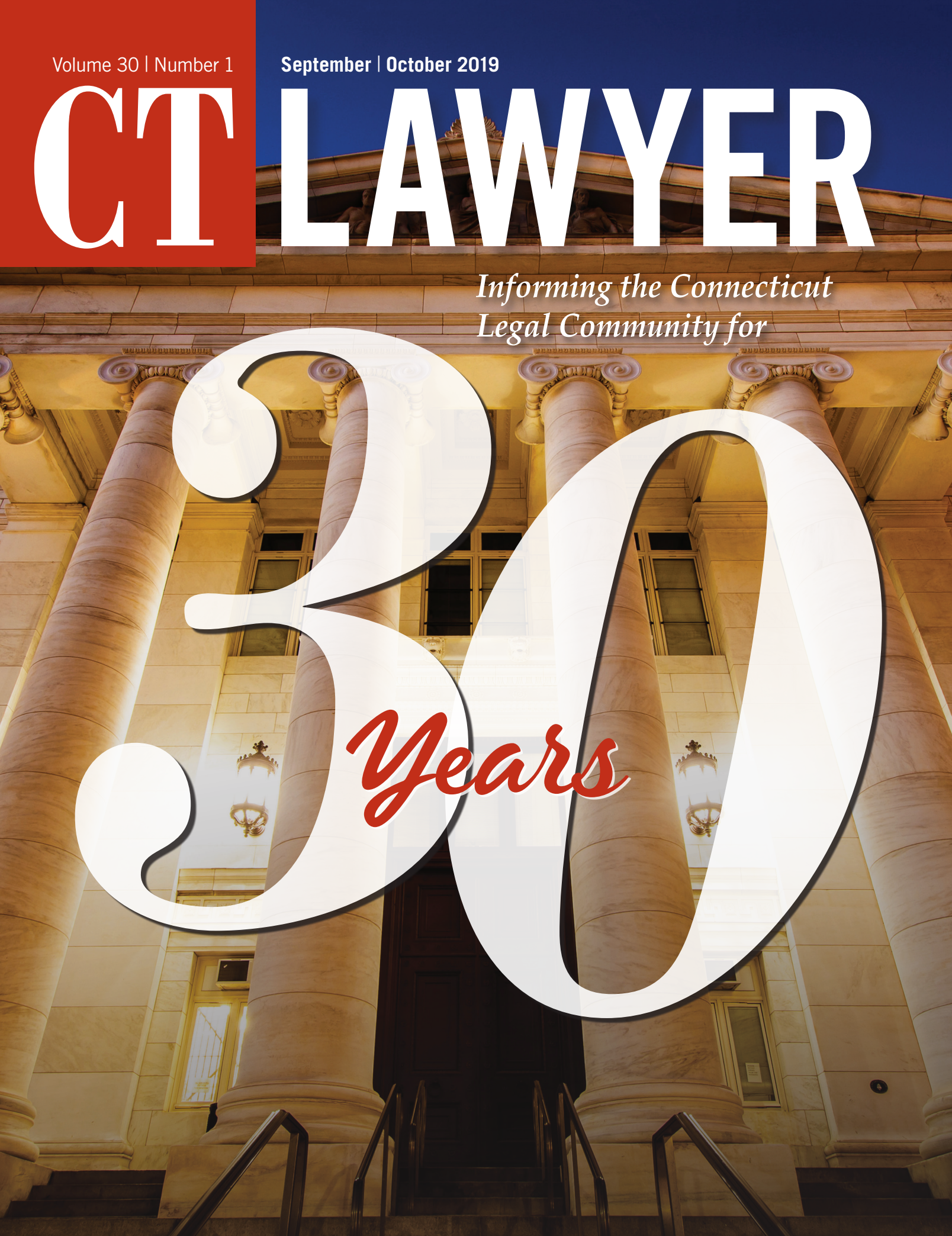
Volume 30 | Number 1

September | October 2019

CT LAWYER

Informing the Connecticut Legal Community for

30 Years



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CT LAWYER

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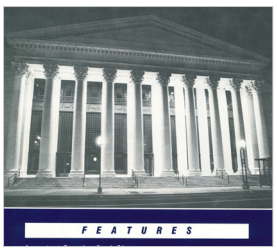
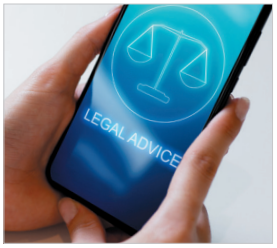
FEATURES





COLUMNS

DEPARTMENTS

Connecticut Lawyer has a new look! As you read this issue, check out its updated design and logo to match its new name, *CT Lawyer*.

Cover Credit: Jon Bilous / 123RF Stock Photo

This cover image pays tribute to the magazine's first cover, which featured the New Haven Superior Courthouse.

Balancing Customs to Adapt to the Legal Industry Evolution

By Ndidi N. Moses

Ndidi N. Moses *is the 96th president of the CBA. Her focus for this bar year is balance for a better legal profession. As an active member of the association, she serves on the Board of Governors, House of Delegates, and Pro Bono Committee.*

I remember spinning in circles in the office chairs in my father's law office a few years after he became an attorney in 1990. As a newly minted, but not so young lawyer, large firms weren't interested in my father as an associate, and he had little choice but to go into solo practice. In those days, it was common for young lawyers to hang their shingles. On main streets all over the country, signs read: "Law firm of..." or "Law offices of…." Solo and small firms, like my father's, were flourishing. My father was a general practitioner, but more precisely, he was a community lawyer. He handled any case that came into his office: criminal matters, civil cases, leases, contracts, taxes, divorce, bankruptcy, immigration, child custody. If he could not handle it, one of his friends in the same building or down the street accepted a referral. I spent my summers, as a child, watching in awe as my father built his legal practice from scratch.

The legal market back then was different from the one that exists today. In 1990, when my father passed the bar examination, and coincidentally the year *Connecticut Lawyer* magazine was established, the Internet, as we know it today, did not exist. In fact, a year prior, a British scientist had just finished writing a proposal for "a large hypertext database with typed links," known today as the World Wide Web.[1] In those days, the *web* referred only to something spiders spun to catch insects; a *tablet* was only known as "a small, solid piece of medicine;"[2] and if you told someone to call you on a cell phone, most people would assume you were in prison. Some would argue that those were the *good ole' days* when we did not have to worry about *spam* and *cookies*. In 1990, those words referred to only food items.

Over a decade later, after my completion of law school, I went to visit my father's law office. I noticed immediately things had changed. My father had moved to a smaller office. He had reduced his staff to only a part-time receptionist. His phone was not ringing as frequently. Fewer solo firms lined the main streets. It was clear my father's former clients were finding other ways to address their legal issues. What my father could not have known at the time was that the legal profession, in regards to its services to individual clients, was in the midst of an evolutionary trend, which has resulted in shrinkage rather than expansion.[3]

Studies suggest the shrinking of the individual market for legal services may be because over the past three decades, the cost of legal services has risen almost twice as fast as other items in the Consumer Price Index, such as education, housing, food, clothing, and medical care.[4] Indeed, studies suggest a negative correlation between the cost of legal services and the individual consumer's perception of the "relative importance" of legal services.[5] Instead of paying higher legal fees, individuals had begun to represent themselves. Moreover, the new technological advances of the past few decades have convinced some people that they do not need to hire lawyers. Many individuals who need legal help turn to online legal services, such as LegalZoom, Rocket Lawyer, and LegalShield for guidance.[6]

The decision of many individuals to "do-it-themselves" has transformed the dynamics in trial courts nationwide. The National Center for State Courts reported, in its 2015 report, *The Landscape of Civil Litigation in State Courts*, that over 75 percent of the cases in state court had at least one self-represented party.[7] The study found that "the civil justice system takes too long and costs too much."[8] As a result, "many litigants with meritorious claims and defenses are effectively denied access to justice in state courts because it is not economically feasible to litigate those cases."[9] Sophisticated clients with financial resources, aware of these trends, have begun to rely more on alternative dispute resolution and mediation to address legal issues.[10]

"Yesterday is gone. Tomorrow has not yet come. We have only today. Let us begin."

–Mother Theresa

While the aforementioned changes may appear to be relevant to litigators and transactional lawyers in solo and small firms, mid-sized and larger firms fair no better. For over a decade, studies have been showing that mid-sized and larger law firms are also "losing market share" despite the economic gains made in the markets overall.[11] This is because many law firms and lawyers seem to be "fighting the last war" according to the 2018 *Report on the State of the Legal Marke*t, published by the Center for the Study of the Legal Profession.[12] Most "law firms... remain committed to once successful strategies even as evidence mounts of their failure."[13] The studies point out that most firms are "[i]gnoring strong indicators that their old approaches—to managing legal work processes, pricing, leverage, staffing, project management, technology, and client relationships—are no longer working[.]" Instead of "risking the change that would be required to respond effectively to evolving market conditions," most law firms "choose to double down on their current strategies[.]"[14]

While law firms are "doubling down," corporations are increasing their internal budgets for their legal departments, and either not changing or decreasing their spending on outside legal counsel.[15] Where internal law departments are unable to fill gaps, many corporations are utilizing "alternative legal service providers" to cover services historically performed by law firms, such as e-discovery, document review, and contract drafting, to name a few.[16] This industry of alternative legal services, which was relatively unknown a few years ago, reported revenues of $8.4 billion, in 2017.[17] One former large firm partner remarked, "companies have been trying to get through the head of law firms that legal services, the way they're being currently delivered, are really inefficient and expensive."[18]

Bar associations, which were established to help lawyers weather these legal storms, are also in jeopardy of becoming extinct for the same reasons law firms are struggling. Thirty years ago, it did not matter whether a bar association was mandatory or voluntary.[19] Lawyers instinctively joined the bar association upon graduation from law school as part of their civic responsibility to develop themselves and contribute to their profession.[20] Over the years, many bar associations have become complacent, failed to evolve, or failed to find ways to inspire and remind members of the association's importance. Today, most bar associations realize they must rebrand themselves.[21] Millennials prefer virtual platforms, something most bar associations are not structured to provide. Law firms, attempting to cut back on expenses, are questioning whether they want to cover the cost of association fees and travel expenses. All lawyers are analyzing the benefits and drawbacks of membership in a bar association.[22] Then, there is the question of—who has the time for non-billable work?

The Connecticut Bar Association (CBA), the largest advocacy organization in Connecticut dedicated to serving the Connecticut legal community, recognizes these challenges and has been working to address them with our members, in addition to members of our community, the federal and state courts, and corporations. As an association, we are beginning a dialogue with the community and businesses on how law firms can work with the community and corporate clients to reduce costs, improve efficiency, and better manage legal dockets. We are beginning a dialogue with the courts on how we can assist them with their rising pro se dockets, and help them ensure access to justice. These times demand that the CBA, through innovative and adaptable leaders, continues to advocate for the rule of law and lawyers. The CBA must facilitate conversations with market leaders on how legal services should be redefined and restructured. Without this advocacy, the fate of lawyers and the legal profession will be decided without us at the table. As an association, serving a legal community that is undergoing rapid change, we rely on forward thinking leaders who understand that we must leave the silos of our past conceptions about how to practice law successfully, as we work to revolutionize our profession to save it from demise. If we fail to evolve and continue to stagnate, the ever-changing and unapologetic market will substitute us.

I realize that I may be preaching to the choir. The quaintness of our state has lent itself, for the most part, to a collegial and supportive legal environment. While CBA members passionately argue their variant views on issues within the walls of the association, when the time comes to take action, the vast majority of our members understand the importance of putting aside our own self-interests and uniting behind initiatives that benefit the Connecticut legal community as a whole. Our members realize that no one person owns the rights to a section or committee, and that current members or officers do not own the CBA. Rather, we hold this association, and the practice of law, in trust for future practitioners.

While we need to understand the past to be successful in the future, we do not have to continue to live in the past. Thirty years after its conceptualization, the theory of the World Wide Web is now a reality that has transformed our lives, including how legal services are delivered. My father's law firm was a victim of this evolution in the legal market, similar to many other solo law firms nationwide. Still, each time I bring my four-year-old to my of-

Continued on page 40 →

Upcoming Education Calendar

Register at ctbar.org/CLE

SEPTEMBER

25 The Connecticut Pardons Process

OCTOBER

3 2019 Connecticut Bankruptcy Conference

7 Honoring Toni Morrison: The Civil Rights of Lynching Then and Now

15 Ethical Considerations in Residential Real Estate Closings (Free CLE)*

16 DMV Per Se: Hearings and Appeals

21 VA Benefits Training

24 2019 Federal Tax Institute of New England*

25 Not Just Another Test: How to Effectively Obtain and Interpret Evaluations

29 Legal Entrepreneur Conference: 2019's Best Law Office Technology, Software, and Tools*

NOVEMBER

1 Game of Bones: The Science and Strategy of Orthopedic Claims

8 Raising the Bar: A Bench-Bar Symposium on Professionalism*

12 Consumer Bankruptcy Basics and Intersectionality

13 Representing the Startup Venture 2019*

14 Tax Appeals and Capitalization Rates

15 Practice, Procedure, and Protocol in the Connecticut Courts

19 Hot Topics in Probate

20 Understanding the Beginnings of a Federal Criminal Case

DECEMBER

4 The Path Out: Succession Planning and Leaving the Practice of Law*

6 Professionalism Boot Camp*

10 What You Need to Know about IOLTA (Free CLE)*

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Catherine Rawson, executive director of Weantinoge Heritage Land Trust, received a Clyde O. Fisher, Jr. Award.

Gregory A. Sharp accepted a Clyde O. Fisher, Jr. Award honoring him and his late wife Penelope Chester Sharp.

Environmental Law Section Honors Environmental Leaders

The Connecticut Bar Association's (CBA) Environmental Law Section honored Catherine Rawson, Attorney Gregory A. Sharp, and Penelope Chester Sharp (posthumously) with Clyde O. Fisher, Jr. Awards on June 18. The award recognizes individuals or entities who have made a significant contribution to the preservation or enhancement of environmental quality through work in the fields of environmental law, environmental protection, and environmental planning.

"These awardees reflect the spirit of the Clyde Fisher award which recognizes people who have gone beyond the call in protecting Connecticut's natural resources and improving environmental policy," said Keith R. Ainsworth, an Environmental Law Section Awards Committee member.

Catherine Rawson is the executive director of Weantinoge Heritage Land Trust and a widely-recognized leader in Connecticut's nonprofit community. Under her leadership, Weantinoge has added 1,700 acres under permanent protection, secured numerous grants, and received several awards. Rawson has transformed the land trust and conservation community through her collaborative and partnership approach. Rawson is the chair of the Connecticut Land Conservation Council, commissioner of the Land Trust Accreditation Commission, council member of the Land Trust Alliance Conservation Defense Advisory Council, and a member of the Greenprint Steering Committee.

Attorney Gregory A. Sharp was one of the pre-eminent experts in water and wetlands law and remediation of contaminated sites. He began his career in environmental protection at the Connecticut Department of Energy and Environmental Protection (DEEP) and was responsible for drafting the department's early regulations. After graduating from law school, he founded his firm Sharp & Berger before joining Murtha Cullina LLP where he remained until his retirement in 2017. During this career, he served as chairman of the Connecticut Council on Environmental Quality, was appointed to the Brownfields Task Force, and was chair of the CBA's Environmental Law Section.

At the time of her death in 2014, Penelope Chester Sharp was a widely respected leader, botanist, and wetland biologist. She served as the director of the Conservation Commission for the Town of Wilton for ten years. She was active and held leadership positions in many environmental organizations, including the Connecticut Association of Wetland Scientists, the Connecticut Botanical Society, the Connecticut Invasive Plants Work Group, and the Henry L. Ferguson Museum. Ms. Sharp served as the chairman of North Branford's Inland and Wetlands and Watercourse Agency and as a member of the Conservation Commission and the North Branford Land Trust. She was the principal author of *Trap Rock Ridges of Connecticut: Natural History & Land Use*.

The award was established in 1997 in memory of Clyde O. Fisher, Jr., an administrative law judge with the Connecticut Department of Environmental Protection. Past recipients of the award have contributed to the public's education and awareness of environmental issues; contributed to the development, enactment, or administration of environmental law or regulation; and developed pollution prevention or environmental remediation.

IN MEMORIAM

Anthony M. Fitzgerald passed away on June 4. Attorney Fitzgerald practiced law at Carmody Torrance Sandak & Hennessey LLP for nearly 50 years before his retirement in 2018. His civil trial experience was gained from years as a personal injury defense lawyer in his early career, and his civil litigation practice concentrated on business disputes and the representation of lawyers and law firms. Attorney Fitzgerald earned his undergraduate at Yale University in 1966 and his JD from Columbia Law School in 1969.

Saul A. Rothman passed away on July 13. After earning his JD from George Washington School of Law, he became a sole practitioner specializing in family law. Attorney Rothman worked with the Special Masters Program in the Stamford and Bridgeport superior courts, and received special recognition for his work with the Regional Family Trial Docket in Middletown Superior Court. He often handled pro bono cases for CT Legal Services in Stamford.

Three CBA Attorney Members Receive CLABBY Awards

The 2019 CLABBY award winners Robert A. White, Paige M. Vaillancourt, and Thomas A. Gugliotti.

Attorneys Thomas A. Gugliotti, Paige M. Vaillancourt, and **Robert A. White** received CLABBY awards from the Connecticut Bar Association's Commercial Law and Bankruptcy Section. These awards are presented each year by the section to honor the professional achievements of section members. The three awards include: Career Achievement Award, Service to the Profession Award, and Rising Star Award.

"We are fortunate to have such sterling role models in our section as Tom Gugliotti, Paige Vaillancourt, and Bob White, who have consistently demonstrated all that is good about our profession," said section Chair Thomas J. Sansone.

Thomas A. Gugliotti received the 2019 Service to the Profession Award for his section leadership, development of educational programs, and delivery of pro bono services.

Paige M. Vaillancourt received the 2019 Rising Star Award for her consistent and meaningful participation in section activities and meetings, and implementation of section initiatives.

Robert A. White received the 2019 Career Achievement Award for his professionalism and exemplary practice of commercial and bankruptcy law for more than 35 years.

CBA Section Celebrates Paralegal Day

The Paralegals Section co-sponsored a Paralegal Day event with the Central Connecticut Paralegal Association Inc. at the Red Lion Hotel in Cromwell. The panel consisted of Connecticut Superior Court Judge Robert Holzberg (ret.); local attorneys with expertise in personal injury, criminal, municipal, and trusts and estates law; and investigators.

2019 L.A.W. Camp for High School Students

The CBA's 2019 L.A.W. Camp consisted of two, week-long camps in New Haven, Hartford, and New Britain from July 8-19. This camp exposes high school students to the legal profession and gives them instruction on critical and analytical thinking to help them succeed in their educational and professional careers. During the week, students visited courts and participated in panel discussions, advocacy training, and prepared for a mock court case.

Throughout the week, over 60 campers from across the state were coached by more than 30 CBA members who volunteered their time to answer questions and guide the students as they learned the techniques and skills necessary to effectively present their mock court case.

This was the second year the CBA assisted in organizing L.A.W. Camp. Hon. Angela C. Robinson, now of Wiggin and Dana LLP, and Sung-Ho Hwang of the Law Offices of Sung-Ho Hwang LLC, founded the camp in 2011.

Pastor Al Watts of the Cornerstone Christian Center led a discussion with participants about success planning in the New Haven session at Yale's Sterling Law Building.

2019 L.A.W. Camp students from Hartford and New Britain with Connecticut Supreme Court Chief Justice Richard A. Robinson.

Connecticut Supreme Court Chief Justice Richard A. Robinson answered students' questions after the mock trial presentations.

This L.A.W. Camp student was sworn-in by Judge Vernon Oliver during round one of mock trials.

Annual CBA Leadership Trainings for the 2019-2020 Bar Year

Young Lawyers Section officers gathered on June 28 at Mohegan Sun for their annual leadership retreat at the start of the new bar year.

(L to R) Christopher Klepps, section secretary; Cindy M. Cieslak, section chair-elect; David A. McGrath, section past chair; Amanda G. Schreiber, section chair; Joshua J. Devine, section treasurer; CBA President Ndidi N. Moses; and Attorney General William M. Tong.

Each year, newly elected CBA officers, as well as section and committee chairs, treasurers, and education and legislative liaisons, are given the opportunity to enhance their leadership skills. This year, on June 21 at Madison Beach Hotel, attendees learned how to create a strong personal leadership mindset, how to build self-empowerment, and the skills needed to foster comfort with responsibility.

(L to R) CBA Executive Director Keith J. Soressi, Keynote Speaker Elizabeth Derrico, President Ndidi N. Moses, Immediate Past President Jonathan M. Shapiro, and Vice President Cecil J. Thomas.

Sales Tax on Legal Services Removed from State Budget

The below was sent to CBA members on June 26 from then-President Jonathan M. Shapiro.

On June 26, 2019, Governor Ned Lamont signed the most recent biennial state budget into law. The approved two-year budget does not include a sales tax on legal services as originally recommended by the governor. As you know, the CBA strongly opposed the proposal as it would unnecessarily tax people in times of their greatest need.

We submitted joint letters from the Connecticut Council of Bar Presidents, a group comprised of the presidents of Connecticut's more than 35 voluntary bar associations representing 20,000 Connecticut attorneys, and 14 past presidents of the Connecticut Bar Association to Governor Lamont opposing the proposed tax on legal services. Many of you contacted your state representatives and state senators to express your opposition to the tax, and I provided testimony on behalf of the CBA and all attorneys in the state.

Thank you all for your efforts in response to our call for action. We all know the ramifications a sales tax on legal services would have on our profession and the public's access to justice.

The CBA remains committed to serving as your voice at the capitol, fighting for the interests of all attorneys, enhancing the practice of law, and improving the administration of and access to justice. It is through your continued support and membership that we are able to take on the issues important to our profession. Again, thank you for your support. We will keep fighting for all of you.

Apply Now for Residential Real Estate Specialist Certification

The Real Property Section of the Connecticut Bar Association has created the Residential Real Estate Specialist Certification program to help the public identify attorneys who are competent, experienced, and skilled in the area of residential real estate law and to raise the level of practice in this area of law.

If you are interested in applying for certification, the process to become eligible begins with **filing a notice of intent to apply by October 10, 2019**. The CBA Examining and Standing Committee on Residential Real Estate Certification will hold an exam to certify specialists on February 28, 2020.

For more information regarding the Residential Real Estate Specialist Certification Program and to apply, visit ctbar.org/RRESpecialist.

Connecticut Bar Association

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PEERS AND CHEERS

Attorney Announcements

Ryan Ryan Deluca welcomed five new attorneys to their team of associates: **Karen L. Allison, Johnathan L. Konandreas, Charles Pobee-Mensah, Lindsay T. Reed,** and **Kurt J. Young, Jr.**

Robinson+Cole attorney **Stephen W. Aronson** was honored as Volunteer of the Year by the Pro Bono Partnership for his outstanding individual contributions of providing free legal services.

Sara C. Bronin received the 2019 Pro Bene Meritis Award, the highest honor given by the University of Texas College of Liberal Arts, for her outstanding contributions in professional and philanthropic pursuits.

An installation ceremony was held in Connecticut for officers and directors of the National Italian American Bar Association (NIABA), a California non-profit, installing **Francis M. Donnarumma** as national president, **Daniel Elliott** as a director, and **Cristina Salamone** as regional vice president and a director.

Glenn W. Dowd of Day Pitney LLP was invited to become a member of the American Board of Trial Advocactes (ABOTA), a national association of experienced trial lawyers and judges.

Murtha Cullina LLP announces that **Marc T. Finer** has been named a James W. Cooper Fellow of the Connecticut Bar Foundation. The James W. Copper Fellows Foundation honors the leading members of the legal community in Connecticut, promotes a better understanding of the legal profession and the judicial system, and explores ways to improve the state's administration of justice.

Suisman Shapiro Attorneys at Law welcome **Theodore W. Heiser** as a director in the firm's civil litigation department, practicing in the areas of personal injury and employment law.

Kahan Kerensky Capossela LLP welcomes **Joseph P. Mortelliti** as an associate. Attorney Mortelliti will practice in the real estate, litigation, and land use departments.

Carlton Fields added **Abigail L. Preissler** as an associate in the firm's Hartford office. Attorney Preissler represents institutional lenders, banks, real estate developers, and individual investors in all aspects of a wide variety of commercial real estate and finance transactions.

C. Scott Schwefel of Shipman Shaiken & Schwefel LLC was elected a Fellow of the American Bar Foundation, an honorary organization of attorneys, judges, law faculty, and legal scholars whose public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.

The Law Offices of Edward Nusbaum PC welcomes **Maura A. Smith** as a partner. Attorney Smith focuses her practice on commercial and matrimonial matters.

Lisa P. Staron of Murtha Cullina LLP was elected to the Board of Directors of the Estate and Business Planning Council of Hartford Inc. (EBPC) for a two-year term. EBPC is an association of professionals who specialize in estate and financial planning for individuals and businesses.

Firm/Organization Announcements

Day Pitney LLP received the George J. and Patricia K Ritter Pro Bono Award from the Connecticut Fair Housing Center, recognizing the firm's service to the center and its clients.

The firm Cousins Desrosiers & Morizio PC transitioned to **Morizio Law Firm PC** and has relocated to a new location at 6580 Main St., Suite 200, in Stratford. ■

PEERS and CHEERS SUBMISSIONS e-mail editor@ctbar.org

Professional Discipline Digest

VOLUME 28 NUMBER 3 | By Mark A. Dubois

Presentment ordered for violation of Rules 1.5(b) and (c), 1.15(e), and 8.4(4) concerning a dispute over funds and fees. The respondent was found to have held funds from settlement of one case to pay fees due in another without permission for or notice of such conduct being contained in the fee letter. The Reviewing Committee found an aggravating factor in the respondent's conduct over a period of many grievance hearings. #15-0743, *Davis v. Joseph Chiarelli*, (34 pages).

CLE and IOLTA account audit ordered by agreement for violation of Rules 1.15 and 8.1(2) and Practice Book 2-32(a)(1) concerning an IOLTA account. #17-0540, *Bowler v. Dennis Bradley*, (10 pages).

Reprimand, CLE and IOLTA account audit ordered by agreement for violation of Rules 1.15(b), (c), (e), and (h) concerning an IOLTA account. #17-0668, *Bowler v. Peter J. McGuinness* (10 pages).

Presentment ordered for violation of Rules 8.2(a) and 8.4(4) where lawyer filed a "profanity laced" pleading questioning the integrity of two superior court judges. #17-0774, *New Haven J.D. G.P. v. Arik Bruce Fetscher*, (8 pages).

Reprimand ordered for violation of Rules 3.4(3) and 4.4(a) where attorney failed to pay a bill due to a court reporter and attempted to avoid the debt through by claiming that his solely owned LLC, and not he, was liable and then dissolving and later reforming the LLC under a new name. #17-0852, *Mills v. Frederick A. Lovejoy*, (6 pages).

Reprimand issued for violation of Rules 1.3, 1.4(a)(3) and (4), and 8.1(2) and Pratice Book § 2-32(a)(1) concerning a bankruptcy matter. #18-0002, *Vargas v. Jeffrey D. Cedarfield*, (5 pages).

Presentment ordered for violation of Rules 1.1, 1.3, 1.4(a)(3) and (4), 5.5, 8.1(2), and Practice Book 2-32(a)(1) concerning conduct related to a worker compensation case. The Rule 5.5 charge related to the fact that the respondent rendered legal advice while he was out on suspension. #18-0097, *Caciopoli v. Richard Seth Aries*, (5 pages).

Presentment ordered for violation of Rules 1.3 and 1.4(a)(3) and (4) as well as 8.1(2) and Practice Book 2-32(a)(1) concerning representation in a labor matter. The Reviewing Committee noted that it would have issued a reprimand, but was mandated to file a presentment by virtue of the respondent's prior disciplinary history pursuant to Pratice Book 2-47(d). #18-0126, *Smith v. Richard C. Gordon*, (10 pages).

Reprimand issued by agreement for a violation of Rule 8.4(4). #18-0183, *Donnelly v. Robert Fiedler*, (8 pages).

Presentment ordered for violation of Rules 1.5(b), 8.1(2), and 8.4() as well as Practice Book 2-32(a)(1) where attorney had no written fee agreement, failed to file a complaint on behalf of client with Department of Consumer Protections over a crumbling foundation, and failed to file an answer to the grievance complaint. Though the reviewing committee found that it would ordinarily have issued a reprimand for the conduct, it was mandated to refer the matter to a judge of the superior court under Practice Book 2-47(d) because of the respondent's disciplinary history. #18-0237, *Ebersold v. David Vacco Chomick*, (5 pages).

Presentment ordered by agreement where respondent was on disciplinary probation when probable cause was found on a new matter. The order of probation required all new matters to be referred to and adjudicated by a court. *#18-0268, Schoenhorn v. Neil Johnson, (6 pages).* ■

Prepared by CBA Professional Discipline Committee 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/sgc-decisions. Questions may be directed to editor-in-chief, Attorney John Q. Gale, at jgale@jqglaw.com.

Lawyer May Not, on Behalf of Client, Provide a Fact Witness with a Benefit in Exchange for Testimony

Illustrator credits: Aleksandra Sabelskaia, vilisov / 123RF Stock Photo

A lawyer has a mortgage lender client. After discovery of a structural problem on a mortgaged property, the mortgage lender client and the borrower/guarantors entered into a deed in lieu of foreclosure agreement and settlement agreements for payment of certain amounts owed on the mortgage. One of the settlement agreements provides that one of the loan guarantors ("the Guarantor") will make payments over a few years, and as of now about one-quarter of the payments have been made.

The mortgage lender client is now engaged in litigation with the appraiser of the property with the structural problem. The lawyer has asked the Guarantor for an affidavit relevant to the litigation, and the Guarantor has indicated a willingness to help. But the Guarantor insists upon some form of forbearance, reduction, or forgiveness of some or all of the remaining settlement payments owed to the lender client before he willingly cooperates.

The lawyer asks whether he may, on behalf of the lender client, agree to provide such payment plan forgiveness, debt reduction, or forbearance in exchange for the Guarantor voluntarily providing his testimony.

The Committee concludes that Rules 3.4(2) and 8.4(1) and (4) of the Rules of Professional Conduct prohibit any such payment plan forgiveness, debt reduction, or forbearance in exchange for the Guarantor's testimony.

Rule 3.4(2) provides, in relevant part: "A lawyer shall not…offer an inducement to a witness that is prohibited by law." The Official Commentary to Rule 3.4 adds the following: "It is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying…."[1]

While the Committee generally avoids addressing questions of law, any analysis of Rule 3.4(2) necessarily requires reference to substantive law. The law in Connecticut quite clearly prohibits giving a witness a financial inducement to provide testimony. As Section 53a-149 of the General Statutes provides: "A person is guilty of bribery of a witness if he offers, confers or agrees to confer upon a witness any benefit to influence the testimony or conduct of such witness in, or in relation to, an official proceeding.… Bribery of a witness is a class C felony."[2] The Connecticut Appellate Court has held that the statute is to be broadly interpreted. *State v. Davis*, 160 Conn. App. 251, 258–59, cert. denied 320 Conn. 901 (2015) ("Thus, the statute defines an official proceeding as broadly covering presently instituted proceedings, as well as future proceedings that 'may be held.' Accordingly, the definition of a witness includes those who have already been summoned to testify, as well as those who may be called to testify in the future. This is consistent with the purpose of the bribery and tampering statutes, which are purposely broad and general. Their purpose is to prohibit all forms of corruption of the governmental process. … They broaden the field of corruption of witnesses and tampering with evidence." [internal quotation marks and citation omitted]).

The statutory prohibition of bribery does not preclude only payments made to a witness. It precludes conferring any

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

The Rules of Professional Conduct have the force of law on attorneys. The Formal and Informal Opinions are advisory opinions. Although the Connecticut Supreme Court has on occasion referred to them as well reasoned, the advisory opinions are not authoritative and are not binding on the Statewide Grievance Committee or the courts.

benefit on the witness, and a reduction in debt would certainly be a benefit to the Guarantor. In addition, the statute addresses more than efforts to influence the content of testimony. The statute prohibits conferring a benefit to influence conduct—for example, appearing or not appearing as a witness.

Payment plan forgiveness or debt reduction could not properly be characterized as consideration for settlement of the Guarantor's resistance to a subpoena. Regardless of how it is characterized, payment forgiveness or debt reduction would amount to the conferring of a benefit on a witness in order to influence the conduct of the witness.

In light of Conn. Gen. Stat. § 53a-149, forgiveness or reduction of a payment obligation in exchange for providing testimony would amount to "an inducement to a witness that is prohibited by law," and is thus prohibited under Rule 3.4(2).[3] Such conduct also may be "prejudicial to the administration of justice," in violation of Rule 8.4(4). See CBA Informal Opinion 92-30, Payment to Attorney as Fact Witness ("'The payment of money to a witness to "tell the truth" is as clearly subversive to the administration of justice as to pay him to testify to what is not true.'" Quoting In re Robinson, 136 N.Y.S. 548, 556 [1912]).

It is not pertinent that, under the facts presented, it would be the client, not the lawyer, who confers the benefit. Pursuant to Rule 8.4(1), it is misconduct for a lawyer to violate the Rules "through the acts of another." Put another way, the lawyer may not avoid his responsibilities under the Rules of Professional Conduct by having the client engage in conduct prohibited for the lawyer under the Rules. Indeed, Rule 1.1 provides that "[a] lawyer shall not counsel a client to engage…in conduct that the lawyer knows is criminal…."

Accordingly, consistent with Rules 1.1, 3.4(2), 8.4(1), and 8.4(4), a lawyer may not, on behalf of a client, agree to provide payment plan forgiveness, debt reduction, or forbearance in exchange for an obligor's agreement to voluntarily provide testimony. ■

NOTES

1. This Committee and the American Bar Association Committee on Ethics and Professional Responsibility have previously opined that it is not improper to pay a fact witness for his or her time and expenses, provided that such payments do not amount to inducements to testify in particular ways and the amount of the payment is reasonably related to the actual costs of the witness's time and expenses. ABA Formal Opinion 96-403, *Propriety of Payments to Occurrence Witnesses* ("So long as it is made clear to the witness that the payment is not being made for the substance or efficacy of

Continued on page 40 →

CT LAWYER TURNS 30

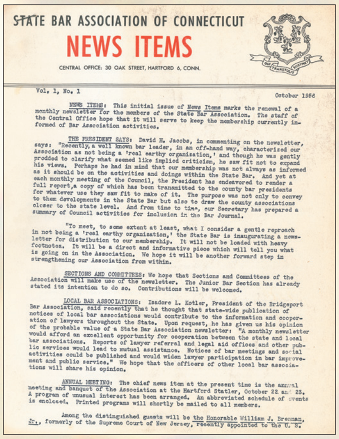
The year was 1990. The average price of Apple Inc. stock was $1.11 per share. The landmark Americans with Disabilities Act had just been passed by Congress. *Driving Miss Daisy* won the Academy of Motion Picture Arts and Sciences award for Best Picture. George H. W. Bush was president of the United States. And *Connecticut Lawyer* magazine made its debut in the mailboxes of attorneys across our state.

Jump to 2019, when the price of Apple Inc. stock is now approximately $200 per share, and we celebrate the 30th volume of *Connecticut Lawyer* magazine.

Photo credit: Manit Khumrod / 123RF Stock Photo

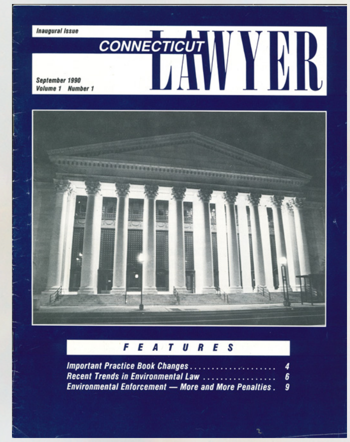
By Alysha Adamo and Elizabeth C. Yen

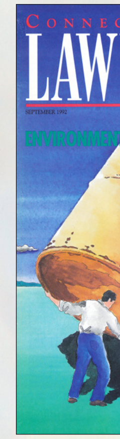
CONNECTICUT LAWYER CHANGES OVER THE YEARS


STATE BAR ASSOCIATION OF CONNECTICUT
NEWS ITEMS


CONNECTICUT LAWYER
NEWS OF THE CONNECTICUT BAR ASSOCIATION


CBA Endorses Concept of Unified Trial Court
Clients' Security Fund Reimburses $60,738
CONNECTICUT LAWYER
Connecticut Bar Presidents Council Organized





1956
NEWS ITEMS, THE PREDECESSOR TO THE FIRST *CONNECTICUT LAWYER* NEWSLETTER, DEBUTS

1962
The US Supreme Court rules against compulsory prayer in public schools

1969
THE *CONNECTICUT LAWYER* NEWSLETTER DEBUTS

1973
Landmark US Supreme Court decision, *Roe v. Wade*, protects a woman's ability to choose to have an abortion

1976
THE *CONNECTICUT LAWYER* NEWSLETTER EXPANDS ITS CONTENT

1981
Sandra Day O'Connor is appointed as the first woman to serve on the US Supreme Court

1987
DNA is used in a criminal court case for the first time

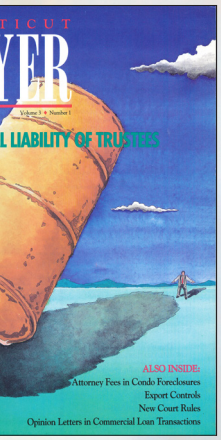
1990
Volume 1, Number 1 (September 1990)
THE FIRST ISSUE OF *CONNECTICUT LAWYER* IN A MAGAZINE FORMAT IS PUBLISHED

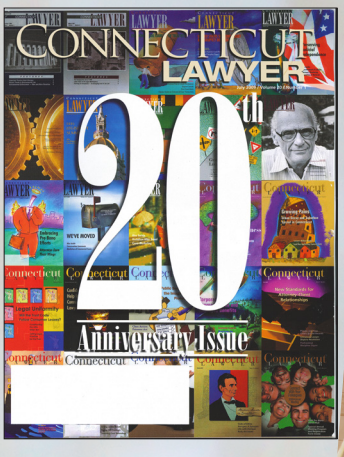
Connecticut Lawyer humbly began as a six-page, black and white newsletter in February 1969. It promised to provide a "livelier, more succinct" format with a broader scope than its similarly structured predecessor, *News Items*. The periodical's evolution continued in February 1976, when it changed to an expanded newsletter with more photos and a goal to include content such as "information about committee and section activities, local and county bar association programs, pertinent developments in the profession, the law and the legislature, and 'Letters to the Editor.'" It served as the Connecticut Bar Association's most frequent connection to its members, and its contributing authors included a "who's who" of Connecticut's legal community: present and future judges, legislators, other public officials, policy makers, and section and committee chairs.

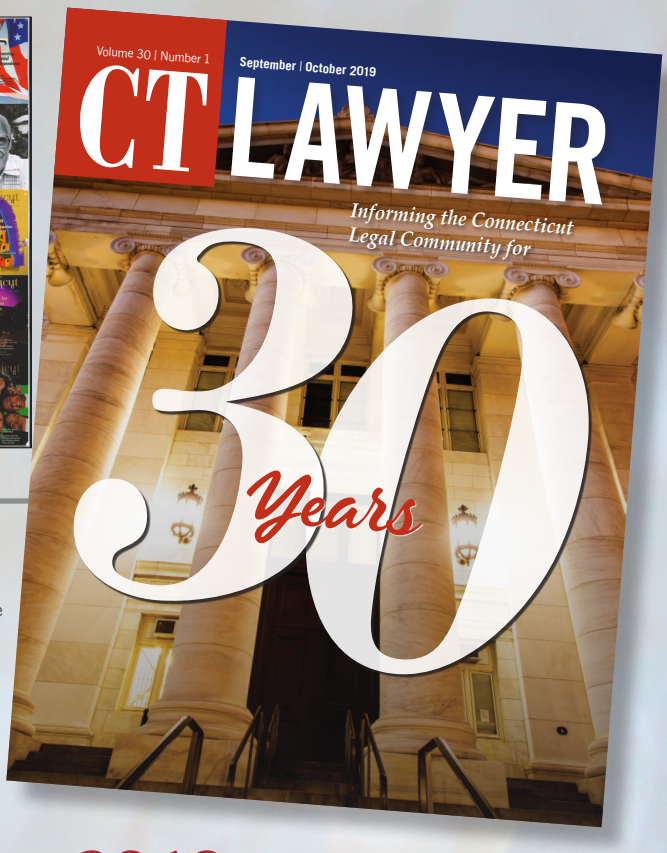
As technology changed, so did *Connecticut Lawyer*. The 1990 iteration marked the publication's graduation from a black and white newsletter into a full-fledged magazine. With the rise of the Internet and e-mail (yes, we are going back *that* far), the content was also able to shift. The publication was no longer part of a limited number of available channels to reach CBA members. With evolving resources such as an association website, electronic newsletter and, eventually, social media, the magazine was able to expand beyond reporting association news and legislative updates, and could provide readers with a more extended range of Connecticut-based substantive legal articles, evolving into the magazine you are holding (or reading on your phone) today. Throughout all of these changes, three of the original advisory committee members—Steven Errante,[1] Fred Sette, and Elizabeth Yen—have served since the inaugural issue and continue their service into this new publication year.

While the magazine is still mailed to CBA members throughout the state, *Connecticut Lawyer* has also expanded its online presence since its debut. Full issues can be viewed at ctbar.org/CTLawyer, more recent issues are searchable through Casemaker®, and a complete database containing every issue produced is available to CBA members at ctbar.org/PeriodicalsArchive.

Throughout the past 29 years—no matter the format—*Connecticut Lawyer* has maintained its mission to contribute to lawyers' professional growth; inform readers of important legislative changes, court decisions, and other issues arising in the legal profession; keep members abreast of CBA activities; and help improve law office management skills. Thanks to the publishers of the *Connecticut Law Reporter*, the magazine has included highlights from recent superior court decisions since its inception.[2] *Connecticut Lawyer* is also a source for informal ethics opinions of the CBA Standing Committee on Professional Ethics and digests prepared by the Professional Discipline Section summarizing professional discipline decisions of the Statewide Grievance Committee. *Connecticut Lawyer* articles have been cited in several







1992
Volume 3, Number 1 (September 1992)
CONNECTICUT LAWYER'S COVER LOGO IS UPDATED

2000
The US Supreme Court halts presidential election recount

2001
Volume 12, Number 1 (August/September 2001)
CONNECTICUT LAWYER'S COVER LOGO IS UPDATED

2009
Volume 20, Number 1 (July 2009)
CONNECTICUT LAWYER'S COVER LOGO IS UPDATED

2015
The US Supreme Court strikes down all bans on same-sex marriage

2019
Volume 30, Number 1 (September/October 2019)
CONNECTICUT LAWYER'S COVER LOGO REFLECTS ITS UPDATED NAME: *CT LAWYER*

Connecticut Supreme Court decisions.[3] Articles have also been cited in informal Connecticut ethics opinions[4] and in Connecticut General Assembly Office of Legislative Research reports[5] and Judiciary Committee hearings.[6]

In this 30th year of *Connecticut Lawyer*, we look forward to continuing to provide CBA members with useful, informative articles to enhance their law practices. In this spirit, we want to hear from you! If you have any suggestions for the magazine, please e-mail us at editor@ctbar.org. ■

Alysha Adamo *is the publications manager at the Connecticut Bar Association and the managing editor of* Connecticut Lawyer *magazine.*

Elizabeth C. Yen *is a partner at Hudson Cook LLP's New Haven office. She chaired the* Connecticut Lawyer *Advisory Committee from 2012-2019 and is one of the original members of that committee.*

NOTES

1. Mr. Errante chaired the advisory committee from its inception until mid-2012, when Ms. Yen succeeded him.
2. Judge Joseph Flynn noted the *Connecticut Lawyer*'s publication of several summaries of his Superior Court decisions in his 2001 remarks to the General Assembly's Judiciary Committee in connection with his then-pending nomination to the appellate court.
3. *See, e.g.*, *State v. Bellamy*, 323 Conn. 400, 483 n.18 (Conn. 2016) (citing to, inter alia, C. Ray & M. Weiner, "*State v. Kitchens*: The Decision Not To Decide," 21 *Connecticut Lawyer* (March 2011)); *Finkle v. Carroll*, 315 Conn. 821, 837 n.14 (Conn. 2015) (citing to, inter alia, C. Ray & M. Weiner, "*Mueller v. Tepler*, 312 Conn. 631 (2014): The Appellate Court Gets 'Blumberg-ed'," 25 *Connecticut Lawyer* (October 2014)); and *Electrical Contractors v. Insurance Co. of the State of Pennsylvania*, 314 Conn. 749, 762 (Conn. 2014) (citing to, inter alia, R. Robinson, "Connecticut's Little Miller Act: A Primer," 13 *Connecticut Lawyer* (February 2003)).
4. *See, e.g.*, Informal Opinion 2014-02 (March 19, 2014), citing A. Porter, "Why It Pays To Accept Credit Cards," 21 *Connecticut Lawyer* (May/June 2011); Informal Opinion 91-02 (December 27, 1991), citing P. Edelberg & S. Carruthers, "The FDIC Insurance Rules: How They Affect Your Practice," 1 *Connecticut Lawyer* (May 1991), and Informal Opinions 01-15 (October 19, 2001) and 95-13 (February 24, 1995), each referencing R. Wirth, "The Archives Retention Quandary," 3 *Connecticut Lawyer* (February 1993).
5. *See, e.g.*, OLR Reports 95-R-1216 (December 8, 1995) and 95-R-1612 (December 13, 1995), each citing to L. Gold, "CBA Clients' Security Fund," 4 *Connecticut Lawyer* (June/July 1994).
6. *See, e.g.*, P. Costas, "A Goal Not Yet Reached—A Unified Trial Court Including the Probate Court," 15 *Connecticut Lawyer* (December 2004/January 2005), discussed in a March 2005 colloquy between then-Senator McDonald and Judge James Lawlor.

Resolution of Legal Fee Disputes Program

By Leanna Zwiebel

The Connecticut Bar Association's Resolution of Legal Fee Disputes Program helps lawyers and clients with a dispute over the fees incurred for legal services to find a solution to their problem through mediation and/or arbitration, rather than litigation. The dispute resolution process is free, informal, and impartial.

The CBA staff program administrator works closely with the Resolution of Legal Fee Disputes Program Committee to oversee the implementation of the program, including the procedure for processing complaints and the establishment of a panel of qualified arbitrators and mediators to oversee arbitrations and mediations. Committee members include: Jennifer Shukla, chair; Hon. Lynda Munro (ret.); Michael Donnelly; Bridget Gallagher; CBA Past President Jonathan M. Shapiro; and Gary Sheldon.

How do I file a dispute with the program?

If the matter is unable to be resolved in good faith without assistance, you may file a petition with our program. Once your petition is filed, the program administrator, along with the Resolution of Legal Fee Disputes Program Committee chair, will review the submission for completeness and to ensure it falls within the scope of the program.

All of the required forms for the program are available on our website at ctbar.org/FeeDisputes. As the petitioner, you must fill out the petition form as well as a short statement of facts. In addition to these forms, you may include any other documentation you deem necessary for your dispute, such as e-mail records and billing statements. All of these documents can be sent to the program administrator via e-mail at FeeDisputes@ctbar.org, fax at (860)223-4488, or US mail to Resolution of Legal Fee Disputes Program, 30 Bank St, New Britain, CT 06051.

Is participation mandatory if a client files a petition for resolution over a dispute?

No. This is a voluntary program, therefore, a dispute will only be heard if all parties consent. In some cases, the parties consent to participate in advance by agreeing in a written fee retainer to arbitrate fee disputes with the program.

Am I responsible for getting the respondent's consent to use the program?

This is a voluntary program, therefore, consent is needed from all parties to proceed. Some attorneys choose to include a clause in their fee agreements for use of the program, should a dispute over legal fees occur. If written consent is not included in the attorney's fee agreement, the CBA will make one attempt to contact the respondent for their consent. If the respondent declines consent or is nonresponsive after 30 days from the CBA's attempt, the CBA must close the file.

How long is the dispute process?

Many disputes are resolved through the program within six months after a petition is filed. The administrative phase of the dispute process, including time to respond to the petition and appoint an arbitrator or mediator, generally takes less than 90 days. Once an arbitrator or mediator is confirmed, a dispute resolution session is usually held within the next 90 days.

Can a petition for resolution only be filed by an attorney?

No, either side may initiate the resolution process.

How do I become a volunteer mediator or arbitrator for the program?

The CBA Resolution of Legal Fee Disputes Program is always looking for volunteer mediators and arbitrators. If you are interested in volunteering and have at least five years of relevant dispute resolution experience, please send your resume and/or CV for consideration to the program administrator at FeeDisputes@ctbar.org.

For additional questions or for more information about the program, visit ctbar.org/FeeDisputes or contact the program administrator, Leanna Zwiebel, at FeeDisputes@ctbar.org. ■

***Leanna Zwiebel** is the editorial and communications associate/ADR program administrator at the Connecticut Bar Association.*

This article is the launch of a new series intended to highlight CBA programs and services available to members.

Connecticut *Moves to Protect* Business Owners and Investors

By Steve Stafstrom

This past session, the Connecticut General Assembly has adopted legislation to provide clarity and predictability to business owners and investors regarding when their personal assets could be at risk because of the unpaid debts of a business entity in which they hold an interest. In enacting Public Act 19-181, the legislature has limited the situations in which the doctrine of piercing of the corporate veil can be used to hold a shareholder, member, or partner liable for a judgment against a corporation, LLC, partnership, or other business entity.

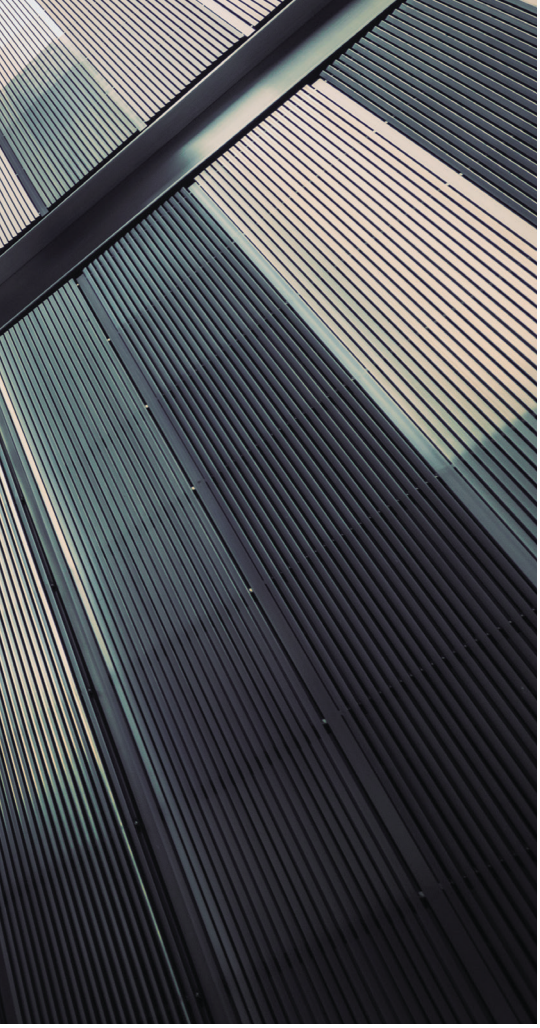


Photo credit: PPAMPicture / Getty Images

It is generally understood that a business entity is legally distinct from its shareholders, members, or partners and that these individuals are not personally liable for the acts and obligations of the business entity.[1] However, courts have long recognized an ability to disregard the fiction of a separate legal entity to pierce the shield of immunity afforded by the business entity structure in a situation in which the business entity has been so controlled and dominated that justice requires liability to be imposed on the real actor.[2]

Abandoning the Identity Test

Connecticut courts have long grappled with when this equitable remedy of veil piercing is warranted, creating a patchwork of sometimes inconsistent decisions. The courts have created and applied two tests. The first, called the "instrumentality rule," requires proof of three elements: (1) control, not mere majority or complete stock control, but complete domination—not only of finances but of policy and business practice in respect to the transaction attacked—so that the corporate entity as to this transaction had at the time no separate mind, will, or existence of its own; (2) that such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of the plaintiff's legal rights; and (3) that the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.[3]

The second test, called the "identity rule," has generally been stated as follows: "If plaintiff can show that there was such a unity of interest and ownership that the independence of the corporations had in effect ceased or had never begun, an adherence to the fiction of separate identity would serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise."[4]

The identity test, in particular, has proven vague and thus difficult to apply. It is sometimes subsumed into or confused with the instrumentality test. It also is not clear if "causation" is an element of the identity test,[5] meaning a business owner could potentially be held liable for the debts of the business entity, even if the fact that she and the business had a "unity of interest" was not the reason the debt could not be paid by the business.

Under the new law, this confusion should be resolved as the identity test has been abdicated by the legislature. Under the Act, the instrumentality test is the only means by which a court could pierce a business entity's veil. And, the Act clarifies and codifies the instrumentality test factors. Of particular note, the Act makes clear that the failure of a business entity to observe corporate formalities, such as filing annual reports, is not a ground upon which veil piercing can be based.

No Reverse Veil Piercing

The Act also specifically overrules the doctrine of "reverse veil piercing," which was called into question by a 2012 Supreme Court decision.[6] Reverse veil piercing had been used to hold a business liable for the debts of one of its interest holders.[7] The doctrine of reverse piercing is problematic in that when corporate assets are attached directly for the benefit of the creditors of an individual, it prejudices rightful creditors of the corporation, who relied on the entity's separate corporate existence when extending credit.[8] Also, if a business entity has other non-culpable shareholders, they too will be prejudiced if the entity's assets can be attached directly.[9]

Public Act 19-181 originated with the General Assembly's Judiciary Committee, which has worked in a bi-partisan manner over the past few years to update Connecticut's business incorporation statutes, including the Limited Liability Company Act and the Business Corporations Act. Members of the Business Law Section of the CBA provided valuable input on drafting the final language of the Act.

The veil piercing bill passed both the House and Senate unanimously. It was signed by Governor Lamont on July 9, 2019, and became effective from that date and is applicable to any civil action filed on or after the effective date. ■

Steve Stafstrom *is the House chairman of the Connecticut General Assembly's Judiciary Committee. He introduced and was the principal sponsor of Public Act 19-181. He is a member of Pullman & Comley LLC, practicing in the area of commercial litigation and has defended clients in corporate veil piercing cases.*

NOTES

1. *See e.g., Saphir v. Neustadt*, 177 Conn. 191, 209 (1979).
2. *See e.g., Commissioner of Environmental Protection v. State Five Industrial Park, Inc.*, 304 Conn. 128, 139 (2012).
3. *Angelo Tomasso, Inc. v. Armor Construction & Paving, Inc.*, 187 Conn. 544, 563 (1982).
4. *Id.* at 187 Conn. at 554.
5. *Wells Fargo Bank, N.A. v. Konover*, 2011 WL 1225986, n. 26 (D. Conn. March 28, 2011).
6. State Five, 304 Conn. at 130.
7. *Id.*
8. *Id.* at 140 quoting *Floyd v. Internal Revenue Service*, 151 F.3d 1295, 1299 (10th Cir.1998).
9. *Id.* quoting *Postal Instant Press, Inc. v. Kaswa Corp.*, 162 Cal.App.4th 1510, 1520, 77 Cal. Rptr.3d 96.

STAYS OF DISCOVERY

IN FEDERAL SECURITIES ACT CASES IN CONNECTICUT STATE COURTS

On May 15, 2019, the Connecticut Superior Court rendered a decision on a matter of first impression in Connecticut that has broad and wide-ranging implications for securities class action cases in state courts across the country. Due to changes that Congress made to the Securities Act of 1933 ("Act") in the 1990s, the Plaintiffs' class action bar has been bringing suits under the Act in state courts in an to attempt to avoid the automatic stay of discovery defendants trigger by filing (or announcing the intent to file) a "motion to dismiss" ("Stay").

THE STAY PROVISION OF THE ACT

The Stay provision, which Congress codified at 15 U.S.C. Section 77z-1(b)(1), provides:

> In any private action arising under this subchapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

The plaintiff's class action bar has conceded that this Stay prohibits discovery during the pendency of a Fed. R. Civ P. 12(b) motion to dismiss in federal court cases under the Act. However, class action plaintiffs have argued that the Stay does not apply to cases under the Act pending in state courts. Thus, class action plaintiffs have been routinely bringing these complex federal securities cases to state courts, hoping to avoid the Stay and burden the defendants with extensive discovery even when a defendant has filed a credible, even presumptively winnable, motion to dismiss. Securities litigators across the country have been aggressively seeking guidance from state courts on the implications of the Stay on discovery in state court cases.

By Gary S. Klein, Marc J. Kurzman, and Brian A. Daley

Illustration credit: erhui1979 / Getty Images

In Connecticut, the issue is complicated by the fact that our analog to a Fed. R. Civ. P 12(b) motion is called a motion to strike, not a motion to dismiss.

HOW OTHER COURTS HAVE ADDRESSED THE ISSUE

Several decisions from state courts in California and Michigan had held that the Stay does not apply to suits under the Act pending in state court.[1] Other state courts have enforced the Stay.[2] The inconsistent decisions have left both sides of the securities class action bar with little guidance on this very important legislative change to the Act.

HIGH STAKES DISCOVERY AT ISSUE

The Stay is strategically important for litigants on both sides of class actions. For defendants, the Stay allows them to challenge the legal sufficiency of the plaintiff's case without the enormous expense of responding to requests for production, interrogatories, or requests to admit and requiring corporate witnesses—often members of the board of directors and senior executives—to sit for depositions. Conversely, if plaintiffs can avoid the Stay, they can perhaps extract a prompt settlement offer from corporate defendants who would rather settle the case than incur the cost and expend the lost time on discovery. The enormously high stakes involved in responding to discovery in these large and complex cases make the impact of the Stay a critical juncture in cases under the Act in state court.

JUDGE LEE'S DECISION

With this inconsistent jurisprudence and high stakes at issue, Superior Court Judge Charles Lee's May 15, 2019 decision in *City of Livonia v. Pitney Bowes Inc.*, et al., Docket No. X08 FST CV 18 6038160 S has national importance. In *Livonia*, the defendants filed a motion for protective order to enforce the Stay, after expressing their intention to move to strike the complaint for failure to state a claim upon which relief can be granted. The defendants argued that the Stay applies to "any private action" under the Act, citing the plain language of the Act and Connecticut's plain meaning rule, Conn. Gen. Stat. Section 1-2z, which, they argued, mandates that the court enforce the plain meaning of the Act.

The plaintiffs opposed the motion on two grounds. First, they argued, citing the California and Michigan cases on their side, that the Stay does not apply to state court cases under the Act and that the Stay is "procedural" and thereby only implicates federal procedure in cases plaintiffs bring in federal court. Plaintiffs also argued that the phrase "motion to dismiss" in the Act expressly prohibits the imposition of the automatic stay when a defendant files a "motion to strike" in Connecticut. The defendants countered that a motion to strike in Connecticut is identical to a motion to dismiss for failure to state a claim upon which relief can be granted.

Judge Lee granted the defendants' Motion for Protective Order to enforce the automatic stay and stayed all discovery until after the court rules on the defendants' motion to strike. In his decision, Judge Lee ruled that despite the handful of cases to the contrary, the Stay applies in all cases in state court. Judge Lee principally relied on the plain meaning rule and held that Congress' prohibition on discovery once defendants signal their intent to challenge the viability of the complaint applies to "any private action" in both state and federal court.

Judge Lee also held that because a motion to dismiss for failure to state a claim upon which relief can be granted under the federal rules seeks the same relief as a motion to strike for failure to state a claim upon which relief can be granted under the Connecticut Practice Book, the plaintiffs' argument that the Stay does not apply to motions to strike was without merit.

CONNECTICUT PRACTICE BOOK IMPACT

In addition to addressing the nationally important interpretation and application of federal law, the court went even further in its ruling. After concluding a lengthy analysis of the implications of the Stay, a federal law, on state court practice, the court went onto hold that under the Practice Book rules governing protective orders, the defendants had demonstrated that the court had good cause to Stay discovery. Specifically, the court held that plaintiffs would suffer no prejudice if it stayed discovery while the motions to strike were pending.

Securities class action practitioners around the country will no doubt look to the Connecticut Superior Court's ruling in *Livonia* as a very detailed, careful analysis of the implications of the Stay in state court actions. Prior to *Livonia*, most of the decisions were short on thoughtful analysis. The *Livonia* decision carefully analyzed all known prior decisions from other states, the legislative history, and the impact of the Stay on the parties' rights and ruled that the Stay applied. In light of the lengthy and careful analysis in *Livonia*, the court's decision will no doubt have critical impact in this area of the law across the country. ■

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NOTES

1. *See, e.g., Switzer v. W.R. Hambrecht & Co., LLC,* 2018 WL 4704776 (Cal. Super. Ct., September 19, 2018).
2. *See e.g, Milano v. Auhill,* No. SB 213 476, 1996 WL 33398997, at *2-3 (Cal. Super. Ct. Oct. 2, 1996).

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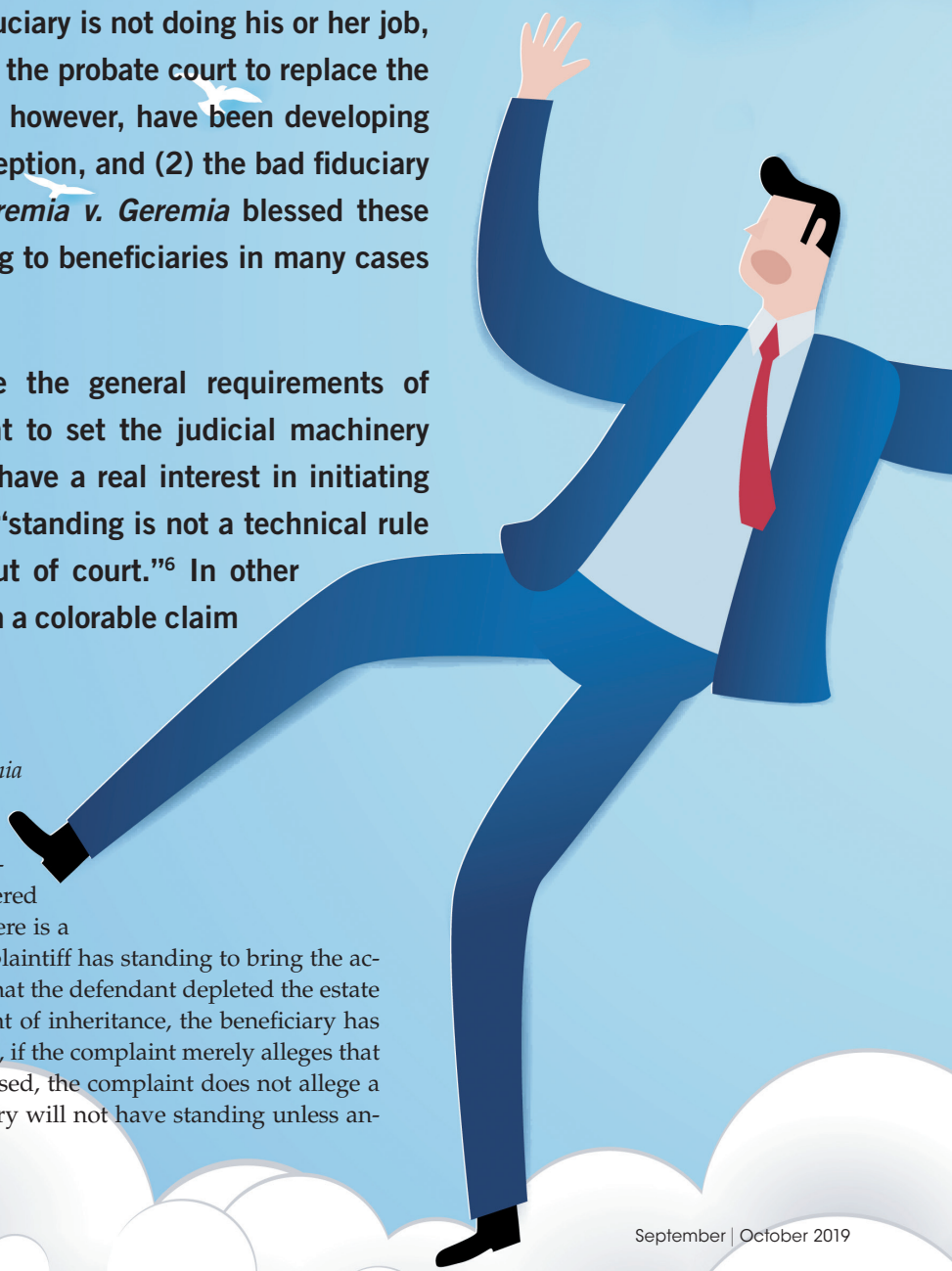
Are Fiduciaries Getting the Boot?

*Direct Standing for Beneficiaries in Estate-Related Litigation Post-*Geremia

By E. Jennifer Reale

The traditional rule has always been that claims belonging to the estate of a deceased person must be brought by the fiduciary of the estate.[1] If the fiduciary is not doing his or her job, the beneficiaries can petition the probate court to replace the fiduciary.[2] Two exceptions to this rule, however, have been developing for years now: (1) the direct injury exception, and (2) the bad fiduciary exception. The appellate court in *Geremia v. Geremia* blessed these exceptions, thereby conferring standing to beneficiaries in many cases to enter the fight.[3]

***Geremia*, of course, did not change the general requirements of standing.[4] Standing is "the legal right to set the judicial machinery in motion."[5] While the plaintiff must have a real interest in initiating the lawsuit, our courts recognize that "standing is not a technical rule intended to keep aggrieved parties out of court."[6] In other words, standing "requires no more than a colorable claim of injury."[7]**



Direct Injury to the Beneficiary

The first question an attorney must ask post-*Geremia* is whether the cause of action, as pled, alleges a direct injury to the plaintiff or whether it alleges an injury to the estate.[8] Importantly, if the complaint alleges that the defendant tortiously interfered with the plaintiff's expectation of inheritance, there is a "colorable claim of direct injury" and, thus, the plaintiff has standing to bring the action.[9] In other words, when a complaint alleges that the defendant depleted the estate and, therefore, interfered with the plaintiff's right of inheritance, the beneficiary has standing to pursue an action.[10] On the other hand, if the complaint merely alleges that the defendant stole from or defrauded the deceased, the complaint does not allege a direct injury to the beneficiary, and the beneficiary will not have standing unless another exception applies.[11, 12]

Illustration credit: Phanuchat Phasertpol / 123RF Stock Photo

It is noteworthy that the *Geremia* court did not address whether tortious interference with the expectation of inheritance is a recognized cause of action in Connecticut.[13] With that said, the majority of our superior courts recognize such an action,[14] with the likely elements being: "1) the existence of an expected inheritance; 2) the defendant's knowledge of the expectancy; 3) tortious conduct by the defendant, such as fraud or undue influence; and 4) actual damages to the plaintiff resulting from the defendant's tortious conduct."[15]

While recognizing claims for tortious interference with the expectation of inheritance do convey new powers and rights to beneficiaries, it does not convey an unlimited power. We must remember that tortious interference with inheritance does not provide the plaintiff with an opportunity to collaterally attack a will beyond the statutory appeal period.[16] Once a will is admitted by the probate court, and the appeal period expires,[17] a claim for tortious interference with the expectation of inheritance cannot be used to set aside a will.[18] (The only exception to this rule is if the complaint alleges fraud.[19])

Bad Fiduciary Exception

The finding that the complaint does not allege a direct injury to the beneficiary-plaintiff, however, does not in itself deprive the beneficiary of standing. The *Geremia* court blessed another exception from the traditional rule: the *bad fiduciary* exception. It is not uncommon for a testator to trust his or her nominated fiduciary during the testator's lifetime.

Unfortunately, given that elder abuse is the crime of the century, that trust is often abused.[20] The Court, of course, recognized that one cannot let the fox guard the chicken-coop and a fiduciary will not pursue an action against herself:[21, 22]

> Where the [fiduciary] has been guilty of fraud or collusion with the party to be sued, or…where the interests of the personal representative are antagonistic to those of the heirs or distributes, the heirs or distributes may maintain actions relating to the personalty of the estate in their own names. Similarly, when the legal representative has failed or refused to act, the heir may maintain an action to recover assets for the benefit of the estate.[23]

Recognizing that this exception has been adopted by many of our sister states[24] and emphasizing that Connecticut General Statute § 45a-234(18) contemplated this exception,[25] the *Geremia* court blessed prior superior court decisions that have conferred standing on the beneficiaries in cases of bad fiduciaries.[26] This exception has already been adopted to trusts; conferring standing to trust beneficiaries recover assets from bad trustees.[27]

Keep in mind that this exception only gives another opportunity to the beneficiaries to protect their interest. It does not deprive the beneficiaries to petition the probate court to remove the fiduciary.[28] Nevertheless, this is a critical exception given that the removal of a fiduciary is an extraordinary remedy and the beneficiaries will often have no control over who the probate court may appoint.[29]

Conclusion

All in all, the *Geremia* decision started a new chapter in estate-related litigation, allowing heirs and beneficiaries to directly protect their interests, as opposed to watching from the sidelines. Of course, the fiduciaries still maintain their duty to protect the estate and recover potential estate assets from wrongdoers. ■

E. Jennifer Reale *is an attorney at Czepiga Daly Pope & Perri. She focuses her practice on probate and fiduciary litigation.*

NOTES

1. *Geremia v. Geremia*, 159 Conn. App. 751, 782, 125 A.3d 549 (2015).
2. *See* Conn. Gen. Stat. § 45a-242(a) (2019).
3. *Geremia*, 159 Conn. App. at 779-88.
4. *See Id*. at 779.
5. *Id*.
6. *Id*. (internal citation omitted).
7. *Id*. (internal citation omitted).
8. *Id*. at 780.
9. *Id*. at 871 (also recognizing that claims for slander and intentional infliction of emotional distress allege direct injury).
10. *See Id.*
11. *See Id*. at 781-88.
12. This distinction between tortious interference with the expectation of inheritance and statutory theft can be an important one. It is well-settled that the plaintiff will receive treble damages if she is successful at proving statutory theft. Conn. Gen. Stat. § 52-564 (2019). On the other hand, Courts are yet to address the question: if the underlying tort for tortious interference with the expectation of inheritance is statutory theft, can the plaintiff receive treble damages?
13. *See Geremia*, 159 Conn. App. at 780-81.
14. *See e.g., Markowitz v. Villa*, CV-16-6060963-S, 2017 Conn. Super. LEXIS 2882 (J.D. New Haven, J. Wilson, Jan. 26, 2017); *Wild v. Cocivera*, HHD-CV-14-6050575-S, 2016 Conn. Super. LEXIS 1788 (J.D. Hartford, J. Noble, June 16, 2016); *Roscoe v. Elim Park Baptist Home, Inc.*, NNH-CV-14-6049541-S, 2015 Conn. Super. LEXIS 3124 (J.D. New Haven, J. Frechette, Dec. 22, 2015); *Reilley v. Albanese*, AAN-CV-15-6018220-S, 2015 Conn. Super. LEXIS 3141 (J.D. Ansonia-Milford, J. Stevens, Dec. 14, 2015); *Hart v. Hart*, WWM-CV-14-6007918-S, 2015 Conn. Super. LEXIS 1094 (J.D. Windham, J. Calmar, May 11, 2 015); *Kite v. Pascale*, 3:07-cv-0512 (AWT), 2015 U.S. Dist. LEXIS 42086 (D. Conn., J. Thompson, March 31, 2015); *Vechiola v. Fasanella*, CV-10-5029378-S, 2013 Conn. Super. LEXIS 374 (J.D. Fairfield, J. Radcliffe, Feb. 7, 2013); *Caro v. Weintraub*, 3:09-CV-1353 (PCD), 2010 U.S. Dist. LEXIS 116492 (D. Conn, J. Dorsey, Nov. 2, 2010); *Dapasquale v. Hennessey*, CV-10-6007472-S, 2010 Conn. Super. LEXIS 2202 (J.D. Hartford, J. Peck, Aug. 27, 2010); *Van Eck v. West Haven Funeral Home*, CV-09-5031256-S, 2010 Conn. Super. LEXIS 2002 (J.D. New Haven, J. Zoarski, Aug. 4, 2010); *Bochian v. Bank of Am., N.A.*, CV-06-4019877, 2006 Conn. Super. LEXIS 3663 (J.D. Hartford, J. Rittenband, Dec. 8, 2006); but see *Eder v. Eder*, NNH-CV-13-6036446, 2014 Conn. Super. LEXIS 1416 (J.D. New Haven, J. Nazzaro, June 10, 2014).
15. *Depasquale v. Hennessey*, CV106007472S, 2010 Conn. Super LEXIS 2202, *9 (J.D. of Hartford, J. Peck, Aug. 27, 2010).
16. See Conn. Gen. Stat. § 45a-24 (2019).
17. The appeal period is thirty days. Conn. Gen. Stat. § 45a-186(a) (2019); but see Conn. Gen. Stat. § 45a-187 (2019) (extending the appeal period to twelve months if the party did not receive notice.)
18. *See* Conn. Gen. Stat. § 45a-24 (2019). Will challenges are commonly done for undue influence and/or lack of capacity. *See e.g., Lee v. Horrigan*, 140 Conn. 232, 233, 98 A2.d 909 (1953).
19. *Brennan v. King*, CV-02-0172137-S, 2003 Conn. Super. LEXIS 21 (J.D. of Waterbury, J. Dubay, Jan. 8, 2003) (citing Conn. Gen. Stat. § 45a-24).
20. Kristen Lewis, *Elder Financial Abuse: The Crime of the 21st Century*, ACTEC FOUND., (August 2018), https://actecfoundation.org/podcasts/elder-financial-abuse (last visited May 24, 2019) (noting that elder abuse is responsible for over thirty-six billion dollars in losses to elderly victims each year).
21. *See Hart v. Hart*, CV-14-6007918, 2014 Conn. Super. LEXIS 2110 (J.D. of Windham, J. Boland, Aug. 28, 2014).
22. Even though fiduciaries have the mandatory duty to collect all debts due to the estate. *See Geremia*, 159 Conn. App. at 783.
23. *Id*. at 784.
24. *Id*. at 784-85 (citing *Kiley v. Lubelsky*, 315 F. Supp. 1025, 1028 (D. S.C. 1970); *Schaefer v. Schaefer*, 89 Wis. 2d 323, 329, 278 N.W.2d 276 (App. 1979); and *Trotter v. Mut'l Reverse Fund Life Assn.*, 9 S.D. 596, 600, 70 N.W. 843 (1897).
25. *Id*. at 785 (citing Conn. Gen. Stat. 45a-234(18), which provides that the fiduciary's decision to compromise a claim "shall be conclusive between the fiduciary and the beneficiaries of the estate or trust in the absence of fraud, bad faith or gross negligence of the fiduciary").
26. *Id*. at 781-86 (citing *Dickman v. Generis*, 48 Conn. Supp. 380, 383-85, 845 A.2d 488 (2004); *Hart v. Hart*, CV-14-6007918, 2014 Conn. Super. LEXIS 2110 (J.D. of Windham, J. Boland, Aug. 28, 2014); and *Wright v. Wright*, CV-05-4000024, 2005 Conn. Super. LEXIS 1458 (J.D. of New Haven, J. Levin, May 27, 2005)).
27. *Christian v. Christian*, AAN-CV-14-5011008-S, 2016 Conn. Super. LEXIS 296, *9-15 (J.D. of Ansonia-Milford, J. Stevens, Feb. 5, 2016).
28. *See* Conn. Gen. Stat. § 45a-242(a) (2019). Keep in mind, however, that the removal of fiduciary is an "extraordinary remedy designed to protect against harm cause by the continuing depletion or mismanagement of an estate. In the absence of continuing harm to the interests of the estate and its beneficiaries, removal is not justified merely as a punishment for the fiduciary's past misconduct." *Cadle Co. v. D'Addario*, 268 Conn. 441, 457, 844 A.2d 836 (2004) (internal citation omitted.)
29. *See Id*.

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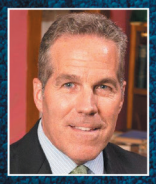
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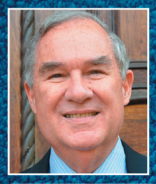
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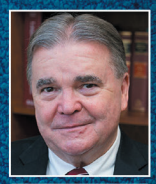
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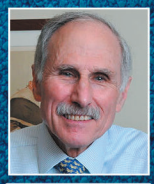
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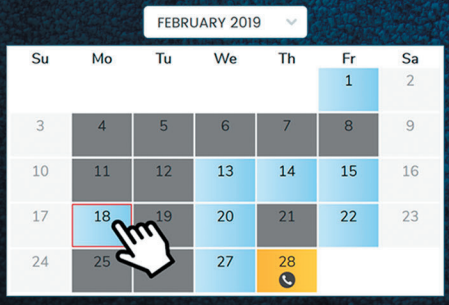

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Standards of Title Committee Addresses the Probate Fee Lien with a Proposed New Standard

By Denis R. Caron

With the enactment of section 454 of Public Act 15-5, now codified as Conn. Gen. Stat. Section 45a-107b, the State of Connecticut created a new form of lien, intended to secure any unpaid probate court fees incurred in connection with estates probated in the probate court. The new lien has certain similarities with the estate tax lien, but it also contains some notable differences, all of which have operated to create confusion within the real property bar as to how these new liens should be addressed. In an effort to resolve at least some of these issues, the Standards of Title Committee has drafted a proposed new standard, to become Standard 13.11 if adopted. The proposed standard is in two parts: the first addresses issues surrounding the release of the probate fee lien, and the second deals with issues that may arise with the lien in the context of a foreclosure action brought by a mortgagee or other lienholder.

It is well-known that the estate tax lien arises as of the moment of death, and that it is a "secret" lien, in that it need not be recorded to be effective against the decedent's real property. The probate fee lien differs in both respects: First, it arises only from the due date for the court's fee. Second, the lien is not necessarily "secret," in that the statute does require the lien to be recorded in certain instances. That requirement is somewhat misleading, however, since the statute states that the lien is not effective "against any 'bona fide purchaser' or 'qualified encumbrancer' until notice of such lien is filed or recorded in the town clerk's office…." Those terms are statutorily defined as purchasers or lenders who take title without "actual, constructive or implied notice" that the owner is deceased. In the vast majority of instances in which this standard might become rele-

Image credit: Alina555 / Getty Images

vant, the title is being examined in connection with an anticipated sale of the property out of the decedent's estate. Under such circumstances, the proposed purchaser obviously has actual notice of the owner's death, and consequently the owner cannot be a bona fide purchaser under the statutory definition. Consequently, the recording requirement does not apply, and the probate fee lien does indeed become a "secret" lien as to that transaction.

Although both the estate tax lien and the probate fee lien run in favor of the State of Connecticut, and not the probate court, the statute does grant authority to local probate courts to release the liens in nontaxable estates. A practice has developed for the courts to release both liens within a single document, even though in many cases the fee lien may not have arisen because the court has not yet sent out its invoice. The question then becomes whether such a premature release is effective, or whether another release would need to be recorded at a later date to clear title. Recognizing that the dual-release practice is already well established and that a probate court would be unlikely to disavow its lien on the ground that no lien existed at the time the court issued its release, the proposed standard adopts the rule that "title is not unmarketable because the release of the lien was issued prior to the date the lien actually arose." The rule would also apply in cases in which only the probate fee lien is addressed in the release.

The second issue to be addressed in the proposed standard relates to foreclosures. Since the lien arises only at the time of the probate court's billing, it is to be expected that such liens are almost always subordinate to the interest being foreclosed. The language of the statute has created some uncertainty as to the proper party to be named and served. Although the statute expressly states that the lien runs in favor of the State of Connecticut, it also indicates that the probate courts may issue releases of the lien. This circumstance has prompted foreclosing lenders to attempt service upon a probate office or judge, or possibly the office of the probate court administrator. There is only one statute addressing the manner of service of process upon the State of Connecticut: Conn. Gen. Stat. Section 52-64 mandates that service be made on the attorney general "in all cases in which the State of Connecticut is named as a defendant." What then is to be made of those previously-prosecuted foreclosures in which the state was not properly served? Was the lien nonetheless extinguished through the foreclosure, or must the plaintiff initiate a second suit—likely an omitted party action pursuant to section 49-30—or alternatively, seek a release of the lien?

Relying on authority provided in *Heritage Savings and Loan Association v. Schaller*, 183 Conn 117 (1981), the committee concludes that the fee lien may have been extinguished in such cases, provided the State of Connecticut was properly named and served in connection with another lien it may have held. Usually, that would be the estate or succession tax lien. In *Schaller*, the state had been named a defendant by virtue of a sales tax lien. Subsequently, the state also recorded a tax warrant, but did not seek to be joined as a party because of that warrant. The defendant owner claimed that this prevented the state from being paid on its warrant from the proceeds of the foreclosure sale. The Supreme Court reversed a trial court ruling in the owner's favor, noting that "the state, once made a party to the action, remained a party throughout the proceeding." Thus, the proposed standard adopts the following rule:

> In the event the State of Connecticut, having claimed an interest in real property by virtue of a [probate court fee] Lien, has been named a defendant in a foreclosure action commenced by the holder of an encumbrance prior in right to the Lien, and in the further event that the State of Connecticut failed to appear in said foreclosure action, title is not marketable unless service of process was made upon the State of Connecticut in accordance with the provisions of Connecticut General Statutes § 52-64, which requires service to be made on the attorney general in all cases in which the state is named as a defendant.

Copies of the proposed new standard are available upon request from the Connecticut Bar Association. The committee welcomes comments, which may be addressed to its chair, Ellen Sostman, at ESostman@catic.com.

In addition, the committee revised Standard 7.1 to reflect the adoption of Sec. 47-36bb, allowing a trust to take title in its own name, and also revised Standards 29.1 and 29.4 to reflect legislative changes made to the tax sale statutes. As revisions to existing Standards, these changes were effective on adoption by the committee and are not subject to comment or further approval. The revised Standards are available on the CBA's website to members of the Real Property Section, and can be purchased from the CBA as a printed supplement to the Standards of Title binder. ■

Denis R. Caron *is a member and former chairman of the Standards of Title Committee. He is a retired vice president of Commonwealth Land Title Insurance Company.*

Pro Bono Opportunities Are Endless

By Amy Lin Meyerson

Image credit: wrightstudio / 123RF Stock Photo

I am honored and excited to chair the CBA's Pro Bono Committee that "strives to promote the public interest through the advancement of justice and the protection of liberty," and more specifically, "facilitate the delivery of competent legal services to the public particularly those in greatest need."[1]

Throughout my 25+ year career as an attorney, I have always made time to engage in pro bono work. Even when I opened my solo law practice, I continued to diligently advocate for my pro bono clients, because I feel that as attorneys we have an obligation to provide access to justice for those in need of legal services.

Rule 6.1 of the Connecticut Rules of Professional Conduct supports the principle that all attorneys should provide pro bono services:

> A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.[2]

Chaired by UConn School of Law Dean Timothy Fisher and CBA Past President William H. Clendenen, Jr. (2015–2016), the Task Force to Improve Access to Legal Counsel in Civil Matters summarized the human consequences of unmet legal needs in civil matters as follows:

> When parties in civil matters lack counsel, profound human needs can be put at risk: safety and bodily integrity for survivors of domestic violence; parent/child relationships in family matters; shelter and security in eviction and foreclosure cases; a decent and safe livelihood in employment and labor matters; health and wellness in cases seeking access to healthcare; the ability to learn and grow when access to education is implicated; access to subsistence income and related governmental benefits; and so on. For individuals facing deportation in immigration matters, *all* of these fundamental human needs may be jeopardized without a lawyer.[3]

Working with Connecticut's legal service organizations and the Connecticut Judicial Branch, the Connecticut Bar Association investigates, implements, and provides opportunities for attorneys to render public interest and pro bono legal services.

Pro bono cases provide a way to develop a new practice area. For example, this past April, the US District Court for the District of Connecticut, the Federal Bar Council, and the Connecticut Bar Association joined together to present "Pro Bono Trials: Tips and Pointers from the Bench and Bar," a free program for attorneys interested in federal litigation. Attendees received insight from members of the federal judiciary and gained useful skills and tips for pro bono trials from skilled colleagues, including mock trial presentations before a federal judge, opening and closing statements, direct examination, cross-examination, and evidence issues. Also included was an overview of the US District Court's screening process for pro se cases and prisoner litigation. Each participant agreed to take on a pro bono matter in the District of Connecticut within the next 12 months and received 6.0 CLE credit hours.

"Lawyers have a license to practice law, a monopoly on certain services. But for that privilege and status, lawyers have an obligation to provide legal services to those without the wherewithal to pay, to respond to needs outside themselves, to help repair tears in their communities."

— U.S. Supreme Court Associate Justice Ruth Bader Ginsburg (March 2014)

If you have taken a break from your law practice and are looking to get your foot back into the door, assisting with pro bono matters can help to ease the transition back into the legal profession.

Leaving the practice of law? Kick-off your second season of service through pro bono! Lawyers leaving the active practice of law who have a passion to serve their communities will find opportunities to do so by sharing their skills, energy, and expertise through pro bono legal work for those in need.

Whether you are embarking upon your second season of service, interested in gaining experience in another practice area, looking to break back into the legal profession after some time off, or searching for ways to help ensure access to justice, pro bono cases can provide you with the opportunities you seek.

The Honorable William H. Bright, past chair of the Pro Bono Committee of the Connecticut Judicial Branch, once said about pro bono: "Our justice system only works for all of us when it works for the most vulnerable of our society."

In that same spirit, join us and the Connecticut Judicial Branch as we work to achieve access to the legal system and justice for everyone. If you know of any individual or organization in need of pro bono legal services, let us know and together we can work to get them the assistance they need. ■

Amy Lin Meyerson *is the 2019–2020 president-elect of the Connecticut Bar Association and chair of the CBA's Pro Bono Committee. She is a sole practitioner in Weston, practicing business and general corporate law.*

NOTES

1. *Constitution of the CBA,* Part. II
2. Conn. R. Prof'l. Cond. 6.1
3. Page 7, Report of the Task Force to Improve Access to Legal Counsel in Civil Matters, Dec. 15, 2016 https://cdn.ymaws.com/members.ctbar.org/resource/resmgr/Civil_Gideon_Task_Force/Final_Report.pdf.

SOME OF THE PRO BONO ORGANIZATIONS SERVING CONNECTICUT INCLUDE:

- **Center for Children's Advocacy** (cca-ct.org)
- **Connecticut Institute for Refugees and Immigrants** (cirict.org)
- **Connecticut Legal Services, Inc.** (ctlegal.org)
- **Connecticut Fair Housing Center** (ctfairhousing.org)
- **Connecticut Veterans Legal Center** (ctveteranslegal.org)
- **Disability Rights Connecticut** (disrightsct.org)
- **Greater Hartford Legal Aid, Inc.** (ghla.org)
- **H.E.L.P. Project Hartford** (homelesslegalprotection.com)
- **The Connecticut Appleseed Center for Law and Justice, Inc.** (ctappleseed.org)
- **Integrated Refugee and Immigrant Services (IRIS) Legal Services Department** (irisct.org)
- **Lawyers for Children America** (lawyersforchildrenamerica.org)
- **Lawyers Without Borders, Inc.** (lwob.org)
- **University of Connecticut School of Law Tax Clinic** (law.uconn.edu/academics/clinics-experiential-learning/tax-clinic)
- **New Haven Legal Assistance Association, Inc.** (nhlegal.org)
- **Pro Bono Partnership** (probonopartner.org)
- **Statewide Legal Services of Connecticut** (slsct.org)
  - **Call4law**—a telephonic legal advice hotline for pre-screened low-income individuals facing consumer debt actions.
  - **Security Deposit Clinic**—a program that provides in-person document drafting to pro se litigants seeking to get back security deposits.
  - **Family Law Clinic**—a program that allows individuals to speak to a pro bono attorney about the divorce process and get help drafting the legal documents and fee waivers they need.
  - **Limited Scope Representation Program**—a program that provides brief or in-depth legal assistance in all areas of poverty law to eligible low-income clients.
- **Truancy Intervention Project** (ctbarfdn.org/truancy-intervention)
- **Victim Rights Center of CT** (endsexualviolencect.org/vrcct)

Visit CTProBono.org for more information on opportunities for attorneys and paralegals interested in volunteering their time to provide legal representation for low-income clients who are screened by a legal services agency and deemed eligible for pro bono services for their civil cases.

UPCOMING PRO BONO EVENTS

10/22:
Pro Bono Clinic (New Britain)

10/24:
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Mothers, Sons, and Powers of Attorney

By Charles D. Ray and Matthew A. Weiner

Image credit: zimmytws / 123RF Stock Photo

The Supreme Court's recent decision in *Geriatrics, Inc. v. McGee*, 332 Conn. 1 (2019) presents an interesting legal issue but, unfortunately, a set of depressing facts that many of us have lived through and many more of us likely will in the future.

Our cast includes Helen McGee, now deceased; her son, Stephen; Stephen's wife; and the plaintiff, the owner of a nursing home. As Helen's health deteriorated, Stephen moved into her home to provide 24-hour care for her, including cooking, grocery ordering, bathing her, dressing her, and dealing with her incontinence. Stephen's wife assisted with these various tasks. In late 2012, Stephen began managing Helen's financial affairs under a power of attorney. Altogether, Stephen cared for his mother for about two years, at which point his own debilitating disease precluded him from continuing.

Helen was admitted to the plaintiff's nursing home in early 2013. However, Stephen and his wife continued to provide care to Helen by managing her personal and financial affairs. In fulfilling this role, Stephen used the power of attorney to withdraw money from the bank accounts in which her social security and pension benefits were deposited. Some of these funds went to pay past and present bills to Helen's creditors. In addition, however, for a three-year period Stephen also wrote checks to both himself and to his wife—about $73,000 in total. Those payments served three purposes: 1) to compensate Stephen and his wife for the care they provided to Helen both before and after she was admitted to the nursing home; 2) to pay Stephen $600 per month to manage Helen's financial affairs pursuant to the power of attorney; and 3) to reimburse Stephen for money loaned to Helen or spent on her behalf. In the meantime, due to delays and rejections related to Helen's applications for Medicare coverage, her debt to the plaintiff continued to rise.

The plaintiff sued both Helen and Stephen in June, 2015, alleging that Helen had breached her residency agreement with the plaintiff and had been unjustly enriched by her failure to pay the more than $153,000 she owed for services provided to her by the plaintiff. Against Stephen, the plaintiff alleged that Helen had transferred assets to Stephen in violation of the Connecticut Uniform Fraudulent Transfer Act (CUFTA). The plaintiff alleged that Stephen was an "insider" as defined by CUFTA and that the transfers: 1) had left Helen with insufficient funds to pay her debts; 2) were made with the intent to hinder Helen's creditors; and 3) were made without Stephen having provided anything in exchange. The plaintiff also alleged that Stephen had been unjustly enriched by the payments he made to himself and his wife.

Helen died shortly before trial began, but her interests were represented by counsel throughout. She made no claims against Stephen and made no allegation that Stephen lacked authority to make the payments to himself or that he had engaged in any kind of wrongdoing. For his part, Stephen testified (by way of deposition, due to his health) that he had begun managing Helen's finances in late 2012 and that he and Helen had agreed, as evidenced in the power of attorney, that he would be compensated for managing her financial affairs. He also testified that he and Helen had made a verbal agreement that Stephen was to be paid for the personal care he provided to Helen. Stephen estimated the value of that care at $230 per day based on what he concluded was the market rate for such services.

The trial court found for Stephen on both counts. On the CUFTA claims, the trial court held that Stephen, and not Helen, was the actual "transferor" of the funds that the plaintiff sought to recoup from Stephen. The trial court then concluded that Stephen was not a "debtor" for purposes of CUFTA, and that the plain and unambiguous language of CUFTA does

not apply to third-party transferors. The trial court also rejected the plaintiff's unjust enrichment claim, holding that while the plaintiff had a legitimate claim to Helen's assets based on its contract with her (and to which Stephen was not a party), Stephen also had a legitimate claim to those assets based on the services he had provided to Helen. In the end, the trial court held that the plaintiff had failed to prove that its claim to the assets was any better than Stephen's.

On appeal, the plaintiff challenged both rulings, without any luck on the unjust enrichment claim. On that issue, the Court was unanimous—the trial court did not abuse its discretion by concluding that the plaintiff failed to prove that it had a better legal or equitable right to Helen's assets than did Stephen. And while the plaintiff potentially could have sought to discredit Stephen's testimony or could have sought to establish priority of its claim over Stephen's, it did neither, perhaps because Stephen's rights began to accrue before Helen's debt to the plaintiff began to climb. In addition, there appears to have been no claim that Helen was even aware of or colluded in the various payments to Stephen and his wife.

The Court's split came in regard to the CUFTA issue, with Justice McDonald (writing for himself, Chief Justice Robinson, Justice Palmer, and Justice Ecker) concluding that a new trial was necessary and Justice D'Auria (writing for himself and Justice Mullins and Justice Kahn) voicing the opinion that the trial court's judgment should be affirmed. Before we follow both sides to their conclusions, it's worth noting that Stephen is essentially wearing two hats in the case. One has "Helen's Son" printed on the front, while the other has "Helen's POA" printed on it. For the dissenters, the former seems to be the hat they prefer, while the majority seems to favor the latter.

But let's start with CUFTA, which in its basic terms, allows remedies in defined situations where there has been either intentional or constructive fraud. Thus, for example, CUFTA tells us that a "transfer" made by a "debtor" is fraudulent as to a creditor if the creditor's claim arose before the transfer was made and the "debtor" made the transfer "with actual intent to hinder, delay or defraud any creditor of the debtor...." Conn. Gen. Stat. § 52-552e(a)(1). Section (a)(2) goes on to tell us that a transfer is also fraudulent if made by a debtor and the debtor "(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due." Conn. Gen. Stat. § 52-552e(a)(2). To further complicate matters, a transfer is also fraudulent as to a creditor whose claim arose before the transfer was made, if the debtor made the transfer "without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation." Conn. Gen. Stat. § 52-552f(a).

If you've spotted the issue the Court had to wrestle with, a pat on the back to you, because everyone involved in the trial court seemed to have missed it. The problem, it turns out, hinged on the fact that transfers can only be fraudulent under the act if made by the debtor, and that was decidedly not the case here. The trial court raised the issue of whether the act applied to "third-party transferors," but never seems to have put the "Helen's POA" hat on Stephen's head to determine whether the act would impute his actions to Helen as her agent. But the cases involving third-party transferors did not impose liability unless the "debtor" actively participated in the transfers. And here, Helen did not participate so the trial court ended the matter there.

That was enough for the dissent, Justice D'Auria noting that the plaintiff "did not appear to argue to the trial court that Helen was even aware of—much less colluded with Stephen in making—the transfers." Justice D'Auria also noted that Stephen was the victim of bad timing, because had he received the funds "before his mother's debt began to accumulate or had her Medicare coverage never lapsed, there would be no claim." The dissent notes that CUFTA defines a "debtor" as "a person who is liable on a claim" and concludes that the act "refers only to transfers actually made, in some capacity, by the party who owes the debt."

For the majority, the key provision of CUFTA is § 52-552k, which provides that unless "displaced" by other provisions of the act, "the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement the provisions of [the act]." The majority concluded that there was nothing in CUFTA "that explicitly or even implicitly provides that acts of the debtor's agent shall not be imputed to the debtor." Given its conclusion that CUFTA is, at its core, a creditor protection statute, the majority had little trouble concluding that agency principles should have been considered by the trial court. On remand, the trial court was directed to "determine whether [Stephen's transfers pursuant to a power of attorney] were fraudulent under any of the theories advanced by the plaintiff."

What's the correct answer? We suppose it all depends on which hat you're wearing. ■

■ 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.

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Highlights | Recent Superior Court Decisions

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.

Administrative Law

New Section-Glen Oaks Condominium Association v. Glen Oaks Condominium Association, 68 CLR 157 (Shapiro, Robert B., J.T.R.), holds that the special "small board" rules to govern meetings of boards with 12 or fewer members, now available under Roberts' Rules of Order, apply to condominium association board of director meetings, including the rule dispensing with the traditional requirement that all motions be seconded.

Under the Administrative Procedure Act the oral entry of an agency decision immediately commences the running of the 45-day period to appeal the decision to the superior court, even if a written decision is later issued. *Raffalo v. Board of Firearms Permit Examiners*, 68 CLR 145 (Cohn, Henry S., J.T.R.). This opinion dismisses a late appeal from an oral decision by the Board of Firearms Permit Examiners to deny a permit, even though the appeal was filed within 45 days of receipt of a subsequently issued written decision.

Arbitration Law

Gallagher v. Merville, 67 CLR 783 (Wilson, Robin L., J.), holds that the Practice Book and statutory provision limiting the right to a trial *de novo* under the judiciary's mandatory arbitration program to parties who "appeared" at the arbitration, Practice Book § 23-66(c) and Conn. Gen. Stat. § 52-459z(c), is satisfied by an appearance by the requesting party's counsel only, at least with respect to requests by defendants, as is the situation in this case. The opinion broadly states the rule as allowing a trial *de novo* by either a nonappearing *plaintiff* or nonappearing *defendant*, but the rationale primarily addresses factors relevant only to requests from defendants.

Whether multiple disputes between two insurers, arising out of claims under multiple liability policies issued pursuant to a single reinsurance treaty that contains a general arbitration clause, should be consolidated for arbitration, presents a procedural issue which should be resolved by an initial arbitration panel rather than by the court. *Employers Insurance Co. of Wausau v. Hartford*, 67 CLR 806 (Shapiro, Robert B., J.T.R.).

Contracts

A contract authorizing a prevailing party to recover trial attorney fees without expressly referencing appellate fees, is presumed to include appellate as well as trial fees, unless the agreement expressly provides otherwise. *Rocco v. Shaikh*, 68 CLR 192 (Tanzer, Lois, J.T.R.). The opinion also holds that a request for fees by a prevailing party is subject to less judicial scrutiny as to amount and reasonableness with respect to claims made pursuant to a *contractual* right to fees, than for a claim for *statutory* fees, because statutory fees are imposed to advance a public purpose and therefore require enhanced judicial oversight.

A contractor's failure to comply with the statutory minimum requirements of the Home Improvement Act, Conn. Gen. Stat. § 20-418 et seq., may be asserted by a homeowner, not only defensively as a bar to the contractor's breach of contract claim, but also affirmatively in support of an application to discharge a mechanic's lien filed by such a contractor to secure payment on the invalid agreement. The opinion notes that there is no appellate precedent on the issue. *Tanius v. Villwell Builders*, LLC, 68 CLR 194 (Shaban, Dan, J.).

The Home Improvement Act applies to the construction of a sophisticated tree house behind a residence with substantial beams to carry the weight of the tree house, traditional house framing, flooring, a loft, and roof rafters. This opinion holds that an unlicensed carpenter hired by a homeowner to build a tree house cannot recover under an oral contract after a dispute arose due to the amount and timing of progress payments. *Reyes v. Vivona*, 68 CLR 198 (Genuario, Robert L., J.).

Law of Lawyering

An attorney's litigation privilege extends to claims of fraudulent misrepresentation of the value of a client's cause of action against a third party being offered as an assignment in exchange for a release of the plaintiff's claim against the client, even though the representations are only indirectly related to the matter in which they were made. *Ghio v. Liberty Insurance Underwriters, Inc.*, 68 CLR 219 (Moukawsher, Thomas G., J.). This opinion dismisses a complaint alleging that the defendant/attorney falsely misrepresented the strength of a client's cause of action against a liability insurer for coverage of the plaintiff's claim, in connection with negotiations for the assignment of the cause in exchange for a release in favor of the attorney's client.

Pensions and Other Employee Benefit Plans

Welsh v. Martinez, 68 CLR 1 (Schuman, Carl J., J.), holds that although retirement

accounts are generally exempt from execution to satisfy a creditor claim, such accounts may be taken into consideration for purposes of determining whether a debtor has the financial ability to pay a fine imposed as a sanction for civil contempt of court. The opinion reasons that (a) a sanction order is not directed at the retirement funds but rather merely relies on those funds in making an evaluation as to whether it is equitable to deny the debtor's request for a stay, and (b) application of the exemption statutes is limited to orders issued "for the purpose of *debt collection*," Conn. Gen. Stat. § 52-352a(c).

Real Property Law

An owner of property in joint tenancy or a co-tenancy with one or more other owners has an absolute right to have the property partitioned among the owners, either by a partition in kind or a sale and a distribution of the proceeds, regardless of inconvenience to the other owners or to tenants, except under unusual circumstances making a partition impractical. The opinion presents a brief and useful review of the law of partition. *Da Foz, LLC v. Dos Santos*, 68 CLR 86 (Kowalski, Ronald E., J.).

The statute authorizing the recovery by a consumer who successfully prosecutes or defends an action on an agreement providing for the recovery of fees by the commercial party does not apply to an action by a condominium association for the recovery of association fees because such an association is not a "commercial party." *West Farms Condominium Association No. 1, Inc. v. Amaio*, 68 CLR 241 (Aurigemma, Julia L., J.).

Social Services

Although boy scout officials are not mandated reporters under the Mandated Reporter Statute because they are not included in the statutory list of "mandated reporters," Conn. Gen. Stat. § 17a-101(b), such officials are protected by the statute's grant of immunity from liability from claims arising out of the reporting of suspected child abuse, as agents of an "institution [or] agency which, in good faith, makes a report pursuant to [the Statute]," Conn. Gen. Stat. § 17a-101e(b). *Day v. Dodge*, 67 CLR 750 (Knox, Kimberly Ann, J.).

Tax Law

American Tax Funding, LLC v. First Eagle Corp., 67 CLR 763 (Cobb, Susan Quinn, J.), holds that a strict foreclosure of any municipal tax lien by an assignee of multiple liens securing tax obligations on the same parcel but for multiple years, will preclude any further recovery on the remaining tax obligations, because pursuant to Conn. Gen. Stat. § 12-195h, the assignee is subject to the same tax enforcement limitations as a municipality including, in particular, (a) a lack of authority to seek a deficiency judgment following the strict foreclosure of a tax lien, and (b) the automatic discharge of all remaining tax liens on the same parcel following a strict foreclosure.

The time limit by which an owner of rental real property must "annually *submit* to the assessor" a form disclosing income and expense information for use in establishing a tax appraisal value, "not later than the first day of June," after which a ten percent penalty is authorized, Conn. Gen. Stat. § 12-63c(a), is satisfied only by the physical delivery of the form to the assessor on or before the required date. A form deposited with the US Postal Service but not physically delivered to the assessor by that date, is not timely and therefore exposes a taxpayer to the ten percent penalty for a late submission. *Seramonte Associates, LLC v. Hamden*, 67 CLR 862 (Richards, Sybil V., J.).

Torts

Derby v. Tails of Courage, Inc., 68 CLR 154 (Bentivegna, James M., J.), holds that the Dog Bite Statute's imposition of strict liability on "the owner or keeper" of a dog, Conn. Gen. Stat. § 22-357, imposes liability on either the owner or the keeper but not both. The opinion holds that a parent who took temporary possession of a dog from a kennel owner for an overnight trial visit before "adopting" the dog cannot prosecute a claim under the Act on behalf of the child for an attack while driving home from the kennel, because the only person liable under the Act is the parent as the dog's "keeper."

Connecticut does not recognize a civil cause of action for "harassment." *Crossen v. Diehl*, 68 CLR 162 (Sicilian, James, J.). The opinion dismisses a count of a complaint alleging that the defendant committed a tort of "harassment" by yelling and directing obscene gestures at a neighbor.

The dismissal of an apportionment plaintiff from a civil action does not require dismissal of the apportionment defendant, because the Apportionment Impleader Statute expressly provides that any impleaded apportionment defendant "*shall be a party [to the action] for all purposes*," Conn. Gen. Stat. § 52-102b. *Pitner v. Danbury Mall, LLC*, 68 CLR 115 (Krumeich, Edward T., J.).

The public benefit of encouraging family members to include a troubled family member within the family circle for therapeutic purposes, as by permitting an adult child with a known propensity toward violence to reside with the child's parents, provides a public policy justification for construing tort law as relieving such parents of liability for injuries inflicted on a third party by an adult child while on the parent's premises. *Lewis v. Natal*, 68 CLR 126 (Blue, Jon C., J.T.R.).

In wrongful death actions brought pursuant to Conn. Gen. Stat. § 52-555, the plaintiff's damages for "*death itself*"—as opposed to pre-death losses such as pain and suffering, medical expenses, and damage to personal property—include not only damages for the loss of future earnings, but also for loss of the capacity to carry on and enjoy *non-work* activities such as raising children, engaging in hobbies, and participating in athletic activities. *Myrick v. Jack A. Halprin, Inc.*, 67 CLR 308 (Wilson, Robin L., J.).

Trusts and Estates

An unconditional waiver of a claim by the Commissioner of Administrative Services against a decedent's estate for medical assistance payments to the decedent, issued in response to the receipt of an "Affidavit in Lieu of Probation" as authorized for small estates by Conn. Gen. Stat. § 45a-273, cannot be revoked upon the discovery of additional estate assets, provided there was no fraud in the issuance of the

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Come One, Come All: The Plate Balancing Act of the Young Lawyer

By Amanda G. Schreiber

Amanda G. Schreiber *is the chair of the Connecticut Bar Association Young Lawyers Section for the 2019-2020 bar year. She is associate senior counsel at Cigna Health and Life Insurance Company in Bloomfield, where she handles healthcare litigation specializing in ERISA and MHPAEA. She graduated with honors from Quinnipiac University School of Law in 2011.*

Sometimes a young lawyer's life feels a little like keeping 100 spinning plates in the air.

I recently went to a circus themed show in Hartford. As always, it proved to be an incredible visual spectacle. But one performer in particular caught my attention: the plate spinner. This man somewhat miraculously managed to spin plates on top of individual sticks. He effortlessly flipped them into the air all while adding more and more plates.

I was jealous. The plate spinner seemed to know his routine. He had obviously had time to practice and was probably using inexpensive plates he could break until he perfected his craft. Then there was the timing aspect. The careful balancing where everything needs to happen at a certain time.

Metaphorically, the world of being a young lawyer is a gigantic plate spinning act. But unlike the circus plate spinner, if I dropped a plate, my client's financial well-being or physical safety could be at risk. If I didn't maintain poise, I couldn't answer work e-mails while attending swimming lessons with my daughter. If I didn't add a plate, I wouldn't get that promotion.

Despite my many spinning plates, I am honored to serve as chair of the Young Lawyers Section for the 2019-2020 bar year. Over the last six years, the section has afforded me countless opportunities that I could not have otherwise achieved. During my tenure, I have moderated and served as a speaker in CLEs. I have served my legal and greater community by participating in Habitat for Humanity, food drives, and clothing collections for charity. I have met and connected with senior bar members who have turned into tremendous mentors, guiding me through my career. Most importantly, I have made connections and friends that will support me in the years to come. I have found the other members of the Young Lawyers Section to be some of the most dedicated, hardworking individuals I know, and I am thrilled to be their leader this year.

I have found, however, that amongst this group my plate balancing concerns are not unique. Every day I talk to young lawyers who are juggling their job, house, marriage, finances, kids, health, and well-being. So many spiraling, spinning plates that they must balance at once, with so much resting on each one.

They all want to know the answer to the same question: "How do you balance it all?"

For that reason, I have decided to dedicate my column this year to exploring the juggling act of the present-day young lawyer.

First, I hope these articles will support our newest members. Young lawyers often feel isolated in their struggles. But they are not the only ones digging themselves out of crushing student loan debt or sneaking out of the office to attend a kindergarten play. Sharing experience and practical advice with colleagues is supportive and lends to a healthier overall bar.

Second, I hope to assist the bar as a whole to better understand the perspective this generation brings to the table. I have found that some aspects of a young lawyer's life are misunderstood by senior colleagues. In some instances, memories are fleeting. They recall caring for a young child, but the last 18 years have made sleepless nights a distant memory. In other instances, the world around us has drastically changed. With the rise of seamless technology, young lawyers can never truly distance themselves from their professional roles in the way letter writing and rotary phones allowed. The purpose is not to highlight the disparities, but to find common ground in perceived differences.

And who knows, maybe we'll figure out how to balance it all—together. ■

President's Message

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fice, and watch him figure out how to get on YouTube on my cellphone, as he spins around in my office chair, I realize that this is not the end of the story. This is simply the beginning of another chapter. To survive in this fast-changing world, we must learn from the past, and continue to adapt and progress as a profession that recognizes current market trends. We must leave our old predispositions and refrain from blindly following the practices of law that were relevant almost three decades ago. That world no longer exists. The time for meaningful change is now. The work must begin today.

As the president of the CBA, I pledge to ensure we continue to transform the organization to ensure we are serving the needs of our members and addressing the market trends. I also look forward to working to help improve the viability of law firms and ensure our community members can access justice. If you are interested in joining the CBA on this historic journey to protect the rule of law, please reach out to us at msc@ctbar.org to discuss how you can get more involved. ■

NOTES

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Informal Opinions

Continued from page 14

the witness's testimony, and is being made solely for the purpose of compensating the witness for the time the witness has lost in order to give testimony in litigation in which the witness is not a party … such payments do not violate the Model Rules."); CBA Informal Opinion 92-30, *Payment to Attorney as Fact Witness* ("Compensation for income lost in order to be a witness is permitted for both payor and payee, as long as the payment neither affects nor is intended to affect the content of the testimony.").

The financial inducement at issue in the facts presented here is not described as payment for a witness's time and expenses, nor may it reasonably be characterized as such.

2. Along similar lines, Conn. Gen. Stat. § 53a-150 makes it a Class C felony to "solicit[], accept[] or agree[] to accept any benefit from another person upon an agreement or understanding that such benefit will influence his testimony or conduct in, or in relation to, any official proceeding."
3. On the surface, Rule 3.4(2) would appear not to apply where it is the witness demanding the inducement, rather than the lawyer *offering* the inducement. But of course, if the lawyer were to agree to the witness's demand, the lawyer would then be in the position of offering an inducement.

Highlights

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affidavit. *Commissioner of Administrative Services v. Mulcahy*, 67 CLR 274 (Noble, Cesar A., J.).

■ Workers' Compensation Law

Fuller v. Western Connecticut Health Network, Inc., 67 CLR 802 (Krumeich, Edward T., J.), holds that the provision of the Connecticut Workers' Compensation Act that authorizes an employer to intervene in an employee's personal injury action against a third party tortfeasor arising out of a work-related accident to recover paid workers' compensation benefits from the employee's recovery, Conn. Gen. Stat. § 31-293, applies only to benefits paid under the *Connecticut* Compensation Act and not to benefits paid under the compensation laws of any other state. Therefore, an employer who has paid benefits pursuant to another state's compensation laws cannot intervene as a matter of right in an action brought by an employee in Connecticut. An employer's lack of workers' compensation insurance causes the loss not only of the employer's immunity from common-law liability for injuries to employees, but also (a) loss by the employer's employees of immunity from common-law liability claims by co-employees, and (b) loss of the employer's immunity from loss of consortium claims by employee spouses. *Wilson v. Hopkins*, 67 CLR 766 (Moukawsher, Thomas G., J.).

■ Zoning

188 Westmont Lot B, LLC v. West Hartford PZC, 68 CLR 208 (Berger, Marshall K., J.T.R.), holds that alternate proposals for IWC applications that *preserve* existing wetlands should be given preference over alternatives that *modify*, *enhance*, or *create wetlands*. The opinion vacates a commission decision to approve an application to locate a home directly over an existing wetland while authorizing the creation of a larger wetland area on another portion of the lot. ■

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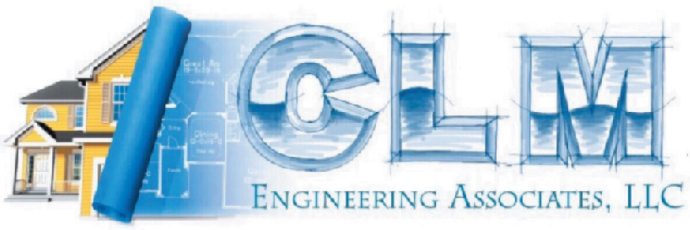

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