CHAIRPERSON, CONNECTICUT MEDICAL EXAMINING BOARD, ET AL. *v.* FREEDOM OF INFORMATION COMMISSION ET AL.
(SC 19055)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and McDonald, Js.

Argued April 15—officially released October 15, 2013

Kerry Anne Colson, assistant attorney general, with whom, on the brief, was *George Jepsen*, attorney general, for the appellants (plaintiffs).

Victor Perpetua, principal attorney, with whom, on the brief, was *Tracie C. Brown*, principal attorney, for the appellee (named defendant).

Opinion

ZARELLA, J. This is an appeal by the plaintiffs, the Connecticut Medical Examining Board (board) and its chairperson, from the judgment of the trial court dismissing the plaintiffs' appeal from a final decision of the named defendant, the Freedom of Information Commission (commission), in favor of the complainants, Attorney Michael K. Courtney and the Office of the Chief Public Defender.[1] The trial court concluded that the commission properly had found that an executive session convened by the board on February 17, 2009, was not permissible under the Freedom of Information Act (act), General Statutes § 1-200 et seq. The board convened the executive session to obtain legal advice about issues raised in a letter from the complainants dated February 13, 2009 (letter), regarding their request for a declaratory ruling. The plaintiffs claim that the board was permitted to convene in executive session under the act because the letter demanded legal relief and, therefore, constituted notice of a pending claim as defined by § 1-200 (8). In addition, the plaintiffs claim that the executive session was permitted under the act because it involved discussions of strategy and negotiations as defined by § 1-200 (6) (B). The commission responds that the letter did not constitute notice of a pending claim but, rather, that the complainants merely noted a potential conflict of interest and suggested a course of action. We agree with the commission and, accordingly, affirm the judgment of the trial court.

The commission found the following facts in its final decision dated December 16, 2009. On January 8, 2009, the complainants submitted a "Request for a Declaratory Ruling" to the board asking: "Is physician participation in the execution of condemned Connecticut inmates using lethal injection permitted?" On February 13, 2009, the complainants sent a letter to Assistant Attorney General Thomas J. Ring noting a potential conflict of interest in his possible representation of the board and Robert Galvin, the Commissioner of Public Health.[2] The complainants also sent the board a copy of this letter.

At its February 17, 2009 meeting, the board convened in executive session for approximately five minutes to discuss what it deemed to be the "pending claim" contained in the letter to Ring. The next day, the complainants filed a complaint with the commission, alleging that the plaintiffs had "violated the . . . [a]ct by convening in executive session during the . . . [meeting] for purposes not permitted under the [a]ct."[3] The complainants thus requested, inter alia, that the commission order the board to disclose the content of the discussions held during the executive session.

After a hearing on the matter, the commission concluded that the letter "merely point[ed] out what [the

complainants] considered to be a 'potential' conflict and only *suggested* that the . . . board be provided with outside legal counsel before issuing a decision related to the request for a declaratory ruling." (Emphasis in original.) The commission determined that the letter thus did not constitute a pending claim, which may be discussed in executive session under § 1-200 (8), because the complainants had deliberately phrased the letter in a way that avoided any implication that they were demanding relief or that they intended to institute an action regarding the potential conflict of interest. In addition, the commission concluded that the plaintiffs had failed to prove that the board discussed "strategy" and "negotiations," for which executive sessions are permitted under § 1-200 (6) (B). (Internal quotation marks omitted.) As a result, the commission determined that the executive session was impermissible under the act and ordered that the plaintiffs "strictly comply" with the provisions of General Statutes § 1-225 (a) in the future.

The plaintiffs appealed from the commission's final decision to the trial court, which upheld the commission's decision on June 28, 2011. The trial court agreed that the letter did not constitute notice of a pending claim under § 1-200 (8) because the letter itself was "ample evidence that the complainants were not demanding legal relief or asserting a legal right." In fact, the trial court characterized the plaintiffs' position as "unreasonable . . . ." The trial court therefore dismissed the plaintiffs' appeal. This appeal followed.[4]

On appeal, the plaintiffs argue that the letter constitutes notice of a pending claim because the letter threatens a claim of conflict of interest or bias, demands legal relief in connection with the request for the declaratory ruling, and challenges the board's right to counsel through the Office of the Attorney General. The commission counters that the letter does not constitute notice of a pending claim because it does not threaten a conflict of interest or bias claim and only *suggests* that the board retain outside counsel before issuing the declaratory ruling. In addition, the commission contends that the complainants did not have the right to challenge the board's right to counsel through the Office of the Attorney General under General Statutes § 3-125.

This court reviews the trial court's judgment pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq. Under the UAPA, "it is [not] the function . . . of this court to retry the case or to substitute its judgment for that of the administrative agency." (Internal quotation marks omitted.) *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010). Even for conclusions of law, "[t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse

if its discretion. . . . [Thus] [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . [Similarly], this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . Furthermore, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . We have determined, therefore, that the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation . . . ." (Citation omitted; internal quotation marks omitted.) Id., 716–17. In the present case, the issue before this court requires us to construe § 1-200 (6) (B) and (8) to determine whether the letter constitutes notice of a pending claim.[5] Consequently, because the commission's interpretation has not been "subjected to judicial scrutiny or consistently applied by the agency over a long period of time," our review is de novo. Id., 717.

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Commissioner of Public Safety* v. *Freedom of Information Commission*, 301 Conn. 323, 338, 21 A.3d 737 (2011). In the present case, the parties contest the meaning of two terms contained within the definition of "pending claim" in § 1-200 (8): "demand for legal relief" and "intention to institute an action in an appropriate forum if such relief or right is not granted." We

therefore examine the relevant statutes to determine whether the letter qualifies as a pending claim under § 1-200 (8).

The act requires that "[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public." General Statutes § 1-225 (a). Section 1-200 (6) defines an executive session as "a meeting of a public agency at which the public is excluded" for one of five specified purposes.[6] This court has narrowly construed these purposes because "the general rule under the . . . [a]ct is disclosure . . . ." *New Haven* v. *Freedom of Information Commission*, 205 Conn. 767, 775, 535 A.2d 1297 (1988); see also *Stamford* v. *Freedom of Information Commission*, 241 Conn. 310, 314, 696 A.2d 321 (1997) ("[t]he overarching legislative policy of the [act] is one that favors the open conduct of government and free public access to government records" [internal quotation marks omitted]).

The purpose at issue in the present case is set forth in § 1-200 (6) (B), which allows an executive session for "strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled . . . ." Section 1-200 (8) defines a pending claim as "a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted."

We conclude that the language of the statute is plain and unambiguous and that the letter does not constitute notice of a pending claim under the exception set forth in § 1-200 (6) (B). Under § 1-200 (8), a pending claim must set "forth a demand for legal relief" and "stat[e] the intention to institute an action . . . ." "[D]emand" means "[t]he assertion of a legal or procedural right." Black's Law Dictionary (9th Ed. 2009). Similarly, the plain meaning of "stating the intention" is that the demand actually or expressly states what actions the author intends to take. Although there are no magic words necessary to express demand and intent, the written notice must actually or expressly state that an action is pending or that an action is conditional on relief not being granted.[7] See General Statutes § 1-200 (8) ("written notice to an agency which sets for a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum *if such relief or right is not granted*" [emphasis added]). Because § 1-200 (6) (B) and (8) requires actual or express articulation, the proper focus is not on what the board reasonably could have believed but, rather, on what the written notice actually states.[8] The letter in the present case does not contain either

a demand for legal relief or evidence of an intent to institute an action in an appropriate forum if the board does not grant that relief.[9] Accordingly, it does not constitute notice of a pending claim.

This court has found pending claims only in situations in which a party expresses "a carefully articulated demand for certain legal relief, a demand asserted to vindicate an alleged legal right personal to [the asserting party]." *Board of Education* v. *Freedom of Information Commission*, 217 Conn. 153, 162, 585 A.2d 82 (1991). In *Board of Education*, the superintendent of schools of the town of Ridgefield issued a directive precluding a high school literary magazine sponsored by the plaintiff board of education from publishing alumni submissions. Id., 154–55. Later, the superintendent received a letter stating that, "[i]n an attempt to avoid litigation, which is a very *real* possibility in this case, I have requested that you withdraw your order . . . . I told [counsel for the board of education] that I had about two weeks for this decision to be made before papers need be filed in [the United States] District Court asking for an injunction." (Emphasis in original; internal quotations marks omitted.) Id., 155 n.2. The letter actually and expressly demanded that the board of education engage in certain actions to avoid a future claim. The pending claim was, in effect, "reduced to writing" and "in the . . . hands [of the board of education] and awaiting its decision." Id., 162.

In contrast, the plaintiffs' assertion that the letter in the present case constitutes notice of a "pending claim" of conflict of interest is without merit. The plaintiffs argue that the letter references Ring's potential conflict of interest in his representation of the board and Galvin. The plaintiffs also suggest that the letter makes a conflict of interest claim against the board. We consider each of these purported claims in turn.[10]

First, a conflict of interest claim against Ring does not qualify under § 1-200 (6) (B) because the board would not be a party to any such claim. Section 1-200 (6) (B) requires that the "public agency or . . . member thereof" be "a party" to the "pending claims or pending litigation . . . ." An agency can be a party to the claim, but only if the claim is directed at the agency itself. See *Board of Education* v. *Freedom of Information Commission*, supra, 217 Conn. 162 n.8; see also Black's Law Dictionary, supra (defining "party" as "[o]ne by or against whom a lawsuit is brought," or in the context of contracts, "one who takes part in a transaction"). The letter informs Ring that there is "a significant risk that the representation of one of your two clients . . . would be materially limited by your office's responsibilities to the other client."[11] The letter clearly indicates that the alleged conflict is Ring's, not the board's.[12]

In addition, the letter refers to a "potential" future

conflict of interest, rather than one that currently exists. At the time of the letter, Ring was not representing both the board and Galvin. The alleged conflict of interest, therefore, is entirely hypothetical, which suggests that the author was not alerting Ring to a pending claim. Moreover, even if the Office of the Attorney General were representing both the board and Galvin concurrently, it would not make sense to treat this situation as a conflict of interest. This court has recognized that the Attorney General is in the "unique position" of representing the state, the state's agencies, and the state's citizens. See *Commission on Special Revenue* v. *Freedom of Information Commission*, 174 Conn. 308, 318–20, 387 A.2d 533 (1978). The Attorney General's ethical duties thus should be considered in relation to his "duties as the constitutional civil legal officer of the state," which include being available to represent these various constituencies. Id., 322.

Second, even if the conflict of interest claim had been directed against the board, there is no pending claim because the letter does not actually or expressly demand relief or state an intent to institute an action if that relief is not granted. The plaintiffs argue that the board reasonably could have feared, from reading the letter, that the complainants would bring a claim against the board for a conflict of interest because Galvin, as the Commissioner of Public Health, was ultimately in charge of the board,[13] and, therefore, the board's ruling would affect him. The letter, however, does not mention any "legal relief" that would qualify under § 1-200 (8). The only relief of any kind mentioned in the letter is the complainants' "suggest[ion]" that the "[b]oard be provided with outside counsel before making any ruling on [the] request" for a declaration regarding whether physician participation in executions by lethal injection is permissible. Even if the board were provided with outside counsel, that relief would not affect the alleged conflict of interest; the board would be in the same conflicted position with respect to the declaratory ruling regardless of who was advising them. See footnote 13 of this opinion.

Moreover, unlike the letter in *Board of Education*, which explicitly demanded legal relief and indicated that action would be taken against the board of education if it did not comply; see *Board of Education* v. *Freedom of Information Commission*, supra, 217 Conn. 162; the letter in the present case merely alerts Ring to a potential conflict of interest and suggests a course of action. Specifically, the letter provides that the complainants seek "to inform [Ring] of a potential conflict of interest in [his] continuing representation of the . . . [b]oard," with no mention of the complainants taking or planning to take further action on this conflict of interest. The letter is not addressed to the board, does not require that the board take any action, and does not state an intent to bring an action in an appro-

priate forum if the board does not comply.[14] In *Board of Education*, the decision to avoid or go forward with the action was conditioned on the decision of the board of education to grant relief; in the present case, however, the decision was not "in the board's hands and awaiting its decision." *Board of Education* v. *Freedom of Information Commission*, supra, 162; see id. ("[a]lthough [counsel for the complaining party] stated at several points in the letter that [the complaining party] . . . wished to avoid litigation, the only way to avert that outcome, under the terms of the letter, was for the board [of education] essentially to capitulate"). The letter in the present case does not mention that the board has a conflict of interest, and, therefore, the plaintiffs' arguments are entirely speculative.

The plaintiffs' claim that the letter constitutes notice of a pending bias claim is even further attenuated. If a written notice must actually or expressly demand legal relief, it follows that the claim must actually or expressly be mentioned in the notice itself. Although the letter does mention a "conflict of interest," the letter does not refer to bias. In order to qualify as a pending claim, the written notice must raise a claim that is more than speculative. The letter simply does not mention a bias claim, and any inference that the complainants would have brought such a claim is based on conjecture.

Finally, the plaintiffs suggest that the letter constitutes notice of a pending claim because it implicates the ability of the Office of the Attorney General to provide counsel to the board under § 3-125. Although § 3-125 does provide the board with a right to representation by the Office of the Attorney General, § 1-200 (8) requires that the legal relief or right be personal to the asserting party. See General Statutes § 1-200 (8) (stating that pending claim must involve relief or right that agency may grant); *Board of Education* v. *Freedom of Information Commission*, supra, 217 Conn. 162 (stating that letter at issue was "a demand asserted to vindicate an *alleged legal right personal to* [the asserting parties]" [emphasis added]). In the present case, the complainants are the asserting parties, but the complainants do not have the right to intervene in the relationship between the Office of the Attorney General and the board. The complainants would not be able to assert the board's right to counsel through the Office of the Attorney General; the appropriate party to assert this right would be the board itself. Cf. *Commission on Special Revenue* v. *Freedom of Information Commission*, supra, 174 Conn. 318–20. Therefore, the complainants' challenge to the board's representation by the Office of the Attorney General is not a pending claim,[15] and we conclude that the board improperly convened in executive session to obtain legal advice regarding the issue raised in the complainants' letter.

The judgment is affirmed.

In this opinion ROGERS, C. J., and PALMER, EVELEIGH and McDONALD, Js., concurred.

[1] In addition to the commission, Attorney Courtney and the Office of the Chief Public Defender also were named as defendants in this case. On June 25, 2010, the complainants filed a request with the trial court to uphold the commission's final decision. Since that time, however, the complainants have not been involved in the case.

[2] The letter provided in relevant part: "We write to inform you of a potential conflict of interest in your continuing representation of the [board] in [this] matter . . . .

"The [b]oard itself is 'within the Department of Public Health' . . . . We understand . . . that in accordance with . . . General Statutes § 3-125, your office would be called upon to represent the [Commissioner] of Public Health, Robert Galvin, M.D., in any action against him as Commissioner.

"If the [board] were to grant our request for [a] declaratory ruling, and, as part of such ruling, determined that any physician licensed in Connecticut who participated in an execution by lethal injection would be subject to discipline, such ruling would call into question Dr. Galvin's participation in the execution of Michael Ross on May 13, 2005. . . . Dr. Galvin's participation in any future executions would be problematic.

"It would seem to us that any advice your office might give the [b]oard in determining whether to issue the ruling requested, or as to the content of such a ruling, would pose a significant risk that the representation of one of your two clients, the [b]oard or Dr. Galvin, would be materially limited by your office's responsibilities to the other client.

"We suggest, therefore, that the [board] be provided with outside counsel before making any ruling on this request. We recognize that you may not see this as any real issue, but we felt it incumbent upon us to point this possible conflict out to you."

[3] At its January 20, 2009 meeting, the board also convened in executive session to "obtain legal advice" regarding the pending declaratory ruling. (Internal quotation marks omitted.) The board claimed that this executive session was permissible under General Statutes § 52-146r. The commission and trial court disagreed, concluding that General Statutes § 1-231 (b) was controlling. The plaintiffs have not challenged this conclusion on appeal to this court.

[4] The plaintiffs appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[5] The interpretation of the letter at issue in this case is a question of law. In *Board of Education* v. *Freedom of Information Commission*, 217 Conn. 153, 585 A.2d 82 (1991), the commission argued that the interpretation of a letter was a question of fact because it "could not be read in a vacuum, divorced from its surrounding factual background." Id., 158 n.6. The commission had heard testimony about this factual background, which included conversations that it believed colored the perception that the plaintiff board of education had about the letter. Id. This court disagreed. See id., 158. First, this court relied on the commission's final decision, which did not suggest that the conversations affected the perception that the board of education had about the letter. Id., 159 n.6. Second, this court examined the administrative record and did not find any testimony to suggest that the conversations reasonably could have led the board of education to diverge from a literal reading of the letter. Id. Therefore, this court concluded that the interpretation of the letter was a question of law. See id., 158.

Similarly, in the present case, the commission's final decision does not suggest that any factual background affected the board's perception of the letter. In addition, the administrative record does not contain any testimony about any factual background that reasonably could have affected the board's perception of the letter. Therefore, in the present case, the interpretation of the letter is a question of law.

As a result, any reference to the complainants' intent in drafting the letter is inappropriate because there was no testimony introduced at the hearing before the commission regarding such intent. The commission made a finding in its final decision that "the complainants' letter did not constitute notice of a pending claim. . . . [T]he complainants were deliberate in their choice of words when drafting the . . . letter because they wanted to avoid even implying that they were demanding any relief or that they intended to institute an action regarding the alleged potential conflict of interest." This finding was improper as it has no basis in the administrative record.

[6] General Statutes § 1-200 (6) provides: " 'Executive sessions' means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210."

[7] Artful writers will not be able to avoid the requirements set forth in § 1-200 (6) (B) by softening their demands with words like "suggest" or "potential." If a written notice provides an agency with no viable alternative other than future action or capitulation, then the notice would effectively express intent regardless of the specific language used.

[8] The plaintiffs' reliance on *Board of Education* v. *Freedom of Information Commission*, 217 Conn. 153, 158–59 n.6, 585 A.2d 82 (1991), is misguided. In footnote 5 of this opinion, we explained that the court in *Board of Education* employed a reasonableness analysis in determining whether interpretation of the letter at issue in that case was a question of law or a question of fact. See id., 158, 158–59 n.6. This reasonableness analysis was not used to determine whether the letter constituted a "pending claim" under § 1-200 (8). See id.

[9] We note for clarity that the phrase "the intention to institute an action in an appropriate forum if such relief or right is not granted" applies to both "demand for legal relief" and "assert[ion] [of] a legal right . . . ." General Statutes § 1-200 (8). The plaintiffs relied to their detriment on a trial court's interpretation of § 1-200 (8) in *ECAP Construction Co.* v. *Freedom of Information Commission*, Superior Court, judicial district of Hartford-New Britain, Docket No. CV-97-0574054 (July 30, 1998). The inclusion of the words "relief or right" clearly demonstrates that the phrase "the intention to institute an action" applies to both a demand for legal relief and the assertion of a legal right.

[10] In his concurring opinion, Justice Norcott states that, "rather than [parse] the language of the letter to determine whether it amounted to a pending claim . . . I would always look first instead to the procedural context in which the letter was filed in order to determine whether an executive session was permissible under § 1-200 (6) (B) before considering the language of any particular filing therein." (Citation omitted.) Justice Norcott therefore would look to the request for a declaratory ruling and the proceedings as a whole to determine whether the board could convene in executive session. This analysis is inconsistent with the language and focus of § 1-200 (6) and (8). Section 1-200 (8) defines a pending claim as "*a* written notice to an agency . . . ." (Emphasis added.) "In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language . . . ." General Statutes § 1-1 (a). The clear meaning of "a written notice" is a single document communicating the intent to institute an action. General Statutes § 1-200 (8). The first step in determining whether a pending claim exists, therefore, is to identify and analyze that document. See *Board of Education* v. *Freedom of Information Commission*, supra, 217 Conn. 162 (examining text of letter to determine whether it constituted pending claim).

In the present case, we begin our analysis with the letter because the board explicitly represented in the minutes of a board meeting concerning, inter alia, the letter that it "enter[ed] executive session to obtain legal advice from . . . Assistant Attorney General [Kerry Anne Colson] to discuss a pending claim *contained in a letter from Attorney Courtney to Assistant Attorney General . . . Ring*." (Emphasis added.) The board did not meet to discuss the request for a declaratory ruling on whether physician participation in an execution by lethal injection is permitted, and, therefore, we need not determine whether the executive session would have been permissible

if the board had done so.

[11] In fact, the complainants might even have had a duty to point out this possible conflict of interest to Ring. See Rules of Professional Conduct, preamble ("Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers."); see also Rules of Professional Conduct 1.7, commentary (discussing general principles of conflicts of interest).

It is unclear why the complainants decided to send the board a copy of their letter to Ring. In fact, it seems inappropriate that the complainants would have communicated with the board at all, as the board was a client of the Office of the Attorney General. See Rules of Professional Conduct 4.2. Nevertheless, although the complainants' intent might not have been completely noble, that intent is irrelevant in the present case.

[12] The plaintiffs also suggest that the letter constitutes notice of a pending claim because it requests legal relief in connection with the pending request for a declaratory ruling. The pending request for a declaratory ruling is insufficient to qualify as a pending claim under § 1-200 (6) (B) because the board would be serving as the decision-making body for that request rather than a party thereto.

[13] The board is a division of the Department of Public Health. See General Statutes § 20-8a (a) ("[t]here shall be within the Department of Public Health a Connecticut Medical Examining Board"). In fact, the Commissioner of Public Health selects the members of the board. See General Statutes § 20-8a (c). Therefore, the board arguably could have a conflict of interest in deciding any claims affecting the Commissioner of Public Health.

[14] Even if the complainants needed to mention conflict of interest or bias in order to save the issue for appeal, the mere possibility of a future appeal is not sufficient to constitute a demand for legal relief. In *Ansonia Library Board of Directors* v. *Freedom of Information Commission*, 42 Conn. Supp. 84, 600 A.2d 1058 (1991), the trial court correctly rejected the argument that a possible appeal from the commission's decision constituted a pending claim, even though the individual in question had engaged in "prior litigious conduct . . . ." Id., 90. The trial court further noted that the argument "would be more persuasive if, as in *Board of Education* . . . [the individual] had indicated that he was considering or was going to take an appeal." Id.

[15] We do not need to reach the issue of whether the executive session in question involved strategy and negotiations. Section 1-200 (6) (B) requires that the executive session involve "strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof . . . is a party until such litigation or claim has been finally adjudicated or otherwise settled . . . ." Because the letter at issue is not a pending claim, § 1-200 (6) (B) is not satisfied regardless of whether the executive session involved strategy and negotiations.