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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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SULLIVAN, C. J., concurring. I concur with the result reached by the majority, based on this court's decision in *St. George* v. *Gordon*, 264 Conn. 538, 825 A.2d 90 (2003), that, in enacting General Statutes § 5-141d, the legislature waived the state's immunity from liability but did not waive the state's immunity from suit. Because sovereign immunity acts as an absolute bar to suit, even the most meritorious claims against the state must be dismissed if immunity from suit has not been waived. In my view, that is the case here.

General Statutes § 5-141d (c) provides that, in order for a state officer to receive reimbursement for legal fees expended in defending against a lawsuit brought against him in his official capacity, that officer must show that "(1) the Attorney General has stated in writing to the officer, employee or member, pursuant to subsection (b), that the state will not provide an attorney to defend the interests of the officer, employee or member, and (2) the officer, employee or member is thereafter found to have acted in the discharge of his duties or in the scope of his employment, and not to have acted wantonly, recklessly or maliciously. . . ." In the present case, Penny Ross, now known as Penny Ross-Tackach, accused her employer, the judicial branch of the state of Connecticut, acting through the plaintiff, Robert C. Flanagan, in his official position as a Superior Court judge, of employment discrimination. Specifically, she alleged in a variety of forums, including the judicial review council and the United States District Court, that the plaintiff had violated her rights by subjecting her to repeated sexual assaults. The judicial review council determined that the allegations of sexual assault were unfounded and that the sexual relations between Ross-Tackach and the plaintiff had been consensual, and the United States District Court dismissed her complaint with prejudice. Nevertheless, the named defendant, the attorney general, refused to reimburse the plaintiff for legal fees incurred in the course of defending himself against the allegations, concluding that the allegations of a sexual relationship between the plaintiff and Ross-Tackach, a state employee, did not involve conduct taken "in the discharge of his duties or in the scope of his employment," as required by § 5-141d (c).

Although I agree that the consensual relationship between the plaintiff and Ross-Tackach fell outside the scope of the plaintiff's employment, I do not believe that that fact is determinative of the plaintiff's claim for reimbursement of his legal expenses. Rather, I believe that the dispositive question is whether a *false* claim that a state official has engaged in illegal conduct in the workplace falls within the scope of the statute.

I would conclude that it does.

In her concurring opinion, Justice Katz states that "the plaintiff's allegations regarding the consensual sexual relationship, supported by his testimony before the judicial review council, indicate that his relationship with Ross-Tackach gave rise to the injury [i.e., costs incurred in defending himself against false claims of sexual assault] for which he now seeks reimbursement . . . ." It may be true that, if the plaintiff had not engaged in a consensual sexual relationship with Ross-Tackach, she never would have made her now discredited allegations of sexual assault. That does not mean, however, that, as a legal matter, the consensual sexual relationship "gave rise" to allegations of sexual assault. This becomes clear if one substitutes some other, more remote and less emotionally charged, conduct for the consensual sexual relationship. For example, if Ross-Tackach had falsely accused the plaintiff of sexual harassment in the workplace because he had declined to recommend her for a country club membership—conduct that is clearly not related to employment—it would be absurd to state that this conduct "gave rise" to the accusations and, therefore, the plaintiff should not be reimbursed for expenses incurred in defending himself.[1] I believe that a central purpose of § 5-141d is to protect state employees from the financial consequences of vindictive and baseless lawsuits against them in their official capacities, regardless of what instigated the lawsuit. By doing so, the statute also advances the state's interest in preserving the public perception of the integrity of its employees.[2] In my view, the attorney general's determination that the plaintiff is not entitled to reimbursement contravened these purposes.

My intention here is not to defend the plaintiff's relationship with Ross-Tackach. I strongly believe, however, that it is unjust, unwise and against the legislative policy embodied in § 5-141d for the attorney general to penalize the plaintiff for that conduct in this context. Indeed, "[t]he same policy which demands the holding of public officers to strict account in matters of public trust, also demands their protection against groundless assaults upon their integrity in the discharge of public duty." *Birmingham* v. *Wilkinson*, 239 Ala. 199, 204, 194 So. 548 (1940). Ross-Tackach's claim against the plaintiff constituted such a groundless assault. Accordingly, I believe that, although the plaintiff's lawsuit against the attorney general is barred by the doctrine of sovereign immunity, he would prevail on the merits of the lawsuit if it were allowed.

[1] Justice Katz states that, "in order to obtain reimbursement for legal costs under § 5-141d (c), the employee must be found, in fact, to have been acting in the scope of his employment." When the accusations against the state employee are *completely baseless*, however, such a finding simply cannot be made. For example, the plaintiff in the present case cannot establish that the alleged sexual assaults against Ross-Tackach were within the scope of his employment because there were no such sexual assaults.

[2] In this case, for example, even though the plaintiff had been publicly censured for his consensual sexual relationship with Ross-Tackach, the

state had an interest in ensuring that he was not falsely labeled as a rapist. There is a vast difference between the public's perception of a consensual, albeit inappropriate, sexual relationship between a high public official and a subordinate and its perception of a high public official's using his office to coerce a subordinate into providing sexual favors.