CONNECTICUT LAWYER

Summer 2018 Volume 28/Number 6

Returning to Your Legal Career after a Break

How to Reduce Your Stress and Enhance Your Well-Being

Has ADR Kept Its Promise?

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Have an idea for an article? Contact editor@ctbar.org.

CONTENTS

FEATURES

12
CBA Hosts Largest Connecticut Legal Conference to Date
By Leanna Zwiebel
Read about this year's sold-out Connecticut Legal Conference, which was a day filled with educational seminars, networking opportunities, and recognition that drew in legal professionals from throughout the state.

16
Capitol Update: 2018 Legislative Session
By Bill Chapman
Learn what you need to know about this past legislative session, including any new acts that will go into effect in the fall.

18
The Relaunching Attorney: Returning to Your Legal Career after a Break
By Carroll Welch
Getting "back in the game" after a long hiatus is immensely challenging. Fortunately, in the last ten years, the conversation about relaunch talent and how to make it part of a diverse and inclusive workforce has become exponentially more active. Read about the resources and programs designed to assist relaunching professionals.

22
How to Reduce Your Stress and Enhance Your Well-Being
By Stewart Edelstein
Our chosen profession is stressful. Unless you know how to deal with that stress, you will face a litany of woes. This article includes a monthly checklist for your own well-being (not what you may expect), and a reading list to enhance your quality of life.

26
Has ADR Kept Its Promise?
By Harry N. Mazadoorian
More than 40 years into the current ADR revolution, a vigorous discussion about whether it has kept its promise continues. However, by almost all measures, the overall growth of ADR use and satisfaction with its results has been high. Arguably ADR is no longer an alternative but rather the mainstay of our civil justice system.

29
Standards of Title Committee Approves a New Standard
By Ellen L. Sostman
The Special Committee on Standards of Title has approved a new proposed standard. Read the standard and find out about the approval process.

30
Interpreting "Prior Knowledge" Clauses in Claims-Made Policies: When Knowing Too Much Can Hurt You
By Jeffrey Vita and Austin Moody
Claims made policies protect the insured from liability for claims brought during the relevant policy period. However, these policies will not cover claims that the insured knew were likely to result before purchasing the policy. In practice, the question of whether or not an insured should be deemed to have prior knowledge of the facts leading to the claim has been difficult for courts to answer. Courts apply three different tests to make this determination.

COLUMNS

President's Message 2
Ready to Pack My Bags
By Karen DeMeola

Time to Go Pro Bono 33
Eight Reasons to Stop Hiding From Your Pro Bono Coordinator and Sign Up for Pro Bono Opportunities
By Ndidi N. Moses

Supreme Deliberations 34
What's the Harm? *Brooks v. Powers,* 328 Conn. 256 (2018) and the Identifiable Person, Imminent Harm Exception to Governmental Immunity
By Charles D. Ray and Matthew A. Weiner

Young Lawyers 38
That's a Wrap
By Aidan R. Welsh

DEPARTMENTS

Upcoming Education Calendar 4
News & Events 5
Peers & Cheers 7
Informal Opinions 8
Court Decisions 36

Karen DeMeola is the 94th president of the CBA. She is the assistant dean of student life at UConn School of Law, where she plans, manages, and oversees programs and services for the student body, including career planning, disability services, and student services. She advises students confronted with a variety of issues, including academic advising, personal matters, and wellness challenges such as addiction and mental health concerns. In addition, Dean DeMeola is charged with implementing and managing diversity programming as well as professional and community development activities.

Ready to Pack My Bags

By Karen DeMeola

On April 19, we touched down in a bucket list destination: Cuba. My father's accounts of his time in Cuba with the US Navy in the 1960s left with me a desire to see this country. When the opportunity arose to visit the country on a rule of law trip with other bar leaders, I could not say no. The excitement of going turned to panic as I read blogs and books and websites. Excitement returned when I remembered where we were going. We landed, quickly made it through "immigration," and made our way to the restroom where we were promptly handed three squares of toilet paper. No seat on the toilet, no soap and water found here. We knew it was coming, like following Milepost on our trip to Alaska two years ago—turn left, look up, and you will see Dall sheep—we were prepared. We dug in our bag for toilet paper and antibacterial wipes. And so began a four-day journey through Cuba and home again.

It is quite easy for me to frame things in terms of privilege. I see it, I feel it, I have it, and I don't. Serving as CBA president is a privilege. I have been able to move initiatives forward, create programs, steer committees and sections, and develop education and training programs. I have reconnected with many classmates and colleagues and have gained new and unexpected friends along the way. I have learned about privilege travelling to all corners of the state, talking to and witnessing local attorneys in action. Attorneys in sweet rides and expensive clothes in some jurisdictions and attorneys barely making it in others. This observation replays in my mind, forcing me to think about the ways privilege impacts access to justice for both clients and lawyers.

The ways in which technology connects us and enhances our practices is amazing and terrifying. Blockchain, smart contracts, crypto currency, and the dark web feel like science fiction coming to life. Machine learning and artificial intelligence can make our lives more efficient, but what is the cost? This is not a statement about the fall of lawyers; instead, it is a wakeup call that we, as lawyers, need to embrace technology for the good of our practice and our clients.

My reliance on technology was constrained while in Cuba. We received complimentary Internet from the hotel but had no cell service. We limited our use to connecting with family via Facebook nightly and left the unused hours—which cost $1/hour—to the staff. Though at first anxiety producing, it was nice to be pulled from the technology that keeps us from truly connecting with each another. The technology that shows us news, images of despair, poverty, racism, sexism, and war sucks us into a morass of depression and negativity. For four glorious days, I wasn't constantly checking my e-mail or my news feeds. I was tech free, but constantly aware that I was free because there was no immediate or easy access.

Seeing things with my personal and American lens was challenging while in Cuba. The poverty, explainable by influx of money, change in government, and embargoes was apparent, but there was also beauty,

history, and an immense cultural pride. We learned from Supreme Court judges, lawyers, economists, political scientists, and journalists about the myths, history, legal system, economy, joys, and benefits of Cuba. No one dies from curable diseases, and education and housing is free. But this was only part of the story, the narrative emerging from a more progressive Cuba. We saw the best and the not so great of Havana, but we saw it from four and five star hotels, air-conditioned buses, and amazing privatized restaurants catering to tourists and the wealthy.

Our ability to challenge our leaders locally and nationally, protecting the rule of law, upholding the constitution, and fighting for equality are so ingrained in all we do. We may be pulled apart by geography, socioeconomic status, gender, race, religion, politics, work, and so many other things. We may highlight our differences instead of celebrating our commonality. We may hate what our opposition has to say but we uphold their right to say it. Privilege.

The trip was a great way to start my wind down as president. Cuba was amazing and beautiful, and a reminder of the privileges I carry. Those privileges didn't stop me from riding in a 1957 Chevy Bel Air convertible, or staying at the ascribed hotels, eating amazing food, or toasting at every meal. I was keenly aware of the ways in which privilege plays out and it re-framed my vision and understanding of the country. I tipped more, left behind items less available there, shared perspectives, and learned a lot about myself and others. I would go back in a heartbeat and recommend that anyone interested should visit.

Not all get to lead an amazing organization of engaged and brilliant lawyers who want to make a difference in the world. To join the conversation and collaborate on access to justice, the rule of law, and the future of the profession. To have a talented, hard-working group of people keeping the organization relevant, engaged, and in operation. To be part of a team that has embraced all that is authentically me. For all of this and more, I am ever grateful. It has been a pleasure to lead the CBA and I look forward to what's to come. CL

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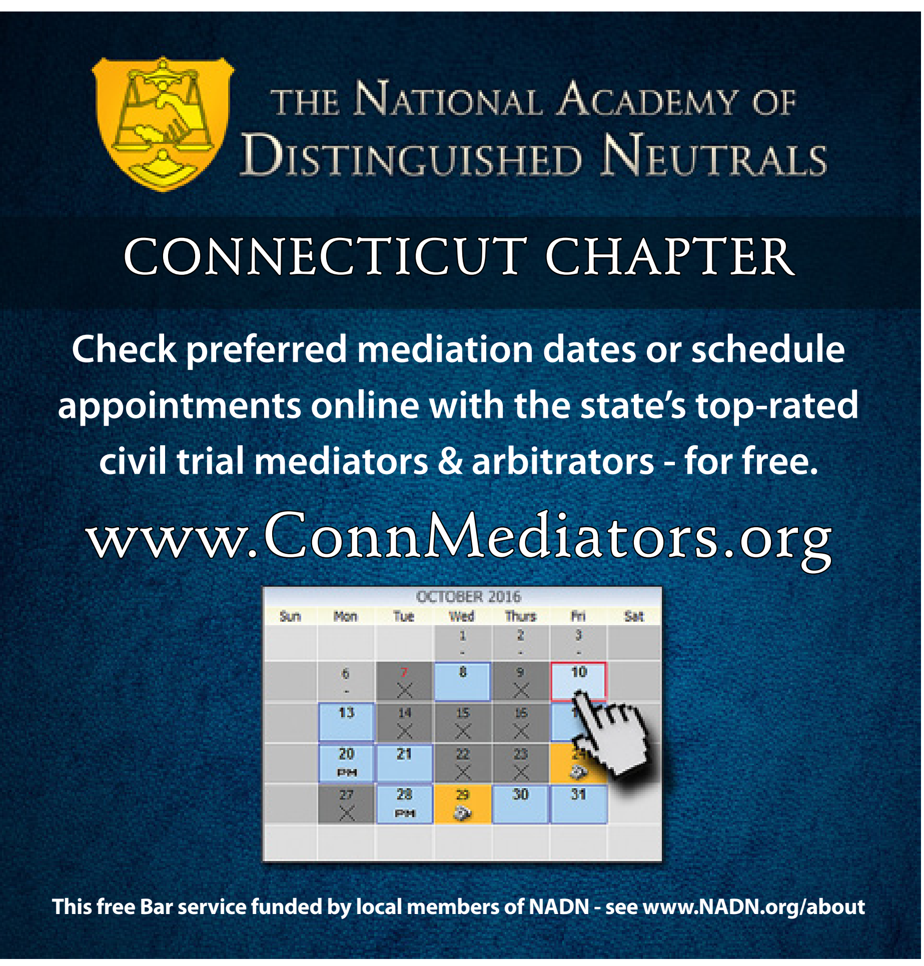


Upcoming Education Calendar

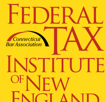
Conferences

September 28
LegalTech/Law Practice Management Conference

October 4
The First Annual Connecticut Bankruptcy Conference

October 5
Workers' Compensation Courtroom Medicine Conference

October 18
Federal Tax Institute of New England



October 26
District of Connecticut Bench-Bar Conference

November 2
Raising the Bar: A Bench-Bar Symposium on Professionalism

November 15
The Solo/Small Firm Practice Symposium

Diversity and Inclusion

September 7
Achieving Meaningful Diversity and Inclusion for Lawyers and Law Students with Disabilities

October 24
Connecticut's Diversity and Inclusion Summit

Seminars

September 13
The Essentials of Importing and the Impact of Punitive Tariffs

September 20
How Data Privacy Laws Will Change the Way You and Your Clients Do Business

The Essentials of School Expulsion

September 25
VA Benefits Training

November 13
Student Data Privacy: How Secure Are Student Records?

November 16
Practice, Procedure, and Protocol in Connecticut Courts

Law Practice Management

September 18
Law Niche Success: How to Build a Strong and Profitable Practice

October 2
Cultivate a Powerful Presence: Strategies to Advance Your Practice

November 30
Professionalism Boot Camp

Ethics

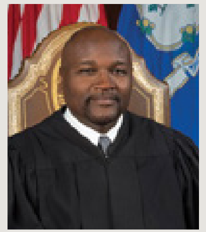
September 14
Legal Ethics: Maintaining IOLTA and Law Office Management Best Practices

October 23
Ethical Considerations in Your Practice

Register at ctbar.org/CLE

Connecticut Bar Association News & Events

Richard A. Robinson: Connecticut's New Chief Justice



Chief Justice Richard A. Robinson

Richard A. Robinson was confirmed as chief justice of the Connecticut Supreme Court on May 3. He is the first African American chief justice of the Connecticut Supreme Court.

His appointment follows Chase T. Rogers' February retirement after nearly 11 years as chief justice. Hon. Steven Ecker, who has been a judge of the superior court since 2014, filled the associate justice seat on the Connecticut Supreme Court.

Chief Justice Robinson was appointed to the superior court in 2000, was elevated to the appellate court on December 10, 2007, and became a justice of the Connecticut Supreme Court on December 19, 2013.

Prior to his service on the bench, he was staff counsel for the City of Stamford Law Department from 1985-1988; in 1988, he became assistant corporation counsel in Stamford where he remained until his superior court appointment. Chief Justice Robinson has had a distinguished career in public service, serving as chair of the Connecticut Commission on Human Rights and Opportunities and the State of Connecticut Judicial Branch Advisory Committee of Cultural Competency. He received the CBA YLS Diversity Award in 2010, the CBA Henry J. Naruk Judiciary Award in 2017, and has been recognized as one of the NAACP 100 Most Influential Blacks in Connecticut. **CL**

CBA President Named Attorney of the Year by the *Connecticut Law Tribune*

Attorney of the Year Award winner Karen DeMeola with her wife, Jess Hockla, and parents, Pat and Bill DeMeola, at the Professional Excellence Awards celebration.

On May 24, CBA President Karen DeMeola was named Attorney of the Year at the *Connecticut Law Tribune*'s fourth annual Professional Excellence Awards celebration at the Bond Ballroom in Hartford. Other finalists for the award included Aaron Bayer of Wiggin and Dana LLP and Thomas Behrendt of the Connecticut Legal Rights Project.

"I am honored and humbled by this award," stated President DeMeola. "Aaron and Tom have dedicated their professional lives to the rule of law and protecting the most vulnerable of our society. They both have a reputation of being professional and civil advocates for their clients. I am proud to have been nominated with them."

This awards celebration gives the Connecticut legal community a chance to highlight great work and achievements. Additional award categories included: new leaders in the law, litigation departments, best mentors, distinguished leaders, unsung heroes, lifetime achievement, GC impact of the year, game changers, giant slayer, and officiator. **CL**

CBA Presents the ABA's Grit Project

(L to R) Leander A. Dolphin, Elizabeth Seeley, Dr. Milana L. Hogan, Justice Maria A. Kahn, Sarah Man, and Danielle J.B. Edwards shared their personal and professional stories of grit and growth.

The CBA presented the seminar, "The Grit Project: How to Develop the Secret Skills of America's Top Women Attorneys." The Grit Project is an American Bar Association (ABA) Commission on Women in the Profession initiative designed to educate women lawyers about the science behind a grit and growth mindset to enhance the effectiveness, retention, and promotion of women lawyers.

Dr. Milana L. Hogan, author of *Grit, the Secret to Advancement: Stories of Successful Women Lawyers,* presented an interactive program that explained growth mindset and why many female attorneys lack it. Attendees participated in small group exercises, discussing video scenarios presented, to help participants learn how to tackle difficult work problems. **CL**

CBA at the Supreme Court of the United States

CBA members sworn in to the Bar of the Supreme Court of the United States.

On May 21, thirty-three CBA members were sworn in to the Bar of the Supreme Court of the United States. The event was organized by Young Lawyers Section (YLS) Executive Committee members Suphi Philip and Shari-Lynn Cuomo Shore.

Past YLS chair and current ABA Young Lawyers Division Chair Dana Hrelic presented the motion to admit the CBA members to the Court. Chief Justice John Roberts admitted the group, who then took the oath, swearing to protect the Constitution.

Prior to their admission, the group heard Justice Neil Gorsuch deliver the majority opinion in *Epic Systems Corp. v. Lewis,* a labor and employment law case. Justice Ruth Bader Ginsburg then spoke for the four dissenters. Justice Gorsuch also provided the majority opinion in *Upper Skagit Indian Tribe v. Lundren et vir.*

Prompted by a letter of invitation from Suphi Philip, the group had the additional good fortune of a private visit from Justice Ginsburg. She took a photo with the attorneys and answered questions. When asked about her favorite case, Justice Ginsburg replied that she has no favorites and that an answer would be like picking her favorite granchild; however, she did mention that one such case would be *United States v. Virginia,* 518 U.S. 515 (1996), which struck down the male-only admission policy of the Virginia Military Institute.

Following the morning at the Court, the group assembled for brunch and heard comments on the emoluments clause of the Constitution from Sam Simon, chief counsel to US Senator Richard Blumenthal. **CL**

CBA Members Sworn In to the United States Supreme Court

Brian Ajodhi
Linda Bulkovitch
Agnes Cahill
Logan Carducci
Cindy Cieslak
Shari-Lynn Cuomo Shore
Garnet DaCosta
Joshua Devine
Kathleen Dion
Garlinck Dumont
John Fries
Carolyn Futtner
James Haines
Eric Hard
Suzanne Hard
Daniel Hunsberger
Uswah Khan
Bonnie Kumiega
Trent LaLima
Andrew Marchant-Shapiro
David McGrath
Jeffrey McGregor
Lauren McNair
Tony Miodonka
Hilary Nelson
Nicholas Ouellette
Suphi Philip
Adrienne Roach
Amanda Schreiber
Aidan Welsh
Kristen Wolf
Stephen Yost
Jeffrey Zyjeski

In Memoriam

Gary G. Attmore passed away on May 3 at the age of 71. Attorney Attmore was a founding partner at O'Connell Attmore and Morris LLC in Hartford, where he practiced law for more than 30 years. He was a member of the CBA Tax Section, Business Law Section, and Estates and Probate Section.

Nancy E. Blair passed away on February 23 at the age of 64. Attorney Blair began her legal career at Cummings & Lockwood LLC in Stamford where she became partner and, in 1993, she went on to open the law firm Blair & Potts. She was a member of the CBA Estates and Probate Section.

David K. Jaffe passed away on April 18 at the age of 63. Attorney Jaffe was a civil rights attorney who advocated for those without a voice. He was a member of the CBA Alternative Dispute Resolution and the Human Rights and Responsibilities Sections. Attorney Jaffe earned his law degree from the University of Connecticut School of Law.

Allen Gary Palmer passed away on July 17 at the age of 54. Attorney Palmer recently retired from Halloran & Sage LLP, where he worked for nearly seven years in family law. He was a certified Guardian Ad Litem (GAL) and often accepted appointments to represent children both as an attorney and as a GAL. He previously served on the panel of appointed counsel in the Superior Court for Juvenile Matters and in various probate courts, where he accepted court appointments to represent indigent children and parents in matters brought by the Department of Children and Families. Attorney Palmer was active in the ABA, Family Law legislation, local, and national legal communities and was a longtime active member of the CBA, having served as a former chair of the Family Law Section and frequently presented case updates at section meetings. He was also a member of the Diversity and Inclusion Committee and its summit committee.

Thomas Ullmann passed away on April 13 at the age of 67. He joined the New Haven Public Defenders Office in 1985, was named chief public defender in 1992, and also was a visiting clinical lecturer at Yale Law School. He was a member of the Connecticut Sentencing Commission and a past president of the Connecticut Criminal Defense Lawyers Association.

William C. Whittemore III passed away on April 4 at the age of 71. Attorney Whittemore spent the last 20 years of his legal career as head of the business law firm he founded in Ridgefield. He was also a commercial arbitrator for a state-wide Connecticut dispute resolution organization. He was a member of the CBA Alternative Dispute Resolution; Business Law; and Franchise, Distribution, and Dealer Law Sections.

Frank N. Zullo passed away on May 26 at the age of 85. In 1959 Attorney Zullo formed Tierney & Zullo, now known as Tierney Zullo Flaherty and Murphy PC, where he practiced law full time for over 50 years. Prior to his career in law, Attorney Zullo served three terms as the mayor of Norwalk. He was the youngest mayor in the city's history, at the age of 33. **CL**

E-mail editor @ctbar.org with submissions for the Peers & Cheers section.

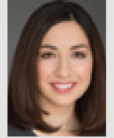
Attorney Announcements

Murtha Cullina LLP partners **Heather L. Berchem, Anthony P. Gangemi, Robert E. Kaelin, Bruce L. McDermott, Patricia E. Reilly, Joseph B. Schwartz,** and **Ryan M. Suerth** have been named James W. Cooper Fellows of the Connecticut Bar Foundation.

Jeffrey Bouchard recently joined **McCarter & English LLP**'s Hartford office as an associate in the corporate, securities, and business transactions practice.

John F. Carberry

John F. Carberry, principle in **Cummings & Lockwood LLC**'s litigation group, was selected as a James W. Cooper Fellow of the Connecticut Bar Foundation.

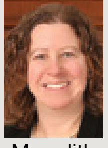

Diana Carlino

Diana Carlino was elected partner at **Rosenblum Newfield LLC.** Attorney Carlino focuses her practice on representing health care providers in medical liability litigation and regulatory proceedings, and general liability law.

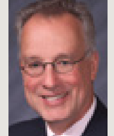
April F. Condon

NAIOP Connecticut & Suburban New York, a chapter of NAIOP, the Commercial Real Estate and Development Association, appointed **April F. Condon** of **Robinson+Cole** to the board of directors.

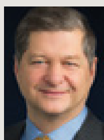
Karen Culton of **McCarter & English LLP**'s Hartford office, has been named income partner. Attorney Culton joined the firm in 2011 and is a member of the corporate, securities, and business transactions practice.


Meredith G. Diette

Meredith G. Diette joined **Berchem Moses PC** as a partner in the labor and employment law department. Attorney Diette advises clients on laws governing the employment relationship, and assists them during collective bargaining and binding arbitration proceedings.


Charles A. Deluca

Charles A. Deluca of **Ryan Ryan Deluca LLP** was inducted into the International Academy of Trial Lawyers, which honors those who have achieved a career of excellence through demonstrated skill and ability in jury trials, trials before court, and appellate practice.


Scott M. Gerard

Kelly A. Trahan

Scott M. Gerard and **Kelly A. Trahan** were added to **Shipman & Goodwin LLP**'s business and finance, and real estate practice groups. Attorney Gerard was added as partner and Attorney Trahan was added as counsel.

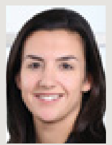
Najia Khalid of **Wiggin and Dana LLP** was promoted to partner. Attorney Khalid is co-chair of the firm's immigration and nationality law and compliance practice, and focuses her practice on business immigration law.

Michael Koskoff

Michael Koskoff, principal attorney at **Koskoff Koskoff & Bieder PC,** received the Thurgood Marshall Award from Quinnipiac University School of Law and the Black Law Students Association, for using his legal education to promote civil rights and liberties in Connecticut.

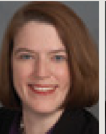
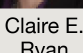
Charles Modzelewski

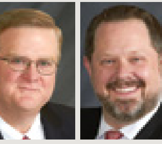
Robinson+Cole welcomes **Charles Modzelewski** to the insurance and reinsurance group as an associate in the firm's Hartford office. Attorney Modzelewski represents insurers in a broad range of coverage matters and disputes.

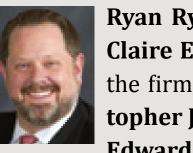

Kathryn N. Mullin

Kathryn N. Mullin of **Robinson+Cole** has been appointed to the board of directors of The Discovery Center, an organization committed to building an equitable and just world where everyone has what they need to grow and thrive.

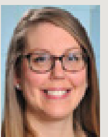
Moy N. Ogilvie will take on the role of managing partner at **McCarter & English LLP**'s Hartford office. Attorney Ogilvie practices in the products liability, mass torts, and consumer class actions group.



Claire E. Ryan

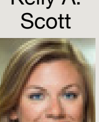

Christopher J. Lynch


Edward N. Storck

Ryan Ryan Deluca LLP welcomes **Claire E. Ryan** as a new partner in the firm, as well as, partner **Christopher J. Lynch** and associate **Edward N. Storck**, both of whom will be practicing out of the firm's Hartford office.


Kelly A. Scott

Pullman & Comley LLC welcomes **Kelly A. Scott** as a new family law associate. Attorney Scott represents clients in all areas of matrimonial and family law.


Emily M. Souza

Neubert Pepe & Monteith PC attorney, **Emily M. Souza,** joined the board of directors of the Beth-El Center, Inc. The center works to alleviate homelessness and hunger in the Milford area.

Eric Wiechmann, partner in **McCarter & English LLP**'s Hartford office, was selected as a member of the Connecticut Chapter of the National Academy of Distinguished Neutrals, an organization of experienced arbitrators and mediators.

Firm/Organization Announcements

Mitchell & Sheahan PC has expanded their firm to lower Fairfield County. Specializing in labor law, employment law, and litigation, the firm now has offices in Stratford, Westport, and White Plains.

Louise T. Truax and **Veronica E. Reich** have opened the law firm, **Reich & Truax PLLC,** for the practice of all aspects of matrimonial law. CL

Formal and informal opinions are drafted by the Committee on Professional Ethics in response to inquiries from CBA members. For instructions on how to seek an informal opinion and to read the most recent informal opinions, see the CBA webpage for the Committee on Professional Ethics at www.ctbar.org/EthicsCommittee. CBA members may also research and review formal and informal opinions in Casemaker.

File Retention Requirements for a Retiring Lawyer

Informal Opinion 18-01

A lawyer who is a sole-practitioner ("Lawyer") has asked for guidance as to the length of time Lawyer must retain closed client files,[1] and whether the "standards of practice" specified in the CBA File Retention Guidelines are applicable to her practice as a court-appointed attorney and/or Guardian Ad Litem for minor children.[2] Since 1988, Lawyer has been representing children as court-appointed attorney pursuant to C.G.S. § 46b-54(c) (as an attorney for minor child or AMC) or C.G.S. § 45-132 (as a Guardian Ad Litem or GAL) in family matters, P.B. § 44-20 in criminal matters, C.G.S. § 45-132 in Probate Matters, and C.G.S. § 46b-129 in Juvenile matters.

Generally, a lawyer's obligation to retain files related to representation of a client emanates from the Connecticut Rules of Professional Conduct ("the Rules"), Rules 1.15(b)[3] and 1.16(d).[4] This committee has provided guidance regarding the application of Rules 1.15(b) and 1.16(d) in Informal Opinion 2010-07, *Destruction of Inactive Client Files,* Issued September 15, 2010, and Informal Opinion 2012-09, *Retiring Attorney's Proposed Disposition of Client's Files,* Issued October 17, 2012. There is also useful information contained in the CBA File Retention Guidelines Including Commentary (1999) (available on the CBA website). However, as the CBA File Retention Guidelines state in the first sentence, they "cannot be considered a safe harbor for the retention or destruction of files." They are merely standards of practice prepared by the CBA Board of Governors to "aid firms and attorneys in the formation of their own retention policies."

Complete records of the client's account funds and other property "shall be preserved for a period of seven years after termination of the representation." Rule 1.15(b). While the seven year retention requirement applies to records related to client funds and certain financial transactions, the Rules themselves are silent as to the length of time that a lawyer is required to retain client files. Lawyer states that it has been her practice to retain files until seven years after the youngest child involved in the case has reached the age of majority. Although most attorneys would be grateful for a "bright line" rule, unfortunately the analysis is more complex and fact specific. As this committee made clear in its Informal Opinion 10-07, before destroying client files or portions thereof, a lawyer must analyze the files to determine whether they contain "critical documents." Critical documents are those "which may have particular legal significance to your clients, such as wills, codicils, trust agreements, contracts, promissory notes, stock certificates, or documents of that type." If the files do contain "critical documents," the lawyer must expend reasonable and diligent efforts to locate the former client, return the documents to them or continue to safeguard the critical documents for as long as is practicable. Informal Opinion 10-07, citing Informal Opinion 98-23.

We stated in Informal Opinion 10-07 that "[n]on-critical documents may consist of notes, pleadings, research, and materials that may be found in permanent public records, etc. Non-critical documents can be stripped or weeded out from your inactive files and destroyed. Old client files that contain only non-critical documents may be destroyed." A lawyer's analysis of whether documents are non-critical must be performed in the context of the circumstances of the client's matter. Under Rule 1.16(d), "a lawyer shall take steps to the extent reasonably practicable to protect a client's interests."

On the other hand, there may be documents which should ordinarily be turned over to a client, but due to exceptional circumstances, cannot be disclosed or surrendered to the client. For example, there may be documents that are subject to a court-imposed confidentiality agreement, or there might be entries in file memoranda that contain confidential information concerning other clients, thus requiring redaction, or, material that might, in the attorney's reasonable judgment, cause significant harm to the client—for example, certain medical or psychiatric records that might be injurious to the client. See, Rule 1.4, Comment—Withholding Information.

Representation of a minor almost always includes sensitive information that could fall into one or more of the above categories. Even when the child reaches majority, it could still

be ill-advised to turn over such documents to the child. It should be noted that a Guardian Ad Litem does not have an attorney-client relationship with the "child." Rather the relationship is one of a guardian and ward.[5]

Finally, there are documents that would ordinarily not be critical documents or necessary to protect the client's interests, such as time and billing records, and internal firm documents for administrative purposes. Lawyer should keep in mind, however, that even if Lawyer determines that such documents need not be surrendered to the client, they should be retained for some reasonable period of time, as it is possible that a court might order such documents to be produced in a dispute between the lawyer and the client. Once the Lawyer has engaged in the above analysis, the Lawyer's practice of retaining files until the youngest child reaches the age of majority would constitute an abundance of caution on the part of Lawyer. Subject to the above analysis, when a client reaches the age of majority, the Lawyer could provide written notice to the client offering to transfer possession of any documents required to be surrendered to them, and of Lawyer's intent to destroy the files after a reasonable amount of time.

Lawyer states she was never "hired" by the parents or child, and did not enter into any retainer agreements with either the parents or children she represented. This fact has no bearing on Lawyer's obligation to maintain client records and protect the client's property. It does, however, indicate that such obligations were not modified by agreement between Lawyer and client.

Lawyer notes in her inquiry that court-appointed attorneys under C.G.S. § 46b-54 as well as GALs have absolute quasi-judicial immunity for actions taken during or activities necessary to the performance of functions integral to the judicial process. *See, Carrubba v. Moskowitz,* 274 Conn. 533 (2005). However, the *Carrubba* Court, in determining that a court-appointed attorney for a minor child has absolute quasi-judicial immunity, also noted that an "attorney for the minor child, just as any other attorney, is subject to discipline for violations of the Code of Professional Conduct." *Carrubba,* 274 Conn. at 543. While a GAL may be an attorney, a GAL is not necessarily an attorney. The duties and functions of a GAL are separate and distinct from those of an attorney to her client. *Carrubba,* 274 Conn. at 538–39; *see also,* Commentary to Rule 1.15.[6] Lawyer's file retention obligations when having served as GAL may be governed by other rules. But where a GAL is also a lawyer, the distinction becomes blurred. A lawyer must act in accordance with the Rules of Professional Conduct, but where the lawyer is acting as a GAL, the lawyer must follow the rules applicable to GALs. Indeed, the State of Connecticut Judicial Branch has promulgated a Code of Conduct for Counsel for the Minor Child and Guardian Ad Litem (the"Code"). The Code provides that "[i]f the GAL is an attorney, he or she acts in the capacity of a guardian, rather than as an attorney, and the information he or she receives is not subject to attorney-client confidentiality." On the other hand, under the Code, both the GAL and the AMC are required to "[m]aintain documentation to substantiate recommendations and conclusions and keep written records of all interviews and investigations for six years from the date of completion of services rendered by counsel or a GAL."

In conclusion, the CBA File Retention Guidelines cannot be considered a safe harbor for the retention or destruction of files. They are merely standards of practice prepared by the CBA Board of Governors to aid firms and attorneys in the formation of their own retention policies. Lawyer's obligations as GAL are separate and distinct from her obligations as AMC. We express no opinion regarding the length of time a GAL must retain documents and files pertaining to her appointment as GAL. In order to determine the length of time Lawyer must retain her client files, lawyer must analyze and decide what parts of such files are critical and what parts are non-critical. Non-critical documents may be destroyed. Critical documents require the Lawyer to use reasonable efforts to locate the client, or other person with decision-making authority for the client, return files to the client or such other person, or seek the advice of an appropriate judicial forum as to disposition of such documents.

Notwithstanding the recommendations and guidelines that this opinion provides, there is no ethical rule that prohibits an attorney from contracting with a client, whether an individual, business entity, or city, town, or other governmental agency, to provide legal services under terms that include a provision establishing, by agreement, the period of time that an attorney will retain a client's file. It is, in fact, a good practice to set forth that time period in the initial engagement agreement or engagement letter. **CL**

Notes

1. For the purposes of this inquiry, we have assumed that the question pertains to files already closed.
2. For a thorough analysis and discussion of the contents of a client's file, what must be maintained by the attorney and what a client is entitled to receive from the attorney, See, Informal Opinion 2010-07; See also, *Guidance Concerning the Contents of the Client File that the Client is Entitled to Receive,* Maine Board of Bar Overseers Opinion #187, Issued November 5, 2004.
3. (b) A lawyer shall hold property of clients or third persons that is in a lawyer's 3 possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.
4. (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of the fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law. If the representation of the client is terminated either by the lawyer withdrawing from representation or by the client discharging the lawyer, the lawyer shall confirm the termination in writing to the client before or within a reasonable time after the termination of the representation.
5. See, Code of Conduct for Counsel for the Minor Child and Guardian Ad Litem, Section I (b)(v).
6. "The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule." See, Commentary to Rule 1.15.

An Attorney Admitted to Practice in another Jurisdiction, with No Physical Presence in Connecticut, May Advise a Connecticut Client on Matters of Federal Law

Informal Opinion 18-02

An attorney not admitted in Connecticut seeks an opinion based on the following scenario. The attorney is licensed in another state, and maintains an office and practice in that state. The attorney and her firm maintain no office or other physical presence in Connecticut, nor do they advertise in Connecticut or otherwise solicit Connecticut residents or businesses as clients. The attorney and her firm do not hold themselves out as authorized to practice in Connecticut.

The attorney inquires whether her firm may enter into an engagement agreement with a potential client located in Connecticut who seeks advice on matters pertaining exclusively to the interpretation and application of HIPAA (the Health Insurance Portability and Accountability Act of 1996), a federal statute. The inquiring lawyer indicates that if she were to undertake such representation, she would disclose to the client in writing, prior to commencing any representation or giving any advice to the client, that: (1) the attorney is not admitted to practice in Connecticut; (2) the attorney is not authorized to advise the client on any issues of Connecticut law; and (3) the representation will be limited solely to issues of HIPAA compliance. The lawyer anticipates that any and all advice given to the client will be provided exclusively by phone, email, or other telecommunications, without the attorney setting foot in Connecticut and without the attorney or anyone at her firm actively soliciting clients in Connecticut. The attorney's specific inquiry is whether such activity would run afoul of Connecticut's statutes concerning the unauthorized practice of law ("UPL").

The committee's primary purpose is to assist lawyers in conforming their conduct to the Rules of Professional Conduct and related court rules. Accordingly, the committee construes the inquiry to be whether the proposed representation complies with the Connecticut court rules and Rules of Professional Conduct concerning unauthorized practice, specifically Rule 5.5 (Unauthorized Practice of Law) and Practice Book § 2-44A (Definition of the Practice of Law).[1]

The Contemplated Representation Is Not Law Practice *in* Connecticut

Practice Book § 2-44A and Rule 5.5 each concern unauthorized practice in Connecticut. Accordingly, the initial question is whether the practice described amounts to practice "in" Connecticut. The committee concludes that it does not. Indeed, there appears to be no basis for the proposition that the representation described amounts to practice in Connecticut given that the only nexus to Connecticut is that the client who seeks the lawyer's advice is located in Connecticut.

The subject matter of the representation does not concern Connecticut law or any matter pending in Connecticut courts. The lawyer and her firm do not advertise or solicit clients in Connecticut. The attorney will disclose to the potential client, in writing, the jurisdictional limits on the attorney's practice and that the scope of the representation is limited to issues of compliance with HIPAA, a federal statute, without reference to Connecticut law. The lawyer and law firm have no physical presence in Connecticut and no part of the representation will be carried out in Connecticut.

To conclude that such practice amounts to practice "in" Connecticut would mean that anytime a Connecticut based person or business sought out, and received advice from, lawyers admitted outside the state on matters wholly unrelated to Connecticut law or proceedings, such lawyers would be subject to claims of unauthorized practice in this state. Such a conclusion cannot be reconciled with the realities of modern practice and business, particularly in light of modern communications and electronic connections. As the authors of *Restatement (Third) of Law Governing Lawyers* (2000) ("Restatement") have stated,

> It is also clearly permissible for a lawyer from a home-state office to direct communications to persons and organizations in other states (in which the lawyer is not separately admitted), by letter, telephone, telecopier, or other forms of electronic communication.
>
> Restatement, § 3, comment e.

A number of large multi-national corporations have world-wide operations and a physical presence in many domestic and foreign jurisdictions, while they also happen to be domiciled in Connecticut. Carried to its logical conclusion, the contention that an attorney licensed outside the state who gives legal advice to a Connecticut based company on federal law, or the law of another jurisdiction, engages in practice "in" Connecticut would bar such companies from seeking counsel on matters such as corporate taxation, securities compliance, capital formation or federal administrative procedure from an attorney admitted and working in New York or in Washington, D.C., unless the attorney also holds a Connecticut law license. Along similar lines, such a reading of the rules would expose an attorney admitted in her home jurisdiction but not admitted in Connecticut to a claim of unauthorized practice whenever performing services in her home jurisdiction for an entity that has operations or offices both in the attorney's home jurisdiction and in Connecticut.

The committee is unaware of any authority for the proposition that law practice occurs "in" Connecticut when the only Connecticut nexus is the client's location here.

The Safe Harbor Provisions for Lawyers Not Admitted In Connecticut

Even assuming, for the sake of argument, that an out of state lawyer giving legal advice on a matter controlled by federal law amounts to practice "in" Connecticut if the client is located in Connecticut, Practice Book § 2-44A and Rule 5.5 provide authorization for such practice. Subsection (b)(8) of Practice Book § 2-44A provides that law practice in the state is permitted where a person is "[p]erforming activities which are preempted by federal law." Subsection (d)(2) of Rule 5.5 provides that a lawyer in good standing in another jurisdiction "may provide legal services in this jurisdiction that . . . (2) the lawyer is authorized by federal or other law or rule to provide in this jurisdiction." It is the committee's opinion that the federal law exception embodied in each provision permits a lawyer admitted in another jurisdiction to give advice to a Connecticut based client on matters of federal law. The contemplated representation concerns a matter that is entirely federal in nature and thus fits within the safe harbor provisions of Practice Book § 2-44A(b)(8) and Rule 5.5(d)(2). It therefore does not, by definition, come within the scope of impermissible unauthorized practice of law in Connecticut.

Non-admitted attorneys should, however, note well that the authorization is not so broad as to permit an out of state attorney to establish a presence in Connecticut by setting up a physical presence or by advertising his or her services to Connecticut residents.**CL**

Notes

1. Conn. Gen. Stat. § 51-88 (Practice of law by persons not attorneys), provides, in pertinent part, as follows: (a) Unless a person is providing legal services pursuant to statute or rule of the Superior Court, a person who has not been admitted as an attorney under the provisions of section 51-80 or, having been admitted under section 51-80, has been disqualified from the practice of law due to resignation, disbarment, being placed on inactive status or suspension, shall not: (1) Practice law or appear as an attorney-at-law for another in any court of record in this state, (2) make it a business to practice law or appear as an attorney-at-law for another in any such court, (3) make it a business to solicit employment for an attorney-at-law, (4) hold himself or herself out to the public as being entitled to practice law, (5) assume to be an attorney-at-law, (6) assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in such manner as to convey the impression that he or she is a legal practitioner of law, (7) advertise that he or she, either alone or with others, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law, or (8) otherwise engage in the practice of law as defined by statute or rule of the Superior Court.

   While the Committee generally declines to offer an interpretation of statutory law, in Informal Opinion 88-09, the Committee opined as follows: "In our judgment the phrase a 'legal practitioner of law' as used in [Conn. Gen. Stat. §] 51-88 should be construed to mean 'a legal practitioner of law *in Connecticut*' and 'practice of law' should be construed to mean 'practice of law *in Connecticut*.'" (emphasis added) In this opinion, the Committee takes the position that the contemplated representation is not the practice of law *in* Connecticut. Accordingly, the contemplated representation does not appear to fall within any of the categories of unauthorized practice described in the statute.

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CBA Hosts Largest Connecticut

By Leanna Zwiebel

Officers of the 2018-2019 bar year (L to R): Treasurer Vincent P. Pace, Immediate Past President Karen DeMeola, Secretary-Treasurer Aidan R. Welsh, President Jonathan M. Shapiro, President-elect Ndidi N. Moses, Vice President Amy Lin Meyerson, and Secretary Dahlia Grace.

Annual Meeting Luncheon Special Guest Speaker Aaron Keller.

Then-CBA President Karen DeMeola passing the gavel to President Jonathan M. Shapiro to serve as the 95th president of the CBA for the 2018-2019 bar year.

Pro Bono Appointments in Federal Court: Tips from the Trenches, Part 1.

Heidi Alexander discussing affordable technology for small firm productivity.

More than 1,300 attorneys, judges, paralegals, and other legal professionals from throughout the state gathered on June 11 at the Connecticut Convention Center in Hartford for the 2018 Connecticut Legal Conference. The day began with a networking breakfast, which included alumni receptions for Quinnipiac University School of Law, UConn School of Law, and Western New England University School of Law, giving attendees the opportunity to connect with colleagues and classmates before heading to the day's first education session.

This year's conference featured over 40 CLE seminars across eleven different tracks with topics ranging from blockchain, mindfulness for lawyers, and diversity and inclusion, along with an entire track dedicated to legal technology.

Among the 11 seminars that began the day, Justice Maria A. Kahn, then-CBA President Karen DeMeola, Fred Lee, James G. Leipold, and Asker A. Saeed spoke to attendees on the strategies for achieving meaningful racial and ethnic diversity and inclusion within their law firms and organizations in their seminar, "Why 'One Size Fits All' Efforts Fail: Tackling the Biases That Still Frustrate Meaningful Racial and Ethnic Diversity and Inclusion." Attendees learned how stereotypes and biases operate to keep racially and ethnically diverse individuals from succeeding in our profession as well as effective strategies for disrupting those hindrances to an organization's commitment to diversity and inclusion.

The CBA Annual Meeting Luncheon recognized the service of Attorney General George Jepsen, who will retire in the fall, and CBA Past President Donat C. Marchand, who served on the CBA House of Delegates since 1981 and the Board of Governors since 1985, as well as judges taking senior and referee status. Along with these recognitions, the 2018-2019 officers were in-

Legal Conference to Date

Bob Ambrogi discussing what the ethical duty of technology competence means for a lawyers practice.

Chief Justice Richard A. Robinson.

LegalTech/Law Practice Management Training with Barron Henley.

Platinum sponsor Kronholm Insurance Services.

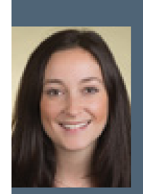
stalled: 95th president of the CBA, Jonathan M. Shapiro; President-elect Ndidi N. Moses; Vice President Amy Lin Meyerson; Secretary Dahlia Grace; Treasurer Vincent P. Pace; Assistant Secretary-Treasurer Aidan R. Welsh; and Immediate Past President Karen DeMeola.

CBA executive director, Keith J. Soressi, welcomed guests to the luncheon, followed by remarks from Chief US District Judge Janet C. Hall and Connecticut Supreme Court Chief Justice Richard A. Robinson, in his first speech for the association in his role as chief justice.

Keynote luncheon speaker, Aaron Keller, discussed bridging the gap between law and journalism by analyzing the cases of Steven Avery and Brendan Dassey in the hit Netflix docuseries *Making a Murderer,* in which Attorney Keller appeared for his role as a local reporter during the trial. He also presented a seminar later in the day, "Access to Justice Confessions, Ethics, and High Publicity in *Making a Murderer.*"

Immediately following the final session of seminars, the President's Reception, sponsored by Murtha Cullina LLP and Shapiro Law Offices LLP, was held for all attendees to mingle with colleagues and discuss the day's events as well as the year to come, over cocktails and an assortment of appetizers.

The CBA thanks all those that helped make the Connecticut Legal Conference a great success—the attendees, exhibitors, and the sponsors, particularly Platinum sponsor Kronholm Insurance Services, and Gold sponsor CATIC. **CL**


Leanna Zwiebel is the communications and editorial associate at the Connecticut Bar Association.

The following is an abridged reprint from

President Jonathan Shapiro's 2018 CBA Annual Luncheon Meeting Speech.

Jonathan M. Shapiro is the 95th president of the CBA. Attorney Shapiro is a partner at Shapiro Law Offices LLC in Middletown where he practices in corporate transactions, employment matters, and complex commercial and general litigation, as well as in arbitrations and mediations.

Over the past year, I had a lot of people come up to me and ask questions about the CBA and becoming president. I was typically asked: "Am I ready?" The next question was, "Why are you doing this?"—and maybe suggesting that I was I little crazy. Next, "How are you going to do this?" And finally, "What is your agenda?"

The reality is the answers to these questions overlap. I grew up in a family that was involved in my community. My parents, my grandparents, my aunts, my uncles—they all gave back to the community. No one ever lectured me about getting involved or being involved. They all lead by example.

This association is much more than the programs we put together. It is much more than the positions we lobby for. It is much more than the sections and committees we offer. For me, this association has been, and will always be, about the people. It is all about everyone in this room who I have had the pleasure of working with over the last 17 years.

It is hard for me to believe I was the chair of the YLS just five years ago. Many of the people I met during those years remain good friends today, and the people that I have met over the last several years serving in other positions in the organization have become good friends. I have also been fortunate to have the esteemed past presidents of this organization welcome me with open arms. I cannot remember a time when I saw a past president where they didn't say, "Jon, if you need anything, we are here for you."

I could be here all day talking about the people that have influenced me, but the reality is it is because of all of you in this room that I am doing this.

How am I going to do this?

The answer is very similar. I am going to need support. I have a close family that has always been there for me.

To my kids, Lily and Ari, who are here today, thank you for always putting a smile on my face when I get home after a long day. When I have had a bad day, your endless love, hugs, and kisses can always make me smile.

And of course, you need a good, supportive spouse by your side. A special thank you to my wife, Sarah, without whom I could not possibly serve in this role. She bears the brunt when I am out at night to attend bar events. She takes care of the kids, she takes care of everything I have going on in my life. Thank you Sarah. I love you.

The bar does not stop because of what you have going on.

The great thing about this organization, about the people in this room is that if life gets in the way of something you have to do for the CBA, everyone remains committed to each other. That is what the CBA is about to me, and that is how I am going to be able to get done what needs to get done.

As for what is my agenda? Well, my main agenda is not to screw anything up.

The CBA is not about me. It is not about what I think. It is about our members and the mission of the CBA.

The CBA is in a great position. I want to continue down the path we are on.

In 2016, the CBA formed its diversity and inclusion committee to help enhance diversity and inclusion. We now have more than 30 firms and companies that have signed the Diversity and Inclusion Plan. Karen's establishment of a pipeline program is aimed at recruiting high school students from diverse backgrounds into the legal profession. This work will help plant the seeds to ensure our profession is as diverse as our population. None of this work can be completed in one or two years. It will only happen through our long-term commitment to the cause. And that is where we will be steadfast.

It is not just looking at the future of our profession. We must also ensure that we are taking care of the present members. We are the preeminent organization for providing CLEs, but that is not enough.

As Karen mentioned, she established a well-being task force. To be a good lawyer, you must be a healthy lawyer. Our profession is a demanding one. It is one of few professions where you have an adversary who is trying to prevent you from succeeding in your job. That can be a difficult road. At times, it can be lonely. But you do not have to be alone, and you are not alone. We are going to ensure that our members have the necessary resources to succeed throughout their careers—beginning, middle, and end.

While we have established many programs to aid those in the early stages of their careers, we have done comparatively little for our more senior attorneys. When you look at the demographics of our association and the bar, there are a lot of baby boomers nearing retirement. While law firms have established succession plans for their attorneys nearing retirement, solo and small firm practitioners often don't have the same options.

If you are a solo practitioner, what happens

if you become incapacitated or pass away? What happens to your files? What happens to your clients? Under Practice Book Rule 2-64, the state can appoint a trustee to take whatever actions are necessary to protect the interests of the clients. It focuses on the clients. But what about the lawyer? What about their needs and their families?

What if we allow our attorneys to plan for these issues ahead of time? What if a lawyer can designate a trustee to transition his or her practice upon disability, death, or discipline? What if the designated trustee is someone whom the older lawyer can guide and advise as they develop their own practice? What if the designated trustee becomes someone who the lawyer can transition or sell his or her practice?

We need to engage in these conversations. We need to educate our members on the importance of retirement and succession planning to ensure that they get value from their practice that they spent decades building. It can also be an opportunity for younger lawyers to learn from more senior lawyers so that transition can take place. The CBA and our members need to continue to lead in the community on the many important issues facing our state and country.

We live in an interesting time. The political climate is unlike anything I have seen. The ability to have civil disagreements over political issues is waning. People seem to take the mentality that you are either with us or against us.

Social media brings about a mob mentality. Rather than engage in dialogue, we instead rush to judgment before any semblance of due process has played out. We as lawyers must stay above the fray.

Our judicial system has been under attack too. We saw unprecedented proceedings in our legislature this past session that cannot continue.

Social media and the mob mentality allow the voices of relatively few, unsatisfied people have influence far greater than their numbers. As the chief justice said, this is not to say the judiciary is infallible judges. It is not to say they should not be challenged, but due process must win out.

As Caroline Kennedy once said, "The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing."

One of our jobs that we must do is to ensure that happens. We must not get swept away in emotion. We as attorneys must safeguard process and the rule of law. We remain a learned profession. We must act like it, and we must lead. Thank you everyone and I look forward to working with everyone over the next year.

Finally, I almost forgot, but how could I not mention my mother, Nancy Shapiro. She taught me more than anyone about giving of yourself to others. She never says no, she is a tireless worker, and has always been

Visit ctbar.org/PresidentShapiroSpeech for the complete speech.

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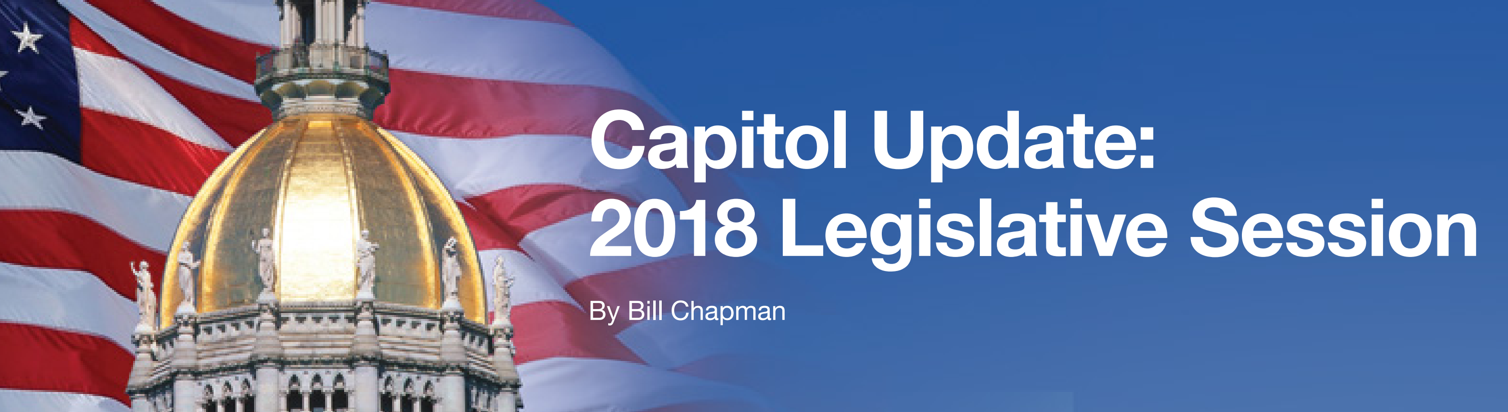

Capitol Update: 2018 Legislative Session

By Bill Chapman

Connecticut's legislative session ended on May 9. This year was the short session since it is a big election year, with all 151 House seats and 36 Senate seats potentially available in the fall election.

With 11 percent of the House leaving the legislature, only 22 incumbent House lawyers and four incumbent Senate lawyers will be running for office this year. Also, it is a question as to whether the speaker of the house will remain in his position, or if there will be a different voice and leadership in the House next year? There are only a few seats to flip for that change to happen.

Constitutional offices are also up for election: governor, attorney general, treasurer, and lieutenant governor.

During this session there were numerous hearings for judges—those being renominated and those nominated (32) for the first time.

Some topics of bills that did not pass in the legislature this session included gambling, sports betting, recreational marijuana, tolls, minimum wage, and sexual harassment statute of limitations.

Some topics of bills that did pass in the legislature this session included dreamers, banning bump stock, national popular vote, domestic violence primary aggressor, crumbling foundations funding, drug pricing controls, and pay equity.

The budget passed in the last day of the session and was approved without many of the legislators noting what was or wasn't in that budget. Knowing that the budget hung over every aspect of bills being brought before the legislature that not many would pass, or they would be included in omnibus bills and if they had any money posted with the bills that they would not advance. Working feverishly each day before and through the session to advance the CBA agenda, below are some of our results of the 500 bills we watched all year.

Bills Supported and Passed

HB-5258 AA ADOPTING THE REVISED UNIFORM ARBITRATION ACT
This bill is to respond to the increased use of arbitration in resolving disputes and revise and modernize arbitration procedures by adopting the Revised Uniform Arbitration Act. Since this was revised by the Uniform Law Commission, we were pleased to finally get the bill enacted after a good ten years.

SB-483 AAC THE PREVENTION AND TREATMENT OF OPIOID DEPENDENCY AND OPIOID OVERDOSES IN THE STATE
This became an omnibus bill that included many aspects of the call to alleviate the opioid crisis, including the study of establishing opioid intervention court(s) in the state. This bill also prohibits prescribing practitioners from prescribing controlled substances to self or family members; requires the Alcohol and Drug Council to convene a working group to evaluate methods of combating the opioid epidemic; requires hospital and emergency medical services personnel that treats a patient to report such overdose to DPH; and extends a pilot treatment program at corrections.

SB-215 AAC COURT OPERATIONS
This bill makes various clarifications and technical changes, and includes extending the "Civil Gideon" pilot program reporting requirements.

HB-5470 AAC THE PROVISION OF TIMELY NOTICE OF CHILD PLACEMENT INFORMATION FROM THE DEPARTMENT OF CHILDREN AND FAMILIES TO THE ATTORNEY REPRESENTING THE CHILD IN A CHILD PROTECTION MATTER
This bill was supported by our Child Welfare and Juvenile Law Section to provide this timely notice information to an attorney or GAL representing a child in a child protection matter.

SB-247 AAC PROBATE COURT OPERATIONS
This bill makes minor revisions to statutes governing certain probate court procedures.

SB-509 AAC NEWLY DISCOVERED EVIDENCE
This bill is about junk science, new evidence to be considered in the same manner as DNA evidence for a petition for a new trial.

HB-5241 AAC ESTABLISHING FINES FOR VIOLATIONS OF THE ELECTRONIC PRESCRIPTION DRUG MONITORING PROGRAM
This bill is an effort to reduce the number of deaths related to opioid prescriptions

HB-5149 AAC SOBER LIVING HOMES
This bill will permit sober living homes to register with the Department of Mental Health and Addiction Services. Additional work needs to be done for the next session and CBA will be involved.

HB-5575 AAC THE APPOINTMENT OF A LICENSED HEALTH CARE PROFESSIONAL TO PROVIDE TREATMENT OR AN EVALUATION IN CONNECTION WITH A FAMILY RELATIONS MATTER
This bill establishes a process for selecting qualified, licensed health care providers in family relations matters involving court-ordered treatment or evaluation of parents and children.

Worked Hard, But Never Approved in Both Chambers

SB-397 AAC ADOPTION OF THE UNIFORM TRUST CODE, THE CONNECTICUT UNIFORM DIRECTED TRUST ACT AND THE CONNECTICUT QUALIFIED DISPOSITIONS IN TRUST ACT
This bill was intended to update the Trust Code. Passed in the Senate and wished there were three more minutes left in the House on the last night.

HB-5251 AA ESTABLISHING BENEFIT LIMITED LIABILITY COMPANIES
This bill establishes a legal framework for forming a limited liability company (LLC) that both pursues social benefits and increases value (a benefit limited liability company, or b-LLC). The structure is similar to the one in place for benefit corporations (b-corps). The Secretary of the State placed a fiscal note on this bill of $60,000.

HB-5472 AAC THE CERTIFICATION OF SHORTHAND REPORTERS AND CONCERNING A STUDY OF VIDEO COURT APPEARANCES BY DEFENDANTS
This bill would require Department of Consumer Protection certification to shorthand reporters who work for compensation in the state. It had been eliminated in 2017.

SB-234 AAC PERMITTING A COMMUNITY SPOUSE OF AN INSTITUTIONALIZED SPOUSE TO RETAIN THE MAXIMUM AMOUNT OF ALLOWABLE ASSETS
This bill is to allow a community spouse of an institutionalized spouse to retain the maximum amount of resources allowable under federal law. The Finance Committee did not approve for fiscal reasons. We have tried for years.

SB-399 AAC THE UNIFORM PROTECTED SERIES ACT
This bill would adopt the Uniform Protected Series Act (UPSA), which creates a framework for forming and operating a protected series of a limited liability company (LLC). A "protected series" is an entity governed by the operating agreement of a series LLC (a "series LLC" is an LLC with one or more protected series). Generally, the bill deems a protected series as an independent LLC, which, with certain exceptions, subjects it to the same requirements existing law applies to other LLCs. The Secretary of the State in her fiscal note stated that this would cost $500,000 to enact.

Besides myself, the CBA is fortunate to have Bob Shea continue working with the Estates and Probate and the Family Law Sections, while Melissa Biggs is working with the Elder Law Section. We have all worked strenuously during this past session to advance the CBA legislative agenda. CL

Bill Chapman handles government and community relations for the CBA.

Follow Bill on Twitter @CTBarLeg

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(Left to right) Retired Judges Michael Riley, Anne Dranginis, Robert Holzberg and Lynda Munro

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The Relaunching Attorney: Returning to Your Legal Career after a Break

By Carroll Welch

Sandra loved her practice as a real estate attorney at a Hartford firm, and when she left to take maternity leave for her first child, she fully intended to return after six months. Twelve years and three children later, Sandra, a stay-at-home mom, found herself yearning to return to the challenges of the law, and the income that came with it. During her career hiatus, Sandra had been active at her kids' schools, sat on the board of a local nonprofit, and even started a small business focused on one of her favorite hobbies—landscape design. But she'd disconnected entirely from her legal career. Reclaiming her identity as a lawyer seemed like a daunting if not impossible goal.

The law is a rigorous and demanding profession and many women (and some men) choose or need to step away at some point for personal reasons, which can include parenting, caring for aging parents, dealing with one's illness or a family members', following a relocating spouse, or pursuing a non-legal career or other endeavor. These career breaks can be as long as 20 plus years and begin before attorneys even had computers on their desks.

Getting "back in the game" and landing a paid legal position after a long hiatus is immensely challenging. Fortunately, in the last ten years, the conversation about relaunch talent and how to make it part of a diverse and inclusive workforce has become exponentially more active. Many more resources and programs designed to assist and provide entry points for relaunching professionals, and attorneys in particular, have become available.[1]

Challenges

Even with aids, the path back into the law is challenging and filled with obstacles. Re-entering attorneys must consider the hurdles and how their relaunch strategies will address them. Some of the most common obstacles faced by a re-entering attorney include:

- **Low Confidence:** The fear of showing up as an attorney for networking and job searching activities when one hasn't practiced for years is, for many, an overwhelming and anxiety-provoking prospect. Regardless of how successful they may have been prior to their breaks, many relaunchers feel like "imposters" when trying to get back to the law.

- **Rusty Skills:** For relaunchers who did not do any pro bono or legal work during their breaks, rusty substantive skills and a lack of knowledge about changes and developments in the law can also be a barrier. Nonexistent or weak technological skills can also diminish confidence dramatically.

- **Lack of Clarity on Target:** Sandra knew that she wanted to return to real estate law. Leveraging her seven years of experience would likely make her relaunch easier. Many relaunchers, however, do not want to return to their pre-break practice areas or employment venues and they prefer to re-enter in a new capacity. The problem: they just don't know what they want to do and what the possibilities are. This lack of clarity can be paralyzing, and lead to their running unfocused and unwieldy job searches that never gain momentum and result in despair and discouragement.

- **No Network:** Sandra had kept in touch with two of her law firm colleagues by sending holiday cards and meeting for lunch once or twice a year during her career break. Contacting them (her supervising partner and fellow associate who since made partner) to enlist support when she decided to relaunch was a critical first step. For many, though, a nonexistent professional network can lead to a feeling of disconnectedness, isolation, and an overreliance on online search sites to apply for positions. This is not an optimal strategy, and it can soon feel like resumes and cover letters are being dropped into black holes.

- **Ageism:** The sting of ageism in hiring can be very strong for relaunchers who return to run job searches in their 40s, 50s, and 60s. They face employer reservations and fears about their rusty skills, lack of commitment to work,[2] unsophisticated technological skills, inability to work with intergenerational teams, or disinclination to be supervised by younger colleagues.

- **Lack of a Support System:** Like any other person setting a goal, relaunchers need support to be successful. Surrounding oneself with friends and family who encourage and help the attorney to adopt a positive outlook is crucial. Having a positive demeanor is as important as having a good resume and directly impacts networking and interviewing performance.

Strategies for Success

Sandra, our relaunching attorney above, was able to land a temporary, six month position with a small real estate practice in Farmington after connecting with her brother-in-law's best friend (a partner at the firm) at a family holiday party. She's hoping that it will become a permanent and/or full time job. Despite the difficult challenges listed above, many attorneys are successful in finding paid legal work after extensive hiatuses by employing key strategies, some of which are listed below:

- **Self Assessment and Targets:** Before diving into preparing resumes and cover letters, relaunchers should spend time inventorying their skills, interests, values, and goals for their re-entry processes. They should be prepared to describe their skills clearly and not expect that prospective employers will try to figure this out. This will facilitate their clarity on skills that are rusty, nonexistent, or strong so they can plan how to prepare. Also, figuring out at the outset of the process what practice area or employment venue to target is key and helps prevent an unfocused and unwieldy job search. The approach of, "I'll do anything. I just want a job!" is not helpful and undercuts rather than advances a relauncher's process.

- **Networking:** The rule of thumb that 80 percent of jobs are achieved through networking is likely closer to 95 percent for relaunchers, who need the boost of a contact or connection to provide an entry point or opportunity. It is simply too difficult for attorneys with career breaks to compete via online job search sites with the general population of candidates without career breaks. Relaunchers should mine their networks of friends, family, neighbors, and community contacts to raise their visibility and explore opportunities.

- **Engagement:** Relaunching cannot happen by looking at one's computer screen or simply thinking and planning. It's important to get out and engage! This may include talking to former colleagues; conducting informational interviews; attending CLE classes; going to panel programs; writing an article; joining a bar association committee; or doing pro bono, volunteer, project, or temporary work. Engagement builds confidence, clarity, skills, and a network.

- **Prepare Tools:** Have a strong pitch or marketing message. An excellent resume and LinkedIn profile are important tools for a good job search. They should be updated with information about skills developed through substantive volunteer or community experience, whether legal in nature or not.

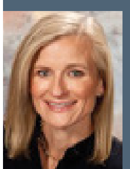
I have seen many attorneys relaunch and

accomplish amazing things in their careers with positivity, proactivity, resiliency, and the support of a network. Employers are increasingly recognizing the value of relauncher talent. Despite sometimes needing initial support or orientation, relaunchers often bring a refreshed perspective and skill set to their legal practices after their career breaks, and are motivated and enthusiastic about resuming their careers.

Where to Begin

Thinking of Relaunching? Here's What You Should Do First

- Seek support from a career coach, counselor, or mentor to help you clarify your skills, interests, and goals.
- Go public with your relaunch plans. Tell everyone you know that you plan to go back to work. This will make your goal more "real" and can lead to helpful contacts.
- Reach out to former colleagues to reconnect and share your plans. For many, this is a daunting initial step but can help the relauncher remember that others thought highly of her professional reputation and want to be of help.
- Engage! Get out and have experiences that will build confidence and help to build momentum.
- Revise and update your resume to include leadership or substantive volunteer and community experiences. **CL**



Carroll Welch is a career, executive, and leadership coach who has supported hundreds of attorneys seeking to return to legal practice or alternative legal careers after career breaks. She is a past director of New Directions for Attorneys, an attorney re-entry program previously run by Pace University School of Law and a former practicing employment law attorney.

Notes

1. These include courses such as Pace Law School's now defunct *New Directions for Attorneys* program and the online Transformative Impact/Relaunching Attorney Platform. Employment programs such as the On Ramp Fellowship provide slots at law firms and corporate legal departments, and programs at many major financial institutions such as Morgan Stanley's Return to Work Program and Credit Suisse's Real Returns offer some legal positions on a shorter term basis that may transition into permanent roles. iRelaunch offers resources, conferences, and consulting services to relaunchers across industries and employers interested in their talent. The Connecticut Bar Association has joined many other bar associations in offering programming and information for its membership on career reentry.
2. A recent *Harvard Business Review* article described a researcher's findings that stay-at-home moms are half as likely to get an interview than an applicant who was unemployed or didn't identify parenting as a reason for her employment gap. https://hbr.org/2018/02/stay-at-home-moms-are-half-as-likely-to-get-a-job-interview-as-moms-who-got-laid-off

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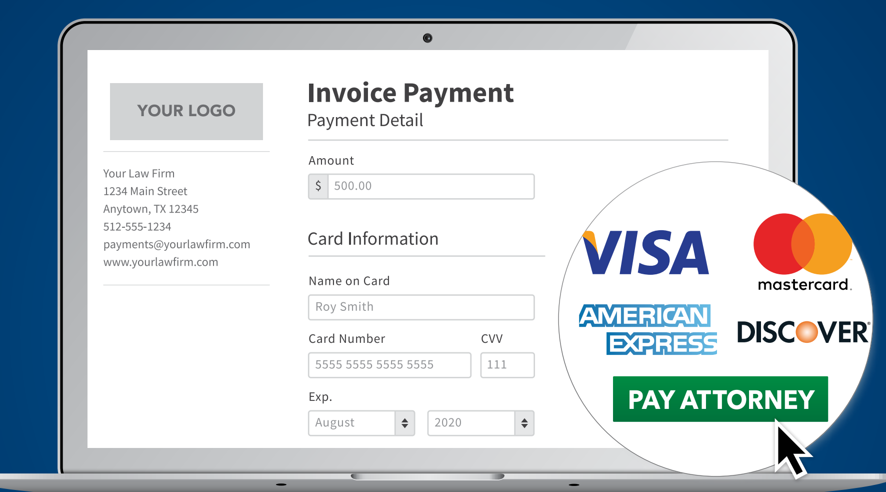

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How to Reduce Your Stress and Enhance Your Well-Being

By Stewart Edelstein

An American Bar Association study[1] released in 2016, based on responses from almost 13,000 US lawyers and judges, concluded that 28 percent of responding lawyers experience depression, 23 percent experience stress, and 19 percent experience anxiety. This study also concluded that alcohol abuse disorders and mental health problems in the legal profession are at higher rates than in other professions and the general population—and that younger lawyers are the segment of the population most at risk of substance abuse and mental health problems.

Consider this: unrelenting low-level stress, unchecked, can cause physical symptoms, including decreased immune system function, increased cholesterol and triglycerides, high blood pressure, faster heartbeat, increased blood glucose levels, digestive problems, loss of mental sharpness, sleeping problems, chest pains, fatigue, headaches, and back and neck pain. And the psychological symptoms? Anxiety, frustration, irritability, and depression. A litany of woes.

You don't want to be on the wrong side of these statistics, and you need not be. Here are strategies that should enable you to enjoy the practice of law without burning out. Adopting even a few of these strategies should help you handle the stresses inherent in what we do. The more of these you adopt, the better you'll be able to cope.

Health Strategies

Eat right, exercise regularly, and sleep at least seven hours a night. Create and nurture your support system by making time for family and friends, and advising your family of more time-consuming work demands; make time for yourself; take fulfilling vacations; and vary your routine.

Career Strategies

Work smarter by keeping a current to-do list, using an effective tickler system, planning a realistic work schedule, refraining from multitasking, dividing large tasks into chunks, and establishing realistic expectations. Refrain from beating yourself up when you make mistakes, but learn from them, don't put off the worst until last, be organized and focused, complete tasks on time, be prepared, plan ahead, and review all files regularly.

Take advantage of teamwork by getting help with work when needed, keep your clients informed, cultivate staff relationships, and get feedback about your work. Benefit from safety valves by discussing your feelings, listening to your body, and having fun.

For a comprehensive discussion of how you can implement these tips, read *How to Succeed as a Trial Lawyer, Second Edition.* The chapter devoted to coping with stress applies to all lawyers.

For a quick test of your state of well-being, try the checklist on the next page. Well-being is much deeper than happiness, which is merely transitory. Well-being is characterized by a profound sense of fulfillment, engagement, meaning, purpose, accomplishment, positive emotion, and wholesome relationships. **CL**

For 40 years, Stewart Edelstein represented commercial clients as a trial lawyer at Cohen and Wolf, P.C., during which he taught clinical courses at Yale Law School for 20 years. He is on the American Arbitration Association Panel of Neutrals, and is the author, most recently, of *How to Succeed as a Trial Lawyer, Second Edition* (ABA 2017).

Notes

1. "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," by Patrick Krill, Ryan Johnson, and Linda Albert, published in the Journal of Addiction Medicine, January/February, 2016, Volume 10, Issue 1.

Monthly Well-Being Checklist

Print 12 copies of this checklist to review your progress on the first day of each month, for a year. Score one point for each box you check. Here is the scoring:

0 to 6 points:	**You need to do better to take care of yourself. Seek help if you need it.**
7 to 12 points:	**You're on the right track. Keep it up!**
13 to 20 points:	**You're making significant progress! Now focus on more ways to improve your well-being.**
21 to 25 points:	**You're well on your way to achieving well-being.**

- ☐ Eat a healthy breakfast, lunch, and dinner each day; refrain from eating anything after dinner. (See the accompanying recipe for Stockbridge Granola.)
- ☐ Get out of your chair at least every 90 minutes.
- ☐ Do at least one of the following:
  - Join a fitness club and use it regularly.
  - Hire a personal trainer and attend regular sessions.
  - Exercise vigorously at least 75 minutes a week or moderately at least 150 minutes a week, or a comination thereof.
- ☐ At least once a week, go for a walk in nature.
- ☐ Refrain from using any electronic devices at least 30 minutes before bedtime.
- ☐ Go to sleep and wake up around the same time each day, and get at least seven hours of sleep each night.
- ☐ Arrive home for dinner at a set time each day, barring unavoidable circumstances.
- ☐ Either do not drink alcohol or, if you do, drink only in moderation, which means an average of no more than one drink a day for women, and an average of no more than two drinks a day for men.
- ☐ Refrain from multitasking.
- ☐ Listen to music that stirs your soul, whether it is relaxing or energizing for you.
- ☐ Renew a hobby or start a new one.
- ☐ Read a book unrelated to the law or a book on the suggested reading list on the next page.
- ☐ Keep an up-to-date to-do list.
- ☐ Don't beat yourself up when you make mistakes, but learn from them.
- ☐ Each day, do the most onerous task first.
- ☐ Clean out all your work spaces; keep them neat and tidy.
- ☐ Archive or delete all electronic documents and e-mails you don't need.
- ☐ Unsubscribe from all digital feeds you don't need.
- ☐ Use an effective tickler system to keep track of all deadlines.
- ☐ Review all your files at least once a month.
- ☐ Keep a plant in your office and water it as needed.
- ☐ Vary your routine.
- ☐ With sincerity, express gratitude each day to someone about something specific.
- ☐ At least once a week, do something just for fun.
- ☐ Frequently, enjoy meaningful time with people you love and with friends.

Suggested Reading

Mindfulness and Reducing Stress

50 Lessons for Lawyers: Earn More. Stress Less. Be Awesome
By Nora Riva Bergman

365 Tao: Daily Meditations
By Deng Ming-Dao

Freeing Yourself from Anxiety: 4 Simple Steps to Overcome Worry and Create the Life You Want
By Tamar E. Chansky

The Nature Fix: Why Nature Makes Us Happier, Healthier, and More Creative
By Florence Williams

The Reflective Counselor: Daily Meditations for Lawyers
By F. Gregory Coffey and Maureen C. Kessler

Rest: Why You Get More Done When You Work Less
By Alex Soojung-Kim Pang

Spontaneous Happiness
By Andrew Weil, MD

Stress Management for Lawyers: How to Increase Personal & Professional Satisfaction in the Law
By Amiram Elwork

Time Management for Attorneys: A Lawyer's Guide to Decreasing Stress, Eliminating Interruptions & Getting Home on Time
By Mark Powers and Shawn McNalis

Transforming Practices: Finding Joy and Satisfaction in the Legal Life
By Steven Keeva

Nutrition and Health

American Dietetic Association Complete Food and Nutrition Guide
By Roberta Larson Duyff

Food Rules: An Eater's Manual
By Michael Pollan

In Defense of Food: An Eater's Manifesto
By Michael Pollan

Why We Sleep: Unlocking the Power of Sleep and Dreams
By Matthew Walker

Yawn!: Bedtime Reading for Insomniacs
By Ellen Sue Stern

Just for Fun

Disorder in the Court: Great Fractured Moments in Courtroom History
By Charles M. Sevilla

Forever Rumpole: The Best of the Rumpole Stories
By John Mortimer

Innocent, Your Honor: A Book of Lawyer Cartoons
By Danny Shanahan

The New Yorker Book of Lawyer Cartoons
By The New Yorker

The Ten, Make that Nine, Habits of Very Organized People. Make That Ten: The Tweets of Steve Martin
By Steve Martin

Options Other Than the Practice of Law The Lawyer's Career Change Handbook: More Than 300 Things You Can Do with a Law Degree
By Hindi Greenberg

Nonlegal Careers for Lawyers
By Gary A. Munneke, William D. Henslee, and Ellen S. Wayne.

Stockbridge Granola Recipe

This recipe is ideal for making granola to sprinkle on cereal, yogurt, and ice cream, and for eating right out of your hand. It is easy to make (although it does require some patience), more tasty, and less sweet than commercial brands—and is healthy eating.

- Preheat the oven to 300 degrees.
- In a large roasting pan, pour in:
  - 8 cups rolled oats
  - 2 to 3 cups nuts of your choice, such as almonds, walnuts, cashews, pecans
  - ½ cup wheat germ (if you use toasted wheat germ, add it at the end)
  - 2 teaspoons dried orange zest
  - 1 teaspoon cinnamon
  - ½ teaspoon nutmeg
- Stir the dry ingredients until they are evenly mixed.
- In a microwavable bowl, combine:
  - ½ cup vegetable oil of your choice
  - ½ cup honey
  - 1 tablespoon vanilla
  - 1 teaspoon almond extract
  - Juice of ½ a lemon
- Microwave the wet ingredients for a minute until warm.
- Stir the wet ingredients until they are evenly mixed.
- Stir the wet ingredients into the dry ingredients until each morsel is coated.
- Pour all the ingredients into an ungreased roasting pan.
- Put the roasting pan in the middle rack of the oven. After 30 minutes, remove it from the oven. Stir, especially from the bottom, top and sides, to avoid excessive browning or burning. If necessary, cover with aluminum foil. Every 20 minutes, repeat the stirring process. Remove the granola from the oven when it is granular, after about an hour.
- After the granola cools, add zest of half a lemon, and dried fruit of your choice, such as dried cherries, cranberries, raisins, currants, or apricots, avoiding clumps.

This granola freezes well, so consider doubling this recipe for a stash that will last longer.

Want to learn more from CBA member Stewart Edelstein about stress in the legal profession? Visit ctbar.org/EdelsteinBarchat.

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Has ADR Kept Its Promise?

By Harry N. Mazadoorian

This year marks the 20th anniversary of the first Quinnipiac Law School/Connecticut Bar Foundation Chief Justice John A. Speziale Alternative Dispute Resolution (ADR) Symposium, for which I had the privilege of serving as planning committee chairperson. The title of that 1998 inaugural symposium was, "Has ADR Kept Its Promise." The conclusions about ADR's successes and potential were quite positive but tempered by a realistic assessment of major issues which still needed to be addressed.

During the time since that 1998 conference, questions about the impact of ADR have continued. For example, ten years after the initial symposium, the 2008 symposium asked further questions about ADR under the title, "Where Have We Come? What Lies Ahead?" The 20th anniversary of the initial symposium seems an opportune time to revisit the questions initially raised in 1998 and to examine some of the research and practices since that time.

The Birth of the Movement

While alternatives to traditional litigation have a long history in Connecticut and the country going back to Colonial times, the goals of the current ADR "revolution" took root at the 1976 Pound Conference entitled, "National Conference on Causes of Popular Dissatisfaction with the Administration of Justice." (The conference took its name from an address delivered by Dean Pound in 1906).

Since 1976, great strides have been taken in identifying, exploring, measuring, and implementing alternative dispute resolution processes to attack what one federal judge referred to as the twin devils of cost and delay. Other goals included increased party control over the processes and preserving relationships. Further, ADR was intended to allow the identification of the most appropriate process for the dispute at hand. "Fitting the Forum to the Fuss" became a much utilized mantra. After the late Professor Frank Sander, universally acknowledged to be the "dean of ADR" in this country, gave his keynote address at the 1976 conference, the expression "multi doored courthouse" became the watchword of the movement.

The movement took hold solidly. ADR is now widely taught in law schools, state and federal courts have adopted wide ranging ADR programs, and many industries have adopted heavily used ADR protocols. The use of these processes have permeated much of legal practice, ranging from corporate to tort to family.

Persistent Questions

Despite these successes, frequent questions about ADR persist. They range from questioning the very efficacy of ADR to whether it truly is a more efficient and inexpensive process to ethical challenges about the use of some of the procedures. Especially in the consumer and employment context, critics claim that many disputants are forced into a process not of their choosing and are denied the forum they truly desire.

Some scholars argue that cost and ease of access, while important, are not as critical as the quality of justice achieved by ADR and decry the creation of a system of "secondhand justice." Still others claim that the cost and time savings are illusory and that—at least in complex cases where three arbitrators are engaged—arbitration can be more costly than litigation. Further, that many arbitrators don't manage the progress of a case well and that arbitrations move at a snail's pace.

Among the continuing analyses of ADR's past and future was a 2016 Cardozo Law School Symposium and specifically a keynote address by Professor Thomas J. Stipanowich of Pepperdine University School of Law, a leader among leaders of ADR scholars and practitioners. (It should be noted that Mr. Stipanowich was the keyknote speaker at the 2005 Quinnipiac/CBF Symposium, which explored some of ADR's "new frontiers.") In a paper that expanded his Cardozo keynote address, Stipanowich, while acknowledging the massive impact that the "Quiet Revolution" in ADR has had since the Pound Conference, asks if the "glass is only half full." He notes that indications exist that the movement may have in some ways failed to deliver on its early promise or developed in what he describes as unforeseen ways. Setting forth a history of major ADR developments which have shaped the dispute resolution world, he identifies a number of "streams of development" that altered legal practice.

Clearly no generalizations about ADR apply equally to all processes under that umbrella. Some of the studies over the past several decades demonstrate that practitioners have different opinions about different processes. Nor have all processes enjoyed the same rate of acceptance. In fact, Stipanowich concludes that "the central theme of the Quiet Revolution in the U.S. was the growth of mediation as a regular feature of federal and state court litigation."

Professor Stipanowich identifies a number of factors influencing the use of ADR, including "behavioral drift…..and inertia," regional differences in the way attorneys employ mediation and the "gravitational pull" on mediation practice by lawyers, to accomplish their preferences rather than the preferences of their clients. He further identifies some critical challenges for the future such as fully matching dispute resolution processes to the problem at hand, learning more about cultural influences in international dispute resolution, and more effectively utilizing technology to better achieve dispute resolution goals.

Thus, more than 40 years into the current ADR revolution, a vigorous discussion of whether it has kept its promise continues. The conversation is a healthy one and spurred on perhaps because of widely divergent expectations and even understandings of what the original promise was.

It is certainly true that the growth of ADR knowledge and adoption among practitioners, courts, and institutions has not been universal.

Indicators of Success

However, by almost all measures, the overall growth of ADR use and satisfaction since the 1976 Pound Conference has been high: ADR continues on the ascent with increasingly sophisticated utilizations.

The mainstreaming of these alternative processes has truly produced a dynamic change in the dispute resolution landscape. Increased efficiency, savings of time and

cost, greater party control and reduction in fractured relationships are but a few of the indicators attesting to its success. The developments outlined at the beginning of this article, such as law school and bar association activity, continue to attest to ADR's dramatic impact. Arguably, ADR is no longer an "alternative" but rather the mainstay of our civil justice system.

Both statistical and anecdotal evidence support the accomplishments of ADR. For example, a 2017 front page article in *The Wall Street Journal* examined court filings and noted the dramatic decrease in litigation, with a primary focus on tort cases. The article prominently mentioned the role of both mediation and arbitration in this phenomenon.

Significantly, numerous studies of and surveys about ADR use and its effectiveness have been conducted since the time of the 1998 and 2008 Quinnipiac/CBF symposia. Generally these studies have verified increase use of and satisfaction with ADR as well as continuing confidence in many of the various processes on the spectrum of dispute resolution mechanisms: the processes were reported to have achieved the promise of saving time and money but were also favored for other characteristics such as preserving relationships, providing for greater party control, and allowing for better alignment of the neutral's qualification with the dispute at hand. Other identified ADR benefits continue to be greater durability of the award or settlement achieved, greater confidentiality, and more opportunities for option building.

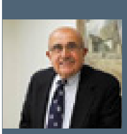
Continuing Challenges

Notwithstanding these positive developments and measures of success, it is clear that a number of challenges continue to lie ahead and must be deliberately addressed if ADR is to progress to its full potential. In addition to those mentioned earlier in this article, other challenges and opportunities are:

- Truly integrating ADR processes into the mainstream of our societal dispute solution systems, rather than considering them add-ons or alternatives.
- Emphasizing dispute *avoidance* as much as dispute *resolution.*
- Recognizing critical differences between commercial and business to business ADR and ADR in the consumer and employment field and thus developing appropriate procedures and protections for the latter which may not be needed in the former.
- Giving greater emphasis to ADR process design and seeking out and creating more flexible, tailor made, hybrid processes to address disputes, rather than simply selecting from menus of processes created by others.
- Building upon Connecticut's enactment of the Revised Uniform Arbitration Act by carefully considering and adopting the Uniform Mediation Act.
- Developing and utilizing a reliable quantitative and qualitative database to accurately evaluate ADR's effectiveness in terms of savings of time and money as well as the quality of justice and disputant satisfaction achieved.
- Examining options for more effective and reasonable **regulation** of ADR, particularly in the context of mediation, and making thoughtful and evidence based decisions on issues such as whether credentialing is appropriate and, if so, what standards shall be required.

While much has been made of the ADR "revolution" whether it was a quiet one or not, it appears that the ADR movement has been more evolutionary than revolutionary and has much further to go. But since the inception of the current ADR movement, even after fully considering the challenges yet to be addressed, there can be no doubt that the movement has achieved its goals and kept its promises.

And then some. **CL**



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Standards of Title Committee Approves a New Standard

By Ellen L. Sostman

The Special Committee on Standards of Title has approved a new proposed Standard, Standard 19.8 – Title Derived through Foreclosure Where Owner Is Known or Believed to Be Deceased at Commencement of Action. This Standard sets out the rule that a title derived through foreclosure where the owner of the property is known or believed to be deceased when the action is commenced is marketable if (a) all of the decedent's heirs or devisees were named as defendants in the action, or (b) the plaintiff obtained and published an order of notice pursuant to Conn. Gen. Stat. Sect. 52-69, or (c) the plaintiff named as defendants the known heirs and obtained and published an order of notice as to unknown heirs. The commentary can be summarized as follows:

Comment 1 addresses what standard does not cover: foreclosures that are commenced against a deceased owner named as defendant where there was no knowledge of his or her death, and foreclosures commenced against an owner who is properly named and served as a defendant, but who subsequently dies. In the first instance, any service made on the deceased owner is invalid and the foreclosure fatally flawed. In the second instance, where the death occurs after the recording of a lis pendens in proper form, the heirs or devisees of the owner who acquired title by his or her death are bound by the lis pendens.

Comment 2 notes the legal precept, discussed in Standards 13.1 and 13.2, that title to real property passes at death to the decedent's heirs or devisees. In the context of a foreclosure commenced after the death of the owner, that precept requires that all heirs or devisees of the decedent be joined as defendants. If a probate estate has been opened, the probate court finding of heirs or devisees may be used as the basis for naming and serving defendant title holders.

Comment 3 discusses the use of an order of notice pursuant to Conn. Gen. Stat. Sec. 52-69 where no estate was opened and the decedent's heirs or devisees are unknown. This comment sets the rule that second hand information, such as is obtained from an obituary, is not adequate, by itself, to identify all heirs with certainty. Title derived only through the use of such information to name and serve defendant title holders is not marketable.

Comment 4 addresses the final aspect of the rule set out in the head note: where it is possible to determine names and addresses of some heirs, they should be named and served as defendants, and then an order of notice must be obtained as to any unknown heirs.

The CBA bylaws require this summary of the new Standard to be published in the *Connecticut Lawyer.* Following publication of this article, there will be a 60-day comment period, during which any interested party is invited to submit comments. Any such comments can be e-mailed to the committee chair at esostman@catic.com. The committee will review all comments, make any revisions it deems appropriate, and will then present the proposed Standard 19.8 to the Board of Governors for final approval and publication.

The committee has also approved revisions of Standard 6.4, Conveyances by Power of Attorney, and Standard 6.5, Deed from a Fiduciary to such Fiduciary as Grantee. Standard 6.4 in particular has undergone substantial revision to reflect the adoption of the Connecticut Uniform Power of Attorney Act in light of its changes to presumptions and powers affecting powers of attorney, and it should be carefully reviewed for those changes prior to using or accepting a power of attorney as the basis for the execution of a conveyance of real property. In addition, the revision pulls into this Standard a reference to the rule governing entities using powers of attorney discussed in Standard 28.3.

Revisions to existing standards are not subject to a comment period or Board of Governor's approval. The revised Standards 6.4 and 6.5 are now fully in effect. **CL**

Ellen L. Sostman is a Senior Title Counsel at Connecticut Attorneys Title Insurance Company, a member of the CBA's Real Property Section's Executive Committee and Chair of the Standards of Title Committee. She has been a member of the Connecticut Bar since 1975.

Interpreting "Prior Knowledge" Clauses in Claims-Made Policies: When Knowing Too Much Can Hurt You

By Jeffrey Vita and Austin Moody

Claims-made insurance policies are designed to protect policyholders from liability for claims brought during the relevant policy period. From the perspective of the insurer, these policies have the distinct advantage of providing certainty that when the policy period ends without a claim having been made, the insurer will not be exposed to any further liability. However, the major drawback for the insurer is that it may face liability for the insured's wrongful acts that took place well before the policy period began. One way that insurers limit this exposure is to agree to provide coverage for past wrongful actions, but only where the insured did not know that it was likely to face a claim prior to the inception of coverage. Although the language varies among insurers, claims-made policies typically provide coverage only to the extent that "the insured had no knowledge of any suit, or any act or error or omission, which might reasonably be expected to result in a claim or suit as of the date of signing the application for this insurance."[1]

This seemingly simple language has been the subject of extensive litigation. Courts across the country frequently wrestle with the question of whether the insured had knowledge of any wrongful acts that were reasonably likely to result in a claim. As part of this determination, courts also must decide whether the relevant language excludes acts that the insured should have known would result in a claim or only those acts that the insured subjectively thought were likely to result in a claim. To help interpret this "prior knowledge" language, courts traditionally have applied one of two tests: 1) the subjective standard or 2) the objective standard. More recently, a growing number of jurisdictions, including Connecticut, have applied a new hybrid subjective-objective standard. This novel approach attempts to avoid the pitfalls of the other two tests and create a result that is fair to both the insured and the insurer.

The Subjective Standard

Under the subjective standard, the court examines what the insured actually knew at the time that it entered into the insurance contract. This standard is applied in a minority of jurisdictions and is most frequently employed when the policy does not contain the word "reasonably."[2]

For example, in *Estate of Logan by Fink v. Northwestern Nat. Cas. Co.,* the Wisconsin Supreme Court interpreted a professional liability policy that contained the following provisions:

> "1. Professional Liability and Claims Made Clause: To pay on behalf of the Insured all sums in excess of the deductible amount stated in the Declarations which the Insured shall become legally obligated to pay as damages as a result of CLAIMS *331 FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD:
> "(a) by reason of any act, error or omission in professional services....
> "PROVIDED ALWAYS THAT such act, error or omission or such personal injury happens:
> "(aa) during the policy period, or
> "(bb) prior to the policy period, provided that prior to the effective date of this policy:
> "(2) the Insured had no basis to believe that the Insured had breached a professional duty or committed a personal injury."[3]

In *Logan,* the court addressed whether the policy applied to a legal malpractice claim where an attorney failed to timely file tax returns for the estate. The attorney argued that he did not have the subjective belief that a claim would result from this failure while the insurer argued that this was irrelevant because an objective standard should apply. Despite explicitly rejecting the objective standard and applying the subjective standard, the court ruled in the insurer's favor, finding that the insured had a subjective belief that a claim was likely.[4] Notably, the policy in *Logan* did not include acts that might *reasonably* be expected to result in a claim. However, even this seemingly objective language has not prevented a minority of courts from applying a subjective standard. For example, in *Liebling v. Garden State Indem.,* the court applied the subjective standard even where the policy excluded coverage when the insured "reasonably could have foreseen" that any act, error, or omission would give rise to a claim.[5] The court held that even though the policy contained objective language, the parties must have intended for a subjective standard to apply: "[T]he 'reasonably could have foreseen' exclusion in Garden State's policy shall be deemed to mean that coverage may be denied only if the insured knew or believed that there had been a deviation from professional standards and that based on all the known circumstances it was likely that a malpractice claim would be made."[6]

The subjective standard is the most policyholder friendly test but represents the minority approach. This is likely due to the fact that the test suffers from two key deficiencies. First, as noted in *Liebling,* this standard frequently goes against the plain language of the policy. The words "reasonably could have foreseen" suggest an objective test. Secondly, it is often difficult to determine what the insured actually knew. It is much easier for the trier of fact to determine what a reasonable insured should have known in a certain situation.

The Objective Standard

The objective standard has been applied by a clear majority of courts that have considered the issue. Under the objective standard, courts will look to what a reasonable insured should have known in a given situation. They will also consider whether, given the insured's knowledge of the facts, the insured should have reasonably expected a claim to result.[7]

Courts generally apply this standard where the relevant language at issue includes the words "reasonably foreseeable," "reasonably believe," or similar language.[8] However, some courts have applied this standard even in the absence of this key policy language. Just as in the case of the subjective standard, the policy language is often instructive but it does not always dictate which standard the court will apply. For example, in *Ratcliffe v. Int'l Surplus Lines Ins. Co.,* the court held that an objective standard should apply where the policy did not provide coverage when the insured was aware of "any circumstances which might give rise to a claim being made..."[9] Even though the policy language seemed to suggest a subjective analysis, the court nevertheless refused to consider the subjective beliefs of the insured.[10]

The most common justification for the use of the objective standard is that the insured should not be given the unilateral power to decide whether a particular set of circumstances present a material risk of a claim. Instead, in order to properly manage risks, the insurer should be made aware of all circumstances that could objectively lead to a claim.[11]

Subjective-objective Standard

While the objective standard remains the majority position, in recent years, many courts, including Connecticut courts, have applied a hybrid two-pronged subjective-objective standard. Under this approach, the court first "asks the subjective question of whether the insured knew of certain facts and then asks the objective question of whether such facts could reasonably have been expected to give rise to a claim."[12] Courts that have adopted this approach argue that it represents the cor-

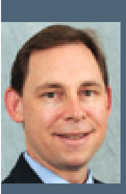
rect interpretation of the plain language of most prior knowledge exclusions and that it avoids some of the problems caused by the other two standards.

First, most prior knowledge exclusions are worded similarly to the following: the insurance coverage applies, provided that "the insured had no knowledge of any suit, or any act or error or omission, which might reasonably be expected to result in a claim or suit as of the date of signing the application for this insurance."[13] Courts that apply the subjective-objective standard divide this language into two separate clauses. The first condition in the exclusion is satisfied if the insured had actual knowledge of the relevant suit, act, error, or omission.[14] This is a purely subjective test that measures what the insured actually knew at the time that it completed the insurance application. If the insured had no subjective knowledge of the facts leading to the claim, coverage will not be excluded. However, if the insured did have subjective knowledge of these facts, the court will then consider the second condition. The second condition is satisfied if "the suit, act, error, or omission *might reasonably be expected* to result in a claim or suit."[15] This is purely an objective standard. It does not require that the insured actually expected a claim or suit. It only asks whether a reasonable professional in the insured's position might expect a claim or suit to result. This two-pronged analysis is purported to be a more accurate interpretation of the plain language of the policy. However, it is also applied in situations where the language does not clearly call for such an approach.[16]

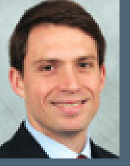
Although Connecticut appellate courts have yet to weigh in on the issue, multiple superior courts and the United States District Court for the District of Connecticut have applied the subjective-objective standard.[17] These courts have touted the two-pronged approach as avoiding the pitfalls of the other two approaches: "the subjective-objective approach is sensible because it avoids the problems that might result from applying a purely subjective approach (e.g., 'encouraging disingenuous, after-the-fact justifications') or a purely objective approach (e.g., making a policyholder 'accountable for matters he did not know about')."[18] This "balanced" approach appears to be the real reason that the subjective-objective standard has been gaining traction in recent years. It is the only approach that considers the interests of both parties. The insured is not allowed to unjustifiably claim ignorance, but is held to a reasonable person standard when it comes to anticipating a claim. As a result, it would not be surprising to see the subjective-objective approach continue to gain traction and eventually become the majority position.

Conclusion

Whether an insured is held to have prior knowledge of a likely claim or suit in a claims-made policy setting can be largely influenced by the law of the relevant jurisdiction and the precise wording of the policy at issue. Although Connecticut insureds can expect the subjective-objective approach to continue to gain momentum in the state, they should endeavor to secure a policy that avoids words such as "reasonably" or, at the very least, establishes a clear two-pronged approach. However, regardless of the language of their policies, policyholders should proactively report all potential claims as soon they become aware of any actions, errors, or omissions that could potentially lead to covered liabilities. **CL**



Jeffrey Vita is a founding Partner of Saxe Doernberger & Vita PC, and has more than two decades of experience in pursuing insurance recoveries and crafting creative risk transfer solutions for his policyholder clients, both corporate and individuals. He routinely counsels clients on insurance and risk management issues related to the construction, manufacturing, power and energy, transportation, financial, healthcare, and real estate industries, as well as the municipal sector.



Austin D. Moody began his career as a Summer Associate with SDV and currently focuses his practice on complex litigation, with a concentration in life insurance coverage matters.

Notes

1. *See, e.g., Colliers Lanard & Axilbund v. 1 Lloyds of London,* 458 F.3d 231, 234 (3d Cir. 2006).
2. *Am. Special Risk Mgmt. Corp. v. Cahow,* 286 Kan. 1134, 1147, 192 P.3d 614, 623 (2008).
3. 144 Wis. 2d 318, 337, 424 N.W.2d 179, 185 (1988).
4. *Id.* at 338.
5. 337 N.J. Super. 447, 462-63, 767 A.2d 515, 523 (App. Div. 2001).
6. *Id.* at 462.
7. *See, e.g., Nat'l Union Ins. Co. of Pittsburgh, Pennsylvania v. Holmes & Graven,* 23 F. Supp. 2d 1057, 1066 n.7 (D. Minn. 1998).
8. *Cahow,* 286 Kan. at 1149.
9. 194 Ill. App. 3d 18, 26, 550 N.E.2d 1052, 1057 (1990).
10. *Id. See also International Ins. Co. v. Peabody Intern. Corp.,* 747 F.Supp. 477, 482 (N.D.Ill.1990) (question on insurance application asking whether insured was " 'aware of any circumstances, occurrence or condition ... which may result in the ... assertion of a claim' " was deemed to be objective, not subjective).
11. *Mt. Airy Ins. Co. v. Thomas,* 954 F.Supp. 1073, 1079 (W.D. Pa.1997).
12. *Philadelphia Indem. Ins. Co. v. Atl. Risk Mgmt., Inc.,* No. CV064018752, 2009 WL 2783073, at *6 (Conn. Super. Ct. July 30, 2009)
13. *See, e.g., Colliers Lanard & Axilbund v. Lloyds of London,* 458 F.3d 231, 233 (3d Cir. 2006).
14. *Id.* at 237.
15. *Id.*
16. *See, e.g., Selko v. Home Ins. Co.,* 139 F.3d 146, 151 (3d Cir. 1998) ("provided ... the insured neither knew nor believed that the insured had breached a professional duty").
17. *Philadelphia Indem. Ins. Co,* No. CV064018752, 2009 WL 2783073, at *6-7; *Vertrue, LLC v. Hiscox, Inc.,* No. FSTCV136019949S, 2015 WL 6405812, at *18 (Conn. Super. Ct. Sept. 17, 2015); *Maher & Williams v. ACE Am. Ins. Co.,* No. 3:08CV1191 JBA, 2010 WL 3546234, at *11 (D. Conn. Sept. 3, 2010).
18. *Philadelphia Indem. Ins. Co.,* No. CV064018752, 2009 WL 2783073, at *7 (quoting Selko at 152).

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Eight Reasons to Stop Hiding From Your Pro Bono Coordinator and Sign Up for Pro Bono Opportunities

Ndidi N. Moses

By Ndidi N. Moses

Ndidi N. Moses is the Vice President of the CBA and chair of the Pro Bono Committee.

In every publication of *Connecticut Lawyer,* the Connecticut Bar Association publishes an article authored by a member of the bar, encouraging other CBA members to sign up for a pro bono opportunity. Most attorneys have settled somewhere between leading the charge to sign colleagues up for pro bono opportunities, and hiding under their desks when the pro bono coordinator comes by with the sign-up sheet. If you are in the group of people who still need convincing that pro bono work is good for you, your professional development, and your community, we dedicate this article to you—so here are eight reasons why you should do pro bono work.

No Haggling About the Bill

Most lawyers will agree that getting a client to pay a bill can be more stressful than providing the legal representation itself. Assisting pro bono clients removes this source of stress. Instead of worrying about billing hours and documenting your time, you can focus your attention on other more important matters, like representing your client. Besides, the real reward is the positive difference you can make in someone's life. This is not to say that you will not get any monetary compensation by anyone. In fact, depending on the type of case, if successful, many pro bono attorneys may recoup their legal fees from their opponent at the conclusion of the case.

A Good Rollercoaster Ride

From the time you take on a pro bono case until its conclusion, your emotions can shift from excitement, to outright fear. But, by the end of the experience, you will have a strong sense of accomplishment and pride for being able to complete a task that many refused to undertake. Indeed, the first time I handled a pro bono case, it felt like that first drop on the rollercoaster ride, when your stomach falls out of your body. I had the feeling of looking out over the entire theme park, appreciating for the first time the gravity of what I had taken on, and while panicking on the inside, I tried to keep calm on the outside. The fear quickly subsided because I became so engrossed in the pro bono case that I had very little time to think about my own fears. I found myself focusing more on doing a good job for my client. Before I knew it, the case was over, that feeling of fear had melted into a sense of accomplishment and pride, and I was signing up for another pro bono opportunity.

Contentment and Satisfaction

Studies show that those who help others feel a sense of accomplishment and self-worth causes them to be happier, and take better care of themselves. In addition, there are surveys that show that lawyers who do public service work are happier lawyers. Undoubtedly, it is because pro bono work gives lawyers a sense of accomplishment and pride. You are making a difference in someone's life, and that feeling can be transformative.

Better Lawyer and Citizen

Pro bono work is an excellent source of professional development for lawyers. It forces lawyers out of their comfort zones, allowing them to sharpen their skills, and introduces them to new legal issues, theories, and experiences. Pro bono cases encourage lawyers to think creatively and craft novel resolutions for their clients' unique issues. This is because pro bono clients are from a diverse cross section of our society, with unique backgrounds, and layered legal problems. Unraveling the legal issues can feel like a law school exam, but it gives attorneys the opportunity to sharpen their legal skills. Whether it's being able to actually interact with one's client directly, first chair a trial, or argue before a judge, for junior lawyers, pro bono cases provide the chance for hands on experience they often cannot get elsewhere. This is mostly because, unlike paying clients, pro bono clients tend to be more flexible with who works on the file.

Brownie Points from Judges

Judges will remember you and appreciate you for your services. The rising cost of legal services has many citizens representing themselves. The large number of pro se litigants puts a tremendous burden on the judicial system, especially judges and their law clerks. Front line judicial staff members are also forced to take on the responsibility of helping pro se litigants navigate the legal process, while not crossing the line into offering legal advice. It is a delicate balancing act, and one that can be alleviated by a lawyer's offer to represent a litigant pro bono.

Someone's Hero

The legal system is a confusing and daunting place for lawyers. So you can imagine how intimidating the legal process must be for pro

(continued on page 40)

Charles D. Ray is a partner at McCarter & English LLP, in Hartford. He clerked for Justice David M. Shea during the Supreme Court's 1989-1990 term and appears before the Court on a regular basis. Matthew A. Weiner is Assistant State's Attorney in the Appellate Bureau of the Office of the Chief State's Attorney. ASA Weiner clerked for Justice Richard N. Palmer during the Supreme Court's 2006–2007 term and litigates appellate matters on behalf of the State.

Any views expressed herein are the personal views of DASA Weiner and do not necessarily reflect the views of the Office of the Chief State's Attorney and/or the Division of Criminal Justice.

What's the Harm? *Brooks v. Powers,* 328 Conn. 256 (2018) and the Identifiable Person, Imminent Harm Exception to Governmental Immunity

By Charles D. Ray and Matthew A. Weiner

"It was...a dark and stormy night...[v]ery, very dark, and very stormy," is how one of the defendants in *Brooks v. Powers,* 328 Conn. 256 (2018), described the evening that led to the death of Elsie White. The issue in *Brooks* turned on whether the defendants—two constables in the town of Westbrook—had a legal responsibility to do more to prevent the tragedy that occurred after the storm had passed.

On June 18, 2008, the two constables were scheduled for boat patrol from 6:00 p.m. until 10:00 p.m. However, when they arrived for work, a severe storm had rolled into Westbrook. Because of the storm, the constables could not take the boat onto the water for regular patrol. Instead, "they were to patrol the marinas and other parts of town, ensure that the boat was ready to go out if necessary, and respond to any emergencies that arose."

When the constables "arrived for work, they punched in, got into a cruiser, and drove to [a Dunkin' Donuts]." They then drove to the marina to inspect the boat; specifically, to make sure that the bilge pumps—which were brand new—were working. Without getting out of the cruiser, the constables confirmed that the boat was fine.

After visually inspecting the boat, the constables drove to a convenience store "to get some snacks." While one constable was inside the store and the other was waiting in the cruiser, the town tax collector pulled into the store's parking lot. The tax collector, who "appeared concerned," told the constable in the cruiser "that there was a woman who needed medical attention in a field just up the road. She said that the woman was wearing a shirt and pants, without a coat or any other rain gear, and was standing with her hands raised to the sky. At that time, [although it was still light outside], it was raining heavily and there was thunder and lightning. The field was about one-half mile from the ocean and less than one-half mile from the [convenience store]."

The constable told the tax collector that he would take care of the situation. As a result, the tax collector "drove away under the impression that she no longer needed to call 911 because the constable was going to take care of [the matter]."

The constable did call 911. He told the dispatcher that "'a person stopped by and they said there's a lady up on [Boston Post Road] up by Ambleside [Apartments]...standing in a field with a raincoat on, looking up at the sky.' While [he] and the dispatcher chuckled over this, he told the dispatcher that '[t]hey think she might need medical help,' to which the dispatcher replied, '[g]eez, do you think?'" The constable then asked the dispatcher to send one of the other constables because he couldn't "leave the boat." In response to the dispatcher's inquiry about the woman's location, the constable replied that she was near the Ambleside Apartments. "'She should be the person standing out in the rain,' he said, chuckling, before saying goodbye."

The dispatcher never sent another constable to the field. She forgot to.

The constables, meanwhile, drove back to the marina. Without getting out of their cruiser, they checked that the new bilge pumps were still pumping.

A couple hours later, the constables finally drove along Boston Post Road past the field where the tax collector had seen the woman. They turned their spotlight on the field, which had knee-high grass, and didn't see anyone. When asked in connection with an internal affairs investigation whether he had gotten out of the cruiser, one of the constables responded: "No. I wouldn't go

out and walk through a field in the pouring rain."

On the morning after the storm, a fisherman found Elsie White's body washed up among large rocks, less than a mile from the field in which she was last seen. The cause of her death was accidental drowning. Although the police incident report stated that the "investigation did not conclusively pinpoint a time when White entered the water," evidence suggested that she had not entered the water until after 7:00 a.m. on June 19.

After White's death, the administratrix of her estate, Bernadine Brooks, sued the two constables, alleging that their actions were negligent and caused White's death. The defendants moved for summary judgment, arguing that they could not be held liable based on the immunity afforded municipal employees for their discretionary acts. The plaintiff countered that the defendants' conduct fell within the identifiable victim, imminent harm exception to that immunity.

The source of the parties' dispute, therefore, was General Statutes § 52-557n. The statute provides that a municipal officer, acting within the scope of his or her official duties, cannot be held liable for negligent acts or omissions that require the exercise of judgment or discretion. The "immunity reflects a value judgment that—despite injury to a member of the public—the broader interest in having government officials and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury." An exception to this immunity "applies when the circumstances make it apparent to the...officer that his or her failure to act would be *likely* to subject an identifiable person to *imminent* harm." (Emphasis added.)

The trial court agreed with the defendants that they were entitled to summary judgment and granted their motion. It concluded that, given the defendants were only informed that White was standing in a field, there existed no genuine issue of material fact regarding whether the harm to which White was exposed—drowning in Long Island Sound—was evident to the defendants. In addition, the trial court concluded that, because the uncontroverted evidence established that the 911 dispatcher had told the constables that she would send someone else to check on the woman in the field, "it could not possibly have been apparent to the defendants that their failure to check on her themselves would subject White to a risk of imminent harm."

The appellate court, in a 2-1 decision, reversed. Judge Gruendel, writing for himself and Judge Mihalakos, concluded that there existed a genuine issue of material fact as to whether White was an identifiable victim subject to imminent harm. The appellate court majority framed the issue as whether a reasonable factfinder could conclude that general "harm from the storm"—not just the specific harm of drowning—was apparent to the defendants. Then Judge (now Justice) Mullins dissented. He concluded, among other things, that White's drowning was not of the same general nature as the risk of harm attendant to standing outside in a field during a severe thunderstorm. Without evidence tying White's drowning to her presence in the field, the plaintiff could not prevail. See *Brooks v. Powers,* 165 Conn. App. 44 (2016).

On appeal to the Supreme Court, the defendants urged the court to adopt Judge Mullins' conclusions and reasoning. Justice Palmer, writing for Chief Justice Rogers, Justice McDonald, Justice Robinson, and Justice Espinosa, did exactly that.

The majority agreed that the defendants were entitled to summary judgment in their favor for two reasons. First, as Judge Mullins had concluded, "White's drowning was far too attenuated from the risk of harm created by the storm for a jury reasonably to conclude that it was storm related..." Here, the majority determined that, applying basic negligence principles, the evidence could not establish that the defendants owed White a legal duty because her drowning in Long Island Sound was not a reasonably foreseeable result of the defendants' conduct. Thus, the plaintiff's negligence claim failed even without consideration of the higher burden imposed by General Statutes § 52-557n when a defendant is a municipal agent.

Second, the majority agreed with the defendants that "White's drowning was too attenuated from the risk of harm created by the defendants' conduct for a jury reasonably to conclude that it was imminent." For the majority, it "strains credulity to conclude that the defendants, in failing to respond to a report of a women out in a field during a storm—and instead, relaying that report to a 911 dispatcher, albeit in a lighthearted or even flippant manner—ignored a risk that the woman would drown in waters one-half mile away from the field, most likely the next day, after the storm presumably had passed." Although the majority could imagine scenarios in which an individual's presence in a field during a storm could give rise to a duty for a police officer to take immediate steps to prevent imminent harm—such as if the person were a child—an adult standing outside during a summer storm was not one of them.

Justice Eveleigh, writing in dissent, disagreed with the majority based in significant part on a different interpretation of the harm that faced White, and of which the constables should have been aware. For Justice Eveleigh, the storm "was only one factor that should have weighed toward the defendants' decision to respond; the real danger that White faced was her own disregard for her safety, which evinced a reasonable likelihood that she was suffering from mental illness." Framed in this manner, the harm that befell White was not too attenuated because "[t]he defendants had information...which should have made it apparent that White was in peril of immediate harm *from herself*...The only information apparent to the defendants at the time was that she was acting strangely, improperly dressed, in the middle of a field during a thunderstorm; facts which everyone can agree are inherently dangerous. The risk is not that White could be hurt by the storm but, rather, that she could be trying to hurt herself." (Emphasis in original.) That danger was reported to the defendants by the tax collector, to which they responded by

(continued on page 40)

The following highlights are provided by the publishers of the *Connecticut Law Reporter*. For copies of these opinions or information about the reporting service, call (203)458-8000. All citations are to the weekly edition of the *Connecticut Law Reporter*.

Highlights from Recent Superior Court Decisions

Animal Rights

A court lacks subject-matter jurisdiction over a habeas corpus petition brought by an animal rights organization seeking the release of three elephants owned by what appears to be a private zoo, both because the plaintiff lacks standing to prosecute the petition as there are no allegations of a significant relationship between the petitioner and the animals, and because the petition is wholly frivolous on its face. The petitioner argues that the elephants have emotional, social, and intellectual lives sufficiently comparable to those of humans to be accorded judicially-recognized, common-law liberty rights. *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.,* 65 CLR 647 (Bentivegna, James M., J.).

The Dog Bite Statute does not provide relief for dog "keepers," including a person caring for another person's dog who qualifies as a "keeper." *Chao v. Ackley,* 65 CLR 12 (Calmar, Harry E., J.). The opinion holds that whether an employee of a company providing temporary home-care services for dog owners, who was bitten by a dog during the employee's first caregiving visit to the owner's home, constituted a "keeper" within the meaning of the Act, and therefore whether the employee could recover under the Act from the owner, presents an issue of fact which cannot be resolved on the owner's motion for summary judgment.

Bankruptcy and Foreclosure

A motion to open a judgment of strict foreclosure does not stay the running of the law day until a hearing is commenced on the motion. Therefore, if the law day is reached before a hearing is held title passes to the mortgage holder and can no longer be opened pursuant to Conn. Gen. Stat. § 49-15 (prohibiting the opening of a foreclosure judgment "after the title has become absolute in any encumbrancer"). *Cornelius v. Noble,* 65 CLR 891 (Robaina, Antonio C., J.).

Contrary to its express terms, the state statute that automatically opens judgments of strict foreclosure "upon the filing of a bankruptcy petition by the mortgagor," Conn. Gen. Stat. § 49-15(b), applies only if the federal petition did in fact result in an automatic federal stay. *U.S. Bank, N.A. v. Morawska,* 65 CLR 792 (Truglia, Anthony D., J.). The matter involves a bankruptcy petition for which no automatic stay went into effect pursuant to the provision of the 2005 Bankruptcy Abuse Protection Act that eliminates any automatic federal stay if "two or more single or joint [bankruptcy] cases of the debtor were pending within the previous year but were dismissed." For another a recent opinion reaching a similar conclusion based on a somewhat different rationale, see *Aurora Loan Services, LLC v. Bracey,* 65 CLR 392 (Moore, John D., J.).

Civil Procedure

Dur-A-Flex, Inc. v. Dy, 66 CLR 23 (Moukawsher, Thomas G., J.), holds that a trial court's authority under the Practice Book to close a court room during a civil proceeding, Practice Book § 11-20, does not include authority during a trade secrets case to bar a party from attending trial while confidential information by an opponent is being presented; the court's authority in such a situation is limited to excluding nonparties.

The federal statute tolling the statute of limitations for state causes of action brought in federal court pursuant to federal supplemental jurisdiction over state claims joined with federal causes in a federal action, 42 U.S.C. § 1367(d), does not actually toll a state limitations period but rather merely grants an additional 30 days to commence such an action following a federal dismissal. The plaintiff unsuccessfully argued that following a federal dismissal a claimant has the remaining balance of the original limitations period plus an additional 30 days to reassert the claim in state court. *Arciuolo v. Tomtec, Inc.,* 65 CLR 854 (Wahla, M. Nawaz, J.).

Welsh v. Martinez, 66 CLR 29 (Moll, Ingrid L., J.), holds that following the granting of an application for execution of an outstanding judgment and an order in aid of the execution, as authorized by Conn. Gen. Stat. § 52-356a, neither the execution nor the order need be served on the judgment debtor; the only limitation on immediate implementation of the execution and order is that the judgment debt remain unsatisfied.

Law of Lawyering

Imbruce v. Johnson, 66 CLR 71 (Jacobs, Irene P., J.), holds that a plaintiff's assertion of a legal malpractice claim waives the attorney/client privilege with respect to communications between the client and the new counsel while the prior litigation matter was ongoing, because whether advice by the new counsel caused any of the plaintiff's alleged loss arising from the prior matter is at issue in the current malpractice action. The opinion denies the new counsel's motion to quash and for a protective order.

The absolute litigation privilege extends to post judgment proceedings such as a law firm's prosecution of an ejectment order against a tenant in a mortgage foreclosure action, even though the conduct occurred

after the entry of the judgment. *Gordon v. Eckert Seamens Cherin & Mellot, LLC,* 65 893 (Wilson, Robin L., J.). The plaintiff, a former tenant, has brought an action for replevin, civil theft and conversion to recover for the removal of personal property from the premises at the law firm's direction.

Tax Law

O'Brien-Kelley, Ltd v. Goshen, 65 CLR 522 (Bentivegna, James M., J.), holds that a municipality's statutory right to recover all fees and costs incurred in defending "any civil action brought as a result of...an alias tax warrant," Conn. Gen. Stat. § 12-140, is not triggered by a voluntary withdrawal of an action. This matter involves a claim by a taxpayer against a municipality and state marshal for the marshal's alleged wrongful retention of an excess fee for executing a warrant. The opinion denies the municipality's motion for attorney fees filed after the plaintiff had voluntarily withdrawn the claim against the municipality.

A voluntary payment of personal property taxes terminates a property owner's right to contest a property assessment, even if the payment was mistakenly made by the previous owner following a recent, pre-assessment sale to the taxpayer which included an adjustment for anticipated property taxes. *100 Berlin Holdings, LLC v. Cromwell,* 65 CLR 761 (Aronson, Arnold W., J.T.R.). Neither the seller nor the buyer notified the tax assessor of the sale, resulting in the tax assessor delivering the personal property declaration to the seller.

Torts

A daycare center owes a special duty of care both to children in its care, and to the parents of such children. *Seagull v. Cardillo,* 65 CLR 883 (Truglia, Anthony D., J.). The opinion holds that allegations that the defendant withheld from the parents of a child that died while in its care information that a possible cause of the death was the business's unauthorized administration to the child of the over-the-counter drug commonly known as Benadryl, are sufficient to state a claim for the negligent infliction of emotional distress on the parents.

Connecticut follows the minority rule that a plaintiff in a vexatious litigation case in which the claimant has prevailed on some but not all theories of recovery has the burden of proof on the issue of the proper allocation of fees between the successfully and unsuccessfully prosecuted theories. *Greene v. Keating,* 65 CLR 746 (Lee, Charles T., J.). The opinion holds the vexatious litigation plaintiff failed to carry this burden, resulting in a judgment for the claimant but an award of no damages.

The provision of the statute that authorizes a hospital to release a patient's medical records to a third party only upon the written request of the patient, limiting such a release with respect to stored tissue samples to "a patient's designated licensed institution, laboratory or physician," Conn. Gen. Stat. § 19a-490b(a), may not be avoided in a medical malpractice action by obtaining an order requiring that the plaintiff/patient provide defense counsel with a written authorization with a blank designation for the recipient. The defense apparently is attempting to prevent or at least delay disclosure of an expert preliminarily retained to review the tissue samples. *DelGallo v. Hartford Hospital,* 65 CLR 829 (Noble, Cesar A., J.).

Trade Regulation

Allegations that a home fuel oil company intentionally failed to report an oil spill while replacing a residential oil tank, in violation of the statute requiring that oil spills which pose "a potential threat to human health or the environment" be immediately reported to DEP, Conn. Gen. Stat. § 22a-450, motivated by the defendant's desire to avoid or minimize remediation costs, are sufficient to state a claim for a violation of CUTPA, Conn. Gen. Stat. § 42-110a et seq. *Nelson v. Valley Energy, LLC,* 65 CLR 455 (Brazzel-Massaro, Barbara, J.).

The "ascertainable loss" element of a CUTPA claim does not require proof that the defendant incurred the claimed loss because of a reliance on the alleged unfair practice; that is, a plaintiff can meet the ascertainable loss element without proving that the loss was incurred because of the plaintiff's reliance on the unfair conduct which is the basis of the plaintiff's claim.

Konikowski v. Stephen Cadillac GMC, Inc., 65 CLR 634 (Moll, Ingrid L., J.). The opinion holds that a plaintiff asserting a claim against a car dealership for selling a vehicle at a price above its advertised price, in violation of a CUTPA regulation, may recover the difference in price even though there is no evidence that the plaintiff relied on the regulation when agreeing to price.

(continued on page 40)

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That's a Wrap

By Aidan R. Welsh

Aidan R. Welsh is chair of the Connecticut Bar Association Young Lawyers Section for the 2017-2018 bar year. She is a partner at Schoonmaker George & Blomberg PC in Greenwich, where she handles complex divorce and family law actions involving significant assets and client custody issues. Attorney Welsh frequently speaks on issues related to family law for the CBA and has authored several publications in this field. She graduated with honors from UConn School of Law in 2006.

What a way to end my year as chair of the Young Lawyers Section. On May 21, 2018, I found myself, along with my six-year-old son, walking up the marble steps of our country's most impressive courthouse. On this day, I, along with 30 other members of our bar, were scheduled to be sworn-in before the United States Supreme Court. This event was the culmination of my journey as chair, but let's start at the beginning.

If you read my first article as chair in *Connecticut Lawyer* then you know that I have been an active member of the Connecticut Bar Association for many years. I joined immediately after graduating from law school and several years into practice I was appointed to the executive committee of the Young Lawyers Section. I initially served as co-chair of the YLS Family Law Committee and moved up through the ranks of director and officer. Seven years later, I was looking up *Robert's Rules of Order* for the 100th time, ready to commence my first meeting as chair.

My main goal was to increase opportunities for young lawyers to get involved in our local and legal communities, and organize programs that would improve and further hone lawyers' legal skills. When I look back on this past year, I am certain this goal was met and want to share our successes with all of you as we as a section now look to next year and beyond.

We started the year with our Annual Executive Leadership Retreat for members of the executive committee. This retreat is designed to plan our bar year and teach our new leaders how to lead. This process is essential for our success as a section. Justice D'Auria of the Connecticut Supreme Court joined us at our luncheon. He spoke with our future leaders about the importance of mentorship and pro bono involvement—two key pillars of the Young Lawyers Section.

During and after the leadership retreat we got right to work planning our year. Part of the planning revolved around creating and organizing various types of networking events for young and senior lawyers. These events were led by my wonderful team of directors and committee chairs. Early on in the bar year, my pro bono director, Melanie Dkyas, ran our annual Pro Bono Fair in October. The organization of this event changed this year to help drive attendance from more lawyers in the community. We worked hand in hand with Quinnipiac University School of Law as well as the University of Connecticut School of Law to hold two separate events on the same day, highlighting local nonprofit organizations needing pro bono assistance from lawyers. This was a perfect opportunity to introduce lawyers to the many opportunities in the legal community to get involved as well as provide a networking opportunity to mix and mingle with leaders of the bar.

This year, we again ran our Tasting Series, a social networking event held at a local brewery and vineyard. Most recently, we organized and held two golf events. On May

16, we held our Annual Women's Professional Golf Event sponsored by the Women in the Law Committee. This is always a favorite event among lawyers. It provides an opportunity to work with a pro and participate in a nine-hole tournament. We also turned our year-end event into a casual golf tournament to encourage involvement in our section, and the weather was perfect.

In addition to providing networking opportunities for young lawyers to get involved in our legal community, another major goal was to create opportunities to give back to our local communities. At the helm of this task was my Public Service Director Joanna Kornafel. Attorney Kornafel organized several different clothing and supply drives for the benefit of several local organizations. In December, with the sponsorship of Faxon Law Group, we held a widely attended holiday event, which we used as a drop off location for collections. We collected numerous boxes of donations for My Sister's Place, a nonprofit organization located in the Hartford area, and raised monetary donations for CT Coalition to End Homelessness. Most recently at our year-end meeting and golf tournament, we collected work clothes donations for Dress for Success and a veterans' organization. One of my personal favorite events of the year was our project with Habitat for Humanity. The CBA teamed up with other organizations for the day to help build homes in Hartford. Nothing feels better than swinging a hammer and feeling like you truly accomplished something for the benefit of someone else.

Probably the most important and time consuming task the YLS performs during the year is the planning of continuing legal education programs for the association. My fantastic CLE directors, Kyle McClain and Joshua Devine, skillfully organized our CLEs and worked with all of my wonderful co-chairs to put on successful and well-attended educational programs. It is our duty as lawyers to always continue to learn and improve our skills. This is true for all lawyers, not only for young lawyers. It is a great task that the YLS puts on all these wonderful programs.

One of my final programs of the year was the US Supreme Court Swearing-in. Without the time and dedication of Suphi Philip, Shari Shore, and the CBA Staff this event would not have been possible. More than 30 members of the Connecticut bar traveled to Washington, DC to be sworn-in on May 21, 2018. This was an incredibly inspiring and special day. I asked my young son to join me, figuring he would be impressed by the building and interested in this learning experience with mom. Perhaps I thought we needed another lawyer in the family! (We already have seven and that is just counting close family!) No matter how bored he might have been, he looked proud, and that made the experience worth it.

May 21 was decision day. To us in Washington, DC this meant seven out of the nine justices were present for our swearing in and we had the opportunity to hear Justice Gorsuch render his decision in the case of *Epic Systems v. Lewis,* a decision that may forever alter employee/employer relationships. If that was not exciting enough, out came Justice Ginsburg wearing her infamous dissent collar. She let the Court and all of us sitting there know what she thought of the majority's opinion.

As we exited the grand courtroom, much to our surprise, Justice Ginsburg's clerk announced that she wanted to meet with us all. When she walked in, the silence in the room was deafening. I'm not sure I have ever experienced such a reaction to one single person. She casually talked to us about her decisions, her walk on the red carpet at the premier of *RBG,* and had us all in stitches about her comments on Stephen Colbert. Impressive is an understatement. After this once in a lifetime opportunity, we were joined at our luncheon by Sam Simon, Senator Blumenthal's chief counsel. He shared with us his experience on the hill as a government lawyer in the Trump era, and told us about his role as chief counsel to an active senator. It was a fitting end to the event to hear from a young lawyer who has found great success at our nation's capital.

The moment of walking up those marble steps and joining the ranks of some of the most well-known lawyers of our time is a memory I will not forget. More importantly, what I will not forget is my time and experience working with the Young Lawyers Section. As I said in my first article, I truly would not be where I am today in my career without this experience. I would like to take the opportunity to thank all the leaders who came before me and mentored me, and all the leaders who will come after me. Leaders are born out of this section of the bar. **CL**

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Time to Go Pro Bono

(Continued from page 33)

se litigants. Very few people arrive at the point of self-representation willingly. Often times, there is a complicated story that preceded the decision to represent oneself. This story is normally filled with tales of frustration and feelings of desperation. Self-representation is often the last resort. When a lawyer enters the case, the lawyer becomes the hero because the lawyer can reduce the client's anxiety and stress by guiding them through the legal process and helping them obtain a favorable result.

One Step Closer To Stardom

Think about how moving Atticus Finch was in *To Kill a Mocking Bird,* or Thurgood Marshall in *Marshall.* Inadequate legal assistance is the leading cause of injustice in our society. Lawyers can help uncover massive injustices and latent legal issues in our society by representing underprivileged clients. When these injustices are revealed, the lawyer who reveals them paves the way for real change in our society. Moreover, the lawyer who blazed this trail of change can become the face of social movements to continue to effectuate change.

It's the Right Thing to Do, and It's Easy to Get Started

The CBA and American Bar Association have a program called, Free Legal Answers, an online pro bono initiative. It is a virtual legal advice clinic for low-income Connecticut residents. It is also an easy way to get started doing pro bono work. To find more about Free Legal Answers, contact the CBA, or visit ctbar.org/FreeLegalAnswers. **CL**

Supreme Deliberations

(Continued from page 35)

trivializing the situation in a phone call (rather than a police radio call that would have alerted others) to the dispatcher, providing the dispatcher an inaccurate report, and apparently lying to the dispatcher about their ability to leave the boat.

How did the majority respond to Justice Eveleigh's analysis? By pointing out that any claim that the imminent harm arose from something other than the storm (such as from White, herself) was not properly before the court. Because it was "undisputed that the plaintiff's claim—as advanced in the trial court, in the Appellate Court and in this court—consistently has been that the defendants should have been aware that White was exposed to a serious risk of harm *from the storm,*" the majority deemed it improper to address an argument first raised at such a late date. (Emphasis in original.)

To be sure, reading the description about what the constables did—and didn't do—on the evening of June 18, 2008, made our blood boil. But, to its credit, the majority confined itself to the claims raised by the parties, separated bad facts from the law, and reached the outcome compelled by precedent. **CL**

Highlights

(Continued from page 37)

Neither attorneys' fees incurred in defending any law suit, nor fees incurred to prosecute a CUTPA claim, constitute a "loss of money or property" within the meaning of CUTPA; therefore, neither type of damages may be relied upon to satisfy the "ascertainable loss of money or property" element of a CUTPA claim. *Saporoso v. Connective Wireless, Inc.,* 66 CLR 25 (Shapiro, Robert B., J.).

Unemployment Compensation

A trial court lacks the authority to vacate a decision by the Employment Security Board of Review to dismiss an appeal from a denial of an application for employment benefits made on the procedural grounds that the applicant had failed to call in to the Employment Security Appeals Office to initiate a scheduled telephone hearing. *Cousins v. Administrator*, Unemployment Compensation Act, 65 CLR 670 (Ecker, Steven D., J.). The applicant in this case claims to have mistakenly believed that the call would be initiated by the Division and waited two days before following up to determine why the hearing had not been held. The application was summarily denied based on the Division's general practice of denying all appeals following an applicant's failure to attend a scheduled hearing unless a request to open is made on the same day as the scheduled hearing.

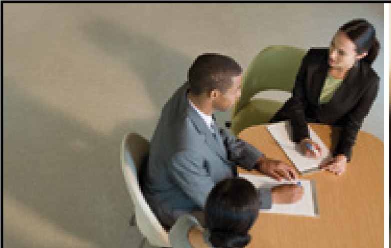
Workers' Compensation Law

King v. Volvo Excavators, AB, 65 CLR 8 (Cole-Chu, Leeland J., J.), holds that the 2017 amendment to the Products Liability Statute eliminating the exclusion of claimants entitled to receive workers' compensation benefits from the Act's general ten-year repose period and substituting instead the Act's fixed ten-year statute of repose, P.A. 17-97, amending Conn. Gen. Stat. § 52-577a(c), does not apply retroactively to injuries incurred before the Act's October 1, 2017 effective date. Note, however, that while it appears that the amendment was intended to increase the statute or repose for workers' compensation benefits, it may have reduced the period in situations in which a product's "useful life" is less than ten years.

Zoning

Statements made during a public hearing on a zoning permit application are subject to the absolute litigation privilege. *Priore v. Haig*, 65 CLR 787 (Povodator, Kenneth B., J.). The opinion holds that statements made by a citizen challenging the credibility of the applicant are absolutely privileged.

An ordinance allowing "customary home occupations carried on entirely within the dwelling unit" applies only if all phases of a business occur within the confines of a residence. *Watson v. Glastonbury ZBA*, 65 CLR 587 (Domnarski, Edward S., J.). The opinion holds that such an ordinance does not authorize the use of a home office to manage a business which has activities occurring at remote locations. **CL**



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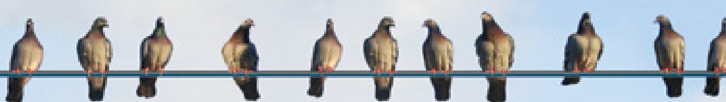

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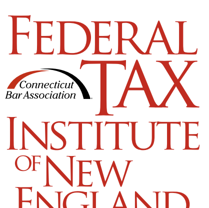

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