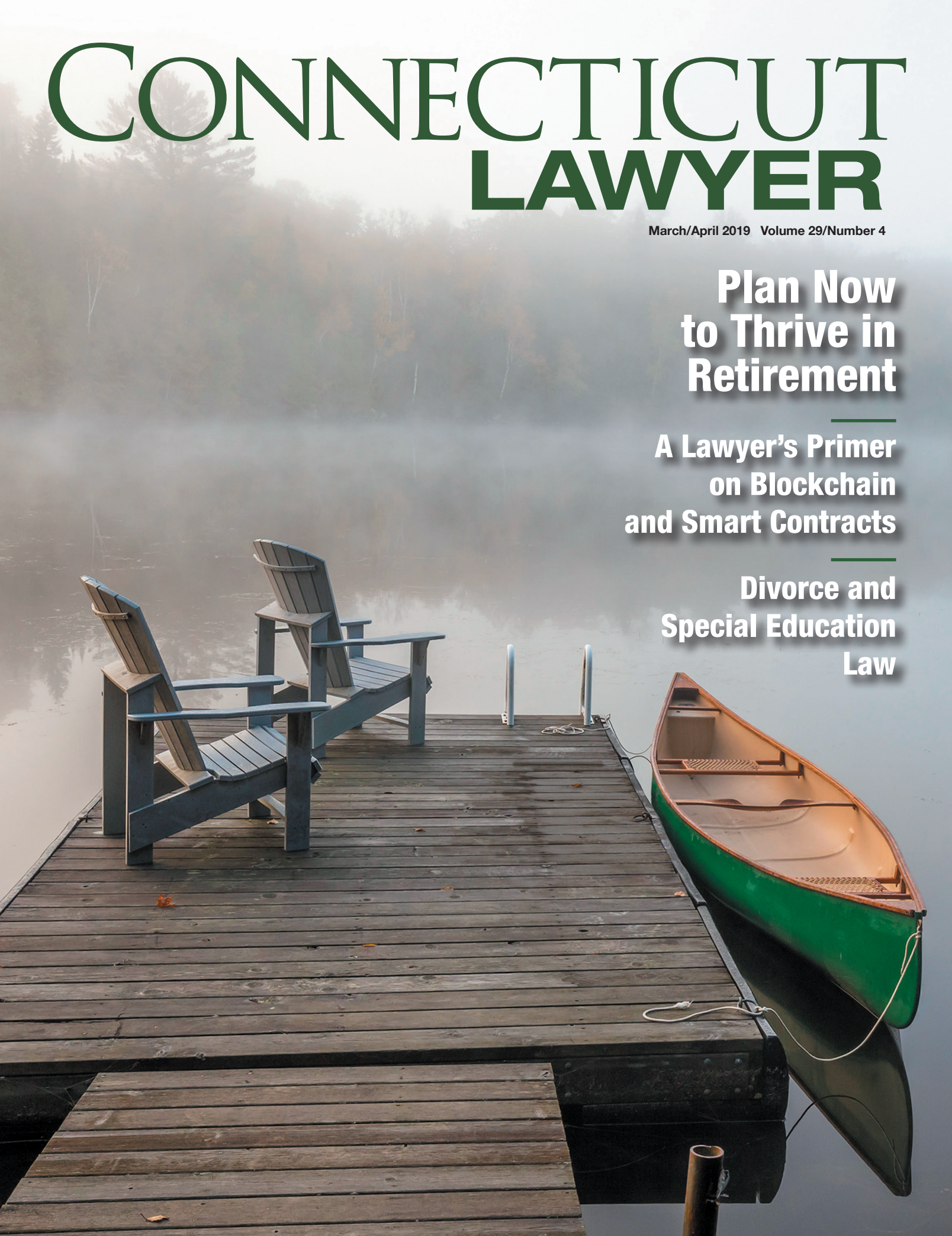
CONNECTICUT
LAWYER

March/April 2019 Volume 29/Number 4

Plan Now to Thrive in Retirement

A Lawyer's Primer on Blockchain and Smart Contracts

Divorce and Special Education Law



BUILD A STRONGER DEFENSE AGAINST PROFESSIONAL LIABILITY RISK. RELY ON KRONHOLM INSURANCE SERVICES AND CNA.

CNA

KRONHOLM INSURANCE SERVICES

Connecticut Bar Association

As part of an insurance organization with over $55 billion in assets and an "A" rating from A.M. Best, we have the financial strength you can count on. If a claim is made against you, our Lawyers' Professional Liability Insurance Program will provide you with superior claim handling by experienced attorneys who specialize in Lawyers' Professional Liability Insurance. With claim services designed specifically for law firms, and risk control programs proven to help minimize loss, if you're looking for reliable coverage in the great state of Connecticut … we can show you more.®

For a quote or more information, contact Kronholm Insurance Services at 800-842-8444 or visit www.kronholminsurance.com.

Join Us as We Celebrate These Stars of Our Legal Community

Connecticut Bar Association

Celebrate with the STARS!

a night of honor and inspiration

- Dinner and Dancing
- Networking with Your Peers
- Outstanding Stories of Services to the Community and Legal Profession

Thursday, April 11, 2019
5:30 p.m. - 10:00 p.m.
Aqua Turf Club

#cbastars

This year's stars include:

Henry J. Naruk Judiciary Award
Hon. William I. Garfinkel
United States District Court for the District of Connecticut

Distinguished Public Service Award
Hon. George C. Jepsen
Former Attorney General; Shipman & Goodwin LLP

John Eldred Shields Distinguished Professional Service Award
Hon. Anne C. Dranginis (Ret.)
Pullman & Comley LLC

Tapping Reeve Legal Educator Award
Willajeanne F. McLean
UConn School of Law

Citizen for the Law Award
Pastor AJ Johnson and Cori Mackey
Christian Activities Council

Edward F. Hennessey Professionalism Award
Mark A. Dubois
Geraghty & Bonnano LLC

Citizen of the Law Award
Krishna R. Patel
Grace Farms Foundation

Charles J. Parker Legal Services Award
Justine C. Rakich-Kelly
The Children's LAW Center of Connecticut

Young Lawyers Section Vanguard Award
Melanie P. Dykas
Locke Lord LLP

The Honorable Anthony V. DeMayo Pro Bono Award

Rebecca L. Ciota
Ciota Legal Group LLC

Jennifer L. Hluska
Prudential Financial

Brittany A. Killian
McCarter & English LLP

Jane I. Milas
Garcia & Milas PC

Stephanie B. Nickse
S.B. Nickse Law Offices LLC

Register Today!

Visit ctbar.org/awards or call (844)469-2221.

Show your support of this year's stars by becoming a sponsor.
Contact Natalie Jackson at njackson@ctbar.org or (860)612-2035 for more information.

We will also honor attorneys practicing 50 years in Connecticut.

Headline Sponsor

KRONHOLM INSURANCE SERVICES
PART OF THE BROWN & BROWN TEAM

CONNECTICUT LEGAL CONFERENCE

Presented by

Connecticut Bar Association

Earn All 12 of Your MCLE Credits with the Connecticut Legal Conference*

Monday, June 10
Connecticut Convention Center, Hartford

Be a part of the largest annual gathering of legal professionals in Connecticut!

Connect and collaborate with the leaders of our community at networking breakfasts, the annual meeting luncheon, and the President's Reception.

*Full-day member registrants can earn six CLE credits at the conference, and will receive access to on-demand versions of more than 15 conference seminars for full CLE credit.

Don't Miss:

Wellness Pre-Con Offerings

LAWYER WELLBEING
Connection • Health • Growth

- **Mindfulness Session with Walt Hampton**, Success Summit
- River Walk
- Yoga
- Chair Massage

Annual Reviews of Case Law and Legislation in:

- Appellate Advocacy
- Commercial Law and Bankruptcy
- Construction Law
- Family Law
- Real Property
- Workers' Compensation Law

Advanced Training in Depositions and Cross-Examination

Robert Musante, Killer Depo, Walnut Creek, CA
- Great Adverse Depositions: Principles and Principal Techniques
- Attacking the Liars: "I Don't Remember"

Keynote Luncheon Speaker

Asha Rangappa, Former FBI Agent; CNN Contributor; Senior Lecturer, Yale University, New Haven

Over 40 Practical CLE Seminars Including:

Trauma-Informed Advocacy

Hon. John A. Danaher III
Connecticut Superior Court, Litchfield

Dr. Alice M. Forrester
Clifford Beers, New Haven

Miriam Gohara
Yale Law School, New Haven

Ndidi N. Moses
US Attorneys Office, New Haven

Sean M. Rose
Justice Resource Institute, Needham, MA

Searching the Clouds: Fourth Amendment Rights in the Age of Cloud Computing

Learn about the significance of the watershed case *Carpenter v. United States* on Fourth Amendment jurisprudence and search and seizure analysis with regard to technological advances, such as cloud-based devices like Echo, Siri, and Evernote.

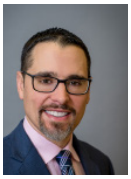
National Law Practice Management Speakers

Heidi Alexander
Massachusetts Law Office Management Assistance Program, Boston, MA

Charity Anastasio
American Immigration Lawyer's Association, Washington, DC

Elder Abuse and Exploitation

Dr. Harry E. Morgan
The Center for Geriatric and Family Psychiatry Inc., Glastonbury



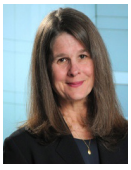
Carmine P. Perri
Czepiga Daly Pope & Perri, Berlin

Ethics: Year in Review

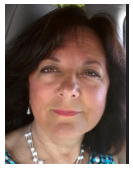
Stephen J. Conover
Carmody Torrance Sandak & Hennessey LLP, Stamford

Patricia King
Geraghty & Bonnano LLC, New London

Brendon P. Levesque
Horton Dowd Bartschi & Levesque PC, Hartford



Marcy T. Stovall
Pullman & Comley LLC, Bridgeport



Deborah Del Prete Sullivan
Office of the Chief Public Defender, Hartford

Register at ctlegalconference.com

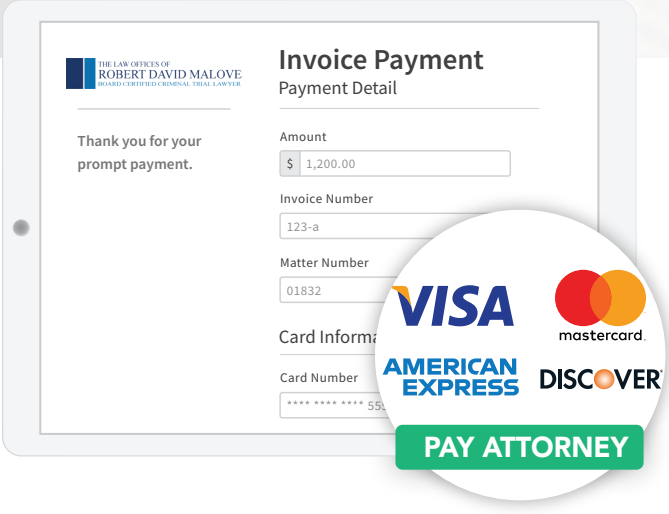
LAWPAY IS FIVE STAR!

★★★★★

LawPay has been an essential partner in our firm's growth over the past few years. I have reviewed several other merchant processors and no one comes close to the ease of use, quality customer receipts, outstanding customer service and competitive pricing like LawPay has.

— Law Office of Robert David Malove

Trusted by more than 35,000 firms and verified **'5-Star'** rating on ★ Trustpilot



LawPay®

AN AFFINIPAY SOLUTION

THE #1 PAYMENT SOLUTION FOR LAW FIRMS

Getting paid should be the easiest part of your job, and with LawPay, it is! However you run your firm, LawPay's flexible, easy-to-use system can work for you. Designed specifically for the legal industry, your earned/unearned fees are properly separated and your IOLTA is always protected against third-party debiting. Give your firm, and your clients, the benefit of easy online payments with LawPay.

877-737-1297 or visit **lawpay.com/ctbar**

LawPay is proud to be a vetted and approved Member Benefit of the Connecticut Bar Association.

Connecticut Bar Association

Special offer for bar members. **Call for details**

CONNECTICUT LAWYER

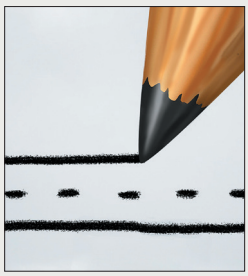
The *Connecticut Lawyer* (ISSN 10572384) is published six times per year by the Connecticut Bar Association, 30 Bank Street, New Britain, CT 06051-2276. CBA membership includes a subscription. Periodicals postage paid at New Britain, CT, and additional offices.

POSTMASTER: Please send address changes to *Connecticut Lawyer*, 30 Bank St, New Britain, CT 06051-2276.

Design/Production services provided by Belvoir Media Group, 535 Connecticut Avenue, Norwalk, CT 06854. 203-857-3100. www.belvoir.com

Cover credit: Brian Lasenby
gonepaddling / 123RF Stock Photo

CONTENTS



FEATURES

COLUMNS

DEPARTMENTS

Have an idea for an article? Contact editor@ctbar.org.
All suggestions are welcome.

Jonathan M. Shapiro is the 95th president of the CBA. He is a partner in the Shapiro Law Offices PC in Middletown, where he practices in corporate transactions, employment matters, and complex commercial and general litigation, as well as in arbitrations and mediations. He regularly serves as "local counsel" for non-Connecticut-based firms that are admitted to practice pro hac vice.

Ask Not What You Can Do for the CBA, but What the CBA Can Do for You

By Jonathan M. Shapiro

I KNOW I AM SOMEWHAT PREACHING TO the choir as most of the people reading this column are members of the CBA. But if I am a betting person (and generally I am not), I am betting most of you do not know everything that the CBA has to offer you.

This is both a positive and a negative. On the positive side, it may be a reflection of the many different benefits we offer. On the negative side, it may be a reflection of the need for greater communication or appreciation for what is available to you. So I wanted to take this opportunity to write about what I find particularly beneficial for all of you.

The CBA is dedicated to aiding you in advancing your career and to promoting the public interest through the advancement of justice and the protection of liberty. Our many benefits are designed to satisfy these goals.

Sections, sections, sections. Our sections are the lifeblood of the CBA. They help you stay on top of, and hopefully ahead of, the game by providing professional development and networking opportunities. There are more than 40 substantive sections in different areas of the law. There is something for everyone. Don't belong to a section? Now is the perfect time to join. At the end of January, we launched "Test Drive a Section," which allows all of you to join up to three sections for free for the remainder of the bar year.[1] It is a great opportunity to start seeing what you are missing. We are giving you the section for free for the rest of the bar year, but you must do your part too by attending section events. (In full disclosure, you get the section for free, but certain events may still require a fee.) This offer ends March 31.

Do you like causes? We have causes too. Our committees focus on public interest, legal, practice-related, and professional issues in various areas, including civics education, diversity and inclusion, human trafficking, immigration, legislative policy and review (more on this one in a moment), medical marijuana, membership, pro bono, professionalism, and more. If you are interested in an appointment to one of our committees, please send me an e-mail at jshapiro@ctbar.org for more information or contact any of our staff in the Member Service Center at (844)469-2221 or msc@ctbar.org.[2]

The CBA is your voice at the Capitol. We are a lobbying organization and, in my opinion, our lobbying efforts are an under-appreciated benefit. Our legislative team works diligently to enhance and protect the practice of law for you and your clients, and improve the administration of justice. You may see e-mails from your section leaders or Bill Chapman, our government and community relations director, containing links to proposed legislation. This is your opportunity to weigh in on matters. Our Legislative Policy and Review Committee then vets positions, and approved positions are submitted to the House of Delegates or Board of Governors for ultimate approval. We have an incredible track record of success at the Capitol, and this legislative session should be no different. And if a sales tax is proposed on legal services, you can rest assured that we will lead the charge in opposing it.[3]

As you all know, we offer robust continuing legal education. From administrative law to planning and zoning, your educational needs are at the forefront of our work so that you can stay on top of new developments in the law and better serve your clients. At the Connecticut Legal Conference, you can satisfy all your MCLE requirements in a single day while networking with your colleagues. Registration will be available soon so keep your eyes open! Concerned about cost? With your membership, you have access to a full library of on-demand courses for NO ADDITIONAL COST![4] You can satisfy all of your CLE requirements just by being a member. Beginning next bar year, the CBA will offer 12 hours of CLE through six complimentary in-person seminars (worth two credits each) that will be scheduled to take place throughout the state.

And did you know that our CLE Tracker records your CBA programs automatically in your member profile? The transcript can be searched, e-mailed, and printed. The

tracker even allows members to add CLE credits earned elsewhere.[5]

Have a fee dispute with a client? Our Resolution of Legal Fee Disputes Program provides a forum for attorneys to resolve fee disputes with their clients through mediation and/or arbitration, rather than litigation. The dispute resolution process is free, informal, and impartial.[6] The procedures for the program were revamped at the end of last year and it is running better than ever.

I know you are all aware that our profession is not always easy. We work long, intense hours, skip vacations, and have a tendency to place our needs last—including our health and well-being. Under Immediate Past President Karen Demeola, we developed the CBA Lawyer Wellbeing initiative to provide our members with the necessary resources to prioritize and maintain their wellness, in all its dimensions, and to prevent the materialization of serious health problems. In order to most effectively take care of others, you have to be able to take care of yourself![7]

Did you know that every CBA attorney member has the opportunity to be placed into Find a Lawyer CT? Find a Lawyer CT is a publicly searchable online directory that allows the general public to tap into our network of attorneys and learn more about our members who may be able to assist them.

Need office space? The CBA offers members free and discounted conference rooms and work spaces at the CBA Law Center in New Britain. We can serve as a temporary or remote office while you are in the area or a convenient location for meetings with colleagues or clients.[8]

And of course, all members have access to Casemaker—our comprehensive research library that is free for all CBA members. It includes access to federal and state materials from every state, and is also used by the Judicial Branch.[9]

This only scratches the surface of everything the CBA has to offer you. There are countless discounts available on a variety of services, access to insurance and retirement programs, and other programs designed to help you succeed in your practice. A comprehensive list is available on the CBA website, and we continue to work to enhance the value of your membership. If there is something you need that we are not doing, let me know and we will see what we can do to make it happen! ■

Notes

1. Beginning next year, first-year attorneys will be able to join up to three sections for free throughout the bar year.
2. A list of all of our sections and committees is available at ctbar.org/Sections.
3. A list of all of our current legislative positions is available at https://www.ctbar.org/docs/default-source/legislative-affairs/meeting-agendas/legislative-agenda_2-1-19.pdf?sfvrsn=bafa7750_4.
4. You may access the education portal at: ctbar.org/EducationPortal.
5. Access this benefit by clicking "CLE Tracker" in the top right corner of the ctbar.org homepage. You must be logged in to view your CLE history.
6. Learn more about the Resolution of Legal Fee Disputes Program, including its rules, at ctbar.org/FeeDisputes.
7. For more information on attorney well-being, visit cbalawyerwellbeing.com.
8. To take advantage of this benefit and for more information, visit ctbar.org/OfficeSpace.
9. Casemaker can be accessed from the ctbar.org homepage or directly at ctbar.org/casemaker.

Upcoming Education Calendar

April

2 Ethical Considerations in Your Practice

2 Practice Book 101

3 Confusion to Fusion: Creating a Balanced and Rewarding Legal Career

4 Representing Victims of Childhood Trauma: *Resilience* Screening

9 Beyond Standard Discovery: Drafting, Objecting, and Responding

15 Complying with the Medicare Secondary Payer Act: Everything You Need to Know in 2019

18 Medicare Set-asides: What Practitioners Need to Know

23 Financial Issues in Family Law: Protecting Your Client's Interests

26 A Practitioner's Guide to Elder Law

May

1 Planning for the Art Collector

5-7 Workers' Compensation Retreat

9-10 2019 Appellate Advocacy Institute

15-17 Litigation Retreat

June

10 Connecticut Legal Conference

Register at ctbar.org/CLE

Connecticut Bar Association

CLE on-demand

When Traveling

While Relaxing at Home

On Your Commute

MCLE Anywhere, Anytime

Visit ctbar.org/EducationPortal for our full course catalog.

Earn your MCLE credits from the comfort of your home or office with the CBA Education Portal.

Professional Discipline Digest

Volume 28, Number 2

By Michael F. Romano

PRESENTMENT ORDERED BY AGREEment and ordered consolidated with another previously adjudicated pending matter for violation of Rules 3.3, 4.1, 4.3, and 8.1(2) of the Rules of Professional Conduct and Practice Book § 2-32(a)(1). *Hart vs. Jeanmarie Riccio-Ryan*, #17-0659 (5 pages).

Attorney ordered by agreement to attend a three-credit continuing legal education course (CLE) in legal ethics and professionalism for violation of Rule 8.4(4) of the Rules of Professional Conduct. *Serapilia vs. Robert A. Ziegler*, #18-0823 (8 pages).

Attorney ordered by agreement to attend a three-credit continuing legal education course (CLE) in legal ethics/law office management for violation of Rule 8.4(4) of the Rules of Professional Conduct. *Fienemann v. Jodi Zils Gagne*, #18-0102 (8 pages).

Reprimand ordered by agreement for violation of Rules 1.2, 1.3, 1.4, 1.5, 1.7, 1.8, and 8.1 of the Rules of Professional Conduct and Practice Book § 2-32(a)(1). *Nathan vs. Thomas Patrick Willcutts*, #17-0711 (7 pages).

Presentment ordered after hearing for failing to pay state marshal bill more than eight months after services were rendered for no substantial purpose other than to delay or burden a third person in violation of Rule 4.4(a) and constituting conduct prejudicial to the administration of justice in violation of Rule 8.4(4), both violations of the Rules of Professional Conduct. *Paladino vs. Nickola Jean Cunha*, #17-0506 (6 pages).

Attorney ordered by agreement to make restitution to the Complainant in the amount of $1,500 for violation of Rules 1.3 and 1.5(b) of the Rules of Professional Conduct. *Pardo vs. Richard P. Lawlor*, #17-0780 (8 pages).

Presentment ordered for attorney's failure to comply with audit and CLE conditions agreed to in agreement that resulted in dismissal of a previous complaint (*Bowler v. Vallilo* #16-0425), which failure constitutes conduct prejudice to the administration of justice in violation of Rule 8.4(4) of the Rules of Professional Conduct; for failure to respond to the grievance complaint in violation of Practice Book § 2-32(a)(1); for failure to file attorney registration form in violation of Practice Book § 2-27(d); for a trial *de novo* on the violation of Practice Book § 2-27(d) as found by the reviewing committee in the previous #16-0425 complaint. *Carrasquilla vs. Paul R. Vallillo*, #17-0632 (6 pages).

Presentment ordered by agreement for consolidation of all pending disciplinary matters with this matter alleging violation of Rule 8.1 of the Rules of Professional Conduct and Practice Book §§ 2-27 and 2-32(a)(1). *Bowler vs. Robert O. Wynne*, #18-0053 (5 pages).

Presentment ordered by agreement for consolidation of all pending disciplinary matters with this matter alleging violation of Rules 1.15, 8.1, and 8.1(2) of the Rules of Professional Conduct and Practice Book §§ 2-32(a)(1). *Bowler vs. Keisha Shantell Gatison*, #17-0666 (6 pages).

Attorney ordered by agreement to attend a three-credit continuing legal education course (CLE) in legal ethics for violation of Rule 8.4(4) of the Rules of Professional Conduct. *Raymond vs. Michael Richard Powers*, #17-0731 (8 pages).

Presentment ordered by agreement for consolidation of all pending disciplinary matters with this matter alleging violation of Rules 1.15(b) and 8.1(2) of the Rules of Professional Conduct and Practice Book §§ 2-27(c) and 2-28(h). *Bowler vs. Richard S. Bruchal*, #17-0235 (6 pages).

Presentment ordered after hearing for violation of Rule 1.3 by not returning original documents provided to respondent, not returning money paid to respondent, not returning phones calls to respondent, and not doing any work on complainant's files; for violation of Rules 1.4(a)(3) and (4) by failing to communicate adequately with the complainants; for violation of Practice Book § 2-32(a)(1) by failing to answer the grievance complaint without good cause; for a trial *de novo* on the violation of Practice Book § 2.27(d) for failing to complete the annual attorney registration and violation of Rules of Professional Conduct 1.5(a) and 1.15(b) for failing to account for, safeguard, or return the unearned fee and 1.16 for withdrawing from the representation without notifying the client. *Medina vs. Alan Michael Giacomi*, #18-0021 (6 pages).

(*Continued on page 40*)

Prepared by CBA Professional Discipline Section members from public information records, this digest summarizes decisions by the Statewide Grievance Committee resulting in disciplinary action taken against an attorney as a result of violations of the Rules of Professional Conduct. The reported cases cite the specific rule violations to heighten the awareness of lawyers' acts or omissions that lead to disciplinary action.

Presentments to the superior court are de novo proceedings, which may result in dismissal of the presentment by the court or the imposition of discipline, including reprimand, suspension for a period of time, disbarment, or such other discipline the court deems appropriate.

A complete reprint of each decision may be obtained by visiting jud.ct.gov/sgcdecisions. Questions may be directed to editor-in-chief, Attorney John Q. Gale, at jgale@jqglaw.com.

CBA Past President Receives 2019 NCBP Fellows Award

CBA Past President Frederic S. Ury receiving the 2019 NCBP Fellows Award plaque from NCBP President Jennifer Parent.

Congratulations to Frederic S. Ury, past president of both the Connecticut Bar Association (2004-2005) and the National Conference of Bar Presidents (NCBP) on receiving the 2019 NCBP Fellows Award during the American Bar Association's 2019 Midyear Meeting in Las Vegas, NV. This award was established in 2005 to honor an outstanding past president of a bar association.

Attorney Ury received this award for his continued leadership and lifetime of service to the bar, lawyers, and the public. In 2007, Attorney Ury was appointed by the chief justice of the Connecticut Supreme Court to serve as one of two attorneys on the Steering Committee of the State of Connecticut Judicial Branch's Public Service and Trust Commission. Additionally, in the wake of September 11, he donated hundreds of hours of free legal representation to World Trade Center victims and their families in hearings before the Victims' Compensation Board of the State of Connecticut Judicial Branch. Beyond his 42 years in the legal profession, Attorney Ury has helped with various pro bono and philanthropic projects in his community, including the Community Council of Westport-Weston, the United Way of Westport-Weston, and the Westport-Weston Foundation.

The NCBP was founded in 1950 to provide information and training to state and local bar association leaders. Its primary mission is to provide high-quality programming to current bar leaders at two meetings held each year contemporaneously with the annual and midyear meetings of the American Bar Association. ■

CBA Launches Connecticut Free Legal Answers

Connecticut Free Legal Answers is an online pro bono initiative between the Connecticut Bar Association and the American Bar Association (ABA).The ABA has partners in more than 40 states for this innovative project.

Connecticut Free Legal Answers

This program is a virtual legal advice clinic intended for low income Connecticut residents. Qualified users can request brief advice and counsel about a specific civil legal issue; volunteer attorney representation is limited to answering the question posed without any expectation of ongoing representation. All communication between the client and the attorney takes place anonymously via a secure website. Lawyers can provide assistance online, anytime via the web-based platform.

Watch our latest BarChat video interview with Ashleigh Backman of Statewide Legal Services at ctbar.org/BarChat to learn more about the program.

Visit ctbar.org/FreeLegalAnswers to become an attorney volunteer. ■

YLS Honors Asha Rangappa with Diversity Award

The Young Lawyers Section (YLS) held its eleventh Diversity Award Dinner on February 7 at Amarante's Sea Cliff in New Haven. The honor was presented to Asha Rangappa—former FBI agent, CNN contributor, and senior lecturer at Yale University—for her outstanding efforts on behalf of diversity.

YLS Chair David A. McGrath introduced the event and provided the background of the award. The YLS Diversity Award is presented to a person in the legal field who has shown both a personal and professional commitment to the elimination of bias in the legal profession as well as the principle that all people should have full and equal protection in the justice system.

YLS Senior Advisor Suphi A. Philip introduced Attorney Rangappa, noting that the recipient is "the embodiment of a creative, persevering spirit." To illustrate this point, Attorney Philip shared an anecdote about Attorney Rangappa's FBI physical fitness exam. After suffering contused ribs in a car accident, Attorney Rangappa continued her training and was able to complete the required running, push-up, pull-up, and sit-up drills to stay in the program beyond the required minimum.

Asha Rangappa is a director of admissions and senior lecturer at Yale University's Jackson Institute for Global Affairs and a former associate dean at Yale Law School. Prior to her current position, she served as a special agent in the New York Division of the FBI, specializing in counterintelligence investigations. She was one of the first Indian-American female recruits to the FBI after the agency began a post-9/11 push for diversity and inclusion. Her work involved assessing threats to the national security, conducting classified investigations on suspected foreign agents, and performing undercover work. While in the FBI, Attorney Rangappa gained experience in intelligence trade craft, electronic surveillance, interview and interrogation techniques, and firearms and the use of deadly force.

In her previous role as Yale Law School's dean of admissions, she was a part of the school's efforts to increase diversity, which resulted in the most diverse class in Yale Law School's history, in 2017.

Consistently involved in the Connecticut legal community, Attorney Rangappa has served on the boards of the South Asian Bar Association of Connecticut (SABAC), the Connecticut chapters of the Society of Former Agents of the FBI, and the National Organization for Women (NOW). She has long supported Young Lawyers Section programs, including its Annual Women's Professional Golf Event.

YLS Chair David A. McGrath, YLS Senior Advsior Suphi A. Philip, and Diversity Award recipient Asha Rangappa.

Attorney Rangappa graciously thanked the CBA and the organizations in attendance in support of her, stating: "Both [Yale] Law School and SABAC have played important roles in both shaping my career and offering me different perspectives on diversity and how it intersects with the legal profession." She shared that she receives calls from South Asian girls and women each week who want to discuss a potential career in law enforcement or national security; many of them say that this career path had simply never occurred to them as something that they could do until they saw it in front of them.

She concluded the evening with a nod to the future of diversity and inclusion: "We as underrepresent[ed] groups in the legal profession in this country have a responsibility to paint a picture where our communities can see this path as one that they belong in and *can* belong in, and not only because doing so reflects the America we live in, but because it protects it as well." ■

CBA Lawyer Wellbeing Website

In a professional culture that historically rewards intensity, long hours, skipping vacations, and perfectionism, it can be difficult for attorneys to take care of their health. In response, the CBA launched its Lawyer Wellbeing website to provide members with the necessary resources to prioritize and maintain their wellness, in all its dimensions, and to prevent the materialization of serious health problems. Available resources include the ABA Wellbeing Toolkit, a calendar of CBA wellbeing events, videos, articles, and more. It is the hope of the CBA that this tool will provide helpful resources for practitioners and will promote a conversation about the need for balance in a long-term legal career.

For more information, visit cbalawyerwellbeing.com. ■

Winter Wellness

The CBA hosted a series of wellness programs this winter. Visit cbalawyerwellbeing.com to view the latest offerings.

Walt Hampton discussing the importance of mindfulness.

Mindfulness for Lawyers CLE

On January 24, Walt Hampton of Summit Success presented on mindfulness for lawyers. The science behind mindfulness shows that it reduces stress, enhances wellness, increases productivity, and significantly improves the bottom line. Attendees learned how it can help improve focus, productivity, and effectiveness with clients; the science behind it; and how to start a mindfulness practice. ■

From Bench/Bar to 5k

On January 29, the Lawyer Wellbeing Taskforce presented "From Bench/Bar to 5k: Learn How to Start (or Improve) a Running or Walking Program." Stephanie Blozy of Fleet Feet in West Hartford taught attendees the key factors involved in starting a running/walking program and how to train for a 5k. Additionally, she addressed the risks of a sedentary lifestyle, the benefits of being active, common barriers to becoming active and how to overcome them, the basic bio-mechanics of running, and tips and tricks to stick with it. ■

Stephanie Blozy sharing how to successfully start a walking or running exercise program.

Bill Jawitz teaching attendees how to set themselves up for a year of successful lawyering.

Productivity Boot Camp: Time and E-mail Management for Lawyers CLE

On January 31, Bill Jawitz of SuccessTrackESQ presented on how to be a more successful lawyer with time and e-mail management skills. Attendees learned how to prioritize, delegate, and minimize interruptions so they can devote more time to serving clients and developing new ones—while being less stressed and more effective in the process. Additionally, he discussed how to increase productivity and effectiveness by managing your environment, routines, boundaries, and choices.

Chief Justice Robinson Speaks at Section Meeting

On January 31, Chief Justice Richard A. Robinson joined the Litigation Section meeting at the Hartford Club for "An Evening with Connecticut Chief Justice Richard A. Robinson." The chief justice gave attendees an update on the state of the Connecticut judiciary and imparted some of his lessons learned from his first nine months as chief justice. He also shared insights on effective trial and appellate advocacy based on his nearly two decades of experience in all levels of the Connecticut judiciary. ■

Chief Justice Richard A. Robinson with CBA President Jonathan M. Shapiro

In Memoriam

Judge John C. Flanagan passed away on February 13. Prior to his 51-year legal career, Judge Flanagan enlisted in the army from 1942-1946, achieving rank as captain. After his time in the army he earned his law degree at Yale University, later founding the firm now known as Mulvey Oliver Gould & Crotta in 1949. In 1980, he was appointed as a judge of the Connecticut Superior Court, where he served for 39 years. Judge Flanagan was the oldest sitting judge, retiring in 2018. ■

Ashleigh Backman of Statewide Legal Services discussing available pro bono opportunities.

YLS Hosts Pro Bono Hour

On Tuesday, January 22, the Young Lawyers Section (YLS) held their Pro Bono Hour program at Herd Restaurant in Middletown. The more than 50 members in attendance learned about pro bono opportunities in a variety of practice areas from representatives for ten different Connecticut organizations. Representatives from each of the pro bono organizations detailed the current projects, time requirement, and available training.

"The Pro Bono Hour was a wonderful opportunity for YLS members from a range of organizations—both in-house council and those at firms—to learn about the pro bono opportunities available throughout the state," said YLS Assistant Pro Bono Director Alexandra J. Cavaliere. "It is my hope that those in attendance will take these opportunities back to their firms to expand the reach of the messages shared by the pro bono representatives that night."

Attendees were encouraged by many of the pro bono representatives to examine both their availability and passions and to approach an organization to see how help is needed. Currently, the need for pro bono service is great and any volunteer assistance is appreciated. For more volunteer opportunities, visit ctbar.org/probonoorganizations. ■

Peers & Cheers

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

Attorney Announcements


Danielle M. Bercury

Danielle M. Bercury of **Brenner Saltzman & Wallman LLP** was promoted to of counsel. Attorney Bercury practices in the areas of land use and commercial real estate.


Patricia L. Boye-Williams


Marilyn B. Fagelson


Kristin L. Zaehringer


Catherine A. Cuggino

Murtha Cullina LLP is pleased to announce **Patricia L. Boye-Williams**, **Marilyn B. Fagelson**, and **Kristin L. Zaehringer** as partners, as well as **Catherine A. Cuggino** as counsel.


Deborah R. Brancato


Liam S. Burke


Todd R. Michaelis

Deborah R. Brancato, **Liam S. Burke**, and **Todd R. Michaelis** have been elected partners of **Carmody Torrance Sandak & Hennessey LLP**.


Jeffrey F. Buebendorf

Jeffrey F. Buebendorf of **Browne Jacobson LLP** was elected as an officer of Phi Delta Phi International Legal Honor Society, a 150-year-old law student-based organization dedicated to the promotion of professionalism and civility in the practice of law. Attorney Buebendorf will serve a two-year term.


J. Tyler Butts


Kevin P. Daly


Emilee M. Scott


Taylor A. Shea

J. Tyler Butts, **Kevin P. Daly**, **Emilee M. Scott**, and **Taylor A. Shea** were promoted to counsel at **Robinson+Cole**'s Hartford office.


Daniel L. Gottfried

Daniel L. Gottfried rejoined **Day Pitney LLP** as a partner in the corporate and business law department and a member of the tax practice group at the firm's Hartford office.


Alexis S. Gettier


Sebastian M. Lombardi


Ruth S. Moskowitz


Robert G. Rahilly

Alexis S. Gettier, **Sebastian M. Lombardi**, **Ruth S. Moskowitz**, and **Robert G. Rahilly** have been promoted to partner at **Day Pitney LLP**.


Jennifer Rignoli

Parrett Porto Parese & Colwell PC welcomed **Jennifer Rignoli** as a principal of the firm, continuing to represent clients in litigation in all courts and as a member of the firm's health care, regulatory, and compliance practice group.


Alaine C. Doolan

Alaine C. Doolan of **Robinson+Cole** was appointed to the board of directors of Interval House, Connecticut's largest domestic violence intervention and prevention agency, for a two year-term.


Matthew E. Willis

Matthew E. Willis has become an equity partner of **Kahan Kerensky Capossela LLP**. Attorney Willis focuses his practice in the areas of personal injury and criminal law.

Firm/Organization Announcements

Jonathan Perkins Injury Lawyers is expanding its practice to assist employees who suffer emotionally and financially as victims of discrimination in the workplace.

CBA 100% Club member **Monstream & May LLP** have changed their firm name to **Monstream Law Group**. The firm's primary focus is insurance defense.

Murtha Cullina LLP completed the expansion of its New Haven office. The firm celebrated with an open house for attorneys and clients of the firm.

Nine **Robinson+Cole** lawyers and staff volunteered at Junior Achievement's "JA in a Day" program at Parkville Community School in Hartford. The volunteers taught 90 first grade students a JA-developed curriculum focused on money, needs and wants, family, and the value of hard work.

Robinson+Cole

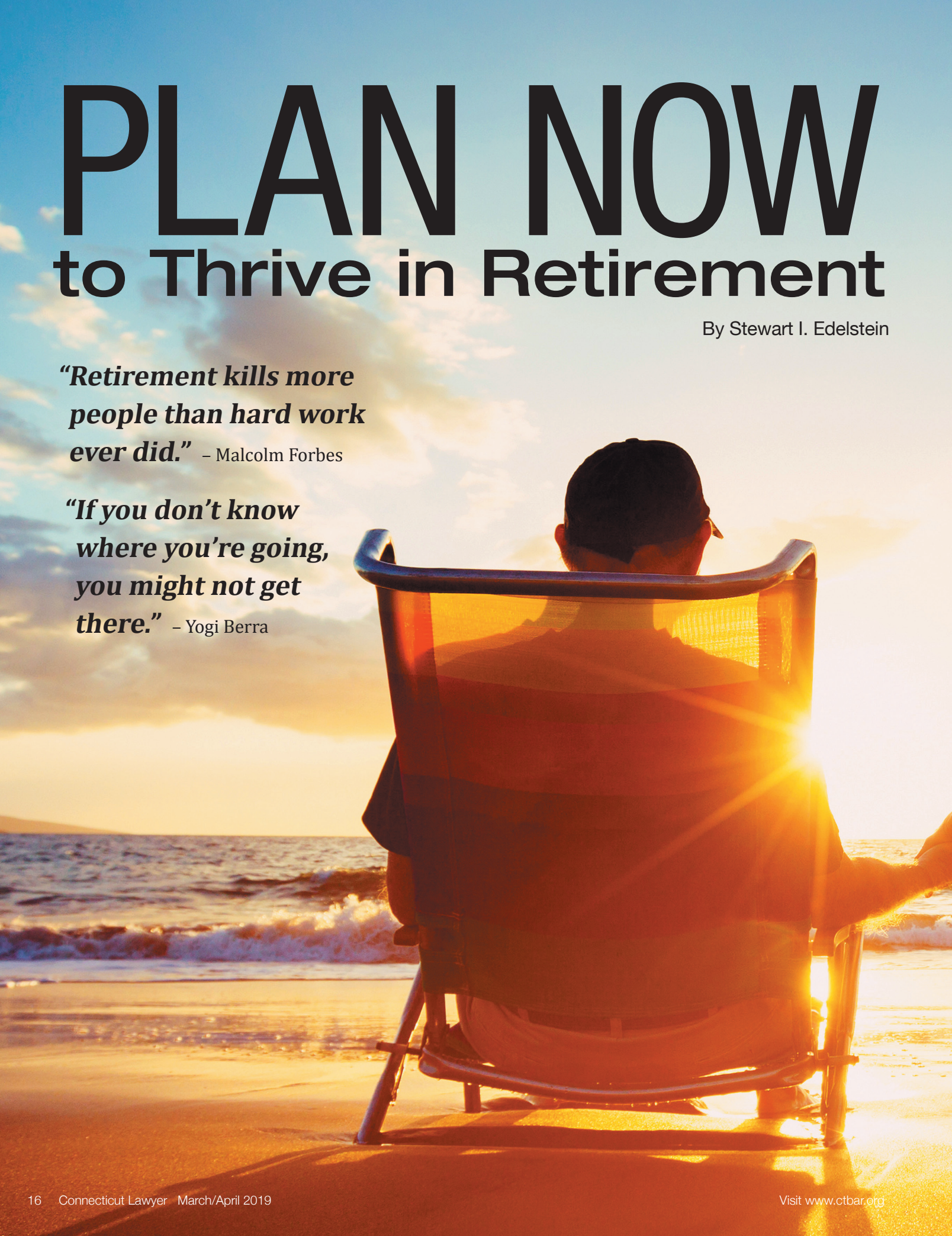
CBA 100% Club member **Pullman & Comley LLC** will be celebrating its 100th anniversary in 2019 with a "Centennial Year of Service," participating in a year of community service projects throughout Connecticut. ■

PLAN NOW
to Thrive in Retirement

By Stewart I. Edelstein

"Retirement kills more people than hard work ever did." – Malcolm Forbes

"If you don't know where you're going, you might not get there." – Yogi Berra



Try This Thought Experiment

Today is your first day in retirement. Over decades, you diligently saved for your retirement years, and so you are financially secure. Even so, you know that money does not buy happiness. You are no longer practicing law. You have no clients. You are no longer a mentor to younger lawyers in your firm. No one relies on your professional advice. You are no longer a colleague with other lawyers. Your very identity as a lawyer, in all its manifestations—gone.[1]

Who are you now? How do you find meaning in what will likely be this last quarter of your life? How do you thrive? Unless you plan well in advance of retirement, you may find yourself bereft. You can't wait. You must start planning for a thriving retirement now. This article assumes you have taken care of your financial security and focuses on what you need to do years before you retire to prepare for your own well-being in retirement. Even if your retirement is imminent, you will benefit from reading this article.

Consider this:

> In the Western world…more years have been added to average life expectancy in the last century than in all of the previous millennia combined. In the blink of an eye, 65 has quite literally become the new 55: the typical 65-year-old living in modern America can now expect to live as long as the average 55-year-old living in 1935 America once did. Although the addition of these extra years can be viewed as an unprecedented example of human innovation and technological progress, there is still a downside to this new development. For most of human history, planning for the distant, long-term future was not necessarily essential. When reaching one's 60th birthday was relatively uncommon—as it was in the early 1900s—considering one's preferences at age 70 or 80 would have been considered an unnecessary exercise (and one that most likely would have taken time away from making important and more consequential decisions in the present). But with newly added years to the life span, plans must now be made with a longer future in mind.[2]



This eye-opening quote is from a 2011 study finding that when subjects were shown digitally altered images of themselves made to look retirement age, they were likelier to save more money from a hypothetical windfall. Even though that study pertained to preparing financially well in advance for retirement, the same analysis applies to preparing for your own well-being in retirement.

Here are five tips you can implement now. Your knee-jerk reaction may be that you don't have the time to prepare for retirement—besides, your retirement is years off.

Big mistake.

Invest in yourself now for your future. At age 65, it is likely that you will have about a decade before the start of your inevitable decline.[3] In retirement, on average, men live about 17 years and women about 20 years.[4] How will you thrive in retirement?

1. Develop and Maintain a Healthy Lifestyle

Now is the time to develop and maintain a healthy lifestyle. For specific tips, and a monthly well-being checklist, read "How to Reduce Your Stress and Enhance Your Well-Being," published in the Summer 2018 edition of *Connecticut Lawyer*.

Be realistic: When you retire, you're not likely to radically alter your diet or your exercise habits. Get started now by eating healthy foods and exercising regularly. You'll feel better during your career, and benefit from more years of vigorous living in retirement.

Scientific studies bear this out. For example, a 2017 study of over 80,000 adults concluded: "We found robust associations between participation in certain types of sport and exercise and mortality, indicating substantial reductions in all-cause and CVD [cardiovascular disease] mortality for swimming, racquet sports and aerobics and in all-cause mortality for cycling."[5]

2. Nurture Relationships

Make time for family and friends. Nurture your relationship with your spouse/partner on an ongoing basis—not just on anniversaries and birthdays. A study of more than 1,500 retirees to determine how spending and relationships in retirement affect happiness concluded, "the spousal relationship has a much more substantial impact on life satisfaction than spending inputs."[6] If you have kids, be an integral part of their lives, not an absentee parent, always working. Your kids grow up only once, so you won't have a second chance to raise them.

Cultivate and maintain a healthy social life. As Cicero observed: "Friendship improves happiness and abates misery, by the doubling of our joy and the dividing of our grief." Good friends will help you feel good about yourself and positive about life, accept and respect you for who you are, stick with you through good times and bad, and value your friendship.

Surround yourself with positive-oriented, happy people. A study of about 5,000 peoples' happiness over 20 years concluded, "the relationship between people's happiness extends up to three degrees of separation (for example, to the friends of one's friends' friends). People who are surrounded by many happy people and those who are central in the network are more likely to become happy in the future. Longitudinal statistical models suggest that clusters of happiness result from the spread of happiness and not just a tendency for people to associate with similar individuals."[7]

How does nurturing your relationships during your career pay off during your retirement years? Aristotle aptly described friendship as a "slow ripening fruit." By establishing and maintaining friendship bonds now, you will benefit from having old friends later in life. Old friends play a unique role in your life. Oliver Wendell Holms, Jr. noted, "There is no friend like an old friend who has shared our morning days, no greeting like his welcome, no homage like his praise." Consider also this Yiddish proverb: "One old friend is better than two new ones." You can't create old friends retroactively. Of course, that fact of life does not preclude you from making new friends during your retirement years, which is likely. It just won't be the same.

Scientific studies validate the benefits of the importance of having friends throughout life, especially in your retirement years. People benefitting from strong social relationships live longer[8] and are happier as they age.[9]

3. Develop Interests, Hobbies, and Intellectual Pursuits

Remember life before law school? You probably had interests, hobbies, and intellectual pursuits that have lain dormant many years. Get out that old musical instrument; read a novel; go to the theater, movies, concerts, art galleries, lectures, sporting events—whatever you enjoy that's unrelated to the practice of law.

Why? For at least two reasons. First, developing interests, hobbies, and intellectual pursuits will provide balance in your professional life. Second, by doing so you will establish a foundation upon which you will build further in retirement. For example, if you take up a musical instrument now, when you retire, you'll be primed to join a local community orchestra. If you get


back on the tennis court now, you'll be ready for social tennis when you retire.

4. Explore Retirement Destinations

Each year, you are entitled to vacation days. Take them. While you're at it, consider vacationing where you may want to retire, staying with a local resident through Airbnb, VRBO, or another agency. When there, get to know the area by exploring, talking to locals, reading the local newspaper (including letters to the editor, which can be very revealing), and hanging out where locals do. In Stockbridge, MA, where I live, locals hang out at the post office (no home mail delivery), the library, the coffee shop, and the transfer station.

Questions to ask yourself in deciding on your retirement destination include these, among others, to be discussed with the person with whom you'll be sharing your retirement years:

Do you want to stay where you are, where you're comfortable, already have a supportive community, and many friends, while avoiding the hassle of relocating?

Do you want to remain in your present home or downsize?

Do you want to relocate to a less expensive location?

What are the local and state taxes?

What type of community do you want to live in?

Do you want to relocate to be near activities you like?

Do you want to try a new climate (e.g., escaping Connecticut winters)?

Do you want a new lifestyle in retirement? If so, where would it be?

Do you want to relocate to be closer to family?

If you have a vacation home, do you want to relocate there?

What is the proximity to quality health care?

What cultural amenities are available?

What recreational amenities are available?

What is the political climate?

5. Visualize Your Retirement Years

Get away from everything electronic and all distractions, preferably when you are in a contemplative mood, and even better surrounded by nature, whether in your garden, a city park, or a nature preserve.

In nature, visualize what you would like your retirement years to be, with an open mind. Ask yourself questions such as these:

Where do you see yourself living in your retirement years?

What do you feel passionate about?

What fosters your sense of vitality, connection, and contribution?

What matters to you about how you are living now and in your future?

What goals do you want to achieve in your retirement years?

What do you envision doing in your retirement years?

How can you engage in activities now that promote that vision?

Do this exercise as often as it suits you. Write down your thoughts, revising as they evolve. For a good guide for this exercise, read *Revolutionary Retirement*, by Catherine Allen, Nancy Bearg, Rita Foley, and Jaye Smith (Reboot Partners LLC, 2014). To enhance visualizing your retirement years creatively, read *65 Things to Do When you Retire*, edited by Mark Evan Chimsky (Sellers Publishing, 2012), which is comprised of 65 essays by noted authors, retirement experts, and people who, in retirement, turned their dreams into reality.

Conclusion

Your self-perception about aging affects your longevity. "People with positive self-perceptions about aging—attitudes that have roots in what they learn as young and middle-aged adults—demonstrate median survival rates 7.5 years longer than do those with negative self-perceptions."[10]

What's so good about aging in your retirement years? Geriatric psychiatrist Marc E. Agronin sums it up this way: "Aging brings a broadening of our knowledge, roles, and vision that can be encompassed by the term wisdom. This wisdom is based upon and fueled by fundamental reserves of brain connections, skills, social instincts, emotional and spiritual maturity, and creative powers that continue to grow and develop with age."[11]

I created and maintained the groundwork to thrive in retirement early in my professional career and now, three years after retiring with my wife, we're both thriving. You can do the same, based on your own interests, aspirations, and goals in life. It's just a matter of planning well in advance so you can thrive in *your* retirement. ■

STEWART EDELSTEIN

For 40 years, Stewart Edelstein represented commercial clients as a trial lawyer at Cohen and Wolf PC, 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). You can contact him at stewedelstein@gmail.com.*

Notes

1. A recent Gallup poll confirmed that the identity of 70 percent of college graduates is tied to their jobs, whereas only 29 percent of non-college graduates believe so. More than half of non-college graduates consider their jobs "just what they do." It is fair to assume that the identities of even more than 70 percent of lawyers, all of whom are educated beyond college, are tied to their professional work. "In U.S., 55% of Workers Get Sense of Identity From Their Job: Seven in 10 college graduates get a sense of identity from their job," by Rebecca Riffkin, *Gallup News* (August 22, 2014).
2. "Future self-continuity: how conceptions of the future self transform intertemporal choice," *Annals of The New York Academy of Sciences*, by Hal E. Hershfield, Vol. 1235, Issue 1, pp. 30-43 (Oct. 24, 2011), cited in "Why It's So Hard to Put 'Future You' Ahead of 'Present You': Give your future self a break," by Tim Herrera, New York Times (Sept. 10, 2018).
3. A person in reasonable health at age 65 has an average life expectancy of about 19 years, of which about ten are likely to be healthy, and the next eight disabled. "Understanding the Improvement in Disability Free Life Expectancy in the US Elderly Population," *National Bureau of Economic Research*, June 2016, cited in *At Peace: Choosing a Good Death After a Long Life*, by Samuel Harrington, MD (Hachette Book Group, 2018).
4. *Ibid.*
5. "Associations of specific types of sports and exercise with all-cause and cardiovascular-disease mortality: a cohort study of 80,306 British adults," by Oja P., Pedisic Z, *et al.*, *British Journal of Sports Medicine*, Vol. 51:812-817, Issue 10 (2017), cited in "The Best Sport for Longer Life? Try Tennis," by Gretchen Reynolds, New York Times (September 5, 2018).
6. Finke, Michael S. and Ho, Nhat and Huston, Sandra J., Spending, Relationship Quality, and Life Satisfaction in Retirement (September 23, 2017). 2018 Academic Research Colloquium for Financial Planning and Related Disciplines, available at SSRN: https://ssrn.com/abstract=3041761or http://dx.doi.org/10.2139/ssrn.3041761.
7. "Dynamic spread of happiness in a large social network: longitudinal analysis over 20 years in the Framingham Heart Study," by J. H. Fowler and N. A. Christakis, *BMJ*, 2008; 337: a2338 (Dec. 5, 2008).
8. "Social Relationships and Mortality Risk: A Meta-analytic Review, by J. Holt-Lunstad, T. B. Smith, and J. B. Layton, PLOS Medicine, https://doi.org/10.1371/journal.pmed.100316 (July 27, 2010); "Loneliness and Social Isolation as Risk Factors for Mortality: A Meta-Analytic Review," by J. Holt-Lunstad, T. B. Smith, M. Baker, T. Harris, and D. Stephenson, Perspectives on Psychological Science (March 11, 2015), https://doi.org/10.1177/1745691614568352.
9. "Benefits of Having Friends in Older Ages: Differential Effects of Informal Social Activities on Well-Being in Middle-Aged and Older Adults" O. Huxhold, M. Michelle, MB. Schulz, Journals of Gerontology, SeriesB: Psychological Sciences and Social Sciences 69(3), doi: 10.1093/geronb/gbt029 (May 16, 2013).
10. Marc E. Agronin, MD, The End of Old Age: Living a Longer, More Purposeful Life (Hachette Book Group 2018), at page 34, based on the Baltimore Longitudinal Study on Aging. For more information, go to B. R. Levy, M. Slade, S. Kunkel, and S. Kasl, "Longevity Increased by Positive Self-perceptions of Aging," *Journal of Personality and Social Psychology* 83 (2002): 261-270.
11. Agronin, *op. cit.*, at 40.

A Lawyer's Primer on Blockchain and Smart Contracts

By Michael C. Chan

What Is a Blockchain?

Essentially, a blockchain is a huge, global, decentralized ledger. A blockchain keeps track of who sent how many Bitcoin or Ether to whom, the exact time it was sent, and the balance on every single user's account. All of these transactions/data are irreversible, immutable, and time-stamped transactions/data on the blockchain. For an attorney, there is great value in having an undisputed single source of truth about a transaction or piece of data.

Each of these transactions remain public and traceable, because each transaction constitutes a step in the blockchain itself. The blockchain itself is stored and maintained by thousands of nodes/miners across the globe. There are many different cryptocurrencies that use the blockchain protocol. For the purposes of this article, we will focus on the two largest public blockchains: Bitcoin[1] and Ethereum.[2] Nobody owns the Bitcoin or Ethereum platform and it is not backed by any venture capital group. While there are private/hybrid "permissioned" blockchains, such as HyperLedger and Quorom being developed by IBM[3] and JPMorgan[4] respectively, they are accessible to a handful of pre-selected private parties (for example, a trading pool of a few banks or hedge funds) and are beyond the scope of this article.

Blockchains Have the Following Unique Characteristics:

- Global and transnational
- Resilient and tamper resistant data
- Transparent and irrefutable records
- Pseudo-anonymous
- An incentive mechanism to process transactions

To unpack this a bit, a blockchain is a borderless database made up of a global network of unaffiliated and decentralized computers. It is relatively cheap to store and defend data that is inputted into the blockchain and next to impossible to hack.

Blockchain Itself Has Never Been Hacked (Looking at You, Equifax!)

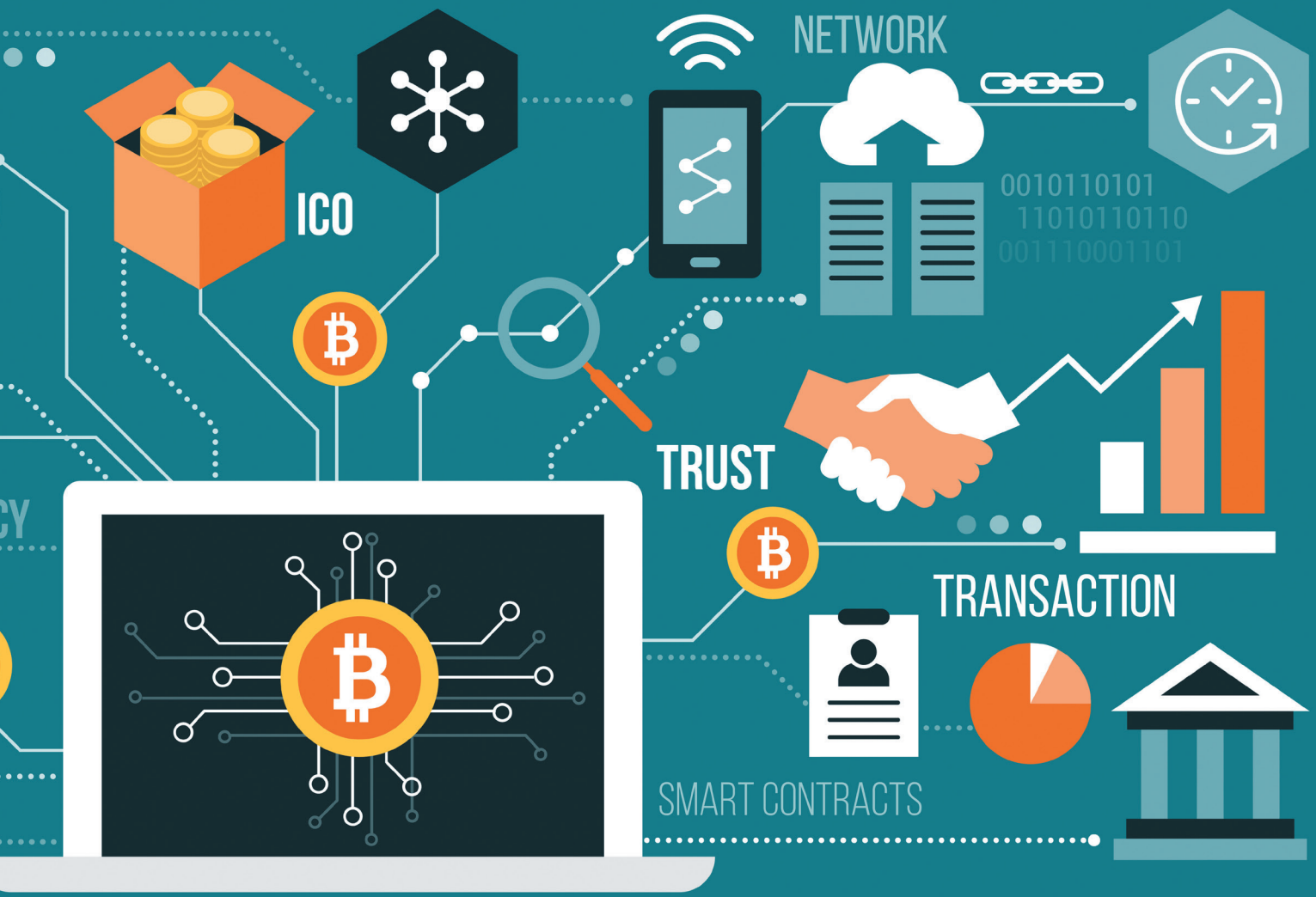
In fact, the Bitcoin and Ethereum blockchain themselves have never been broken. However, some of the centralized cryptocurrency exchanges, such as Mt. Gox, that hold the cryptocurrencies themselves have been broken.[5] Bitcoin or Ethereum themselves are impossible to hack, because an attacker would need to control 51 percent of the nodes to reverse just one transaction, and controlling 51 percent of a network such as Ethereum or Bitcoin would take billions of dollars in computing power to reverse. The only existential threat to breaking the blockchain protocol would be some serious advances in quantum computing, which would mean the security on all our data is jeopardized, not just the cryptography surrounding the blockchain protocols.

Every Blockchain Transaction Is Recorded and Irreversible

Every transaction is recorded publicly on the blockchain in the form of a "hash," which is simply a long series of randomly generated numbers and letters, that looks something like: "*0xad9b86640008f02d9f2f3f0702133cea4eecb18c*." The blockchain is pseudo-anonymous, because all a user needs is an Ethereum or Bitcoin address to interact and conduct transactions on the blockchain, as opposed to any personally identifiable information or a credit card number.

Miners Verify Blockchain Transactions

A blockchain works by having the entire decentralized network publicly verify single transaction via a series of complex math



problems called "proof of work." The computers that choose to use their computing power to solve these proof of work problems are called "miners." In return for using their computing resources, miners receive a block reward, which is more bitcoins, ether, or whatever cryptocurrency they are mining. There are thousands of different nodes within the network that have to reach a consensus on whether a transaction is authentic. In other words, there is not a single central authority controlling the data, since updating the database is dependent on reaching a consensus with the other nodes.

How Do Addresses Work on the Blockchain?

Addresses rely on public-private key cryptography. Public-private key cryptography is similar to a locked mailbox with a key. Anybody can drop mail inside, but only the person with the private key can unlock the mailbox. Unlike your data on Facebook, this address is user owned and portable.

How Safe Is It to Conduct a Transaction on the Blockchain?

How is it safe to post my Bitcoin or Ethereum address? Instead of a credit card and/or social security number, a user only needs an address to interact with a blockchain. An Ethereum address has elements of a bank account, e-mail address, and social security number all in one. For example, one of my actual personal Ethereum addresses is: *0xad9b86640008f02d9f2f3f0702133cea4eecb18c*. Feel free to send me Ether! Imagine how reckless this would be if I had posted my credit card or social security number instead of my Ethereum address.

In the Beginning, There was Bitcoin…

Bitcoin was the first used case to offer proof that you could create a secure database—the blockchain—scattered across hundreds or thousands of computers, with no single authority controlling and verifying the authenticity of the data. The work of maintaining that distributed ledger was itself rewarded with small, increasingly scarce Bitcoin payments. Bitcoin is the first case of creating a secure, decentralized cryptocurrency.

Ethereum First in Smart Contracts

Moving beyond Bitcoin, Ethereum was launched with the goal of being the first "world computer." Ethereum's goal was to build more than just a decentralized currency, but a peer-to-peer network to describe and execute business logic on a blockchain, i.e. "smart contracts."

Definitions

Blockchain: A decentralized database or ledger shared across a peer-to-peer network of computers (known as "nodes") often scattered across the globe.

Each node has an exact copy of the database and no single node can tamper with it. Consensus among majority of nodes is needed to update the database. A blockchain is made possible by combining together several existing technologies: 1) peer-to-peer networks, 2) public-private key cryptography, and 3) a consensus mechanism.

Ethereum: An open source software platform based on blockchain technology that enables developers to build and deploy decentralized applications.

Bitcoin: Launched in 2009, Bitcoin was the first virtual currency to make use of blockchain technology.

Ether: A cryptocurrency mined and used to pay for transactions and services on the Ethereum blockchain network.

Nodes/Miners: Computers that process a transaction across the network. Each node stores an exact and current copy of the blockchain.

Cryptocurrency (also known as token or a coin): A digital token used to record and conduct transactions on the blockchain.

Proof of Work: A consensus algorithm used to confirm transactions. Nodes/Miners compete in a race to solve a difficult math problem. Once the math problem is completed and the other nodes confirm it is correct, the transaction is complete, and the miner receives a reward in the form of that blockchain's cryptocurrency.

Public-Private Key Cryptography: Invented in the 1970's by cryptographers out of Stanford, it is a way to send secure encrypted messages between parties without a shared key/password.

Ethereum Address: An account created on the Ethereum blockchain, which is comprised of a public address and a private key/password. The address can engage in transactions with other addresses without interference from a third party.

Smart Contract: A computer code that facilitates the exchange of money, content, property, shares, or anything of value and automatically executes when specific conditions are met.

Initial Coin Offerings (ICO): A fundraising activity by which a team or protocol collects capital in return for a cryptographically unique token. Similar to an Initial Public Offering (IPO).

Code as Law: What Are Smart Contracts? How Are They Currently Being Used?

A smart contract is code that is facilitated by a blockchain. A public blockchain is not owned by any one person or central entity, and instead collectively managed by a globally distributed peer-to-peer network; it allows us to complete a secure transaction without any of the traditional institutions, such as a government or large corporation, which we traditionally rely on to establish trust.

A trustless transaction allows the party to not care who the other party is on the other side of the transaction, because the code itself will serve as the law. Smart contracts and decentralized applications promise to remove middlemen and reduce friction in all types of property transactions. By using self-executing code and the blockchain, decentralized applications can reduce fraud and prevent censorship and third-party interference.

For example, in the Swiss city of Zug, the government has already issued blockchain-based identification centered on Ethereum.[6] Since all personal data is stored only with an individual's address on mobile phones—not centrally on a server, such as a Zug government database, Equifax, or publicly on the Internet—and is encrypted, citizens are in full control of what information to release and to whom. The City of Zug does an identity check to match an Ethereum address with a citizen.

Benefits of Smart Contracts

A smart contract itself is very good at managing the property rights of crypto-assets. Once a smart contract is executed, it can manage these property rights without monitoring by a human. These crypto-assets can be digital goods or represent an underlying physical good. Currently, smart contracts are being used to manage the rights of digital artwork, title to real estate, derivatives, and tax compliance. As long as the rules are objectively verifiable, then these smart contracts will execute automatically based on this verifiable data. To get objectively verifiable data, the two parties to a contract would both have to agree as to the source of the information. For example, in a derivative contract based on the price of gold to dollars, the two parties would agree to use the data feed from the Chicago Mercantile Exchange. For smart contracts, this source of data is often referred to as an "oracle."

Limitations of Smart Contracts

While smart contracts are very good at managing the metes and boundaries of property rights, they cannot represent every contractual promise, particularly those that are not objectively verifiable; for example a typical "force majure" clause or defining what is "reasonable" would be next to impossible. In other words, code may be logical, but people often are not. Another problem is when smart contracts are self-executing, there are commercial risks, such as it may be possible that the code does not execute as was intended by the parties. Additionally, since all the transactions are public, there is a limit on how anonymous a transaction can be. Currently, there are a handful of blockchain start-ups focused on combining traditional legal agreements with smart contracts to solve many of these limitations.

The Token Economy: What Exactly Is a "Coin" or a "Token?"

A "token" or "coin" is software offered to users in exchange for using and improving the software platform of the application, and the terms can be used interchangeably. A token can be used to represent an underlying asset such as a fraction of a digital artwork. A token can also be used as a key to unlock other features of a software application, similar to how when one goes to a fair or carnival and purchases tokens for use on a Ferris wheel. Tokens can then be exchanged for services or resold on the open market. Price is still based on speculation, but the economic value is distributed among users as well as shareholders and executives in a company. For example, instead of Facebook getting all the rewards from sharing user data and content, a user's Ethereum chosen address would hold the tokens. That address is portable to any service and the tokens can be sold.

Initial Coin Offerings (ICO)

In 2017, there was a great mania (and bust) about "ICOs" or Initial Coin Offerings, which is similar to a traditional IPO or Initial Public Offering. The difference being that instead of offering stock, the offering consisted of "coins" or "tokens." These coins, mostly created on top of the Ethereum protocol, were new cryptocurrencies created with the promise to make the holder of these coins money-based on the underlying business prospects of the company offering these coins for sale. In some instances, these coins also function as a token to use the underlying software application. In other cases, these coins were just merely a vehicle to raise money without a traditional middleman such as an investment banker.

Thousands of these new cryptocurrencies were created over the past two years, and the vast majority of these were scams or out-of-business within a matter of months. For the most part, these ICOs were illegal securities offerings, and the SEC even went so far as to create a website called "Howey Coin" to give investors an idea of what a scam ICO might look like.[7] Howey Coin was named after the "Howey Test," which defines the elements of a security. One reason there were so many ICOs was because they could be created with a few lines of code and a slick website to market them. Going forward, in the United States, it appears to be that any legitimate ICO that seeks to raise money will have to register their offering with the SEC like any other security.[8]

Decentralized Autonomous Organization (DAO) and Automated Governance

In the future, with a combination with self-executing smart contracts and artificial intelligence, one can envision the possibility of entire organizations being created and run by software programs or, as some in the field call them, DAOs, which is short for Decentralized Autonomous Organizations.

How to Obtain Your Own Ethereum Address for Free

The easiest way to obtain your own Ethereum address is by using MetaMask.[9] MetaMask is a free downloadable extension available for Google's Chrome, Firefox, or Opera browser that allows you to interact with smart contracts and decentralized applications right in your browser. MetaMask will allow a user to generate any number of Ethereum addresses, sign transactions on the Ethereum network, and allow a user to hold tokens from various applications. ■

MICHAEL CHAN

Michael Chan is a legal engineer/software developer with OpenLaw.Io, a spoke of Consensys. Consensys is a world leader in developing blockchain applications and decentralized software. Attorney Chan has long been interested in smart contracts and making the law more accessible through technology. He is also a founding partner of the New York City intellectual property law firm Melwani and Chan LLP.

Notes

1. https://bitcoin.org/bitcoin.pdf
2. https://ethereum.github.io/yellowpaper/paper.pdf
3. https://www.ibm.com/blockchain/hyperledger
4. https://www.jpmorgan.com/global/Quorum
5. https://cointelegraph.com/news/the-mess-that-was-mt-gox-four-years-on
6. https://joinup.ec.europa.eu/document/swiss-city-zug-issues-ethereum-blockchain-based-eids
7. https://www.howeycoins.com/index.html
8. https://www.sec.gov/ICO
9. https://metamask.io/

Effective Mediation Advocacy: Focused Preparation

By Hon. William I. Garfinkel and Sara F. Cates

In an era in which the number of cases that go to trial is in great decline,[1] effective representation, more than ever, includes skillfully representing clients throughout the mediation process. This can be achieved by focused preparation for each stage of the process. While the literature discussing mediation advocacy is prolific, and the suggested approaches are myriad,[2] we suggest here a simple goal: attorneys should carefully prepare for mediation with a focus on achieving the best possible settlement outcome for the client. This article will

discuss concrete steps lawyers can take to prepare for case resolution with this purpose in mind. We will look at the mediation process in three components: the pre-mediation conference, the mediation statement, and the actual mediation session.

The Pre-mediation Conference

Many mediators will hold a conference prior to the mediation session.[3] This initial meeting may be held in person, but far more frequently is held over the phone. While all counsel will participate, usually clients do not. There are several things lawyers can do to prepare for the pre-mediation conference:

Confer with Opposing Counsel and Your Client Prior to the Conference

Set up a time to talk with opposing counsel before the conference with the mediator. The initial conversation with the mediator will be much more productive if lawyers for both sides have a sense of the other party's actual interest in attempting to resolve the case. Lawyers should not be hesitant to be candid in this conversation.

On a more pragmatic level, counsel should confer regarding scheduling. Participating in the pre-mediation conference with prior knowledge of when both parties—counsel and clients—are and are not available will not only make it much more efficient to schedule the mediation, but will also make a good impression on the mediator. Preliminary discussions with opposing counsel should also address when it makes sense, in the life of the case, for the mediation to occur. If significant discovery needs to be conducted, or pending motions need to be ruled on, before fruitful settlement discussions can occur, this is important information to share at the pre-mediation conference. To the extent both parties are in accord on these issues, the more productive the process will be.

It is also important to confer with your client before the pre-mediation conference. Use this conversation to confirm your client's interest in trying to resolve the case. This conversation is also a good time to explain the mediation process to a client who may be unfamiliar with it. In addition, ensure your client understands the goals of mediation, including a risk-benefit analysis that favors settlement. This is important in managing the client's expectations regarding a realistic settlement of the case. Finally, obtain information as to your client's availability for the next several months to assist in scheduling the mediation session. Thorough communication with the client at all stages is essential.[4] A surprised, clueless client makes a poor impression on the adversary and on the mediator.

Consider the Goals of the Pre-mediation Conference, and Prepare Accordingly

The initial conversation with the mediator will accomplish several things. First, the mediator will want to make sure that both parties are actually interested in attempting to resolve the case. Be candid with the mediator in this regard. If both sides are interested in actively exploring settlement, the next question is when. Here, again, candor is important. If certain parts of the litigation process need to play out before settlement discussions can be productive, explain this to the mediator. If the parties are ready for settlement right away, they should be realistic about scheduling. In the District of Connecticut, for example, magistrate judges are often scheduling settlement conferences several weeks—and often months—out. Lawyers should also have a sense of how long of a mediation session is appropriate for the case. Some magistrate judges will schedule a half-day mediation as the default. If you believe your case will require a longer session, let the mediator know at the outset. It there is genuine urgency to hold the mediation as soon as possible, explain it. It may be possible to rearrange a schedule or find another available judge or special master.

The pre-mediation conference is also a chance for counsel to ask questions about submissions. In general, mediators will issue an order or guidelines for mediation statements, often right after the initial conference is held. This document will likely include information about page limits, formatting, content, and submission of the mediation statement. Any particular questions about submissions, or any legitimate requests for exceptions to the usual orders, can be raised at the pre-mediation conference.

Further, the initial conference is the appropriate time to make any special requests. Questions and concerns, such as whether it is permissible to have a client available by phone only, or whether the parties will be in separate rooms at all times, are appropriately raised at this stage. With respect to actual presence of parties at the session, some mediators will not allow anyone to participate by phone. If the mediator will consider such a request, the reason must be compelling, since mediation is more productive when all decision-makers are present. Counsel may also wish to inquire about the mediator's process. For example, you may ask if the mediator requires (or prefers) opening presentations at the mediation or whether the mediator wishes to have certain exhibits, such as a "Day in the Life" video ahead of time.

There are things that the initial meeting is *not*. It is not, for instance, an opportunity to litigate the case. Counsel should, above all, avoid *ad hominem* attacks on other counsel or the opposing party.

The Mediation Statement

One of the most important aspects of representing a client in mediation is writing the mediation statement. First and foremost, as mentioned above, the mediator will provide counsel with instructions for preparing this document. Pay attention to those instructions and follow them!

Prepare Your Mediation Statement, Keeping in Mind Audience and Purpose

The primary audience of the mediation statement is the mediator. The purpose of the documents is to give the mediator the

information he or she needs to conduct the mediation, and to present your client's position with candor such that you will be putting the client in the best situation possible for settlement.

In general, a mediation statement will contain a statement of the cause(s) of action, a brief and coherent statement of the relevant facts of the case, an explanation of the critical disputed legal issues, the status of the litigation, any upcoming deadlines, and a recap of any negotiation history (including offers of compromise). The mediation statement is most helpful if it also contains your thoughts as to what would be an appropriate settlement range, including any significant non-monetary terms. The mediation statement should contain candid comments as to the strengths and weaknesses of the case; acknowledgement of shortcomings enhances credibility with the mediator.

While the mediation statement is the place to explain the case's critical disputed issues, it is not the place to argue those issues. Counsel should not, for example, simply cut and paste from a brief filed in the case. Rather, provide the mediator with a brief working summary of the argument, acknowledging its possible weaknesses. Avoid being hyperbolic. Refrain from caustic rhetoric. When counsel keeps in mind audience and purpose, it is clear that the mediation statement is a document distinct from a brief on the merits. Its aim is not to persuade a court to rule in a certain way; its goal instead is to provide the mediator with an accurate impression of the case and the interests of your client. If there is a dispositive motion pending, note that; do not, however, simply refer the mediator to the docket. The purpose of the mediation statement is to present to the mediator, in one composed document, all of the information needed for the purpose of settlement.

As you draft your mediation statement, also keep in mind secondary audiences. Your client, of course, has a right to read the document. Accordingly, any information you include in the statement must be incorporated in such a way that you are comfortable sharing it with the client. And, even if the mediator does not require it, you may consider sharing your statement with opposing counsel.

What about Attachments?

Mediation statements are an opportunity for counsel to explain—to present to the mediator—the salient elements of the litigation in the context of attempting to reach a resolution. In general, it is not helpful to refer the mediator to exhibits already filed in the case. If, in your discretion, you feel certain exhibits are necessary to assist the mediator in understanding the pertinent facts of the case, consider submitting these documents along with the mediation statement. Examples of particularly helpful exhibits include important records, photographs, reports, or drawings. Being able to speak directly with the client(s) is typically the most effective way to communicate what has happened to the plaintiff and how that has impacted him or her. Exhibits should be submitted to the mediator only when necessary to augment the mediator's understanding of the case and your position; they are not a substitute for a well-composed memorandum.

Preparing for the Mediation

Once the mediation is scheduled, and the mediation statement has been written, lawyers can focus on preparing for the actual mediation session.

Prepare the Client

A large part of mediation preparation will include discussing with your client what to expect. Explain the settlement process to the client. Let the client know that he or she may be asked questions by the mediator and that the mediator may direct comments at him or her. Some clients need to be warned to avoid overt hostility and hyperbole. Others need to be encouraged not to be hesitant to speak frankly in front of the mediator. Also, let your client know that the process, in one sense, takes time and that patience is required. In another sense, though, the client needs to be prepared to respond thoughtfully, but fairly quickly, to demands or offers from the other side. An unprepared client (or attorney) in this regard will detract from the momentum of the negotiations and can result in an unsuccessful session.

Continue to Keep in Mind Audience and Purpose

Anything you want the mediator to see, and any information you want the mediator to know, should be included in, or submitted with, the mediation statement. It is neither efficient nor particularly helpful to bring a key piece of evidence (such as a 20 minute recording of the incident that is the impetus of the dispute) to the mediation and present it to the mediator for the first time. Any facts about your case that are potentially relevant to it reaching a final settlement should be shared with the mediator before the session. To ensure that this happens, lawyers need to thoroughly investigate the facts of the case in preparing for settlement. It is inexcusable not to know thoroughly the facts of the case.

It is also critical for lawyers to be aware of, and understand the facts relating to, the client's overall financial situation with respect to the litigation. For example, if there are bills, liens, lost wages, etc. that impact your client's ability to accept or pay a certain sum, it is vitally important to have this information available during the mediation session.

Act Constructively

Be flexible during the process. You will have to provide thoughtful advice quickly. Think ahead about possible paths the discussions may take, and be prepared with a potential response. Lawyers (and clients) should exhibit to the mediator that they are there in good faith. Even if the position of the opposite side is one you view as unrealistic or unhelpful, exclaiming to the mediator that you are "insulted" by the demand or offer is not especially constructive. Rather, respond with a position that makes sense to you, providing the mediator with a thoughtful explanation of why you believe your position makes more sense. Putting yourself in the shoes of the mediator, and asking what you can say or do to assist the mediator in reaching a

settlement, is an effective way to give the mediator the information he or she needs to achieve a settlement that is acceptable to your client.

Acting constructively also encompasses understanding that the mediation process will present opportunities that other stages of the litigation will not. For example, a joint session with the mediator allows you to create an impression on the opposing party. Consider what you want the other party to hear that they might not hear otherwise. This opportunity to positively impact the resolution process should not be wasted.

Conclusion

In closing, giving thought to each stage of the process will allow lawyers to best represent clients in mediation. Focused preparation—of the case, of yourself, and of your client—will put you in the best position to advance constructively toward a resolution that is in the best interest of your client. ■

HON. WILLIAM I. GARFINKEL

Hon. William I. Garfinkel is a United States magistrate judge in the District of Connecticut. He has served as a mediator for over 20 years, and in this time has helped to resolve thousands of cases

SARA F. CATES

Attorney Cates is the career law clerk to Judge Garfinkel. She also teaches legal skills at Quinnipiac University School of Law.

Notes

1. See Burns, Robert. *Advocacy in the Era of the Vanishing Trial*, 61 U. KAN. L. REV. 893, 894 (2013) (noting that less than two percent of federal civil cases go to trial).
2. See *generally* Abramson, Harold, *Mediation Representation: Advocating as Problem-Solver in Any Country or Culture 2* (National Institute for Trial Advocacy 2010) (advising that, "[i]nstead of advocating as a zealous adversary, [the lawyer] should advocate as a zealous problem-solver."); Lawrence, James K.L., *Mediation Advocacy: Partnering with the Mediator*, 15 OHIO ST. J. ON DISP. RESOL. 425, 426 (2000) ("In order to be an effective mediation advocate it is necessary to change from a litigator's mind-set of approaching disputes as a combatant, bent on winning, to an advocate's mind-set of working toward uncovering interests while creating and evaluating options to satisfy those interests.").
3. This is the practice for some of the Magistrate Judges in the District of Connecticut. Even if your mediator does not hold such a conference, the suggestions in this section nevertheless are essential to thorough preparation.
4. Of note, Rule 1.4. of the Connecticut Rules of Professional Conduct provides that "[a]lawyer shall: … reasonably consult with the client about the means by which the client's objectives are to be accomplished."

Divorce and Special Education Law:

A Primer for Family Law Attorneys and Divorced Parents of a Child with a Disability

Although the United States divorce rate is falling,[1] divorce rates run much higher for couples that have a child with special needs.[2] Family law practitioners and their clients need to be aware of what parental rights are under the Individuals with Disabilities Education Act (IDEA) and under Section 504 of the Rehabilitation Act (Section 504) when drafting a divorce decree to ensure a child's special education interests are appropriately addressed.[3]

By Jeffrey L. Forte

Which Parent Has the Right to Make Educational Decisions for Their Child with Special Needs?

Generally speaking, unless otherwise provided by court order or state law, both parents have rights under the IDEA to address parental concerns and advocate for the needs of their disabled child's special education and related services. "When the parents of a child with a disability are divorced, both parents are entitled to exercise their IDEA rights, unless a court order or state law provides otherwise."[4]

Issues inevitably arise when there is a disagreement between divorced parents relating to their child's special educational needs and related services. This often leads to further confusion and difficulty regarding how the school district should proceed, thereby causing a three-way dispute between parent, parent, and school district.[5] Divorced parents should also be mindful of districts' efforts to "divide and conquer" the parents. For this reason, as a matter of best practice, it is critical that family law attorneys and divorced parents craft a final divorce decree clearly specifying which parent has "educational decision-making authority" over their child's special education.

Which Parent Has Educational Decision-making Authority When Not Specifically Addressed in the Divorce Decree?

It cannot be underscored enough that the divorce decree contains an educational decision-making authority clause when a divorced couple has a child with special needs. The family law practitioner or concerned divorced parent of a child with special needs should seek to modify or amend an existing divorce decree so that such a clause is contained.

In the absence of such a clause, family law courts and/or administrative impartial due process hearing officers examine which parent has legal custody, physical custody, and/or medical decision-making authority over the disabled child.[6] Under state laws, a divorced parent that neither possesses legal nor physical custody of the child may lack standing to participate in the child's special educational process under the IDEA.

Preventing a Child's Special Education Needs from Being Interrupted during and after a Divorce

In the practice of special education law, there are many scenarios

©Katarzyna Bialasiewicz / Getty Images

involving divorced parents challenging the special education services of their child. Here are a few examples:

Benjamin is a child that is outplaced at a specialized school. Mom and dad are divorcing. Dad cannot accept that Benjamin requires a specialized school. Dad wants Benjamin back in district. Mom wants Benjamin to stay in his current outplacement. The school district would be happy to agree with dad because it is cheaper. Dad signs the IEP first, allowing the school district to take Benjamin back into district.

Rob is a student that successfully is secured a private outplacement at mediation paid for by the district based on violations of Free Appropriate Public Education (FAPE). In exchange for Rob's private outplacement, the district requires both mom and dad sign a confidential settlement agreement. Mom and dad are divorced. Mom refuses to sign the agreement, thereby delaying and possibly preventing Rob's private outplacement.

Tim is a student with disabilities that is not receiving a special education. Mom and dad are divorced. Mom and dad share joint legal and physical custody of Tim, but mom handles medical decisions. Mom wants the school district to initially evaluate Tim for special education services, but dad says no and refuses to provide consent to the district.

In each of these examples, all of the issues can be avoided if the divorce decree contained an educational decision-making authority clause. Thousands of dollars, family court appearances, court-appointed guardians, and the emotional toll both on the parents and child can arguably all be avoided if the family law attorney proactively protects parental educational decision-making rights over the child's special education.

Had I Only Known: Special Education Questions to Ask While Crafting a Divorce Decree

As a special education lawyer and certified child advocate, I have represented dozens of divorced parents relating to the educational rights of their child with special needs, oftentimes in concert with my client's family law attorney. Here are some questions for you and your client to consider when handling a divorce case:

- Which parent will have educational decision-making authority over the child's special education? Specify it in the divorce decree.
- Which parent will attend and advocate at IEP or Section 504 meetings on behalf of the child? Note that under the IDEA, both parents have the right to bring anyone they wish to an IEP or Section 504 meeting and school districts do not have any authority to prevent it.
- In so much as there is physical abuse or domestic violence between ex-spouses, a protective or restraining order can strategically allow a school district to prevent the abusive spouse's personal attendance at an IEP meeting and instead participate by phone.
- If the school district of your client's child is not fulfilling the IEP or Section 504 obligations and you need to hire an advocate or special education lawyer, which parent will pay for such representation? Which parent gets to decide if such representation is allowed and by whom?
- If your client's child requires private evaluations, which parent will fund these costs? Which parent selects the evaluator?
- If your client decides to unilaterally place his or her child in a private special education school because the school district is not providing FAPE, which parent will fund the private unilateral placement?
- Which parent has the right to obtain all of the child's educational records under the Family Educational Rights Privacy Act (FERPA) with the school district?
- Will your client and his or her divorced spouse live in different towns? If so, this can affect costs pertaining to the child's private outplacement. Residency requirements are included in private settlement agreements with districts.

Do You and Your Client Need to Speak with a Special Education Law Attorney?

As with any legal fact pattern, it depends on the situation. Divorced and divorcing parents, as well as family law practitioners who have concerns about the child's special education, should always connect with an experienced special education attorney to ensure the child's educational rights are ambitiously appropriate and that the child's IEP, school placement, and related services are being delivered with fidelity.

As a matter of best practice, I require any potential clients that are divorced to provide me with a copy of their divorce decree prior to entering into an attorney-client relationship in order to determine what parent has standing to pursue the special educational interests of their child. Regardless of the disputes among former spouses, divorced parents are encouraged to set their differences aside for the benefit of their child's special education during and after the divorce and continue to be empowered as their child's best advocate. ■

JEFFREY L. FORTE

Jeffrey L. Forte practices special education law, child advocacy and juvenile defense. He is the founding member of Forte Law Group LLC where he exclusively represents families and children with special needs. Forte Law Group LLC has offices in Westport, Shelton, and West Hartford.

Notes

1. Steverman, Ben. (2018, September 25). *Millennials Are Causing the U.S. Divorce Rate to Plummet*. Retrieved from Bloomberg, https://www.bloomberg.com/news/articles/2018-09-25/millennials-are-causing-the-u-s-divorce-rate-to-plummet; see also Wood, John. (2018, October 5). *The United States Divorce Rate is Dropping, Thanks to Millennials*. Retrieved from World Economic Forum, https://www.weforum.org/agenda/2018/10/divorce-united-states-dropping-because-millennials and DePaulo, Bella Ph.D. (2017, February 2). *What Is the Divorce Rate, Really?* Retrieved from Psychology Today, https://www.psychologytoday.com/us/blog/living-single/201702/what-is-the-divorce-rate-really.
2. Wiscarson, Diane. (2018, January 1). *Divorce and What It Means for A Child's Special Education*. Retrieved from American Academy of Matrimonial Lawyers, http://aaml.org/library/newsletter/divorce-and-what-it-means-child%E2%80%99s-special-education.
3. Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (2004); Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. § 794.
4. Weber, Mark. *Special Education Law and Litigation Treatise*, § 14.5 (4th ed. 2017) LRP Publications; see also IDEA 2004 Regulations, 34 CFR 300.30(b)(2) (stating that a person qualified as a parent if any judicial decree or order authorizes the person to act as a parent or to make educational decisions on behalf of the child).
5. *Id.*
6. *Fuentes v. Board of Educ. of the City of New York*, 52 IDELR 152 (2d Cir. 2009). (Neither IDEA nor Part B regulations address how divorce affects parent's right to make decisions about student's special education services. Rights of noncustodial parent will turn on state law and terms of divorce agreement. Because neither divorce decree nor custody order gave father right to make educational decisions, he lacked standing to challenge child's IDEA services); *Taylor v. Vermont Dep't of Educ.*, 38 IDELR 32 (2d Cir. 2002) (2d Circuit held both FERPA and IDEA left intact state's authority to determine who may make educational decisions on behalf of child, so long as state does so in manner consistent with federal statutes. Under custody decree, student's mother, as noncustodial parent, lacked right to make educational decisions); *Navin v. Park Ridge Sch. Dist.* 64, 36 IDELR 235 (N.D. Ill. 2002), aff'd, 104 LRP 18051 , 49 F. App'x 69 (7th Cir. 2002) (Parent of student with dyslexia could not challenge child's IEP because divorce decree allocated authority of student's education to former wife. However, District Court allowed impartial hearing officer to hear father's claims of IDEA procedural violations, since he retained certain rights under decree); *Sheils v. Pennsbury Sch. Dist.*, 64 IDELR 127 (3d Cir. 2014, unpublished) (Remanding case back to District Court, 3d Circuit instructed lower court to determine whether school district could properly implement student's IEP with consent of one parent with joint custody notwithstanding other parent's objection); *W.S. v. Wilmington Area Sch. Dist.*, 66 IDELR 249 (W.D. Pa. 2015) (Family court proceedings can limit parent's right to pursue FAPE claim. Mother filed petition in Pennsylvania court to challenge Ohio court's award of "sole legal custody" to father. That statement prevented her from arguing she had right to challenge perceived flaws in her son's special education program).

5 Tips for Managing Your Pro Bono Workload

Ndidi N. Moses

By Ndidi N. Moses

Ndidi N. Moses is the president-elect of the CBA and chair of the Pro Bono Committee.

"PRO BONO" OR "PRO BONO PUBLICO," IS A LATIN TERM THAT translates to "for the public good." And while we all want to do what is good for the public, the question becomes: "How can we balance a healthy pro bono workload while still billing enough hours to sustain a healthy legal practice?" Here are five tips to help you pick the appropriate pro bono projects and manage your pro bono caseload:

1. Determine Your Availability

Do an inventory of what your workload looks like and how much time you think you have to devote to pro bono projects. If you do not think you have any time to devote to pro bono services, consider joining the board of a nonprofit looking to add attorneys to their board.[1] You can also attend a pro bono fair and speak with pro bono service providers about the projects available and the time commitments. If you are at a firm, you can talk to your pro bono coordinator or other associates working on pro bono projects about shadowing associates working on pro bono cases. You can also help partners and associates at your firm with discrete projects related to their pro bono cases, like research, cite checking, and helping prepare for court proceedings.

2. Pick Issues You are Passionate About

The more passionate you are about an issue, the more rewarding the work will be, no matter the challenges that may be present. First, think critically about the issue you have an interest in and enjoy working on. Then, try to find a pro bono service provider who handles similar issues. Spend some time researching nonprofits and other social service organizations. Once you find an issue or cause you want to support, talk to attorneys and paralegals who have handled similar cases to find out more information about the time commitment and skill set required, which will help you determine the best way to get involved.[2]

3. Create an Engagement Letter

This is something you do already with paying clients, and it's equally important for pro bono cases. Make sure you clearly identify your responsibilities, objectives, and requirements, as well as your client's responsibilities, in an engagement letter. During the first meeting with your client, the engagement letter should be discussed, as well as the terms conveyed and agreed upon, immediately.[3]

4. Ask for Assistance

Do not be afraid to reach out to others to get advice, sample documents, and general guidance with handling pro bono cases. This is especially true if you have a busy schedule or if you are unfamiliar with the legal issues. Additionally, there is a good chance that other issues may emerge outside of your legal expertise, and go beyond your engagement letter. If this occurs, assess whether you are able to handle the new legal issues and, if you are not, refer those matters out to other attorneys.[4]

5. Carefully Track Your Time and Expenses

While most large and mid-sized law firms require associates and paralegals to track their pro bono hours and expenses, many solo practitioners, in-house departments, and public organizations may not have policies requiring detailed tracking of pro bono hours and expenses by everyone assisting with the pro bono case. Everyone should be tracking the time spent handling a pro bono case and the legal costs expended representing pro bono clients for two reasons: First, attorneys may be able to obtain compensation at the conclusion of some pro bono cases.[5] A detailed accounting of your time and legal costs will be required to obtain compensation. Second, knowing how much time and money you spend on a case will help you more accurately estimate the time and expenses required for certain types of pro bono cases. This will also help you select the pro bono case that is right for you.[6]

When managing a pro bono caseload, the right balance and fit may seem elusive and hard to achieve at times, but the key is to perform a self-evaluation of your needs and interests, as well as the needs of your prospective pro bono clients. Take on projects only when you are ready for the time commitment required. The good news is that pro bono opportunities range drastically in time and scope, and the only real question is: Which pro bono opportunities are right for you? ■

(*Continued on page 40*)

Graham v. Commissioner of Transportation, 330 Conn. 400 (2018): An Icy Bridge, Sovereign Immunity, and Legislative Acquiescence

By Charles D. Ray and Matthew A. Weiner

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.

IS A STATE TROOPER A STATE EMPLOYee? Maybe yes, maybe no, as we learn in *Graham v. Commissioner of Transportation*, 330 Conn. 400 (2018)—at least for purposes of the state statute waiving sovereign immunity for highway defect claims.

The story begins in the winter of 2011, when the plaintiff, Barry Graham, was involved in a car accident on the Gold Star Memorial Bridge. At 6:30 a.m. on December 12, as the plaintiff drove his pickup truck in the northbound lanes of the bridge, the truck slid on black ice, rolled over on its side, and collided with a bridge structure. As a result of the crash, the plaintiff suffered serious injuries.

The plaintiff's accident was not the first one to occur on the icy bridge that morning. The first accident occurred at 5:40 a.m. Nine minutes later, the state police notified the Bridgeport operations center of the defendant, the commissioner of transportation. The operations center then implemented its standard protocol for responding to off-hour calls for service. Specifically, the center called the supervisor of the department's maintenance garage in Waterford—which services the Gold Star Memorial Bridge—with instructions to call out a crew to salt the bridge. Because the garage was closed, it had to implement its off-hours procedure, which required two crew members to drive in their nonemergency vehicles to the garage—where the department's de-icing equipment and materials were stored—open the garage, load the salting truck, then drive to where the salting needed to be performed. The crew leader responsible for off-hour calls on this day was Theodore Engel, who lived about 30 minutes from the garage.

Engel was called out at 5:51 a.m. It took Engel and his helper more than an hour to get to and open the garage, prepare and load a truck for salting operations, and drive the truck to the bridge. By the time they got there, the plaintiff's accident had already occurred. In addition, the state police, who had been on the bridge since before 6:00 a.m. responding to other accidents, had decided to close the bridge.

According to the commissioner, in addition to sending out the salt crew, Department of Transportation (DOT) workers had illuminated electronic signboards positioned approximately one-tenth of a mile before the start of the bridge in both directions. The signs read: "Slippery Conditions. Use Caution." However, both the plaintiff and Engel swore that they had not seen any such warning signs.

Approximately seven months after the accident, the plaintiff filed suit naming the commissioner, among others, as defendants. In relevant part, the plaintiff alleged that the commissioner "has a statutory duty to keep and maintain all highways and bridges within the state highway system in a reasonably safe condition" and that the "cause of his accident and resulting injuries [were due to the commissioner's] breach of his duty to keep the bridge in a reasonably safe condition by failing to take adequate measures, in response to the notice he had received of its dangerous condition, either by treating its icy surface, placing or utilizing warning signs in the area to warn travelers of that dangerous condition, or closing the bridge until that dangerous condition could be remedied." The plaintiff got around the obstacle of sovereign immunity by invoking General Statute § 13a-144, which provides, in relevant part, that: "Any person injured in person or property through the neglect or default of the state or any of its employees by means of any defective highway, bridge, or sidewalk which it is the duty of the Commissioner of Transportation to keep in repair…may bring a civil action to recover damages sustained thereby against the commissioner in the Superior Court."

Eventually, the commissioner moved for summary judgment. The commissioner's primary argument was that he had not breached his statutory duty to remedy the ice patch. In particular, he argued that his employees had responded promptly, had

followed standard protocol, but still did not reach the bridge until after the plaintiff's accident. The plaintiff responded by pointing out that breach of duty is usually a "multifactorial factual issue" that should be decided by a jury. The plaintiff further argued that several genuine issues of material fact existed, including whether, given that the Gold Star Memorial Bridge was prone to freezing over completely and the commissioner (allegedly) had actual notice of earlier accidents that morning, it was unreasonable for the commissioner to call in people from a work crew that could not treat the bridge for more than an hour. The trial court agreed with the defendant, concluding that "as a matter of law…the [commissioner's] response time was reasonable."

On appeal, a unanimous panel of the appellate court reversed. After concluding that there existed a genuine issue of material fact regarding when the commissioner received actual notice of the defect that caused the plaintiff's injuries and that the reasonableness of the commissioner's response was a matter for the jury, the court addressed the question of whether the commissioner had failed to make proper use of temporary remedies, such as closing the bridge. The court explained that, pursuant to General Statutes § 13a-144, the state "waives sovereign immunity for defective highway claims based upon the neglect or default *not merely of the commissioner of transportation, but of the state or any of its employees*, at least when performing duties related to highway maintenance." (Emphasis in original.) Because there was a genuine issue of material fact regarding whether the failure of the state police—who, presumably, fell within the definition of "any" state employee—to close the bridge before the plaintiff's accident occurred was reasonable, the appellate court remanded the case with direction to deny the commissioner's motion for summary judgment.

On certification, the primary legal issue before the Supreme Court was whether the waiver of sovereign immunity under § 13a-144 extended to the plaintiff's claim that the state police were negligent in failing to close the bridge before a crew could arrive to remedy the icy condition. Writing for the four member majority, Chief Justice Robinson concluded that the statute did not so extend the waiver of sovereign immunity.

The majority's analysis started with a rejection of the plaintiff's argument that § 13a-144's waiver extends to the actions of every state employee without regard to the employee's relationship to the commissioner. First, such a reading would violate the principle that waivers of sovereign immunity are to be strictly construed. Second, such a reading would lead to absurd results. For example, "if a Department of Social Services employee—whose job has nothing to do with highway maintenance and who the commissioner has no authority to oversee—was driving along any portion of the state's highways and came upon a defective condition, but failed to alert the commissioner, this would be a neglect of the commissioner's duty under § 13a-144." (Footnote omitted.) That couldn't be what the legislature had in mind.

Instead, for the majority, the waiver contained in § 13a-144 requires "proof that the state employee is engaged in highway maintenance and that a relationship exists between the state employee and the commissioner." According to the majority, the court had reached that very conclusion 30 years earlier in *Lamb v. Burns*, 202 Conn. 158 (1987), where a motorist sued the commissioner based on injuries she and her children suffered from a car accident caused by a patch of ice. The plaintiff in *Lamb* was involved in an accident on a Saturday, after the state police had been notified of the icy patch and a state trooper had responded to the report by placing 30-minute flares near the patch and calling for a sand truck. The plaintiff's accident occurred after the flares had burned out but before the sand truck had arrived. As in *Graham*, the plaintiff in *Lamb* alleged that negligence on the part of the state police could form a basis for finding the commissioner liable under § 13a-144. In *Lamb*, the Supreme Court concluded that the trial court had properly instructed the jury that negligence on the part of the state police could provide a basis for finding the commissioner liable under § 13a-144.

So how did *Lamb* support the majority? Because, according to the majority, the *Lamb* opinion set forth the requirement that liability for "state employee" negligence could exist only where the plaintiff established that the state employee engaged in highway maintenance and that a relationship existed between the state employee and the commissioner. The plaintiff in *Lamb* had satisfied that evidentiary burden through evidence that: it was the custom of the commissioner to avail himself of the state police and the state police had assumed such duties; it was a state trooper's "duty" and "usual procedure" to report highway defects; DOT had relied on the state police to call about highway issues; and an established procedure existed through which DOT made available to the state police a list of the home numbers of its maintenance supervisors. By contrast, the plaintiff in *Graham* had produced virtually no evidence "regarding the nature of the relationship between the state police and the commissioner…."

Justice D'Auria, writing for himself and Justices Palmer and Mullins in dissent, disagreed for a few reasons. First, for the dissent, the plain language of § 13a-144 does not limit the waiver of sovereign immunity in the manner determined by the majority. Instead, the language "of the state or any of its employees" "sweeps broadly, reaching allegations of neglect even by those without a relationship to the commissioner." Moreover, although the statute directs the plaintiff to bring suit against the commissioner, it refers to "the state" generally as the party responsible to the injured person.

Second, the dissent rejected the majority's concern about opening the floodgates of litigation whenever a random state employee came across a highway defect and failed to inform the commissioner of it. For the dissent, this concern mixed the concept of duty into the question of the scope of the sovereign immunity waiver. The commissioner would never be found liable for the failure of a Department of Social

(*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

An owner retains ownership of a biting dog that is scheduled for euthanization at the end of a quarantine period and therefore has standing to sue to challenge whether the dog is being held under humane conditions. *Miller v. Hamden*, 67 CLR 276 (Wilson, Robin L., J.).

Indian Law

Tribal sovereign immunity does not bar a Dram Shop Act case brought in state court against a tavern at the Mohegan Sun Casino owned by a Massachusetts corporation, for injuries in an off-reservation motor vehicle accident allegedly caused by the tavern's service of alcohol to an operator who is not a tribal member, even though the conduct upon which the claim is based—the service of alcohol to an already intoxicated patron—occurred on tribal land. *Kulic v. Landsdowne Pub-MS, LLC*, 67 CLR 337.

Landlord and Tenant

Miah v. Smith, 67 CLR 367 (Droney, Nuala E., J.), holds that a determination of whether a post notice-to-quit statement by a landlord to a tenant rendered the notice equivocal, thereby defeating subject-matter jurisdiction for the summary process action, must be based on an evaluation of how a *reasonable* tenant would construe the statements, not on how the specific tenant in this case actually understood the statement.

Middletown Housing Authority v. Ready, 67 CLR 155 (Aaron, Barbara, J.), relies on the doctrine of equitable non-forfeiture in ordering judgment in a summary process action for a tenant of a moderate income housing project. The opinion reasons that the hardship to the tenant, a disabled mother with a moderately handicapped child, would greatly outweigh the hardship to the landlord, the tenant had not acted willfully, and the tenant had already delivered sufficient funds to the court clerk to remedy the default.

Real Property

Todd's Hill Investment Circle, LLC v. Bell, 66 CLR 795 (Markle, Denise D., J.), holds that a holder of an interest in a limited liability company has no ownership interest in real estate owned by the LLC and therefore cannot protect its interest in the LLC assets through the filing of a notice of interest on the land records pursuant to the Marketable Record Title Act, Conn. Gen. Stat. § 47-33f (authorizing the filing on the land records of a notice of interest by "any person claiming an interest of any kind in land"). The opinion holds invalid a notice of interest in real property recorded by a spouse who received a share of the other spouse's interest in a limited liability company which owned commercial real property.

The execution of a mortgage through the use of a trade name rather than the mortgagee's legal name, and the subsequent assignment of the mortgage, again through the use of the trade name, do not invalidate either the mortgage or the assignment. The mortgage, therefore, may be foreclosed by the assignee. *U.S. Bank, N.A. v. Armijo*, 66 CLR 563 (Lee, Charles T., J.).

Luft v. Rochette (Cole Chu, 65 CLR 59 Leeland J., J.), holds that the fact that a foreclosure deed omitted an express easement in the foreclosed parcel's chain of title, does not defeat ownership of the easement by subsequent owners. The matter involves an easement providing access to a pond to multiple homeowners in a subdivision. The party owning the fee interest to the lot burdened by the easement is attempting to defeat the right of the owner of one of the subdivision lots to use the easement, on the grounds that the easement was interrupted by the foreclosure sale in that owner's chain of title.

State and Local Government Law

A state legislator lacks standing to prosecute a civil action to enjoin the governor from expending funds on a study of a proposal already rejected by the General Assembly. *Markley v. Malloy*, 67 CLR 325 (Moukawsher, Thomas G., J.).

Nardello v. Merrill, 66 CLR 711 (Agati, Salvatore C., J.), holds that although the statutory requirement that a certificate of candidacy for nomination by a political party to a district office be timely filed with the secretary of the state is mandatory, a court has equitable authority to allow the correction of an error caused by party or election officials rather than by the candidate.

The provision of the Palliative Use of Marijuana Act that creates a private cause of action for an employer's discharge or refusal to hire an employee based solely on status as a person qualified to engage in the palliative use of marijuana, does not waive the state's sovereign immunity for claims brought against state agencies. *Rivera v. UConn*, 66 CLR (Peck, A. Susan, J.T.R.).

Torres v. Norwalk, 66 CLR 548 (Povodator, Kenneth B., J.), holds that the immunity provided municipal employees from liability for torts committed in the performance of discretionary duties applies only to claims arising out of the exercise of a governmental authority that has been extended to the employee and not to routine tasks incidental to the exercise of that authority. The opinion holds that a police officer is not provided with immunity under the statute for claims arising out of a

motor vehicle accident which occurred while the officer was engaged in a high-speed response to a call for emergency assistance, because the activity of operating the vehicle is merely incidental to the authority with which the officer was acting at the time of the accident.

Tax Law

A merchant's statutory right to recoup the sales tax portion of an uncollectible credit transaction which has been written off as a bad debt as authorized by Conn. Gen. Stat. § 12-408(2)(B), is available only if the merchant maintains sufficient records to allow each transaction that is written off to be directly correlated to the specific transaction in which the sales tax was imposed; records providing only aggregate records of write-offs cannot be relied on to substantiate a claim for recoupment of the sales tax portion of uncollectible accounts receivable. *Home Depot U.S.A., Inc. v. Commissioner of Revenue Services*, 67 CLR 207 (Cohn, Henry S., J.T.R.).

Torts

Ayala v. Paramount Plaza at New Brite, LLC, 67 CLR 231 (Gordon, Matthew D., J.), holds that an apportionment complaint may not be filed against a party with a non-delegable duty, because a non-delegable duty cannot be apportioned.

Voluntarily waived medical provider charges remaining after applying medical insurance proceeds against a plaintiff's medical bills, are not "collateral source deductions" which must be applied against a plaintiff's recovery from a third-party tortfeasor as required by Conn. Gen. Stat. § 52-225a and Conn. Gen. Stat. § 52-225b. *Morey v. Sutula*, 67 CLR 231 (Brazzel-Massaro, Barbara, J.).

Horner v. Hartford Roman Catholic Diocesan Corp., 67 CLR 308 (Lager, Linda K., J.), holds that the Fraudulent Concealment Statute, Conn. Gen. Stat. § 52-595, applies to all statutes of limitation that do not specifically preclude its application. The opinion holds that the Statute applies to the extended limitations period for personal injury claims based on the sexual abuse of a minor, Conn. Gen. Stat. § 52-577d (30 years from the date a claimant attained the age of majority). The opinion also holds that the statute of limitations for a claim against a Catholic Diocese for the sexual abuse of a minor parishioner by a priest known by the diocesan archbishop to have a propensity for child sex abuse does not commence when the victim first becomes aware that the *priest's* conduct was improper and actionable, but rather when the victim first became aware that a claim could be brought against the diocese based on the *archbishop's* misconduct in failing to protect minor parishioners from the priest.

The rule that a property owner's non-delegable duty to maintain premises in a safe condition cannot be apportioned precludes one person in control of the property that has been sued on a premises liability claim from obtaining apportionment for the negligence of another person who also has full control over the same property. This opinion holds that a condominium association sued for personal injuries to a visitor injured in a fall on a walkway leading to a particular unit cannot bring an apportionment complaint against the unit owner. *Yagle v. Brook Haven Condominium Association, Inc.*, 67 CLR 269 (Noble, Cesar A., J.).

The statute of limitations incorporated into the Wrongful Death Statute, Conn. Gen. Stat. § 52-555 ("two years from the date of death...[but] not more than five years from the date of the act or omission complained of"), is a jurisdictional requirement and therefore the two-year period is not subject to tolling to accommodate a claimant's late discovery of the existence of a claim under the statute. *Choezin v. Boston Culinary Group, Inc.*, 67 CLR 362 (Swienton, Cynthia K., J.).

Zoning

Bielitz v. Wex-Tuck Realty, LLC, 67 CLR 18 (Berger, Marshall K., J.T.R.), holds that the statute providing that a zoning applicant may not be required to comply with zoning regulations not in effect at the time an application is filed, Conn. Gen. Stat. § 8-2h, applies only to zoning regulations that are changed through administrative or legislative action and not to changes brought about by judicial appellate interpretations of existing regulations, even with respect to interpretations rendered while an approved application is under appeal.

The appeal provision of the Affordable Housing Act authorizes appeals from preliminary and conditional rulings on zoning applications even though such an appeal on a comparable traditional appeal would not be ripe for adjudication. *Landmark Development Group, LLC v. East Lyme Zoning Commission*, 67 CLR 341 (Berger, Marshall K., J.T.R.).

Branford Housing Authority v. Branford PZC, 67 CLR 348 (Berger, Marshall K., J.T.R.), holds that the statutory authorization for "protest petitions" to require a supermajority vote on a zoning amendment application does not apply to affordable housing applications.

A decision by the Hamden Zoning Board of Appeals to waive zoning requirements to allow the otherwise unpermitted use of a single-family residence as a group sober house was a reasonable accommodation with the requirements of the federal Fair Housing Act and the Americans with Disabilities Act that local ordinances be applied in a manner that avoids limiting housing opportunities for handicapped individuals. Therefore, the approval decision may not be overturned on an appeal by a neighborhood association opposing the use. *Spring Glen Civic Association, Inc. v. Hamden ZBA*, 67 CLR 357 (Quinn, Barbara M., J.T.R.).

McLoughlin v. Bethel PZC, 67 CLR 372 (Berger, Marshall K., J.T.R.), holds that the designation of a particular use as allowed pursuant to a special permit does not eliminate a zoning commission's discretion to deny an application based on general zoning concepts, even if the use would satisfy all expressly stated requirements for the zone in question.

The Affordable Housing Act applies to housing projects sponsored by municipal housing authorities. *North Haven Housing Authority v. North Haven PZC*, 66 CLR (Mottolese, A. William, J.T.R.). ■

Two Points for Honesty

By David A. McGrath

David A. McGrath is the chair of the Connecticut Bar Association Young Lawyers Section for the 2018-2019 bar year. He is a partner at Louden Katz & McGrath LLC in Hartford, where he handles divorce and custody litigation. He graduated with honors from the University of Connecticut School of Law in 2009 and has exclusively practiced in the area of family law since that time.

ALMOST A DECADE AGO, IN A LAND NOT very far away, in the basement of 90 Washington Street in Hartford, I was arguing a contempt motion. I represented a mother in a post-judgment contempt matter. The contemnor-father was in arrears some $60,000 of child support. He would go on to spend multiple substantial spans of time incarcerated as a result of the litigation.

The contemnor had counsel appointed on his behalf, and I was frustrated with what I felt were excuses being propounded on the contemnor's behalf. In my closing argument, I used the word "disingenuous" to describe opposing counsel's argument. As soon as I had uttered that word the entire dynamic changed. In my recollection, opposing counsel transformed from calmly making his argument to pounding on the table and raising his voice in an animated response, as though he were defending a falsely accused murderer. The magistrate, in front of whom this lawyer was a frequent guest, was taken aback and exclaimed that he had never seen this lawyer so incensed.

In retrospect, I understand exactly why the lawyer was so angry. By using the word "disingenuous" to describe his argument, I had attacked not just his client and his argument, but the lawyer himself and his honesty. To his credit, he has been nothing but civil, kind, and professional to me in every interaction since. I hope this column will suffice as a belated apology.

Several years later, I was farther away, in a different courthouse on a different case with a different opposing counsel. After the conclusion of an evidentiary hearing, the judge ordered counsel to make another attempt to negotiate a settlement during the lunch recess. It became quickly and abundantly clear that settlement would not be possible, and the judge would need to be notified that he would have to write a decision. I did not wish to wait an hour on the clock for my client in order simply to report back to the judge that no settlement had been reached.

Opposing counsel had other matters on the docket that afternoon, so I asked him, were I to leave the courthouse, whether he intended to report to the judge or simply alert the clerk that the case had not settled. He snapped at me, "Are you worried I'm going to tell on you?" In his next breath he told me that he would report to the clerk and would not see the judge. Notwithstanding his sarcastic initial response and the fact that, just minutes earlier, he had yelled at me that I was a "petulant baby," I took him at his word. My trust was not based out of any affinity for him. I trusted him because, regardless of the snark and ad hominem attack, he is a commissioner of the superior court. I do not have to like him for him to have earned my trust.

I like to think that I am not naïve,[1] I do not automatically trust salespersons, contractors, real estate agents, accountants, or members of many other professions to tell the truth or keep their word. They have to do the work of building a relationship and earning that trust. I do not take for granted that my clients are telling the truth and have withdrawn from representation when their failure to do so justifies it.

Lawyers, on the other hand, unless a reputation for dishonesty precedes them, have already earned that trust. Notwithstand-

There are a few attributes that set lawyers apart from almost every other profession—and I believe that the most important one is a real expectation that they will be honest.

ing the notion in popular culture that lawyers are dishonest, precisely the opposite is generally true. There are a few attributes that set lawyers apart from almost every other profession—and I believe that the most important one is a real expectation that they will be honest.

This is an aspect of professionalism that the entire bar must work to protect. The news is presently full of prominent attorneys who have lied—lied through their teeth, lied repeatedly, lied with pants-on-fire, lied under oath, and lied to law enforcement. It takes the honest work of tens of thousands of ethical lawyers, working honorably through arduous litigation and negotiation day in and day out, both when it is easy and when it is hard, to overcome the attention given to the famous bad apples and to protect both the reputation of the profession and the rule of law. It is hard work well worth undertaking. It is this work that makes being a commissioner of the superior court something to be proud of. Anyone who behaves in a way that loses the trust earned in becoming a lawyer injures the entire profession and is unlikely to ever regain that trust for him or herself. A reputation is hard to mend.

More recently, I was back at 90 Washington Street on a different matter. During legal argument, a different opposing counsel stated, "I don't think Attorney McGrath is being entirely honest." She immediately stopped and corrected her prior statement to say that she did not believe that my "facts were correct." Thanks to that quick correction on her part, I had no need to pound on the table. ■

Notes

1. I also prefer to believe that I am not a petulant baby, but we all are entitled to our opinions.

PDD
(Continued from page 9)

Presentment ordered after hearing for violation of Rule 1.3 of the Rules of Professional Conduct by making only two phone calls to a lender, post-bankruptcy, after agreeing to assist the complainant; violation of Rules 1.4(a)(3) and (4) of the Rules of Professional Conduct by failing to respond to complainant's e-mails and other communications and when he did, failed to provide any substantive information; and violation of Practice Book § 2-32(a)(1) for failing to respond to the grievance complaint. *Cherry vs. Scott A. Garver*, #17-0841 (7 pages).

Presentment ordered by agreement for consolidation of all pending disciplinary matters with this matter alleging violation of Rule 8.1(2) of the Rules of Professional Conduct and Practice Book § 2-32(a)(1). *Atmore vs. Keisha Shantell Gatison*, #17-0778 (6 pages).

Presentment ordered by agreement for consolidation of all pending disciplinary matters with this matter alleging violation of Rules 1.1, 1.4, 1.15, 1.16(d), and 8.1(2) of the Rules of Professional Conduct and Practice Book § 2-32(a)(1). *Costa vs. Keisha Shantell Gatison*, #18-0130 (6 pages).

Presentment ordered for violation of Rules 1.4 and 8.1(2) of the Rules of Professional Conduct and Practice Book § 2-32(a)(1) by failing to communicate with complainant adequately in that respondent failed to communicate to complainant in her native language telling complainant that respondent had been suspended from the practice of law and from practice before the immigration courts, thereby enabling complainant to make an informed decision concerning her file; further, respondent failed to answer the grievance complaint without good cause. *Galdamez-Santos vs. William Fernandez*, #18-0083 (7 pages).

Presentment ordered by agreement for consolidation of all pending disciplinary matters with this matter alleging violation of Rules 5.3(1) and 8.4(4) of the Rules of Professional Conduct. *New Haven Grievance Panel vs. Keisha Shantell Gatison*, #18-0345 (6 pages).

Presentment ordered by agreement for consolidation. *Furchi vs. Keisha Shantell Gatison*, #18-0307 (4 pages).

Attorney ordered by agreement to attend a three-credit continuing legal education (CLE) course in Connecticut Law IOLTA account management and to close her IOLTA bank account for alleged violation of Rules 1.15(b) and (e) of the Rules of Professional Conduct. *New London Grievance Panel vs. Lynn Jean Cella-Coyne*, #18-0001 (5 pages).

Presentment ordered after hearing for violation of Rules 1.7(a)(1) and (2), 8.1(2), and 8.4(3) of the Rules of Professional Conduct by providing legal advice and filing an appearance on behalf of a party involving a concurrent conflict of interest in that the representation of that client was directly adverse to another client and by being dishonest in his answer to the grievance complaint. *Silver vs. Michael Atwater Stratton*, #17-0753 (7 pages). ■

Pro Bono
(Continued from page 33)

Notes

1. Help 4 Nonprofits, *Finding Pro Bono Help through Board Recruitment*, http://www.help-4nonprofits.com/UseItToday/UseItToday-Finding_Pro_Bono_Help_through_Board_Recruitment.htm, (last visited January 21, 2019).
2. Erika Winston, *Finding Time for Pro Bono*, Washington Lawyer Magazine, October 2017, https://www.grossmanyoung.com/wp-content/uploads/sites/155/2018/10/PDF.pdf, (last visited January 21, 2019).
3. Here is a link to a sample engagement letter created by the American Bar Association for use in immigration cases. https://www.americanbar.org/content/dam/aba/administrative/litigation/leadership_init/pro-bono-for-immigrant-children/sample-client-engagement.pdf.
4. Check out the American Bar Association's Standing Committee on Pro Bono and Public Service at: https://www.americanbar.org/groups/probono_public_service/, (last visited January 21, 2019).
5. CT Law Help, Pro Bono Portal, https://probono.ctlawhelp.org/frequently-asked-questions-about-taking-pro-bono-cases, (last visited January 21, 2019).
6. Eve Runyo, *The PBEye: Pro Bono As We See It*, The Pro Institute, http://thepbeye.probonoinst.org/2011/04/18/do-you-track-your-in-house-pro-bono/re, (last visited January 21, 2019).

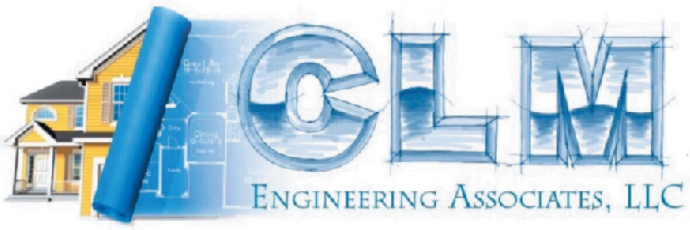
Supreme Deliberations
(Continued from page 35)

Services employee to remedy a highway defect not because the claim was barred by § 13a-144, but because that particular state employee would not have any duty to keep the highway in repair.

Third, the dissent simply did not read *Lamb* the same way as the majority did. Its "reading of *Lamb* is that all a plaintiff must allege to fit within the sovereign immunity waiver…is that the 'neglect or default of the state or any of its employees' (including state police employees) took place while performing duties related to highway maintenance." *Lamb* does not "restrict the otherwise broad reach of the statute's unambiguous sovereign immunity waiver. Nor could it. The breadth of the statute speaks for itself."

So what's our takeaway from *Graham*? Well, first of all, we take solace in the fact that Mr. Graham is not completely out of luck. He can still go to trial on his claim against the commissioner based on his argument that the *commissioner's* employees should have done more, and he may have recourse regarding his claim against the state police through the claims commissioner process. But from the appellate practitioner's standpoint we, like the dissent, found it interesting that both the majority and the dissent invoked the doctrine of legislative acquiescence to support their respective interpretations of § 13a-144. We're not ones to quibble with how the court goes about interpreting statutes, especially when the method involves a well-established tool like legislative acquiescence. But reliance on legislative acquiescence would seem to be more appropriate when the court decision interpreting the statute is clear—not where the court is split 4-3 on the meaning of its precedent, with a unanimous appellate court apparently backing the three dissenters. ■

Member of National Society of Professional Engineers(NSPE)



Member of Connecticut Society of Professional Engineers (CTSPE)

Forensic Engineering/Construction Management/Inspections

www.clmpe.com

CONSULTING ENGINEERS AND EXPERTS IN THE FOLLOWING:

- Construction Accident Investigations
- Construction Defects Claims
- Construction Management
- Standard of Care for Engineers and/or Contractors
- Slips/Trips and Falls
- ADA Compliance
- Electrocution Matters
- Vehicular Accident Reconstruction
- Water Intrusion Cases
- Variance and Land Boundary Issues
- And more....

SERVING CLIENTS THROUGHOUT THE STATE OF CONNECTICUT

WE MAINTAIN AN ACTIVE CASE-LOAD OF WORKING WITH PLAINTIFF AND DEFENSE FIRMS

HUNDREDS OF INVESTIGATIONS PERFORMED AND REPORTS GENERATED

ASSISTED IN THE SETTLEMENT OF NUMEROUS CASES

EXPERIENCE TESTIFYING IN COURT ALONG WITH PROVIDING DEPOSITION TESTIMONY

Craig L. Moskowitz, MBA, MS, PE
President
Direct: 917-270-8822
clmprofessionalengineer@gmail.com
PO Box 4532 Stamford, CT 06907
PO Box 394 Montvale, NJ 07645
Toll-Free: 866-432-4677
Office: 203-658-3910