BISHOP, J., concurring. While I agree with the majority's disposition of these appeals, I write separately to emphasize the legal and policy reasons that an appellate court should not accord review to an unpreserved claim that the trial court exhibited partiality toward a party at trial. The defendant law firm, Modugno, Modugno & Modugno, LLC (law firm), contends that the "court erred during trial when it advised [the attorney for the plaintiff, the Embalmers' Supply Company] on how to proceed during trial." The "advice" the court purportedly gave was its suggestion that the plaintiff's counsel "sit down, take a deep breath, take a minute or two and think" during a colloquy between counsel and the court regarding the admissibility of extrinsic evidence to explain the intent of the parties in the execution of a release. The law firm claims that, following this advice, the plaintiff's counsel then reversed his position on the issue, and the court correspondingly ruled in the plaintiff's favor.[1]

"[A]s a general rule, even in cases alleging judicial bias, this court will not consider the issue on appeal where the party failed to make the proper motion for disqualification at trial. . . . Failure to request recusal or move for a mistrial represents the [parties'] acquiescence to the judge presiding over the trial." (Citation omitted; internal quotation marks omitted.) *Schnabel* v. *Tyler*, 32 Conn. App. 704, 714, 630 A.2d 1361 (1993), aff'd, 230 Conn. 735, 646 A.2d 152 (1994); see also *Statewide Grievance Committee* v. *Friedland*, 222 Conn. 131, 146–47, 609 A.2d 645 (1992). "Our Supreme Court has criticized the practice whereby an attorney, cognizant of circumstances giving rise to an objection before or during trial, waits until after an unfavorable judgment to raise the issue. We have made it clear that we will not permit parties to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial." (Internal quotation marks omitted.) *Fiddelman* v. *Redmon*, 31 Conn. App. 201, 213, 623 A.2d 1064, cert. denied, 226 Conn. 915, 628 A.2d 986 (1993); see also *L & R Realty* v. *Connecticut National Bank*, 53 Conn. App. 524, 543, 732 A.2d 181, cert. denied, 250 Conn. 901, 734 A.2d 984 (1999).

Here, the law firm did not object to the court's "advice" to the plaintiff's counsel, move the court to recuse itself on the basis of a lack of impartiality or seek a mistrial. The record contains no indication that the law firm made an assertion of judicial misconduct or bias to the trial court. Rather, the law firm simply asserted that the court's ruling on the admissibility of evidence of the parties' intent in executing a release was "inappropriate." As noted, this evidentiary claim

is separately set forth by the law firm on appeal and, I believe, properly assessed by the majority. Thus, I agree with the majority that the law firm's freestanding claim of impropriety is unpreserved and, consequently, unreviewable on appeal.

An unpreserved claim of improper judicial commentary has been held to be appropriate for review if it implicates a constitutional right or pursuant to the doctrine of plain error. See *State* v. *Anthony*, 24 Conn. App. 195, 210, 588 A.2d 214, cert. dismissed, 218 Conn. 911, 591 A.2d 813, cert. denied, 502 U.S. 913, 112 S. Ct. 312, 116 L. Ed. 2d 254 (1991); *State* v. *Harris*, 28 Conn. App. 474, 476–77, 612 A.2d 123, cert. denied, 223 Conn. 926, 614 A.2d 828 (1992); *Honan* v. *Dimyan*, 63 Conn. App. 702, 778 A.2d 989, cert. denied, 258 Conn. 942, 786 A.2d 430 (2001); *State* v. *Gracewski*, 61 Conn. App. 726, 734, 767 A.2d 173 (2001). In this instance, because the claimed prejudicial effect of the court's "advice" to counsel was no more than an allegedly improper evidentiary ruling and the law firm's evidentiary claim was not coupled with an assertion that the court's alleged partiality denied it a fair trial, the claim does not rise to the level of a constitutional violation. Additionally, because the law firm has not sought plain error review, none is available to it. See *State* v. *Marsala*, 93 Conn. App. 582, 590, 889 A.2d 943 ("This court often has noted that it is not appropriate to engage in a level of review that is not requested. . . . When the parties have neither briefed nor argued plain error [or review pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989)], we will not afford such review." [Internal quotation marks omitted.]), cert. denied, 278 Conn. 902, 896 A.2d 105 (2006).

In addition to these legal reasons to decline review of the law firm's claim, there is a sound policy basis to decline as well. This court does not sit as a surrogate judicial review council. Indeed, our Supreme Court has opined that "when an attorney is confronted with what appears to be judicial misconduct, the appropriate avenue is the judicial disciplinary process . . . ." (Internal quotation marks omitted.) *Notopoulos* v. *Statewide Grievance Committee*, 277 Conn. 218, 236, 890 A.2d 509, cert. denied, U.S. , 127 S. Ct. 157, 166 L. Ed. 2d 39 (2006). Publicly aired unfounded claims of judicial impropriety serve not only to denigrate the integrity of the judge subjected to such claims; they also tend to bring into disrepute the integrity of the judicial process to the detriment of the public's right to have confidence in government's adjudicative arm. Thus, there is good reason for our jurisprudence that mere claims of judicial misconduct, unmoored to the constitutional rights of a litigant and unclaimed for plain error review, should not find a hospitable response on direct appeal.

For the foregoing reasons, I respectfully concur in

the majority opinion.

[1] The law firm has separately claimed that the court's ruling on the admissibility of extrinsic evidence regarding the release was incorrect. Thus, it is not necessary to reach the law firm's untethered claim regarding judicial bias in order to resolve the evidentiary issue.