

STATE OF CONNECTICUT  
OFFICE OF THE PUBLIC HEARINGS

CHRO ex rel. Dawn Wynkoop, et al.,  
Complainants

CHRO Nos. 0840008, 0840031,  
0840032, 0840162, 0840243

v.

NERAC, Inc.,  
Respondent

December 13, 2012

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**RULING ON RESPONDENT'S MOTIONS FOR ARTICULATION**  
**ON THE DENIAL OF RESPONDENTS MOTIONS IN LIMINE**

This tribunal has addressed the issue of what is relevant and admissible on the record, and in its previous decisions. The public policy of the State of Connecticut favors disclosure of, and admittance of, any probative evidence that will tend to aid the trier of fact in its determination. All evidence that is admitted is accorded its proper weight by the trier of fact. The respondent has requested intervention to preclude entire classes of evidence that may have probative value, prior to any witness offering them as testimony. The motions in limine currently at issue are prophylactic and of a general nature, rather than specific requests. Respondent previously filed more than a dozen motions to dismiss that were denied. Additionally, respondents filed five requests for declaratory rulings with the Commission on Human Rights and Opportunities (CHRO). The CHRO set down the requests for a specified proceeding, i.e. the public hearing. This motion for articulation is granted in an effort to make clear the nature of evidence and admissibility in an administrative hearing.<sup>1</sup>

**I. STANDARD**

"The motion in limine is not formally recognized by our statutes or rules of practice, and has generally been used in Connecticut courts to invoke a trial judge's inherent discretionary powers to control proceedings, exclude evidence, and prevent occurrences that might unnecessarily prejudice the right of any party to a fair trial." *C. Tait & J. LaPlante, Connecticut Evidence* (1988) § 2.6.1, p. 30. When the determination of the admissibility of evidence hinges on other

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<sup>1</sup> This tribunal would like to point to respondent's arguments made on the first day of trial where the respondents argued for wide latitude on admissibility when submitting undated, unaddressed, pieces of paper that allegedly were an attachment on email, without presenting the email, and asked that it be entered into evidence. These pieces of paper were admitted over the objection of the complainant and the tribunal noted that they would be accorded their proper weight. See TR. 192 -198 (October 15, 2012) and TR 273-276 (October 18, 2012)

necessary facts that can properly be determined only during the trial, after the necessary prerequisite testimony has been presented, such determination is more appropriately made after such prerequisite testimony has been presented. *Richmond v. Longo*, 604 A.2d 374 Conn.App. (1992) “The party who files the motion in limine to exclude evidence has the burden of demonstrating that the evidence is inadmissible on any relevant ground.” *Menna v. Jaiman*, 832 A.2d 1219 Conn.App. (2003)

## II. LAW

The presiding officer has wide discretion in controlling the proceedings and in admitting evidence. “Administrative tribunals are not strictly bound by the rules of evidence and may consider evidence which would normally be incompetent in a judicial proceeding.” *Salmon v. Department of Public Health and Addiction Services*, 788 A.2d 1199 (2002). As an example, even hearsay evidence may be admitted if it has probative value. *Hultman v. Department of Social Services*, 47 Conn.Supp. 228, (2000). Further, § 46a-54-90a (b) of the Regulations of Connecticut State Agencies provides that: “Parties may call, examine and cross-examine witnesses and introduce evidence into the record of the proceedings, subject to the ruling of the presiding officer and as provided in § 46a-54-78a to § 46a-54-96a, inclusive.”

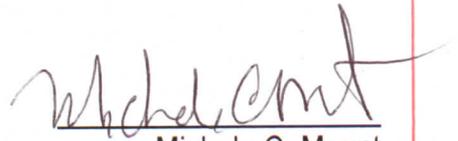
### III. Motions in Limine to preclude Pattern or Practice or Companywide Discrimination

The respondent’s motions filed on October 24, 2012 sought to exclude the presentation of any evidence, by any of the complainants that would tend to show of pattern, practice and companywide discrimination. The complaint does not state any cause of action with regard to the specific claim of “pattern or practice discrimination.” Evidence that would be probative and elementary to proving complainants’ instant complaint would necessarily overlap with any evidence that may also go to proving pattern, practice and companywide discrimination. However, as stated, there is no such pattern of practice claim before this tribunal. To grant this motion would be akin to granting a motion to dismiss by denying the complainants’ due process rights to have their claims fairly heard and to present all the evidence in support of the actions alleged in their complaints. *Id.*

### IV. Motions in Limine requesting the Exclusion of Evidence of Emotional Distress or Attorney’s Fees

Respondent requests exclusion of evidence that may be probative or overlap with the testimony regarding the overall issue of discrimination. A blanket determination of any evidence that could aid the trier of fact in its ultimate decision would not be proper. It would also provide fertile ground for ceaseless arguments regarding what testimony pertains to which issue. Currently, there has been no testimony offered regarding an award of any attorney’s fees or emotional distress damages. This tribunal will not exclude any generalized undefined body of evidence. If there is an objection to specific testimony offered at trial, the decision on such objections will be determined on an ad hoc basis. *Id.*

It is so ordered this 13th day of December 2012.

A handwritten signature in black ink, appearing to read "Michele C. Mount". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michele C. Mount  
Presiding Human Rights Referee

cc.

Douglas Eitelman-via email only  
James Brule-via email only  
Stephen Warner-via email only  
Francis Gleason, Esq.-via email only  
Cheryl Sharp, Esq.-via email only  
Victoria Chavey, Esq.-via email only