ZARELLA, J., with whom VERTEFEUILLE and SULLIVAN, Js., join, dissenting. The majority reverses the trial court's judgment as to the financial orders on the ground that the court improperly failed to rule on a pretrial motion for contempt and sanctions by the plaintiff, Melissa K. Ramin. The majority also expands the rule in *Maguire* v. *Maguire*, 222 Conn. 32, 608 A.2d 79 (1992), to permit an award of attorney's fees for the purpose of compensating a party for the litigation misconduct of the opposing party. I disagree with both of these holdings because the first unwisely interferes with the trial court's broad discretion in the administration and management of discovery matters and the second ignores the applicable statutes, rules of practice and case law that govern an award of attorney's fees. Accordingly, I respectfully dissent.

I

I begin with the plaintiff's motion for contempt and sanctions. The majority concludes, on the basis of *Ahneman* v. *Ahneman*, 243 Conn. 471, 706 A.2d 960 (1998), that in marking the motion off the calendar, the trial court refused to decide the issues raised therein and thus abdicated its fundamental obligation to decide all matters properly placed before it. I disagree.

The following facts are relevant to a resolution of this issue. The plaintiff filed a motion for contempt and sanctions on August 14, 2002, after the defendant, Kurt P. Ramin, failed to comply with the court's most recent discovery order. In her motion, the plaintiff asked the court to: (1) hold the defendant in contempt for his noncompliance with discovery; (2) order the defendant to produce all outstanding documents within one week or appear in court to show cause why he should not be incarcerated for wilful contempt; and (3) order the defendant to pay sanctions to the plaintiff and her reasonable attorney's fees. On September 9, 2002, after hearing argument on the matter, the trial court, clearly exasperated by the parties' continuing battle over discovery, declared that it was not inclined to decide the motion at that time. The court stated: "Take your depositions, see where you go. *If there's something very, very specific as far as the discovery is concerned, I mean specific and vital, major case, following the deposition, then I'll hear you on it . . . .*" (Emphasis added.) The plaintiff did not object to the trial court's decision. Thereafter, the court marked the motion off the calendar, the plaintiff deposed the defendant over the course of five days in October and December, 2002, and the parties proceeded to trial in March, 2003.

At the commencement of the trial, the plaintiff filed a motion in limine requesting that "certain financial

matters regarding which discovery was sought from the [d]efendant and with regard to which he failed and refused to comply, shall be established for the purposes of the action in accordance with the claims of the [p]laintiff." The financial matters to which the motion referred included assets that the defendant had identified during his deposition, including funds that he had transferred to his girlfriend in Germany and a $70,000 retirement account that he had maintained in the United Kingdom. The motion also sought to preclude the defendant, pursuant to Practice Book § 13-14, from offering testimony or documents to rebut the plaintiff's claims concerning these and other assets that the defendant had placed outside the marital estate or deliberately had concealed from the plaintiff and the court.

In explaining her reasons for filing the motion, the plaintiff's counsel observed that, during the September 9 hearing, the court had "grown quite understandably frustrated with the discovery process and *requested that we try and address it all at the time of trial.*" (Emphasis added.) She then described the defendant's continuing refusal to cooperate during his five day deposition and his noncompliance with her requests for the production of documents. When the court asked the plaintiff's counsel how she wanted the court to deal with the defendant's ongoing discovery misconduct, she asked that it grant the motion in limine, stating: "[T]hat would seem to me to be the perfectly appropriate resolution." She also requested attorney's fees to sanction the defendant for the additional legal expenses incurred to obtain the information he had refused to produce.

The court responded that it would consider specific evidence regarding the dissipated assets on a case-by-case basis as it was introduced at trial, rather than granting the motion in limine at that time. The court also agreed to consider the plaintiff's request for attorney's fees to sanction the defendant for his noncompliance with discovery. The plaintiff's counsel expressed satisfaction with the court's response and declared that she was prepared to try the case.

Thereafter, the plaintiff requested on two separate occasions that sanctions be imposed against the defendant. On the first occasion, the defendant testified on direct examination that he had transferred approximately $194,000 out of the marital estate to his German girlfriend, Martina Meyer, without the plaintiff's consent following commencement of the dissolution proceedings. In denying the plaintiff's motion, the court explained that the defendant had stated that he did not intend to introduce any additional evidence contradicting his former testimony on the matter, and, consequently, improper removal of the assets in question was an "*uncontroverted*" fact that the court would take into account when making an equitable distribution of the marital estate at the conclusion of the trial. (Empha-

sis added.)

On the second occasion, the court granted the plaintiff's motion for sanctions with respect to the defendant's proposed testimony on cross-examination regarding his removal of an additional $177,248 out of the marital estate without the plaintiff's knowledge or consent. The court explained: "I'm specifically tying [this decision] into the original motion in limine and I'm specifically tying it into [the defendant's] responses and his behavior and what this court deems to be a calculated . . . effort to obstruct the discovery process and to move this case forward." In its subsequent memorandum of decision, the court also explained that it had considered the defendant's noncompliance with discovery when it formulated the financial orders distributing the marital estate.

Practice Book § 11-13 provides in relevant part: "(a) Unless otherwise provided in these rules or ordered by the judicial authority . . . all motions and objections to requests when practicable . . . must be placed on the short calendar list. . . . [A]ny motion in a case on trial, or assigned for trial, may be disposed of by the judicial authority *at its discretion* . . . . (c) If a motion has gone off the short calendar without being adjudicated any party may claim the motion for adjudication. . . ." (Emphasis added.) Accordingly, the issue before this court is whether the trial court abused its discretion when it marked the plaintiff's motion off the calendar.[1]

"As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and *the ultimate issue for us is whether the trial court could have reasonably concluded as it did.* . . . In reviewing a claim that the court has abused this discretion, great weight is due to the action of the trial court and every reasonable presumption should be given in favor of its correctness . . . .

"At the same time . . . [d]iscretion imports something more than leeway in decision-making. . . . It means a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice. . . . [T]he court's discretion should be exercised mindful of the policy preference to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his day in court. . . . The design of the rules of practice is both to facilitate business and to advance justice; they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice. . . . Rules are a means to justice, and not an end in themselves . . . ." (Citations omitted; emphasis added; internal quotation marks omitted.) *Millbrook Owners Assn., Inc.* v. *Hamilton Standard*, 257 Conn. 1, 15–16, 776 A.2d 1115 (2001).

The trial court in the present case did not refuse to consider the plaintiff's motion for contempt and sanctions, but, rather, conducted a hearing on September 9, 2002, for that very purpose. At the conclusion of the hearing, the court chose, in the reasonable exercise of its discretion pursuant to our rules of practice; see Practice Book § 11-13; to mark the motion off the calendar. The court advised the plaintiff that it would hear the parties further with respect to any "specific and vital" discovery information that the plaintiff failed to obtain when she deposed the defendant the following month. As a result, the trial court's decision was the functional equivalent of denying the plaintiff's motion without prejudice because the court, having concluded that the motion should not be decided at that time, effectively "[left] the matter open for further presentation and consideration in the same or another proceeding."[2] *Varanelli* v. *Luddy*, 130 Conn. 74, 80, 32 A.2d 61 (1943).

It is the duty of the reviewing court to make every reasonable presumption in favor of the trial court's ruling. See *Millbrook Owners Assn., Inc.* v. *Hamilton Standard*, supra, 257 Conn. 15. I would therefore conclude, mindful that the rules of practice are designed to facilitate business and advance justice, that the trial court properly and reasonably exercised its discretion by deferring to rule on the motion for contempt and sanctions until after the plaintiff had made one final attempt to obtain discovery during the defendant's deposition. Significantly, the plaintiff did not object to the trial court's decision when it was rendered or at any time thereafter. Moreover, after the defendant produced some of the requested documents during the deposition, the plaintiff chose not to seek further argument on the contempt motion, as she could have done, but instead filed a motion in limine requesting that the court impose sanctions at trial for the defendant's remaining discovery misconduct. At the hearing on that motion, the plaintiff indicated that the reason she had not resurrected her prior motion was because the trial court had "*requested that we try and address* [*the remaining discovery issues*] *at the time of trial*," which she later described as a "*perfectly appropriate resolution*" of the matter. (Emphasis added.) Furthermore, the plaintiff received the relief she sought in her motion in limine on the only two occasions when she objected to the defendant's actual or proposed testimony regarding the allegedly dissipated assets.[3] As a result, the plaintiff achieved her objective of ensuring that the court accept her version of events as true on both occasions. Notably, the plaintiff did not merely acquiesce in the solution devised by the court to address the defendant's discovery abuse, but participated in crafting it when she filed the motion in limine at the commencement of the trial. Accordingly, I would conclude that the court did not abuse its discretion when it deferred consideration of

the plaintiff's motion until after the defendant's deposition.

To the extent that the majority construes the trial court's failure to render a formal ruling on the motion as an absolute refusal to consider the issues raised therein, I submit that the plaintiff herself would not have agreed with this conclusion. If she had believed that the court's decision amounted to an absolute refusal, she could have claimed the motion or sought its reassignment to another judge pursuant to Practice Book §§ 11-13 and 11-19.[4] Indeed, her subsequent remarks at the hearing on the motion in limine indicate that she was satisfied with the trial court's decision to defer a ruling on the motion and to address all remaining discovery issues at trial. The majority's failure to view as significant the fact that the plaintiff did not renew her request for sanctions following the defendant's deposition, claim her motion, or seek reassignment of the motion to another judge, suggests an unwillingness to hold the plaintiff and her attorney accountable for their decisions regarding how to deal with the defendant's discovery misconduct prior to and during the trial. I believe that micromanaging the trial court in matters of discovery, as the majority appears to do here, *especially* in emotionally tense family disputes, is dangerous and unwarranted.

The majority maintains that our decision in *Ahneman* compels a different result. I emphatically disagree on the ground that *Ahneman* is factually distinguishable. In that case, the defendant filed several postjudgment motions concerning financial and nonfinancial matters. *Ahneman* v. *Ahneman*, supra, 243 Conn. 474. At short calendar, the trial court rendered an oral decision declining to consider the motions. Id., 475. Thereafter, the defendant moved for reconsideration and reargument. Id., 475–76. Following reargument, the court announced that it would consider the motions concerning nonfinancial matters, but would not consider the motions regarding financial matters. Id., 476. The court explained: "As far as the money issues are concerned, it was my opinion that that was the law of the case that was established by the contested hearing we had over the modification and the contempt. That ruling, I think, would cover these other money issues. . . . I will not hear anything on monetary aspects because I think the law of the case was established as a result of the earlier hearing. It's now on appeal. The nonmonetary aspects I will set down for a hearing . . . ." (Internal quotation marks omitted.) Id., 476–77 n.7.

On appeal to this court, we initially determined that we had jurisdiction to review the defendant's claim because the trial court's "decision not to consider the defendant's motions" was the functional equivalent of a final judgment. Id., 480. We stated that, "[l]ike a formal denial, the effect of the court's decision refusing to

consider the defendant's motions during the pendency of the appeal was to foreclose the possibility of relief from the court on those issues, unless and until the resolution of the appeal required further proceedings. Indeed, the refusal to consider a motion is more deserving of appellate review than a formal denial, because the defendant not only has been denied relief; she has been denied the opportunity even to persuade the trial court that she is entitled to that relief. Moreover . . . there is an unacceptable possibility that any harm suffered as a result of the court's refusal to consider the motion will never be remediable." Id.

We then considered whether the trial court had discretion to refuse to consider the motions and concluded that it did not. We stated that, "where a court is vested with jurisdiction over the subject-matter . . . and . . . obtains jurisdiction of the person, it becomes its . . . duty to determine every question which may arise in the cause . . . . [A] trial court must consider and decide on a reasonably prompt basis all motions properly placed before it [except] in an extreme, compelling situation," such as "to prevent harassing or vexatious litigation" or in "other [undefined] circumstances . . . ." (Citation omitted; internal quotation marks omitted.) Id., 484–85. We ultimately determined that no extenuating circumstances existed in *Ahneman* that would have justified the trial court's refusal to consider the disputed motions. Id., 485.

The present case is distinguishable from *Ahneman* because the trial court's decision to mark the motion off the short calendar was *not* a final judgment that foreclosed the possibility of relief or that denied the plaintiff an opportunity to persuade the court that she was entitled to such relief. Unlike in *Ahneman*, the court in the present case exercised its jurisdiction when it conducted a hearing on the merits of the plaintiff's motion, listened to the parties' arguments and advised the plaintiff at the conclusion of the hearing that she could seek future relief if the defendant did not comply with her requests for discovery during his deposition. When the defendant persisted in his misconduct by failing to cooperate fully at his deposition, the plaintiff filed a motion in limine at the start of the trial requesting an order that certain disputed financial matters be established in accordance with her claims and that the defendant be precluded from presenting contradictory evidence. Furthermore, the plaintiff ultimately obtained the relief she requested. Accordingly, the facts in *Ahneman*, in which the court did *not* exercise its jurisdiction because the issues raised in the defendant's motion had been raised in her pending appeal and would be decided by the reviewing court, are completely different from the facts in the present case. The majority's reliance on *Ahneman* as a basis for reversal is, therefore, misplaced.

I also disagree with the majority's conclusion that the burden of establishing harm should be shifted from the plaintiff to the defendant "under the unique circumstances of this case . . . ." See *Bovat* v. *Waterbury*, 258 Conn. 574, 594, 783 A.2d 1001 (2001) ("[i]n order to establish reversible error, the defendant must prove both an abuse of discretion and a harm that resulted from such abuse"). According to the majority, the circumstances in this case are "unique" because of the defendant's offensive behavior during his deposition. He was disrespectful and defiant, threw his wallet at the plaintiff's counsel when she asked him to produce his credit cards, repeatedly used obscenities and read a magazine during the proceeding. I would submit, however, that the defendant's behavior at the deposition was irrelevant to the issue of harm because it occurred *after* the trial court's consideration of the motion for contempt and sanctions, and, consequently, had no connection to the court's prior action.[5] Moreover, the defendant's bad behavior during the deposition had no connection to his noncompliance with discovery. In other words, although I agree with the majority that the defendant acted in a provocative and aggressive manner during his deposition, any harm that may have been caused by his failure to comply with discovery would have occurred even if he had not behaved offensively. I therefore disagree that the "unique" circumstances in this case warrant shifting the burden to prove harm from the plaintiff to the defendant.

The majority provides two additional reasons for imposing such a requirement. The first is that it would be unfair to ask the plaintiff to demonstrate how she was harmed when she did not have access to important discovery materials, not identified by the majority, as a result of the court's decision to mark her motion "off." As previously discussed, however, the plaintiff had very specific reasons for seeking certain documents and was quite capable of explaining why the lack of that information would prevent her from making a more persuasive case against the defendant. In addition, the court did *not* rule that the plaintiff could not seek future relief as to the discovery materials described in her motion, such as the documents cited by the majority pertaining to the defendant's $450,000 promissory note to Theodora Landgren. Indeed, such materials were *exactly* the type of information to which the court referred when it said that it would be willing to entertain a future hearing on the motion. The majority fails to acknowledge or address the fact that it was the plaintiff who decided not to seek another hearing on the motion following the defendant's deposition, despite the invitation from the court, and it was the plaintiff who stated at trial that the sanctions she sought, and ultimately obtained, against the defendant constituted a "perfectly appropriate resolution" of the parties continuing discovery dispute. In sum, the majority's conclusion that

our long held standard for proving harm should be altered *in this one particular instance* is simply unwarranted.

The majority also justifies placing the burden to prove a lack of harm on the defendant by explaining that it is consistent with our reasoning in *Billington* v. *Billington*, 220 Conn. 212, 221, 595 A.2d 1377 (1991). I disagree. The majority states that *Billington* applies because, in that case, "we analogized the marital relationship, even in the context of a dissolution case, to the special relationship between fiduciary and beneficiary, insofar as the requirement of disclosure is concerned." (Internal quotation marks omitted.) The majority then declares: "[J]ust as, once it has been shown that a fiduciary has engaged in self-dealing, he has the burden to establish the fairness of the transaction by clear and convincing evidence; see *Cadle Co.* v. *D'Addario*, 268 Conn. 441, 457, 844 A.2d 836 (2004); so, as in the present case, when the defendant has breached his fiduciary-like obligations of discovery to the plaintiff as ordered by the court, he should bear the burden of establishing that his breach of that obligation did not harm the beneficiary of that obligation." This argument can only be described as specious.

The quoted passage from *Billington* declares: "We have recognized . . . in the context of an action based upon fraud, that the special relationship between fiduciary and beneficiary compels full disclosure . . . . *Although marital parties are not necessarily in the relationship of fiduciary to beneficiary, we believe that no less disclosure is required* of such parties when they come to court seeking to terminate their marriage." (Emphasis added.) *Billington* v. *Billington*, supra, 220 Conn. 221. The point made in the foregoing passage is that the parties in a dissolution proceeding are in a relationship similar to, although not the same as, that of a fiduciary and beneficiary and, accordingly, they are obligated to make "full disclosure" of their assets, nothing more. For the majority to rely on *Billington* as support for shifting the burden of proof from the plaintiff to the defendant for noncompliance with discovery requires a leap in logic that finds no support whatsoever in that case. In fact, the majority cites *no* marital dissolution case in which this court considered a discovery claim and suggested that the burden of proof should be shifted to the noncomplying party to prove a lack of harm. For all of the foregoing reasons, I am compelled to disagree with the majority's conclusion that the trial court's decision to mark the plaintiff's motion "off" the calendar requires reversal of the financial orders.

II

The majority next concludes that the rule articulated in *Maguire* should be expanded to grant the trial court discretion to award attorney's fees as part of the financial orders when a party has incurred substantial legal

expenses because of the other party's litigation misconduct and "the other orders of the court have not already adequately addressed that misconduct." I disagree with this holding because it is inconsistent with the governing statutes, fails to recognize the numerous remedial provisions in our rules of practice that permit an award of attorney's fees as a sanction for discovery misconduct, and misapplies our well established case law on the matter.

The underlying premise of the majority's holding is that other means may be inadequate to compensate a party for the legal expenses incurred because of the other party's discovery misconduct, even when the financial orders leave the "innocent" party with sufficient liquid assets to pay such expenses without disturbing the trial court's other financial orders. The majority inexplicably fails, however, to examine the rules of practice specifically designed to compensate an "innocent" party when the other party abuses the discovery process. For example, the abusing party may be subject to sanctions, discovery orders compensating the "innocent" party for reasonable attorney's fees and costs, and orders that facts regarding the discovery sought will be taken as established in accordance with the claim of the party seeking discovery. Similarly, parties who conceal or dissipate assets may be subject to financial orders that take the alleged misconduct into account. The majority ignores the fact that the trial court in the present case employed *all four techniques* to discipline the defendant for his bad behavior.

Practice Book § 13-14 provides in relevant part: "(a) If any party has failed to answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production . . . or has failed to comply with a discovery order made pursuant to Section 13-13, or has failed to comply with the provisions of Section 13-15, or has failed to appear and testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order as the ends of justice require. (b) Such orders may include the following: (1) The entry of a nonsuit or default against the party failing to comply; (2) *The award to the discovering party of the costs of the motion, including a reasonable attorney's fee*; (3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; (4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence; (5) If the party failing to comply is the plaintiff, the entry of a judgment of dismissal. . . ." (Emphasis added.) The

majority fails to address why this comprehensive array of techniques is insufficient to address adequately noncompliance with discovery orders by a party who has incurred substantial legal expenses as a result of the other party's misconduct.

"[A] court may, either under its inherent power to impose sanctions in order to compel observance of its rules and orders, or under the provisions of § 13-14, impose sanctions . . . ." *Millbrook Owners Assn., Inc.* v. *Hamilton Standard*, supra, 257 Conn. 14. In the present case, the court imposed $42,500 in attorney's fees and sanctions on the defendant for his lack of cooperation during discovery, describing them as "the largest sanctions I have issued in my two and a half years on the bench . . . ." *The plaintiff did not appeal from those orders or claim that they were insufficient compensation* for the additional time and effort expended by her attorneys to obtain the information she was seeking.

The court also granted the plaintiff's motion in limine, thereby accepting as an established fact for purposes of the action that the defendant improperly had transferred approximately $177,000 out of the marital estate to his girlfriend in Germany. Furthermore, General Statutes § 46b-81 (c) directs the court to "consider the . . . liabilities and needs of each of the parties" in fixing the nature and value of the property to be assigned. Among the liabilities and needs of the plaintiff were the extraordinary legal expenses she incurred during discovery to unearth marital assets that the defendant had refused to disclose. Although the trial court was not required to make a finding on this issue; see *Weiman* v. *Weiman*, 188 Conn. 232, 234, 449 A.2d 151 (1982); the record establishes that it considered the defendant's misconduct as well as the plaintiff's depletion of her inheritance to discover the concealed assets when it fashioned its financial orders.

In its memorandum of decision, the court noted that the defendant had used "*at least* $395,000 in marital assets" for his own benefit and that the plaintiff had "spent enormous sums for attorney's fees, in large part to trace these assets, with limited success." (Emphasis in original.) The court also stated that, in dividing the parties' property, it would be "equitable and appropriate" to take into account the defendant's unauthorized disposition of $382,725 of the marital assets by giving the plaintiff a share of other assets as an offset. Finally, the court acknowledged in its articulation that, in formulating its financial orders, it had considered evidence introduced by the plaintiff at trial that the defendant had engaged in a " 'pattern of deceit.' " Thus, the court considered the evidence introduced by the plaintiff that the defendant allegedly had dissipated or wrongfully concealed marital assets that, from the trial court's opinion and articulation, amounted to more than

$900,000, and were distributed by the court so that the plaintiff received approximately 58.5 percent of the parties' total financial assets and the defendant received approximately 41.5 percent. Accordingly, there is no need to expand the rule in *Maguire* because, as the present case amply demonstrates, the court has other methods at its disposal to compensate the "innocent" party.

In addition, the statutory scheme does not permit an expansion of *Maguire* in the manner suggested by the majority. General Statutes § 46b-62 governs the trial court's award of attorney's fees in a dissolution proceeding and provides in relevant part: "[T]he court may order either spouse . . . to pay the reasonable attorney's fees of the other *in accordance with their respective financial abilities* and the criteria set forth in [General Statutes §] 46b-82." (Emphasis added.) The criteria set forth in § 46b-82 (a) are "the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate and needs of each of the parties and the award, if any, which the court may make pursuant to [§] 46b-81 . . . ."[6] When a party has sufficient liquid assets to pay his or her own attorney's fees without undermining the other financial orders, the court has considered that party financially able to pay their own expenses. When a party does *not* have sufficient liquid assets to pay their own legal expenses without undermining the other financial orders, the court has not hesitated to award attorney's fees to compensate the "innocent" party for the other party's misconduct. See *Jewett* v. *Jewett*, 265 Conn. 669, 694, 830 A.2d 193 (2003) (trial court properly awarded attorney's fees to plaintiff where defendant's failure to comply with discovery caused plaintiff to incur substantial legal fees and plaintiff was awarded primarily nonliquid assets); *Bee* v. *Bee*, 79 Conn. App. 783, 791–92, 831 A.2d 833 (trial court properly awarded attorney's fees to plaintiff where defendant dissipated plaintiff's substantial liquid assets and failure to award fees would have undermined orders seeking to achieve equal distribution of marital property), cert. denied, 266 Conn. 932, 837 A.2d 805 (2003). In fact, we have recognized in these circumstances that "the length of the proceedings and the time expended by counsel" are relevant considerations when determining the amount of such an award; *Burton* v. *Burton*, 189 Conn. 129, 142–43 n.16, 454 A.2d 1282 (1983); as are "the nature, complexity and scope of the litigation . . . ." Id., 143. In *Jewett* v. *Jewett*, supra, 265 Conn. 694, we specifically recognized that "much of the plaintiff's accrued or already paid legal fees have been caused by the defendant's failure . . . promptly and candidly [to] comply with numerous motions and discovery." (Internal quotation marks omitted.) The majority takes the court's remarks in

Jewett out of context, however, and does not explain that the court awarded attorney's fees because the defendant had converted most of his assets to cash, whereas the plaintiff, having been awarded primarily nonliquid assets, did not have sufficient liquid assets to pay her own attorney's fees without upsetting the balance achieved by the court's other financial orders. Id. An award of attorney's fees, therefore, was consistent with the provision in the statutory scheme that permits a court to order either spouse "to pay the reasonable attorney's fees of the other *in accordance with their respective financial abilities* . . . ." (Emphasis added.) General Statutes § 46b-62. When, on the other hand, the parties have sufficient liquid assets to pay their own attorney's fees without disturbing the balance created by the other financial orders, each party must be deemed financially capable of paying his or her own legal expenses and an award of attorney's fees to punish the offending party is unwarranted under the statutory scheme.

Indeed, an award of attorney's fees to an "innocent" party, as suggested by the majority, would be inconsistent with the original justification for permitting such an award. In *Steinmann* v. *Steinmann*, 121 Conn. 498, 505, 186 A. 501 (1936), we stated that the purpose of awarding attorney's fees was to ensure that the wife would "not be deprived of her rights because she lacks funds which may be supplied from property in which as a wife she has a real interest but which is usually within the control of the husband. *If, however, she possesses property of her own sufficient to pay the expenses of the suit and available for that use, she is not ordinarily entitled to an allowance.*" (Emphasis added.) An award of attorney's fees in these circumstances would border on punishment, and we have declared, unequivocally, that "[*p*]*unishment of a litigant should play no role in the determination of the issue of awarding attorneys' fees.*" (Emphasis added.) *Blake* v. *Blake*, 211 Conn. 485, 488, 560 A.2d 396 (1989); see also *Foster* v. *Foster*, 84 Conn. App. 311, 324–25, 853 A.2d 588 (2004) (court abused discretion in awarding attorney's fees to defendant because award not based on financial abilities of parties and served to punish plaintiff for chronic interference with defendant's and grandparents' visitation and for disrespect of trial court's orders throughout postjudgment proceedings).

The majority's insistence that an award of attorney's fees to compensate the "innocent" party for the other party's discovery misconduct is not punishment and does not amount to a sanction, but merely prevents the "innocent" party from being "unfairly burdened," cannot sugarcoat or change the fact that an award of this nature is punitive in effect. The plaintiff herself described it as such at the hearing on her motion in limine, when she explained to the court: "I am going to ask the court for two sanctions, and one of them is

going to come as part of our proposed orders. And that's that the defendant pay dollar for dollar [the plaintiff's] fees because had he not acted in as obstreperous a fashion as he had, this case would have been over and this case would have been done for far less attorney time, effort, and waste of [the plaintiff's] money." The majority's attempt to portray an award of attorney's fees for discovery misconduct by the other party as less than punitive is simply disingenuous.[7]

In sum, I believe that there is no need to expand the rule articulated in *Maguire* because the rules of practice provide the court with many other tools to compensate the "innocent" party for the financial burden incurred as a result of the other party's misconduct. I agree with the majority that the conduct of the defendant in the present case was abhorrent and that his abusive behavior required the court to take appropriate action. I part company with the majority, however, when they suggest that our existing rules are inadequate and that the court failed or refused to employ them when it had the opportunity and obligation to do so. I would argue, to the contrary, that any suggestion that the court did *not* sanction the defendant for his discovery misconduct during the proceedings or account for his misconduct when fashioning its financial orders finds no support in the record. I would thus conclude that the trial court is not permitted by statute to make an award of attorney's fees in its financial orders to punish a noncomplying party, that existing remedies are adequate to address significant discovery abuse and that parties subject to such abuse have a responsibility to exercise their right to obtain relief pursuant to those remedies, as the plaintiff did when she sought and received both monetary and nonmonetary sanctions against the defendant and obtained financial orders that took his discovery misconduct into account. For all of these reasons, I disagree with the majority that the rule in *Maguire* should be expanded.

[1] I disagree with the majority that the issue in this case is not whether the trial court abused its discretion, but "whether a trial court has the discretion to refuse to consider a party's motion for contempt." In *Ahneman* v. *Ahneman*, supra, 243 Conn. 484–85, we declared that the trial court is duty bound to consider all matters brought before it *except* in "extreme, compelling situation[s]," or "other circumstances . . . ." Consequently, a trial court must exercise its discretion in determining whether the circumstances in any given case fall within one of the identified exceptions. See id. (court has "*discretion* to refuse to entertain or decide motions in order to prevent harassing or vexatious litigation . . . [or in] other circumstances" [citations omitted; emphasis added]). In reformulating the issue in the manner described, the majority avoids direct consideration of the question raised by the plaintiff on appeal, namely, whether the trial court abused its discretion when it marked the motion "off," and fails to apply the proper legal principles in its subsequent analysis.

[2] Although the court stated that it would be open to hearing further argument only with respect to "specific and vital" information that the defendant failed to produce at his deposition, the court in fact granted the plaintiff discretion to request a hearing as to any or all of the discovery materials she sought in her motion, as long as she deemed them "vital" to her case. The ruling thus did not limit the plaintiff's ability to seek further discovery with respect to any of the materials identified in her motion.

[3] The court denied the plaintiff's first request for sanctions as unnecessary

because the defendant did not intend to contradict the damaging testimony. Consequently, the court stated that it would accept the evidence regarding the defendant's transfer of assets out of the marital estate as an "*uncontroverted*" fact. (Emphasis added.)

[4] Practice Book § 11-19 provides: "(a) Any judge of the superior court and any judge trial referee to whom a short calendar matter has been submitted for decision, with or without oral argument, shall issue a decision on such matter not later than 120 days from the date of such submission, unless such time limit is waived by the parties. In the event that the judge or referee conducts a hearing on the matter and/or the parties file briefs concerning it, the date of submission for purposes of this section shall be the date the matter is heard or the date the last brief ordered by the court is filed, whichever occurs later. If a decision is not rendered within this period the matter may be claimed in accordance with subsection (b) for assignment to another judge or referee.

"(b) A party seeking to invoke the provisions of this section shall not later than fourteen days after the expiration of the 120 day period file with the clerk a motion for reassignment of the undecided short calendar matter which shall set forth the date of submission of the short calendar matter, the name of the judge or referee to whom it was submitted, that a timely decision on the matter has not been rendered, and whether or not oral argument is requested or testimony is required. The failure of a party to file a timely motion for reassignment shall be deemed a waiver by that party of the 120 day time."

[5] This contrasts with the plaintiff's subsequent motion in limine, which she filed in response to the court's prior declaration that it would consider all remaining "specific" and "vital" discovery issues following the defendant's deposition.

[6] General Statutes § 46b-81 (c) provides in relevant part: "In fixing the nature and value of the property, if any, to be assigned, the court . . . shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. . . ."

[7] Because I view such an award as punitive, I also note that it makes no sense to award attorney's fees in the manner suggested if one of the purposes is to deter future misconduct, because the consequences suffered by the offending party, if any, are not imposed until long after the egregious behavior has occurred. Also militating against an award of attorney's fees at the end of the trial to sanction the offending party is that the presiding judge may not have been present when the misconduct occurred, and thus would have no firsthand knowledge of its effect upon the proceedings. Consequently, the court might reject a legitimate request for attorney's fees or reduce the size of such an award to the "innocent" party. Finally, simple logic suggests that sanctions like those provided in § 13-14 of our rules of practice, because they are imposed close in time to the alleged misconduct, are far more likely to have a deterrent effect upon the transgressor and promote appropriate conduct by the parties.