVELEIGH and HARPER, Js., concurred.

[1] General Statutes § 51-199b (d) provides: "The Supreme Court may answer a question of law certified to it by a court of the United States or by the highest court of another state or of a tribe, if the answer may be determinative of an issue in pending litigation in the certifying court and if there is no controlling appellate decision, constitutional provision or statute of this state."

[2] Gross originally brought the complaint in the United States District Court for the District of Connecticut. After his death in 2007, the District Court granted the motion of his daughter, Carolyn Dee King, who was also the administratrix of his estate, to be substituted as the plaintiff. Hereinafter, we refer to Gross by name and to King as the plaintiff.

[3] As the opinion of the United States Court of Appeals noted, Connecticut's statutory conservatorship scheme; see General Statutes §§ 45a-644 through 45a-663; was amended in 2007, after the incidents in the present case took place. *Gross* v. *Rell*, 585 F.3d 72, 76 n.2 (2d Cir. 2009). The United States Court of Appeals was "of the opinion that the 2007 revisions do not affect the underlying issues in this case regarding quasi-judicial immunity." Id. The court also stated that it had "no reason to conclude that [the amendments] should apply retroactively, and the parties do not suggest otherwise." Id. Accordingly, in this opinion, we focus our analysis on the 2005 revision of the conservatorship scheme, which was in place at the time that the relevant events occurred. Unless otherwise indicated, all references to the conservatorship scheme, §§ 45a-644 through 45a-663, in this opinion are to the 2005 revision.

[4] The complaint named as defendants: M. Jodi Rell, then governor of Connecticut; Ewald; Judge Brunnock; Donovan; Newman; and Grove Manor. "The claims against Donovan include violation of 42 U.S.C. § 1985, violation of Gross's due process rights pursuant to 42 U.S.C. § 1983, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of fiduciary duty, false arrest, assault and false imprisonment. Gross alleges that Grove Manor violated 42 U.S.C. § 1985, 42 U.S.C. § 1396r, part of the Omnibus Budget Reconciliation Act of 1989 . . . and the Connecticut Patient[s'] Bill of Rights . . . General Statutes § 19a-550, as well as claims for negligent and intentional infliction of emotional distress. Against Newman, Gross asserts claims for violation of 42 U.S.C. § 1985, violation of Gross's due process rights pursuant to 42 U.S.C. § 1983, intentional infliction of emotional distress, negligent infliction of emotional distress, and legal malpractice." *King* v. *Rell*, United States District Court, Docket No. 3:06-cv-1703 (VLB) (D. Conn. March 24, 2008).

[5] The Court of Appeals affirmed the District Court's dismissal of the state and federal statutory claims against Grove Manor on waiver grounds; *Gross* v. *Rell*, supra, 585 F.3d 94; and affirmed the dismissal of the tort claims against Grove Manor for failure to meet the minimum jurisdictional damage amount, without prejudice to the plaintiff's right to reassert those claims if any of the remaining civil rights claims against Grove Manor or the claims against Donovan and Newman ultimately survived. Id., 95. The court also

affirmed the District Court's judgment dismissing the claims against Judge Brunnock; id., 86; and Governor Rell. Id., 96. Finally, the court affirmed the judgment dismissing the claims against Ewald on the ground that the claim failed to meet the minimum jurisdictional damage amount, again without prejudice to the plaintiff's right to reassert the claim. Id.

[6] After this court granted certification on the three questions, it granted the applications of the Connecticut Probate Assembly, American Association of Retired Persons, National Consumer Voice for Quality Long-Term Care, National Senior Citizens Law Center, Jerome N. Frank Legal Services Organization, Center for Public Representation, Connecticut State Independent Living Council, Disability Resource Center of Fairfield County, South Central Behavioral Health Network, Western Connecticut Association for Human Rights, National Disability Rights Network, Advocacy Unlimited, Inc., American Civil Liberties Union, Connecticut Association of Centers for Independent Living, Disability Advocacy Collaborative, National Alliance on Mental Illness-CT, National Association for Rights Protection and Advocacy, People First of Connecticut, Mental Health Association of Connecticut, Inc., and the office of protection and advocacy for persons with disabilities of the state of Connecticut for permission to file briefs on the certified questions as amici curiae.

[7] This court determined in *Spring* v. *Constantino*, 168 Conn. 563, 576, 362 A.2d 871 (1975), that public defenders are not entitled to absolute quasi-judicial immunity. In 1976, the legislature, through the enactment of Public Acts 1976, No. 76-371, §§ 1 and 2, added public defenders to the definition of "state officers and employees" entitled to qualified statutory sovereign immunity pursuant to General Statutes § 4-165.

[8] As we have indicated, the United States Court of Appeals held in the present case that a judge of the Connecticut Probate Court is entitled to judicial immunity. *Gross* v. *Rell*, supra, 585 F.3d 84. The plaintiff does not appear to dispute this conclusion, but disputes only that the judge was acting within its jurisdiction. Id. Although this court previously has not addressed this question, it is clear to us that the Court of Appeals properly concluded that a judge of the Probate Court is entitled to judicial immunity and "will be subject to liability *only when he has acted in the clear absence of all jurisdiction*." (Emphasis in original; internal quotation marks omitted.) Id.

[9] General Statutes (Rev. to 2005) § 45a-655 (a) provides: "A conservator of the estate appointed under section 45a-646, 45a-650 or 45a-654 shall, within two months after the date of his or her appointment, make and file in the Court of Probate, an inventory under penalty of false statement of the estate of his or her ward, with the properties thereof appraised or caused to be appraised, by such conservator, at fair market value as of the date of his or her appointment. Such inventory shall include the value of the ward's interest in all property in which the ward has a legal or equitable present interest, including, but not limited to, the ward's interest in any joint bank accounts or other jointly held property. The conservator shall manage all the estate and apply so much of the net income thereof, and, if necessary, any part of the principal of the property, which is required to support the ward and those members of the ward's family whom he or she has the legal duty to support and to pay the ward's debts, and may sue for and collect all debts due the ward."

[10] General Statutes (Rev. to 2005) § 45a-656 (a) provides: "The conservator of the person shall have: (1) The duty and responsibility for the general custody of the respondent; (2) the power to establish his or her place of abode within the state; (3) the power to give consent for his or her medical or other professional care, counsel, treatment or service; (4) the duty to provide for the care, comfort and maintenance of the ward; (5) the duty to take reasonable care of the respondent's personal effects; and (6) the duty to report at least annually to the probate court which appointed the conservator regarding the condition of the respondent. The preceding duties, responsibilities and powers shall be carried out within the limitations of the resources available to the ward, either through his own estate or through private or public assistance."

[11] See also *Murphy* v. *Wakelee*, 247 Conn. 396, 406, 721 A.2d 1181 (1998) ("[t]he [Probate Court] and *not the conservator*, is primarily entrusted with the care and management of the ward's estate, and, in many respects, the conservator is but the agent of the court" [emphasis in original; internal quotation marks omitted]); *Marcus' Appeal from Probate*, 199 Conn. 524, 529, 509 A.2d 1 (1986) (same).

[12] General Statutes § 45a-202 (a) provides: "Any person, acting as a fidu-

ciary as defined by section 45a-199 or in any other fiduciary capacity, who in good faith makes payments or delivers property or estate pursuant to the order of the court of probate having jurisdiction before an appeal has been taken from such order, shall not be liable for the money so paid, or the property so delivered, even if the order under which such payment or delivery has been made is later reversed, vacated or set aside."

[13] We do not believe that there is a *high* " 'likelihood of harassment or intimidation' " of conservators by conservatees or third parties when they are functioning as the agent of the Probate Court. *Carrubba* v. *Moskowitz*, supra, 274 Conn. 543. Nevertheless, because conservators act as agents for the Probate Court when their acts are authorized or approved, any risk of harassment or intimidation is sufficient to justify quasi-judicial immunity, just as it is for the Probate Court itself.

[14] See *Trapp* v. *State*, 53 P.3d 1128, 1132 (Alaska 2002) (because conservators may be sued pursuant to statute and act as fiduciaries for conservatees, they are not entitled to quasi-judicial immunity); *Frey* v. *Blanket Corp.*, 255 Neb. 100, 107, 582 N.W.2d 336 (1998) (because guardian must post bond and may be held liable pursuant to statute, and because "the role of a guardian in selecting a residence for an incapacitated ward is not closely related to or ancillary to a court's adjudication of a particular matter," guardian is not entitled to quasi-judicial immunity). Donovan cites a number of cases for the proposition that conservators and guardians are generally entitled to absolute quasi-judicial immunity. See *Cok* v. *Consentino*, 876 F.2d 1, 3 (1st Cir. 1989) (court-appointed conservator is immune from action for damages resulting from quasi-judicial activities); *Mosher* v. *Saalfeld*, 589 F.2d 438, 442 (9th Cir. 1978) (conservator of estate is entitled to absolute quasi-judicial immunity because "[h]e was acting pursuant to his court appointed authority in the performance of his statutory duties"), cert. denied, 442 U.S. 941, 99 S. Ct. 2883, 61 L. Ed. 2d 311 (1979); *Zimmerman* v. *Nolker*, United States District Court, Docket No. 08-4216-CV-C-NKL (W.D. Mo. December 31, 2008) ("[g]uardians ad litem and conservators making recommendations to a court and managing assets are entitled to absolute immunity in their roles as court delegees"); *Sasscer* v. *Barrios-Paoli*, United States District Court, Docket No. 05 Civ. 2196 (RMB) (DCF) (S.D.N.Y. December 8, 2008) (guardians are "entitled to immunity to the extent they acted as non-judicial persons fulfilling quasi-judicial functions" [internal quotation marks omitted]); *Faraldo* v. *Kessler*, United States District Court, Docket No. 08-CV-0261 (SJF) (ETB) (E.D.N.Y. January 23, 2008) (court-appointed evaluator in guardianship proceeding is entitled to quasi-judicial immunity); *Holmes* v. *Silver Cross Hospital of Joliet*, 340 F. Sup. 125, 131 (N.D. Ill. 1972) (conservator is entitled to judicial immunity when "[h]is order of appointment . . . was made with specific directions as to his course of conduct as a conservator, giving him no discretion"). Because it is not clear in all of these cases that immunity was extended to conservators even when they were acting without the authorization or approval of the court, and because the cases that may be interpreted as extending that far engage in little analysis, we find the cases unpersuasive on that issue.

[15] Although a conservator of the person is not statutorily *required* to obtain the authorization or approval of the Probate Court when exercising the powers enumerated in § 45a-656, nothing prevents the conservator from doing so. See *Johnson's Appeal from Probate*, supra, 71 Conn. 598 ("under our law the custody of the ward . . . is primarily intrusted to the Court of Probate").

[16] Contrary to the dissenting justice's statement that the majority has "inexplicably fail[ed] to explain why the similarities between [the duties of conservators] and the duties of both guardians ad litem and attorneys for minor children do not justify extending the same level of immunity to conservators," the foregoing analysis explains this distinction.

[17] General Statutes (Rev. to 2005) § 45a-649 (b) provides in relevant part: "(1) The notice required by subdivision (1) of subsection (a) of this section shall specify (A) the nature of involuntary representation sought and the legal consequences thereof, (B) the facts alleged in the application, and (C) the time and place of the hearing. (2) The notice shall further state that the respondent has a right to be present at the hearing and has a right to be represented by an attorney at his or her own expense. If the respondent is unable to request or obtain counsel for any reason, the court shall appoint an attorney to represent the respondent in any proceeding under this title involving the respondent. . . ."

[18] In apparent recognition of these concerns, the commentary to rule 1.14 of the Rules of Professional Conduct no longer provides that attorneys for

clients with impaired capacity must often act as de facto guardians.

[19] The commentary provides: "If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct." Rules of Professional Conduct (2005) 1.14, commentary. A fortiori, if the attorney represents the ward, and not the guardian, he or she has such an obligation.

[20] Newman contends that the decisions of attorneys for respondents and conservatees are correctable on appeal because § 45a-186 provides for appeals from Probate Court decisions. The fact that, in a particular case, the Probate Court's ruling may have derived from an attorney's decision does not mean, however, that the attorney's decision itself is correctable on appeal. Indeed, the attorney's improper or unauthorized decision may prevent an appeal or take place during an appeal.

[21] We emphasize that, although attorneys for respondents and conservatees are not entitled to quasi-judicial immunity, they are not barred from raising the defense that they disregarded an impaired client's expressed wishes in a reasonable and good faith belief that the client was not capable of making reasonable and informed decisions. See Rules of Professional Conduct (2005) 1.14, commentary ("[i]f the person has no guardian or legal representative, the lawyer often must act as de facto guardian"); id. ("[i]f a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client"). An assessment by the attorney with which the trial court, in retrospect, disagrees does not necessarily rise to the level of an ethical violation or malpractice. Otherwise, every time an attorney requested that a conservator be appointed for an impaired client against the client's wishes, and the Probate Court concluded that a conservator was not required, the attorney would be subject to discipline.

[22] See *Carrubba* v. *Moskowitz*, supra, 274 Conn. 539 (although, "[a]s an advocate, the attorney should honor the strongly articulated preference regarding taking an appeal of a child who is old enough to express a reasonable preference; as a guardian, the attorney might decide that, despite such a child's present wishes, the contrary course of action would be in the child's long term best interests" [internal quotation marks omitted]); cf. *State* v. *Sanchez*, 25 Conn. App. 21, 26, 592 A.2d 413 (1991) ("children, unlike adults, are not presumed to be competent [witnesses]").

[23] We recognize that, by its express terms, rule 1.14 applies to minors. See Rules of Professional Conduct (2005) 1.14 (a) ("[w]hen a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of *minority*, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" [emphasis added]). As we recognized in *Carrubba*, however, the extent to which an attorney can maintain a normal client-lawyer relationship with a child is inherently curtailed, even when the child is unimpaired. That is not true for adults.

[24] Again, we emphasize that, if the conservator determines that the conservatee's articulated preference to appeal is unreasonable, the attorney ordinarily should be guided by that determination, and the attorney's failure to act on the conservatee's articulated preference under these circumstances would not ordinarily constitute an ethical violation. See footnote 21 of this opinion. We conclude only that the attorney is not *bound* by the conservator's decisions based on the conservatee's best interests if the attorney believes that the conservatee's articulated preference is reasonable and informed.

[25] Of course, if a conservatee is gravely impaired and is incapable of articulating any preferences, the attorney and the trial court can be guided only by the conservatee's best interests. If a conservatee is so gravely impaired, however, there would seem to be little reason to appoint an attorney to represent the conservatee, as distinct from the conservator, inasmuch as the primary role of an attorney for a conservatee is to advocate for his or her articulated preferences, and an attorney for a conservator has an obligation to protect the conservatee from any acts by the conservator that could be adverse to the conservatee's interests. See Rules of Professional Conduct (2005) 1.14, commentary ("[i]f the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct").

[26] Although an involuntary conservatorship is not an involuntary commitment or a guardianship, as the facts of the present case show, an involuntary conservatee potentially faces many of the same infringements on personal

liberty and autonomy.

[27] We recognize the difficult ethical dilemma faced by attorneys representing clients with severely impaired decision-making capacities, and we emphasize that we do not suggest that an attorney for a respondent cannot, under any circumstances, argue in favor of an involuntary conservatorship against the client's express wishes. See *In re J.C.T.*, supra, 176 P.3d 735 (attorney may seek guardianship for impaired client "where immediate and irreparable harm will result from the slightest delay" [internal quotation marks omitted]); *In re M.R.*, supra, 135 N.J. 176 (attorney's duty to advocate for expressed wishes of client with impaired capacity "does not extend to advocating decisions that are patently absurd or that pose an undue risk of harm to the client"). We conclude only that, under the Rules of Professional Conduct, an attorney may act as the client's de facto guardian or advocate for an involuntary conservatorship against the client's express wishes only if it is unmistakably clear that the client is incapable of making reasonable and informed decisions and the attorney is of the firm belief that a conservatorship is the only way to protect important interests of the client. Affording quasi-judicial immunity to all attorneys for all respondents merely because the decision whether to act as an advocate or as a de facto guardian may be very difficult in an exceptional case would be allowing the tail to wag the dog.

[28] See, e.g., Public Acts 2007, No. 07-116, § 15 (c), codified at General Statutes § 45a-649a (c) ("the attorney for the conserved person shall assist in the filing and commencing of an appeal to the Superior Court").

[29] For all of the foregoing reasons, we also reject Newman's claim that, even if attorneys for respondents and conservatees are not entitled to absolute quasi-judicial immunity, they are entitled to qualified immunity.

[30] The amicus Connecticut Probate Assembly argues that this court should suggest to the Second Circuit Court of Appeals that it defer resolving the question of whether conservators are entitled to quasi-judicial immunity under federal law. The amicus contends that resolution of the issue is unnecessary inasmuch as the plaintiff cannot prevail on her claims against the conservator pursuant to 42 U.S.C. § 1983 in any event, for the reason that conservators are not state actors. Because this argument goes to the merits of the plaintiff's federal claims against conservators, and because the Court of Appeals has not sought the guidance of this court on this issue, we decline to address it.

[31] The plaintiff's complaint alleges that, "[o]n November 3, 2005, at the request of . . . Donovan . . . Brunnock issued an ex parte decree stating 'All visitation by [the plaintiff] for . . . Gross is temporarily suspended. This order applies only to off premises visitation. [The plaintiff] may visit at the health center.' " The complaint further alleges that, "[o]n May 1, 2006, at the request of . . . Donovan . . . Brunnock issued an ex parte decree stating 'Wherefore it is ordered and decreed that . . . [the plaintiff] not be allowed to take . . . Gross off premises from Grove Manor . . . . [The plaintiff's] visitation is limited to one . . . visit per day not to exceed one . . . hour. [The plaintiff] is not to bring any recording devices (visual and/or audio) into Grove Manor . . . .' "

[32] Grove Manor does not challenge the United States District Court's conclusion that nursing homes are not entitled to quasi-judicial immunity for discretionary acts that give rise to state tort claims and claims arising from alleged violations of the Connecticut Patients' Bill of Rights, General Statutes § 19a-550, and the Court of Appeals did not ask us to address this issue.

[33] The District Court found that "[a]n order of the Probate Court is required before a ward may be placed in a long-term care facility. See [General Statutes] § 45a-656 (c)." *King* v. *Rell*, supra, United States District Court, Docket No. 3:06-cv-1703 (VLB). Because General Statutes (Rev. to 2005) § 45a-656 does not have a subsection (c), and the current revision of § 45a-656 (c) does not govern the placement of conservatees in a long-term care facility, we assume that the District Court intended to refer to the current revision of § 45a-656b (b), which requires a conservator to obtain the permission of the Probate Court before making such a placement. Section 45a-656b (b) was enacted in 2007 and was not in place at the time of the events in the present case. See Public Acts 2007, No. 07-116, § 21 (b). As we have indicated, a conservator of the person is not required pursuant to General Statutes (Rev. to 2005) § 45a-656 to obtain permission from the Probate Court before placing a conservatee in a nursing home. See footnote 15 of this opinion. Even if § 45a-656b applied in the present case, however, the purpose of the statutory requirement that the conservator obtain the permission of the Probate Court is to protect the conservatee's liberty and autonomy

interests, not to impose any duty on a third party. Although, in light of this new statutory provision, a nursing home may decide to refuse to admit a conservatee in the absence of proof that the conservator has obtained the permission of the Probate Court, nothing in the statute suggests that the Probate Court may direct orders at a long-term care facility.

We recognize that General Statutes (Rev. to 2005) § 45a-649 (a) (2) provides that, upon an application for an involuntary conservatorship, "[t]he [Probate] [C]ourt shall order such notice as it directs to the following . . . (G) the person in charge of the hospital, nursing home or some other institution, if the respondent is in a hospital, nursing home or some other institution." In addition, the statute refers to the persons who receive such notice as "parties." General Statutes (Rev. to 2005) § 45a-649 (a) ("the court shall issue a citation to the following enumerated parties"). For the reasons stated in this opinion, however, we conclude that the role of the "person in charge of the hospital, nursing home or . . . other institution"; General Statutes (Rev. to 2005) § 45a-649 (a) (2) (G); who receives such notice is to help the Probate Court to decide whether an involuntary conservatorship is in the respondent's best interests, and the person is not a "party" to the proceeding in the ordinary sense of that term, i.e., the person is not subject to the jurisdiction of the Probate Court. In any event, in the present case, the parties have pointed to no evidence that Grove Manor was given notice of the conservatorship proceeding pursuant to § 45a-649 (a) (2). Indeed, the record suggests that Grove Manor did not become involved with the conservatee's case until after the conservatorship was imposed.

[34] Although a nursing home generally would be entitled to *rely* on the decisions of the conservator regarding the admission and treatment of the conservatee, especially if a decision has been authorized or approved by the Probate Court, it would not be *legally bound* to comply with the conservator's requests and instructions to any greater extent than it is bound to comply with the decisions of competent nursing home residents. For example, if a nursing home believed that a conservatee's resistance to an involuntary conservatorship would make the conservatee an unduly difficult or risky resident of that facility, Grove Manor has pointed to no authority, and we are aware of none, for the proposition that the nursing home would be *required* to comply with the conservator's request that it admit the conservatee. Rather, the conservator's court-approved request *permits* the nursing home to admit the conservatee without the conservatee's personal consent. Although a nursing home's failure to comply with a conservator's instructions regarding the care of the conservatee might, in certain circumstances, subject the nursing home to some type of legal action in the Superior Court, as might its failure to comply with the instructions of a competent client, the nursing home is not subject to the jurisdiction of the Probate Court and, therefore, cannot be violating any order of the Probate Court if it fails to follow the conservator's instructions.

Thus, the Probate Court's orders in the present case merely authorized Donovan to inform Grove Manor of her decisions regarding Gross' care and treatment and *permitted* Grove Manor to carry out those decisions without Gross' personal consent, and were not binding on Grove Manor to any greater degree than instructions from Gross would have been if he had been deemed competent.

[35] There may be exceptions, however, to this general rule. For example, if a plaintiff could prove that a nursing home conspired in bad faith with the Probate Court and the conservator to confine a conservatee in the nursing home or to restrict his activities there when such confinement or restriction clearly was not necessary or in the conservatee's interests, the nursing home could not prevail on the defense that it was reasonably relying on the Probate Court's orders.

[36] We recognize that, when a nursing home is caring for a conservatee, it may face more difficult challenges than when caring for a competent client because of the conflicts that may arise when the conservator's instructions are different than the conservatee's expressed wishes. Nevertheless, because the nursing home simply is not performing a judicial function when it complies with the conservator's instructions, the potential for such conflicts does not entitle it to quasi-judicial immunity.

[37] The court stated that, "[e]ven if the order was erroneously or improvidently made by the special surrogate . . . the [s]tate would not be liable for receiving and detaining the claimant under the order of commitment. The officers of the [s]tate [h]ospital were not required before receiving [the] claimant under the order to institute an inquiry in order to satisfy themselves that the special surrogate had not erroneously or improvidently made it.

No such burden is cast upon them. They were confronted by an order valid on its face and it was their duty to yield obedience to it. In complying with that order the officers of the institution and the [s]tate did not subject themselves to an action for false imprisonment." (Internal quotation marks omitted.) *Miller* v. *Director*, *Middletown State Hospital*, supra, 146 F. Sup. 677 n.3.