KATZ, J., with whom SULLIVAN, C. J., and ZARELLA, J., join, dissenting. At the core of this opinion is whether the offer of judgment statute, General Statutes § 52-192a, applies to court-mandated arbitration proceedings commenced pursuant to General Statutes § 52-549u. Today, based upon the ''plain'' language of § 52-192a and the legislative history of that statute, the majority concludes that § 52-192a does not apply to court-mandated arbitration proceedings. Because I disagree with this conclusion, I respectfully dissent.

The majority places heavy emphasis on the punitive nature of § 52-192a, concluding that applying the statute to court-mandated arbitration proceedings would undermine the legislature's intent in enacting court-mandated arbitration, namely, to provide an incentive to parties to ''settle cases voluntarily.'' The majority also focuses on the phrase ''after trial'' as it is used in § 52-192a (b), concluding that it *necessarily* refers to a judicial proceeding that is presided over by a *judge* and formally governed by the rules of evidence, not to a court-mandated arbitration proceeding that is presided over by a nonjudicial officer in which a formal application of the rules of evidence is not required. Accordingly, the majority concludes that the arbitration

proceeding in this case was not a trial, and therefore, that the offer of judgment statute does not apply.

Although I agree with the majority that one *effect* of the arbitration program is that it aids in settling cases, I disagree that that is the primary purpose of the program. More importantly, I fail to see how a goal of encouraging parties to settle cases voluntarily applies in the context of this case in which neither party *elected* to participate in the arbitration program. Furthermore, I do not agree that the punitive effect of § 52-192a undermines § 52-549u. Finally, although the language of § 52-192a is hardly a model of clarity, I do not read the legislature's use of the word ''trial'' as narrowly as the majority. Accordingly, I believe that mandatory arbitration proceedings constitute ''trials'' within the meaning of § 52-192a.

A

My analysis begins with the purpose of § 52-192a. ''In all litigation, a party faces the potential adverse consequences of a defeat, including the expense of a trial and costs. Section 52-192a provides an additional incentive to settle a lawsuit and avoid a trial in certain cases by imposing an increased penalty upon a nonsettling litigant.'' *Murphy* v. *Marmon Group, Inc.*, 562 F. Sup. 856, 859 (D. Conn. 1983); see also *Gionfriddo* v. *Avis Rent A Car System, Inc.*, 192 Conn. 301, 305, 472 A.2d 316 (1984) (purpose of § 52-192a is encouragement of settlements); *Lutynski* v. *B. B. & J. Trucking, Inc.*, 31 Conn. App. 806, 814, 628 A.2d 1 (1993) (statute ''encourage[s] early, fair, and reasonable settlements and . . . encourage[s] plaintiffs to make offers of judgments promptly'' by penalizing defendants who do not settle cases prior to trial), aff'd, 229 Conn. 525, 642 A.2d 7 (1994). As the majority correctly notes, quoting *Paine Webber Jackson & Curtis, Inc.* v. *Winters*, 22 Conn. App. 640, 655, 579 A.2d 545, cert. denied, 216 Conn. 820, 581 A.2d 1055 (1990), ''§ 52-192a 'imposes a penalty for wasting this state's judicial resources . . . [and serves] as an indigenous procedural device for promoting judicial economy . . . .' ''

''Consistent with this broad statutory intent, § 52-192a (a) authorizes a plaintiff's offer of judgment . . . [in] *any* civil action based upon contract or for the recovery of money . . . .'' (Emphasis added; internal quotation marks omitted.) *Gionfriddo* v. *Avis Rent A Car System, Inc.*, supra, 192 Conn. 305. Thus, the plain language of this provision grants a plaintiff the unqualified right to submit an offer of judgment to a defendant in *any contract action* for the recovery of money.[1] No distinction is made between actions in which a trial judge presides and actions in which a trial judge refers the case to an arbitrator.

The issue is whether the purpose of § 52-192a can be accomplished without undermining the goal of arbitra-

tion. Unlike the majority, I consider that both statutes can be accommodated. First, although I recognize that settling cases may be one *effect* of arbitration in general, and indeed, an ancillary benefit of § 52-549u, I do not agree that that is the *primary* goal of § 52-549u. The legislative history of § 52-549u indicates that the primary goal in enacting § 52-549u was to *reduce the backlog of civil jury cases*, independent of the issue of settlement.[2] See 25 S. Proc., Pt. 11, 1982 Sess., p. 3658, remarks of Senator Howard T. Owens Jr. (explaining that "[t]he court system in the State is being choked by new cases . . . all types of civil cases . . . . It's just, [courts are] inundated with the stuff and [at] some stage we're going to have to start weeding this out and I think this is a step in the right direction."); 25 S. Proc., supra, p. 3660, remarks of Senator Eugene A. Skowronski (responding that "[m]aybe there is some merit to the concept that it may relieve some of the overcrowding, but to mandate this kind of system on a statewide basis as this bill is doing is a serious mistake for our state"); 25 H.R. Proc., Pt. 24, 1982 Sess., p. 7665, remarks of Representative Richard D. Tulisano (stating that purpose of court-mandated arbitration is to "*reduce judicial backlog*, particularly in civil matters" [emphasis added]); 25 H.R. Proc., supra, p. 7666, remarks of Representative Richard O. Belden (noting that "we still don't seem to be able to take care of the *backlog* in the system" [emphasis added]); see also 40 S. Proc., Pt. 4, 1997 Sess., pp. 1260–1261, remarks of Senator Thomas F. Upson ("[W]hatever we can do to *unclog the system* . . . is good . . . . It's *not an alternate dispute*, it's arbitration, but it's one way *to expedite cases* so that people won't be in the system two, three, four or five years." [Emphasis added.]).[3]

Second, because I believe that reducing the backlog in the trial courts is the primary purpose of § 52-549u, I disagree with the majority that the goal of § 52-549u would be undermined if the prejudgment interest statute were to be applied to defendants in the mandatory arbitration program. On the contrary, I believe that, in the context of a mandatory arbitration program, as utilized in this case,[4] the punitive component of § 52-192a used to encourage settlement, and thereby avoid wasting scarce judicial resources, can be harmonized with the goal of § 52-549u to reduce court backlog. Indeed, just as judicial resources are wasted in jury cases, they too are wasted, admittedly to a lesser degree, in court-mandated arbitration proceedings.[5]

Furthermore, I disagree with the majority that if § 52-192a were to apply in court-mandated arbitration proceedings, "the parties would have an incentive to reject the arbitrator's award and seek a trial de novo in order to avoid the payment of offer of judgment interest." I am hard pressed to believe that a defendant against whom the arbitrator has ruled would seek a new trial and the attendant expenses *simply* to avoid prejudg-

ment interest. Moreover, should that unlikely event occur, the successful plaintiff would be free to waive the prejudgment interest in exchange for the binding ''judgment of the court . . . .'' See Practice Book § 23-66 (a) and (c).

B

I now turn to the issue of whether mandatory arbitration proceedings constitute ''trials'' within the meaning of § 52-192a. Subsection (b) of § 52-192a, in defining the guidelines for calculating the interest award to be levied against the defendant for nonacceptance of the plaintiff's offer of judgment, refers to a ''trial.'' In its discussion of the significance of the use of the word trial, the majority states that the term refers to ''[a] formal *judicial* examination of evidence and determination of legal claims in an adversary proceeding.'' (Emphasis added.) The majority concludes that because ''the court-mandated arbitration proceeding in this case was not formal, was not presided over by a judge, and did not result in a binding determination of any of the legal claims,'' it was not a trial.

First, although I agree that the term trial *generally* refers to a formal judicial proceeding,[6] I do not agree that this is its *only* meaning. Cf. *Gionfriddo* v. *Avis Rent A Car System, Inc.*, supra, 192 Conn. 306 (term ''verdict'' has more than one meaning). The word trial has been defined as '' 'the investigation and decision of a matter in issue between parties *before a competent tribunal*, including all the steps taken in the case from its submission to the court or jury to the rendition of judgment.' '' (Emphasis added.) *Tureck* v. *George*, 44 Conn. App. 154, 157, 687 A.2d 1309, cert. denied, 240 Conn. 914, 691 A.2d 1080 (1997), quoting 88 C.J.S., Trial § 1 (1955); see also 75 Am. Jur. 2d, Trial § 1 (1991) (defining trial as ''a judicial *investigation* and determination of the issues between the parties to an action'' [emphasis added]). The phrase ''after trial'' as it is used in § 52-192a (b) has been defined simply as referring to a ''final judgment . . . .'' (Internal quotation marks omitted.) *Tureck* v. *George*, supra, 162. In this case, there was an investigation by a competent tribunal, the arbitrator. In addition, I believe that this proceeding was judicial in nature because it took place at the direction and under the guidance of the trial court.[7] Moreover, the majority's conclusion that the arbitration proceeding in this case did not result in any binding determination of any legal claims is not accurate. Pursuant to Practice Book § 23-66 (a), ''a decision of the arbitrator shall become a *judgment of the court* if no claim for trial de novo is filed in accordance with subsection (c).'' (Emphasis added.) Section 23-66 (c) provides in part that ''[a] claim for a trial de novo must be filed with the court clerk within twenty days of the filing of the arbitrator's decision. . . .'' In this case, the plaintiff did not file a claim for a trial de novo.

Accordingly, the decision of the arbitrator was a binding final judgment of the court.

Furthermore, I believe that the majority's narrow interpretation of the word trial is inconsistent with this court's precedent in which we have interpreted terms under § 52-192a broadly. In *Gionfriddo* v. *Avis Rent A Car System, Inc.*, supra, 192 Conn. 305–306, this court examined the word "verdict" as it was used in the revision of § 52-192a (b) that existed at the time of the 1982 trial court judgment in that case. The court concluded that under § 52-192a (b), verdict referred not only to jury trials, as that term generally connotes, but to court trials as well, despite the fact that the statute did not expressly specify that it applied to court cases.[8] Id., 305. Specifically, the court noted that § 52-192a (a) authorized a plaintiff's offer of judgment in "any civil action . . . ." (Internal quotation marks omitted.) Id. On that basis, the court concluded that "[t]hese broad statutory provisions should not be undermined solely because § 52-192a (b), in determining the penalty for nonacceptance of a plaintiff's offer of judgment, refers to a 'verdict.' " Id., citing *Murphy* v. *Marmon Group, Inc.*, supra, 562 F. Sup. 859–60. Similarly, in the present case, I believe that we should interpret the term trial broadly to refer not only to court cases, but to court-mandated arbitration proceedings as well.

Second, the majority's reliance on the informal application of the rules of evidence in support of its conclusion that the arbitration proceeding did not constitute a trial is misplaced.[9] In fact, in juvenile proceedings, courts routinely relax their "strict application of the formal rules of evidence to reflect the informal nature of juvenile proceedings," yet such actions are still considered trials. Connecticut Code of Evidence, commentary § 1-1 (b) (2000); see also Practice Book § 34-2 (a) (juvenile proceedings are essentially civil in nature and should "at all times be as informal as the requirements of due process and fairness permit"); *In re Jessica B.*, 50 Conn. App. 554, 571, 718 A.2d 997 (1998) (formal rules of evidence given " 'liberal interpretation' "); *In re Cynthia A.*, 8 Conn. App. 656, 662, 514 A.2d 360 (1986) (in permitting hearsay evidence to be admitted, court noted that "in juvenile proceedings certain procedural informalities are constitutionally permissible, allowing, for example, the liberal interpretation of the formal rules of evidence as long as due process standards are observed").

The majority also makes much of the fact that the parties stipulated to all the evidence, indicating that this impacts the determination of whether the arbitration proceeding constituted a trial. Parties are entitled to stipulate to evidence. In fact, trial courts routinely allow parties to do so. Accordingly, I fail to see how this controls the issue of whether the proceeding at issue constituted a trial.

Third, the fact that the proceeding was presided over by an arbitrator does not dictate whether there was a trial because the parties in this case did not *voluntarily* proceed to arbitration. Indeed, as noted previously, the trial court, exercising its discretion under to § 52-549u, referred this case to the arbitrator under its mandatory arbitration program. There was no agreement by the parties to proceed to arbitration with the goal of settling the case. Moreover, the decision by the parties not to file a claim for a trial de novo is no more or less a settlement than a decision by the parties not to appeal from a judgment of the trial court.

Finally, under Practice Book § 23-66 (a) and (c), the parties in this action were entitled to file a claim for a trial de novo within twenty days following the filing of the judgment by the arbitrator. The phrase, ''trial de novo'' clearly suggests that the arbitration proceeding was, in fact, a trial. Indeed, the legislative history of § 52-549u supports this view. During debate in the House of Representatives, Representative Michael P. Lawlor stated that ''any finding of an arbitrator shall not be admissible in a *subsequent trial—what lawyers call a trial [de novo] or a trial from scratch* . . . . [E]very party who is affected by such an arbitration decision shall have a right to elect a *trial, another trial, a new trial, a trial [de novo]*.'' (Emphasis added.) 40 H.R. Proc., Pt. 4, 1997 Sess., p. 1388. Therefore, I do not agree with the majority that the arbitration proceeding in this case did not constitute a trial. Accordingly, I believe that § 52-192a, read in its totality, encompasses court-mandated arbitration proceedings. See *Murphy* v. *Marmon Group, Inc.*, supra, 562 F. Sup. 858 (§ 52-192 ''clearly creates a *substantive* statutory right . . . . Rather than governing merely the manner and means of pursuing a claim in court, the law creates a right in all civil plaintiffs to claim interest on responsible settlement offers . . . .'' [Emphasis added; internal quotation marks omitted.]); *Lutynski* v. *B. B. & J. Trucking, Inc.*, supra, 31 Conn. App. 812 (''an award of interest under § 52-192a is mandatory, and the application of [the statute] does not depend on an analysis of the underlying circumstances of the case or a determination of the facts'' [internal quotation marks omitted]).

In conclusion, because I believe that the offer of judgment statute should apply to court-mandated arbitration proceedings, I respectfully dissent.

[1] In this case, all parties agree that the arbitration proceeding constituted a civil action.

[2] In 1997, the legislature amended § 52-549u. See Public Acts 1997, No. 97-24, § 2 (P.A. 97-24) (effective January 1, 1998). Public Act 97-24, among other things, increased the estimated worth of a case for which a trial judge could refer to arbitration from $15,000 to $50,000. In addition, P.A. 97-24 allowed *any party* to petition the court to become eligible to participate in the arbitration process. Prior to that amendment, *only the trial court*, in its discretion, could refer a case to an arbitrator. See General Statutes (Rev. to 1997) § 52-549u. Another amendment, No. 97-40, § 7, of the 1997 Public

Acts, made a minor technical change that is not relevant to this appeal.

[3] The majority, however, refers to a specific comment made by Representative Michael P. Lawlor during debate in the House of Representatives concerning the enactment of a bill that later amended § 52-549u; see footnote 2 of this dissent; concluding that his comment clearly indicates that the legislature's purpose in enacting § 52-549u was to provide a form of alternate dispute resolution and assist parties in voluntarily settling cases. I disagree with the majority's characterization of Representative Lawlor's comments. In their entirety, I believe that Representative Lawlor's comments indicate that the purpose of § 52-549u was to speed up the process in small claims cases in order to decrease the backlog in the trial court. On the floor of the House of Representatives, Representative Lawlor was asked why, under the 1997 bill, the rules of evidence would no longer govern mandatory arbitration proceedings. He responded in general terms noting that the "*whole process of arbitration* is an alternate dispute resolution mechanism *which [was] intended to avoid unnecessary court delays*. In effect these are the two parties sitting down with an impartial hearing officer to figure out if there is a resolution to the case which would *avoid a lengthy and expensive trial*. I suppose *on one level* this is what you might consider an elaborate pre-trial discussion. . . . If it, the current system, is to employ these strict rules of evidence which requires people to make objections against hearsay and other things . . . [i]t makes it a much more formal and therefore, *a lengthy process*. . . . So we're trying to balance *our interest in a speedy resolution of many cases* which really are not that complicated, with every party's right to a full and fair trial before a jury if they [later] choose." (Emphasis added.) 40 H.R. Proc., Pt. 4, 1997 Sess., pp. 1391–93.

Therefore, although I agree that Representative Lawlor believed that arbitration proceedings, in general, had the *effect* of encouraging people to settle cases due to their informal nature, it is clear to me that he believed the purpose of the arbitration program was to dispose of uncomplicated cases quickly. Indeed, eliminating the requirement that the rules of evidence must govern arbitration proceedings aids in this goal because cases can be resolved faster, enabling a greater number of cases to be referred from the trial court to arbitration.

As I have indicated; see footnote 2 of this dissent; in 1997, the legislature added the following language to § 52-549u: "*Any party* may petition the court to become eligible to participate in the arbitration process . . . ." {Emphasis added.) P.A. 97-24, § 2. Prior to that amendment, only "a court, in its discretion" could refer a case to an arbitrator. See General Statutes (Rev. to 1997) § 52-549u. Accordingly, when one or both parties *elect* to participate in the arbitration program, I agree that the legislature likely intended to encourage parties to resolve cases voluntarily without a lengthy and expensive trial. Indeed, this would also help to reduce the backlog of civil jury cases. When the parties have not agreed to participate in the arbitration program, however, and, in fact, have been *mandated* by the court to proceed down that path, I fail to see how they necessarily have any intent to settle the case voluntarily. Therefore, I do not agree with the majority that *mandatory* arbitration promotes the *voluntary settlement* of cases.

[4] As noted previously, all parties in this case agree that the arbitration proceeding was *court-mandated* and that neither party had elected to participate in the arbitration process.

[5] Arbitrators are paid $100 per day and an additional $25 for each decision filed with the court. In addition, the proceedings are conducted in the courtroom. General Statutes § 52-549w (b).

[6] Although the majority maintains that the term trial does not encompass informal proceedings, we note that the definition of "determination" in Black's Law Dictionary (7th Ed. 1999), as relied upon by the majority, includes a final decision by an administrative agency. "[P]roceedings before administrative agencies, [however,] are informal and are conducted without regard to the strict rules of evidence . . . ." *Pizzola* v. *Planning & Zoning Commission*, 167 Conn. 202, 207, 355 A.2d 21 (1974); see also *Jutkowitz* v. *Dept. of Health Services*, 220 Conn. 86, 98, 596 A.2d 374 (1991)("administrative agencies are not governed by the strict rules of evidence"), citing *Huck* v. *Inland Wetlands & Watercourses Agency*, 203 Conn. 525, 536, 525 A.2d 940 (1987); *Connecticut Fund for the Environment, Inc.* v. *Stamford*, 192 Conn. 247, 249, 470 A.2d 1214 (1984) (administrative hearings are "informal and are conducted without regard to the strict rules of evidence"). This informality is indeed more consistent with how this dissent views trials, as discussed subsequently herein.

[7] It is also important to note that the arbitrator *expressly* referred to the

proceeding as a ''summary trial'' in his memorandum of decision.

[8] Section 52-192a (a) has since been amended and now expressly includes the phrase ''prior to the rendering of a verdict by the jury *or an award by the court* . . . .'' (Emphasis added.) See Public Acts 1994, No. 94-20.

[9] Prior to P.A. 97-24, § 2, court-mandated arbitration proceedings were governed by the rules of evidence. See 40 H.R. Proc., Pt. 4, 1997 Sess., p. 1388, remarks of Representative Michael P. Lawlor (amendment ''eliminates the requirement which has been the case up until now that the rules of evidence shall govern the proceedings''). This requirement was eliminated in order to speed up the arbitration process. Id., p. 1392.