EVELEIGH, J., with whom HARPER and VERTEFEUILLE, Js., join, dissenting. In this dispute concerning a discovery request, the majority concludes that: (1) the trial court's order requiring the plaintiff in error, Finn, Dixon & Hearling, LLP (Finn Dixon) to comply with the subpoena issued by the defendants in error, Shipman & Goodwin, LLP, and Carolyn Cavolo (defendants), is an appealable final judgment; and (2) the discovery order must be vacated because it requires the disclosure of materials subject to the attorney-client privilege, and the plaintiffs in the underlying action (plaintiffs)[1] have not waived that privilege. I would conclude that the trial court's discovery ruling is not an appealable final judgment and, therefore, I would not reach the merits of Finn Dixon's claims. Accordingly, I respectfully dissent.

This court previously has recognized that, "[j]ust as an appeal, a writ of error requires a final judgment as a predicate. See Practice Book § 72-1; see also *State* v. *Ross*, 189 Conn. 42, 51, 454 A.2d 266 (1983) ('the use of a writ of error would in no way overcome the objections . . . to the appeal process based upon . . . the absence of finality in the judgment')." *Green Rock Ridge, Inc.* v. *Kobernat*, 250 Conn. 488, 498, 736 A.2d 851 (1999). " 'An order issued upon a motion for discovery . . . ordinarily . . . does not constitute a final judgment, at least in civil actions.' *Chrysler Credit Corp.* v. *Fairfield Chrysler-Plymouth, Inc.*, 180 Conn. 223, 226, 429 A.2d 478 (1980); see also *Presidential Capital Corp.* v. *Reale*, 240 Conn. 623, 625, 692 A.2d 794 (1997) ('[t]he general rule established by our case law is that an interlocutory order requiring a witness to submit to discovery is not a final judgment and, therefore, is not immediately appealable'). '[W]e require that those ordered to comply with discovery be found in contempt of court before we consider an appeal . . . .' *Barbato* v. *J.& M. Corp.*, 194 Conn. 245, 249, 478 A.2d 1020 (1984)." *Green Rock Ridge, Inc.* v. *Kobernat*, supra, 498; see also *Abreu* v. *Leone*, 291 Conn. 332, 346, 968 A.2d 385 (2009) ("an order issued upon a motion for discovery ordinarily is not appealable because it does not constitute a final judgment, and . . . a witness' only access to appellate review is to appeal a finding of contempt"); cf. *Ruggiero* v. *Fuessenich*, 237 Conn. 339, 345–46, 676 A.2d 1367 (1996) ("[a] party to a pending case does not institute a separate and distinct proceeding merely by filing a petition for discovery or other relief that will be helpful in the preparation and prosecution of that case"). This court has recognized certain limited exceptions to this general rule. In *Abreu* v. *Leone*, supra, 291 Conn. 334, for example, the defendant, Karissa Leone, had filed a claim with the claims commissioner seeking permission to bring an action against the department of

children and families (department) for personal injuries allegedly inflicted by the foster child of the plaintiff, Joseph Abreu. Leone issued a notice of deposition and subpoena duces tecum to Abreu, apparently seeking information about the child. Id., 335. Abreu then filed a separate action asking the trial court to quash the subpoena on the ground that he was prohibited, under General Statutes § 17a-28, from disclosing that information. Id. The department intervened as a party plaintiff and filed a brief in support of Abreu's position. Id. The trial court issued a decision holding that Abreu was statutorily prohibited from testifying about his foster child, but allowing the deposition to go forward so that the defendant could seek other information. Id.

Thereafter, at Abreu's deposition, he declined to answer certain questions. Id., 336. Counsel for Leone then read the questions into the record and Abreu and the department placed their objections on the record. Id. Subsequently, the trial court ordered Abreu to answer the questions. Id., 337. The department appealed from that ruling to the Appellate Court, which dismissed the appeal for lack of a final judgment. Id., 338. The department then filed a certified appeal in this court. Id.

On appeal, we concluded that the trial court's order compelling Abreu to answer the questions posed by Leone was an appealable final judgment. Id., 341. In support of this conclusion, we reasoned that: (1) unlike the situations in *Barbato* v. *J.& M. Corp.*, supra, 194 Conn. 248, and *Presidential Capital Corp.* v. *Reale*, supra, 240 Conn. 633, the trial court had clearly indicated what specific information Abreu was required to provide, Abreu had clearly refused to provide that information and, therefore, Leone was "forcing [Abreu] to be held in contempt"; *Abreu* v. *Leone*, supra, 291 Conn. 347; (2) requiring Abreu to be held in contempt "would discourage participation by otherwise willing foster parents and thus undermine the goals of that system," while forcing him to answer the questions would subject the foster child to "embarrassment, stigmatization and emotional harm"; id., 348; (3) the trial court's order had "terminated a separate and distinct proceeding concluding the *department's* rights" because the department could not force Abreu to defy the court order, thereby subjecting himself to contempt proceedings; (emphasis in original) id., 348; and (4) the motion to quash was the sole judicial proceeding at issue in the case and probably the only legal proceeding from which Abreu and the department would have a right to seek appellate review. Id., 348–49; id., 349 (Abreu could not appeal from proceeding before claims commissioner because he was not party, and it was possible that neither Abreu nor department could seek appellate review because proceeding was not judicial proceeding.).

I would conclude that *Abreu* does not support the

majority's conclusion herein that the trial court's order requiring Finn Dixon to comply with the defendants' subpoena duces tecum was an appealable final judgment. First, although, as in *Abreu*, the information that is being sought in the present case has been clearly identified, and Finn Dixon has clearly refused to produce it, a clear and definite discovery order and an unambiguous refusal to obey the order are merely *necessary* predicates to a determination that the ruling is an appealable final judgment; they are not *sufficient* predicates. See *Melia* v. *Hartford Fire Ins. Co.*, 202 Conn. 252, 253–54, 520 A.2d 605 (1987) (order requiring defendant to produce entire claims file for inspection by plaintiff was not appealable final judgment); *State* v. *Grotton*, 180 Conn. 290, 291, 296, 429 A.2d 871 (1980) (order directing taking of specimens of defendant's blood, saliva and urine was not appealable final judgment); *Chrysler Credit Corp.* v. *Fairfield Chrysler-Plymouth, Inc.*, supra, 180 Conn. 227–28 (trial court's imposition of sanctions when defendant refused to produce specifically requested documents was not appealable final judgment). Although the final judgment rule is premised in part on our reluctance to address claims prematurely or to issue advisory opinions; see *State* v. *Grotton*, supra, 292 (discovery orders are not immediately reviewable in part because "their import is fully apprehended only after trial is concluded"); the rule's primary policy rationale is "to discourage piecemeal appeals and to facilitate the speedy and orderly disposition of cases at the trial court level." (Internal quotation marks omitted.) *Mazurek* v. *Great American Ins. Co.*, 284 Conn. 16, 33, 930 A.2d 682 (2007). Thus, the mere fact that a discovery order is clear and definite, standing alone, ordinarily does not mean that the order is immediately reviewable.

Similarly, the fact that a party will be forced immediately to choose between complying with a discovery order and being held in contempt—or some other sanction if this court declines to review the order—standing alone, does not ordinarily exempt the order from the rule that discovery rulings are not appealable final judgments.[2] See *Barbato* v. *J.& M. Corp.*, supra, 194 Conn. 250 ("The party seeking to withhold information may have strong needs to keep that information confidential. Due to the interest of the other parties and the judicial system, however, that person may be *compelled* to disclose the information or be held in contempt." [Emphasis added].). The existence of this "Hobson's choice"; *Abreu* v. *Leone*, supra, 291 Conn. 348; mandates immediate appellate review only when, as in *Abreu*, there are important public policy considerations that outweigh the policy considerations underlying the final judgment rule. Id. (discovery order was immediately reviewable because holding Abreu in contempt would discourage participation in foster parent system while requiring him to testify would undermine purpose of § 17a-28 [b]).

Moreover, to the extent that *Abreu* suggests that the requirement that a party who has already refused to comply with a clear and specific discovery request must be held in contempt before seeking appellate review of a discovery order is a mere matter of form and is, therefore, dispensable; *Abreu* v. *Leone*, supra, 291 Conn. 348 (requiring party who already has refused to answer specific questions to be held in contempt before reviewing discovery order "would be elevat[ing] form over substance" [internal quotation marks omitted]); I believe that any such suggestion is unfounded. In reviewing a judgment of contempt for refusal to obey a discovery order, the reviewing court *may* be required to rule on the propriety of the underlying order, but that will not always be the case. See *Papa* v. *New Haven Federation of Teachers*, 186 Conn. 725, 733, 444 A.2d 196 (1982) ("only those claims of error which concern the court's *authority* to issue [the underlying order] and thereby its authority to find contempt for violations thereof may be reviewed" on appeal from judgment of contempt [emphasis added]); cf. id., 732 ("although the scope of review on an appeal from a judgment of civil contempt is limited to some extent, it is sufficiently broad to encompass many claims of error which may not appear on their face to be jurisdictional in nature"). Once the reviewing court has determined that the trial court had the authority to issue an interlocutory order, the court will not consider whether the order constituted an abuse of discretion. See id., 733 ("certain claims by the [party in contempt] concerning the [violated interlocutory order] are not reviewable because they concern the court's discretion, not its authority"). Thus, this court clearly recognized in *Papa* that a contempt judgment is not a procedural vehicle for converting an interlocutory ruling into appealable final judgment. See id. (because issuance of temporary injunction is not appealable final judgment, only claims implicating court's authority to issue injunction may be reviewed on appeal from judgment of contempt). Rather, the "*judgment of contempt* is a final, reviewable judgment." (Emphasis added.) *Barbato* v. *J.& M. Corp.*, supra, 194 Conn. 250. Accordingly, to the extent that we suggested in *Abreu* that, in the ordinary case, it would be a mere formality to require a party who has already refused to comply with a well defined interlocutory discovery order to be held in contempt and, therefore, the judgment of contempt is dispensable, I believe that this court put the cart before the horse. A judgment of contempt is not a technical prerequisite for immediate review of the merits of an interlocutory discovery order; rather, immediate review of the trial court's authority to issue an interlocutory discovery order may be required to review a judgment of contempt.

It is clear to me, therefore, that, under *Abreu*, a person may bring an immediate appeal from a discovery order only if: (1) the order threatens an important public

policy that provides a "counter-balancing factor" to the policies underlying the final judgment rule; *Abreu* v. *Leone*, supra, 291 Conn. 347; and (2) the party attempting to bring the appeal would not have a later opportunity to challenge the order. Id., 348; see also *Melia* v. *Hartford Fire Ins. Co.*, supra, 202 Conn. 256 (citing with approval federal standard that "allows interlocutory appeals from only those decisions falling within that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated" [internal quotation marks omitted]). In the present case, Finn Dixon claims that the first *Abreu* consideration is present because of the important public policy underlying the attorney-client privilege, and the second consideration is present because Finn Dixon is not a party to and has no interest in the underlying action, its rights will be irretrievably lost if it is required to disclose the requested materials, and it will have no other opportunity for review.

I first address Finn Dixon's claim that protection of the attorney-client privilege is an important counter-balancing factor justifying a departure from the ordinary rule that a discovery order is not immediately appealable. I disagree. This court previously has held that the fact that a discovery order may require the disclosure of materials subject to the attorney-client privilege is not "sufficiently important to transform an interlocutory order into a final judgment" under the applicable standard. Id. This court recognized in *Melia* that a determination on appeal that the discovery order was improper "cannot wholly undo the consequences of [the violation of the privilege], though the rights of the client in respect to use of privileged material during further proceedings can be adequately safeguarded." Id., 257. We also recognized, however, that the fact that "[v]indication at the appellate level can seldom regain all that has been lost by an erroneous determination of a cause in the trial court"; (internal quotation marks omitted) id.; does not mean that such determinations are immediately reviewable. See also id., 258 ("the final judgment rule . . . has induced [this court] to dismiss appeals where statutorily created rights of privacy, no less significant than the right of confidentiality for attorney-client communications have been at stake"); see also *Metropolitan Life Ins. Co.* v. *Aetna Casualty & Surety Co.*, 249 Conn. 36, 47, 730 A.2d 51 (1999) (same).[3] In the present case, Finn Dixon has provided, and I can perceive, no reason to reconsider these principles. Indeed, the majority does not contend otherwise.

The majority concludes, however, that Finn Dixon's independent interest in maintaining the confidentiality of its privileged materials provides a counter-balancing factor to the policies underlying the final judgment rule.

The majority also concludes that attorneys, unlike their clients, have a professional ethical obligation to protect the confidentiality of privileged information; see Rules of Professional Conduct 1.6 (a);[4] and that attorneys should not be placed in the untenable position of either breaching that obligation or violating a court order and being held in contempt.

I am not persuaded. Although the interests of an attorney in preserving the confidentiality of materials subject to the attorney-client privilege may not be identical to those of a client, their respective interests are closely intertwined. Indeed, in the present case, the plaintiffs, in their objections to the defendants' subpoena duces tecum, motion to quash and motion for protective order, "join[ed] in and adopt[ed]" the substance of Finn Dixon's objections, motion to quash and motion for protective order. In addition, in its opposition to the defendants' motion to dismiss this writ of error, Finn Dixon stated that it had asserted its objections to the subpoena duces tecum pursuant to its ethical obligations *to the plaintiffs* under Rule 1.6 of the Rules of Professional Conduct, and not on the basis of its own confidentiality interests. Furthermore, although the defendants in the underlying action directed their subpoena duces tecum at Finn Dixon, they could just as easily have directed it at the plaintiffs, who would have been entitled to obtain the requested documents from Finn Dixon for purposes of discovery. Under *Melia*, the plaintiffs would not have been able to appeal immediately from a decision overruling their objections to the subpoena. Thus, it is clear to me that allowing a nonparty attorney to appeal immediately from a discovery order constitutes an end run around *Melia*. Moreover, to the extent that Finn Dixon has an interest in its privileged materials that is entirely distinct from its clients' interest, I do not believe that that interest is significantly *more important* than the clients' interest. Finally, as the majority recognizes, an attorney's compliance with a court order compelling disclosure of privileged materials does not violate the Rules of Professional Conduct if the attorney asserts all nonfrivolous claims against disclosure. See Rules of Professional Conduct 1.6 (c) ("[a] lawyer may reveal [privileged or confidential] information to the extent the lawyer reasonably believes necessary to . . . [4] [c]omply with . . . a court order"), and commentary.[5]

In my view, by allowing immediate appeals to nonparties from discovery orders that implicate the attorney-client privilege, the majority raises the privilege to an unduly exalted status. Although the privilege is undoubtedly important, this court repeatedly has recognized that a threat to it does not outweigh the policies that underlie the final judgment rule. Because it is well established in this state that a client's interests in preserving confidentiality are not sufficiently important as to require immediate appellate review of a discovery

order, I would conclude, consistent with that precedent, that an attorney's interests also are not sufficiently important.[6] As I have indicated, I believe that, under *Abreu*, a person seeking to appeal from a discovery order must establish *both* that the order concluded the person's rights so that no further proceeding will affect them *and* that there is a counter-balancing public policy interest. Accordingly, I would conclude on this basis alone that the discovery order in the present case is not immediately appealable.[7]

Nevertheless, because the majority concludes that, even in the absence of a counter-balancing factor, the discovery order is immediately appealable on the independent ground that it "terminated a separate and distinct proceeding"; *Abreu* v. *Leone*, supra, 291 Conn. 348; I address that issue. I recognize that this court expressly stated in *Abreu* that "the first [prong of the test set forth in State v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983)[8] was] satisfied" by the discovery order at issue in that case. Id., 341. It is well established, however, that discovery orders do not satisfy the first prong of *Curcio* because they are not "severable from the central cause of action so that the main action can proceed independent of the ancillary proceeding." (Internal quotation marks omitted.) Id., 339; see also *Ruggiero* v. *Fuessenich*, supra, 237 Conn. 345–46 ("[a] party to a pending case does not institute a separate and distinct proceeding merely by filing a petition for discovery or other relief that will be helpful in the preparation and prosecution of that case"). Because our statement to the contrary in *Abreu* is simply unsupportable under our jurisprudence governing the appealability of interlocutory orders, I am compelled to conclude that it was incorrect. Indeed, this court appears to have conflated the first and second prongs of *Curcio* in *Abreu* when it stated that "it is clear that the trial court order in the present case also terminated a separate and distinct proceeding *concluding the department's rights by forcing the disclosure or privileged information . . . that further proceedings could not remedy*." (Emphasis added.) *Abreu* v. *Leone*, supra, 348. A ruling that so concludes a person's rights that further proceedings cannot affect them implicates the second prong of *Curcio*, not the first prong. Id., 339.

I recognize that this court previously has held that certain discovery orders satisfy the first prong of *Curcio*. See *Lougee* v. *Grinnell*, 216 Conn. 483, 487, 582 A. 456 (1990); see also *Presidential Capital Corp.* v. *Reale*, supra, 240 Conn. 631. In *Lougee*, the petitioner, Virginius B. Lougee, brought an action to quash a subpoena that had been issued at the instigation of the respondent, Jeannie B. Grinell, in connection with an action that Grinnell had brought in Texas. *Lougee* v. *Grinnell*, supra, 484–85. We stated in that case that "the sole judicial proceeding instituted in Connecticut concerned the propriety of Grinnell's deposition subpoena, a pro-

ceeding that will not result in a later judgment from which [Lougee] can then appeal. Thus, this appeal falls within the first prong of the test of finality of judgment stated in *State* v. *Curcio*, [supra, 191 Conn. 31]: (1) where the order or action terminates a separate and distinct proceeding. *Commissioner of Health Services* v. *Kadish*, 17 Conn. App. 577, 578 n.1, 554 A.2d 1097 (1989)." (Internal quotation marks omitted.) *Lougee* v. *Grinnell*, supra, 487. In *Presidential Capital Corp.* v. *Reale*, supra, 240 Conn. 631, we stated in dictum that "[a] trial court order that quashes an investigative subpoena indubitably 'terminates' the discovery proceeding that is at issue. See *Commissioner of Health Services* v. *Kadish*, [supra, 578 n.1.] We have, accordingly, regularly undertaken appellate review of such an order. See, e.g., *Heslin* v. *Connecticut Law Clinic of Trantolo & Trantolo*, 190 Conn. 510, 461 A.2d 938 (1983); *In re Application of Ajello* v. *Moffie*, 179 Conn. 324, 426 A.2d 295 (1979)."

As I have explained, however, it is well established that discovery orders do not satisfy the first prong of *Curcio* because they are not "severable from the central cause of action so that the main action can proceed independent of the ancillary proceeding." (Internal quotation marks omitted) *Abreu* v. *Leone*, supra, 291 Conn. 339; see also *Ruggiero* v. *Fuessenich*, supra, 237 Conn. 345–46. Moreover, in two of the three cases that this court cited in *Presidential Capital Corp.* in support of its conclusion to the contrary, the *Curcio* issue was not addressed. See *Heslin* v. *Connecticut Law Clinic of Trantolo & Trantolo*, supra, 190 Conn. 510; *In re Application of Ajello* v. *Moffie*, supra, 179 Conn. 324. In the third case, *Commissioner of Health Services* v. *Kadish*, supra, 17 Conn. App. 578 n.1, which this court also cited in *Lougee*, the issue was raised by the Appellate Court sua sponte and was disposed of with little analysis in a footnote. Finally, it is impossible to reconcile this court's conclusion in *Presidential Capital Corp.* that an order quashing a subpoena is immediately appealable with its conclusion that an order that authorizes discovery to go forward is not. *Presidential Capital Corp.* v. *Reale*, supra, 631 ("[t]he finality that attaches to the quashing of a subpoena is not . . . transferable to an order that authorizes discovery to go forward"). The order is equally determinative of the rights of the parties in both situations and, also in both situations, the main cause of action would have to be stayed pending resolution of an appeal from the order.[9] Indeed, an order compelling discovery is, if anything, more "final" than an order denying discovery because such an order changes the status quo and, "once disclosed through discovery, information cannot be retrieved." Id., 629. Accordingly, it is clear to me that, contrary to this court's conclusion in *Lougee* and the dictum in *Presidential Capital Corp.*, discovery orders that "will not result in a later judgment from which [the subject of

the order] can [later] appeal"; (internal quotation marks omitted) *Lougee* v. *Grinnell*, supra, 216 Conn. 487; should be analyzed under the second prong of *Curcio*, governing orders that "so [conclude] the rights of the parties that further proceedings cannot affect them"; *State* v. *Curcio*, supra, 191 Conn. 31; not under the first prong.[10]

This court previously has concluded that, under the second prong of *Curcio*, we must balance our concern for the rights of the person seeking an immediate appeal with our concern for "the efficient operation of the judicial system . . . ." *Melia* v. *Hartford Fire Ins. Co.*, supra, 202 Conn. 258; id. ("[o]ur concern for the efficient operation of the judicial system . . . is the practical consideration behind the policy against piecemeal litigation inherent in the final judgment rule"). Balancing these concerns, we have concluded that discovery orders generally are not immediately appealable, *even though* an erroneous discovery order may result in the deprivation of rights that cannot be restored in the absence of an immediate appeal. See id., 257 ("It is true that a remand for a new trial resulting from an erroneous order to disclose information protected by the privilege cannot wholly undo the consequences of its violation . . . . Vindication at the appellate level can seldom regain all that has been lost by an erroneous determination of a cause in the trial court." [Internal quotation marks omitted]); id., 259 ("[w]e conclude that the occasional violation of the attorney-client privilege that cannot be fully rectified upon review of the final judgment is a lesser evil than that posed by the delay in the progress of cases in the trial court likely to result from interlocutory appeals of disclosure orders"). Rather, discovery orders are immediately appealable only when our concern for judicial efficiency is outweighed by the need to protect a right that is "too important to be denied [immediate] review . . . ." (Internal quotation marks omitted.) Id., 256; see also *Abreu* v. *Leone*, supra, 291 Conn. 347 ("like other cases in which we have determined that a contempt finding should not be a predicate to appellate review, there is a counterbalancing factor in this situation").

In my view, as a practical and logical matter, these principles apply equally to discovery orders directed at nonparties. Cf. *Presidential Capital Corp.* v. *Reale*, supra, 240 Conn. 629 (nonparty witnesses not entitled under *Curcio* to appeal immediately from denial of protective order). I recognize that, unlike a party, a nonparty's *exclusive* interests in a case in which it has been subjected to a discovery request are avoiding the burden of complying with the request and preserving any applicable privileges. I further recognize that, for all practical intents and purposes, an order compelling discovery finally concludes those interests. A discovery order directed at a party, however, also affects the party's interests in a manner that may not be remediable in a

later appeal. See id. ("[i]t is a given that, once disclosed through discovery, information cannot be retrieved"); *Melia* v. *Hartford Fire Ins. Co.*, supra, 202 Conn. 257 ("[i]t is true that a remand for a new trial resulting from an erroneous order to disclose information protected by the privilege cannot wholly undo the consequences of its violation"). Moreover, there is no guarantee that the party will be able to bring an appeal or, if it can, that it will be able to appeal from the discovery order.[11] Neither the potential unavailability of an adequate remedy on appeal nor the potential unavailability of an appeal, however, is sufficient justification for immediate review of a discovery order on the ground that "the order or action so concludes the rights of the parties that further proceedings cannot affect them." (Emphasis added.) *State* v. *Curcio*, supra, 191 Conn. 31; see also *Melia* v. *Hartford Fire Ins. Co.*, supra, 257. Otherwise, virtually all discovery orders would be immediately reviewable. Cf. *Presidential Capital Corp.* v. *Reale*, supra, 629–30 (if fact that disclosed information cannot be retrieved were sufficient reason to allow immediate appeal from order to testify, "every reluctant witness could delay trial court proceedings by taking an interlocutory appeal"). Moreover, an immediate appeal from a discovery order by a nonparty will delay and disrupt the underlying proceedings no less than an appeal by a party.

Accordingly, I see no reason why, if a party cannot obtain immediate review under *Curcio* of a discovery order without first being held in contempt, such relief should be available to a nonparty. Although the potential for unwarranted disclosure and irremediable harm exists in both situations, I continue to believe that "the occasional [improper discovery ruling] that cannot be fully rectified upon review of the final judgment is a lesser evil than that posed by the delay in the progress of cases in the trial court likely to result from interlocutory appeals of disclosure orders." *Melia* v. *Hartford Fire Ins. Co.*, supra, 202 Conn. 259. Because I do not believe that Finn Dixon's interest in maintaining the confidentiality of its privileged materials and work product is sufficiently important to override our concern for the efficient operation of the judicial system, I do not believe that the trial court's order in the present case is appealable under the second prong of *Curcio*.

The majority does not dispute the substance of this analysis or explain how the discovery order at issue in the present case satisfies the requirement under the first prong of *Curcio* that, to be immediately appealable, an order must be "severable from the central cause of action so that the main action can proceed independent of the ancillary proceeding." (Internal quotation marks omitted.) *Abreu* v. *Leone*, supra, 291 Conn. 339. Rather, it simply ignores this requirement and the holding of *Ruggiero* that discovery matters are not separate and distinct proceedings, and begs the question by stating

conclusorily that, because "Finn Dixon is not involved in any way with the lawsuit between the plaintiffs and defendants," the discovery order "terminated a separate and distinct proceeding and thus satisfied the first prong of *Curcio*." Despite this conclusion, the majority for some reason finds it necessary to expend a great deal of energy explaining why, in its view, there are also compelling policy reasons to review the discovery order immediately. The majority ultimately *acknowledges* that, under *Melia*, these policy reasons, "standing alone, [are] insufficient to transform an ordinary discovery dispute between parties into an appealable final judgment," but concludes that *Melia* "is inapposite with respect to the issue of whether a nonparty's objection to a discovery order satisfies the first prong of *Curcio*."[12] If the majority believes that any discovery order to a nonparty order satisfies the first prong of *Curcio*, however, then there is no need for it to discuss the order's public policy implications. If the majority believes that, to the contrary, policy considerations must provide a counter-balancing factor to justify an immediate appeal from a discovery order, it is impossible to reconcile its ultimate conclusion that such a counter-balancing factor exists in the present case with its concession that "Finn Dixon's claim under the second prong [of *Curcio*] is likely meritless under *Melia*," because the right at issue would not be sufficiently important to warrant an immediate appeal by a party.

Finally, I greatly fear that the majority's decision permitting immediate review of discovery orders directed at attorneys for nonparties will open a floodgate of immediate appeals from *all* discovery orders. See *Melia* v. *Hartford Fire Ins. Co*. supra, 202 Conn. 258 ("[t]he opportunities for delay that would become available if every disclosure order that might arguably implicate the attorney-client privilege could be appealed before trial are overwhelming to contemplate"); cf. *Brown & Brown, Inc.* v. *Blumenthal*, 288 Conn. 646, 655–56 n.6, 954 A.2d 816 (2008) (declining to treat trial court's denial of motion for summary judgment as appealable final judgment in action seeking declaration that documents produced by plaintiff in separate proceeding were confidential because doing so would open floodgate of interlocutory appeals). If a discovery order directed at an attorney for a nonparty is a "separate and distinct proceeding" permitting immediate appellate review under *Curcio*, then discovery orders directed at *any* nonparty, including attorneys for parties, must also be separate and distinct proceedings under *Curcio*. Discovery orders directed at nonparties are an *extremely* frequent occurrence in civil cases.[13] Moreover, as I have explained, there is no principled reason to treat parties and nonparties differently in this context because both classes are exposed to the same threat of irremediable harm from a nonappealable discovery order, and an immediate appeal by either a party

or nonparty would cause the same delay and disruption in the underlying proceeding.[14] Accordingly, it appears to me that the principled application of the newly adopted rule allowing nonparties to appeal immediately from discovery orders will lead inexorably to a rule allowing immediate appeals by parties. I see no reason to venture down that path.[15]

Because I would conclude that the trial court's orders denying Finn Dixon's motion to quash the subpoena and overruling its objections thereto did not constitute an appealable final judgment under either prong of *Curcio*, I would dismiss the writ of error for lack of appellate jurisdiction.

Accordingly, I respectfully dissent.

[1] The plaintiffs are Woodbury Knoll, LLC, Woodbury Knoll II, LLC, Paredim Partners, LLC, formerly known as Hanrock Management, LLC, and David Parisier.

[2] See *Abreu* v. *Leone*, supra, 291 Conn. 347 ("Because . . . the specific questions have been propounded and the trial court has ruled unequivocally what must occur, we can only regard the posture of the present case as the functional equivalent of [Abreu's refusing to answer the questions again and being held in contempt]. . . . In essence, the defendant is forcing [Abreu] to be held in contempt." [Citation omitted; internal quotation marks omitted.]).

[3] This court in *Metropolitan Life Ins. Co.* ultimately concluded that immediate review of the plaintiff's appeal from a discovery order was warranted under General Statutes § 52-265a. *Metropolitan Life ins. Co.* v. *Aetna Casualty & Surety Co.*, supra, 249 Conn. 50–51. Although that conclusion was based in part on the importance of the attorney-client privilege; see id., 48; we expressly relied on *Melia* for the proposition that that consideration, standing alone, does not justify immediate review of a discovery order. Id., 46–47.

[4] Rule 1.6 (a) of the Rules of Professional Conduct provides: "A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the discourse is permitted by subsection (b), (c), or (d)."

[5] The commentary to Rule 1.6 of the Rules of Professional Conduct provides in relevant part: "A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, subsection (c) (4) permits the lawyer to comply with the court order."

At oral argument before this court, Finn Dixon argued that, when a discovery order requiring disclosure of privileged materials is "clearly erroneous," an attorney who discloses privileged information is not entitled to raise the "Nuremburg" defense that the attorney was merely complying with a court order. Finn Dixon cited no authority in support of this claim. Even if it were correct, however, Finn Dixon has cited no authority for the proposition that the attorney cannot be required to disobey a clearly erroneous interlocutory order and be held in contempt before seeking review of the order.

[6] Although I acknowledge that the final judgment rule creates a dilemma for a nonparty attorney in this context, for the reasons that I have explained, I do not believe that this dilemma is significantly *more* burdensome on a nonparty attorney than it is on any other party or nonparty who must disobey a court order in order to obtain immediate appellate review. Moreover, if a nonparty attorney is held in contempt, the attorney obtains appellate review of the order and the challenge is upheld, I find it highly unlikely that any court would find the ethical violation sanctionable, especially in light of the fact that the attorney was faced with conflicting ethical obligations to the client and to the court. Sanctions are also unlikely if a good faith

challenge is denied on appeal and the attorney promptly complies with the order.

[7] Indeed, when asked at oral argument before this court whether one of the reasons for this court's decision in *Abreu* was that the discovery ruling at issue in that case involved an important public policy factor, counsel for Finn Dixon responded, "It certainly was." Counsel did not argue that Finn Dixon could appeal immediately from the trial court's overruling of the objections to the defendants' subpoena duces tecum *solely* because Finn Dixon was a nonparty and would have no other opportunity to challenge the ruling.

[8] In *State* v. *Curcio*, supra, 191 Conn. 31, this court determined that "[a]n otherwise interlocutory order is appealable in two circumstances: 1) where the order or action terminates a separate and distinct proceeding, or 2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them."

[9] We analogized discovery proceedings to proceedings on a motion for summary judgment in *Presidential Capital Corp.* and noted that this court had never held that, "because the *granting* of a motion for summary judgment is immediately appealable, the *denial* of such a motion is equally appealable." (Emphasis in original.) *Presidential Capital Corp.* v. *Reale*, supra, 240 Conn. 631. The granting of a motion for summary judgment that disposes of all claims against a particular party or parties is immediately appealable, however, because, unlike the denial of a motion for summary judgment, *it is a final judgment*. See *Connecticut National Bank* v. *Rytman*, 241 Conn. 24, 34–35, 694 A.2d 1246 (1997); Practice Book § 61-3.

[10] In my view, this court's holding in *Lougee* that orders issued in discovery proceedings within this state that arise from a cause of action pending in another state are immediately appealable is justified under the second prong of *Curcio* because, like all discovery orders, they may so conclude the rights of the parties that further proceedings cannot effect them but, unlike discovery orders arising from a cause of action pending in this state, allowing an immediate appeal will not undermine "the efficient operation of [our] judicial system . . . ." *Melia* v. *Hartford Fire Ins. Co.*, supra, 202 Conn. 258; id. ("[o]ur concern for the efficient operation of the judicial system . . . is the practical consideration behind the policy against piecemeal litigation inherent in the final judgment rule"); id. (where harm caused by delays likely to result from allowing interlocutory appeals outweighs interests that would be protected by allowing such appeals, appeal is not allowed under *Curcio*).

[11] If the party prevails on the merits of its case, it may not be aggrieved for purposes of appeal and, even if it can bring an appeal, the party will not be able to challenge the discovery order unless it can claim that the order resulted in prejudice to the party on the merits.

[12] I agree that the question of whether a discovery order satisfies the first prong of *Curcio* is governed by *Ruggiero*, not *Melia*. *Melia* does control the question, however, of whether an invasion of the attorney-client privilege that cannot be completely remedied is a sufficient threat to public policy to justify an immediate appeal even if the first prong of *Curcio* is not satisfied. *Abreu* provides *no* guidance on that question.

[13] The majority states that "[a]llowing these appeals will not open the floodgates to numerous discovery order appeals, as they are far less common than typical discovery requests between parties . . . ." Even assuming that the majority is correct that discovery requests directed at nonparties are *less* frequent than requests directed at parties, requests directed at nonparties such as witnesses, employers, health care providers, police officers, experts, etc., are still an extremely common occurrence in civil cases.

[14] The majority states that "a principled distinction [between parties and nonparties in this context is] that a discovery order affecting a nonparty likely will satisfy the first prong of *Curcio* . . . whereas one affecting a party in a case will not." (Citation omitted.) As I have explained, however, a discovery order directed at a nonparty is *not* "severable from the central cause of action so that the main action can proceed independent of the ancillary proceeding," as required under the first prong of *Curcio*. (Internal quotation marks omitted.) *Abreu* v. *Leone*, supra, 291 Conn. 339. Moreover, a party, like a nonparty, will not be able to appeal from a discovery order after judgment merely because the order was burdensome or invaded a particular privilege. An appeal will be available only if the order resulted in prejudice to the party's case on the merits. Accordingly, if the main litigation must be stayed pending resolution of an immediate appeal from a discovery order by a nonparty, I see no reason why a party should be

denied that privilege.

[15] The majority suggests that I would "overrule" *Abreu*. This is an incorrect interpretation of my argument. I believe that my analysis makes it sufficiently clear that *Abreu* stands for the proposition that, when a discovery order implicates an important public policy *and* the procedural posture of the case is such that the person at whom the order is directed will not be able to vindicate the rights protected by the public policy in a later proceeding, the order is immediately appealable. My analysis is in no way inconsistent with this reading of *Abreu* and, therefore, would not require overruling it.