FLYNN, C. J., concurring. I respectfully concur in the result reached, but write separately because I do not concur with some of the reasoning of the grievance panel or of the trial court that heard the motion to vacate the arbitration award and, instead, would affirm on a narrower ground.

This case stems from a motion to vacate an arbitration award following a serious allegation made to the client of the plaintiff, Max F. Brunswick. The plaintiff testified before the reviewing committee of the defendant, the statewide grievance committee, that the allegation in his motion to vacate, which stated, inter alia, that the award was procured by corruption, fraud or undue means, was based on information provided to him by his client. The plaintiff testified that his client, the defendant in the underlying arbitration proceeding, had advised him that a secretary in her predecessor attorney's office had told her that her former attorney had received money from the arbitration plaintiff in the arbitration proceeding. The secretary, who allegedly provided this information, left that employment and left the state, and, therefore, could not be found to testify or furnish an affidavit requested by the plaintiff to support the allegation. The plaintiff's client also was concerned about a fee bill from Vincent McManus, Jr., the attorney for the arbitration plaintiff, that reflected a one and one-half hour conference with the arbitrator selected by the arbitration plaintiff that purportedly had occurred prior to the commencement of evidence in the arbitration. Although the amount and the time billed was related to requesting the arbitrator to sit on the case, it was argued that the one and one-half hours billed far exceeded the reasonable time such request would require, thereby suggesting an inference that the merits of the case may have been discussed.[1]

Jurisdictionally, the plaintiff had only thirty days within which to move to set aside the arbitration award. See General Statutes § 52-420 (b);[2] see also *Wu* v. *Chang*, 264 Conn. 307, 312, 823 A.2d 1197 (2003) (if motion to vacate arbitration award not filed within thirty day time limit, court does not have subject matter jurisdiction over motion); *Middlesex Ins. Co.* v. *Castellano*, 225 Conn. 339, 344, 623 A.2d 55 (1993) (same). The practicing lawyer must file the motion to vacate within the very short time window of § 52-420 (b) or his client's motion will be barred.

I agree with the majority's conclusion in part II A, that attorneys in Connecticut are not required, at the time a pleading is filed, to substantiate fully the allegations contained therein with evidentiary support. However, I would go further and hold that it was not

improper and did not violate rule 3.1 of the Rules of Professional Conduct for the plaintiff to track the language of the provisions of General Statutes § 52-418 (a) in the allegations contained in the motion to vacate. In denying the motion to vacate, the court seemed concerned that the plaintiff tracked the language of the entire statute, § 52-418, including corruption, fraud, undue means, partiality or corruption, arbitrator's refusal to postpone or hear evidence and exceeding of powers or imperfect execution of them. This is not improper and has been the common practice of lawyers, who understand that they cannot later prove what they have not pleaded. I disagree with the holding of the reviewing committee that the allegation of fraud, corruption or undue influence was "clearly frivolous . . . ." The commentary to rule 3.1 provides that "[t]he filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery." Additionally, plaintiffs are permitted to plead inconsistent yet otherwise valid causes of actions together in the same complaint, thereby allowing plaintiffs to pursue alternative remedies or theories of relief. See Practice Book § 10-25; *Dreier* v. *Upjohn Co.*, 196 Conn. 242, 245, 492 A.2d 164 (1985); *Veits* v. *Hartford*, 134 Conn. 428, 433–34, 58 A.2d 389 (1948). I do not consider pleading in the alternative to be "frivolous."

I next address part II B of the majority opinion, which concerns the plaintiff's continued pursuit of the allegations contained within the motion to vacate when his client could not supply the affidavit he requested. The defendant found that the plaintiff certainly did not have a good faith basis to maintain the allegation before the court once his client refused to supply an affidavit in support of the statement. I disagree. I find nothing in the record to support the finding that the client refused to supply such an affidavit. Instead, the evidence was that the plaintiff's client would attempt to obtain an affidavit from her prior attorney's former secretary who had personal knowledge but had left the state. An attorney, in pursuing a claim under § 52-418 (a) to vacate an arbitration award due to fraud, corruption or undue influence, would not need to obtain an affidavit from his or her client before bringing an action at law or proceeding to trial. If the legislature had intended to require that such an affidavit be sworn to by the movant seeking to vacate an arbitration award, it knew how to enact such a requirement.[3] There is no affidavit requirement to be found in the General Statutes or in the rules of practice.

In the broader picture, imposing an affidavit requirement in like instances would change the practice of law. For example, there are many situations in which attorneys commence proceedings without corroborating proof of a client's allegations. See, e.g., *State* v.

Dabkowski, 199 Conn. 193, 200, 506 A.2d 118 (1986) (in 1974, legislature repealed General Statutes § 53a-68, thereby eliminating requirement of corroboration to sustain conviction in particular sexual offenses); *Dombrowski* v. *Dombrowski*, 169 Conn. 85, 87–88, 362 A.2d 907 (1975) ("[w]hen there is evidence which is believed by the court, which is sufficient to establish intolerable cruelty, a party is not precluded from a judgment dissolving the marriage because the evidence lacks corroboration"). To require verified complaints, supporting affidavits or corroborative evidence to bring or to pursue a claim in instances where there is no such requirement imposed by rule or statute, would deprive certain persons of access to Connecticut courts. This would be contrary to the letter and spirit of article 1, § 10, of the constitution of Connecticut, which provides: "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

The plaintiff's testimony before the reviewing committee indicated that he told his client that he would need an affidavit to support the client's allegations of fraud, corruption or undue influence. The plaintiff discussed obtaining an affidavit, but one was not required by law in order to bring the motion to vacate. Because such an affidavit was neither required by statute or rule, it became a red herring in this disciplinary proceeding.

I, nevertheless, would affirm the judgment on a more narrow ground. During the December 4, 2003 hearing before the reviewing committee, the plaintiff conceded that his client had advised him at one point that she did not want to go forward with the charges underlying the motion to vacate at the hearing "because she didn't have any proof to back it up." At that point, the plaintiff no longer was faced with a situation in which a necessary witness for his client had left the state and the client wanted to continue to move to vacate. At that juncture, the plaintiff no longer had potentially diverging responsibilities as an advocate for his client and as an officer of the court. Rather, he had an obligation to his client not to proceed with a claim that she did not want to continue to be brought, and he had an obligation to the court under rule 3.1 not to continue to argue the motion to vacate when his client believed she could not get the proof needed to support her allegations. His continuing to proceed, despite his client's desire not to go forward, supports the affirmance of the judgment of the trial court.

Accordingly, I concur in the result.

[1] The arbitrator selected by the arbitration plaintiff testified at the hearing on the motion to vacate the arbitration award that he did not have a one and one-half hour conversation with McManus before the arbitration proceedings began.

[2] General Statutes § 52-420 (b) provides that "[n]o motion to vacate, modify or correct an award may be made after thirty days from the notice of the award to the party to the arbitration who makes the motion."

[3] See, e.g., General Statutes § 52-190a (requires good faith certificate to be filed with complaint or initial pleading in medical malpractice action); General Statutes § 52-278c (a) (2) (requires individuals seeking prejudgment remedy to include affidavit along with unsigned writ, summons and complaint and application); General Statutes § 52-471 (b) (no injunction may be issued unless facts stated in application are verified by oath of plaintiff or some competent witness); see also *Fedus* v. *Planning & Zoning Commission*, 278 Conn. 751, 770–71 n.17, 900 A.2d 1 (2006) (noting that legislature knows how to enact legislation consistent with its intent). Judges of the Superior Court, as rule makers also can impose affidavit requirements but did not do so in this instance. See, e.g., Practice Book § 1-23 (motion to disqualify judicial authority shall be in writing and accompanied by affidavit).