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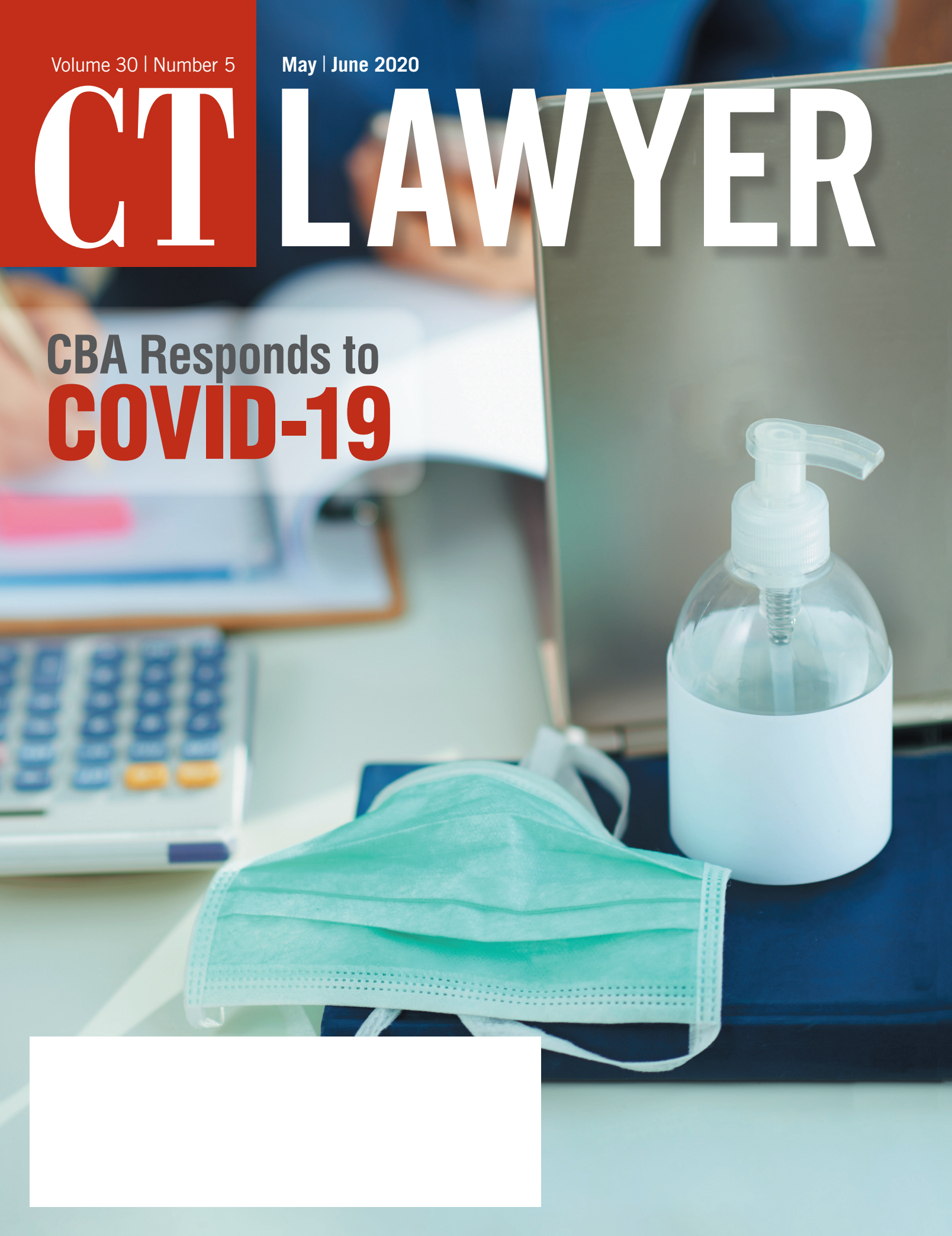
CT LAWYER

CBA Responds to COVID-19



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Coming together is the beginning...

At the onset of the nationwide health pandemic, the Connecticut Bar Association created the 2020 COVID-19 Pandemic Task Force to champion our members and the legal profession. The dedicated leaders who make up the task force worked tirelessly to provide resources and programming on the ability to practice law, operate a law firm, and respond to the epidemic while courthouses were closed and executive orders were enacted.

They listened to their colleagues and crafted legislation and guidance for our judicial and executive branches to help Connecticut attorneys continue to serve their clients and those unable to represent themselves.

Sticking together is progress...

The CBA continues to bring educational programming, provide access to an exclusive online legal research software, and support over 40 practice area sections for attorneys to network and learn about the latest changes in the law.

Working together is success...

We appreciate your membership, because we need each other to ensure the success of the legal profession. If you find that during this challenging time you need assistance to maintain your membership, please know that we will work with you.

Contact us by visiting ctbar.org/waivers or call the Member Service Center at (866)469-2221.

Thank you!

Connecticut Bar Association

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SEND US YOUR IDEAS

Contact editor@ctbar.org.

Article submissions or Topic ideas are welcome.

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Balancing Individual Freedom and Embracing Our Collective Responsibility in a Time of Uncertainty

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.

> "When nothing is certain, anything is possible."
>
> — Mandy Hale

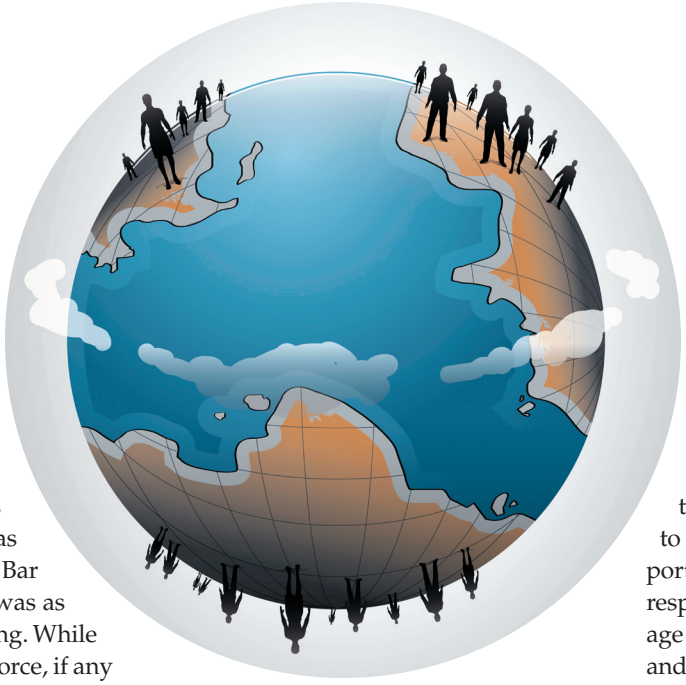
A virus the world minimized and discounted would only months later cause the economies and healthcare systems of the world to shudder, as they are propelled into the midst of a global pandemic. While various leaders have pointed fingers at each other, a clear lesson emerges for citizens across the globe, and a promise that the human race would emerge stronger, more resilient and enlightened. This is because the pandemic served as irrefutable evidence that we are all interrelated and interconnected. What impacts one member of our human race, even if that person is a stranger, in a remote town, in a foreign country, thousands of miles away from our homes—will one day impact us. What this means is that when we act in our own self-interest, for immediate gratification, we must remain aware of how our actions may impact others, and return like a boomerang to change our own realities.

This truth is as scary as it is powerful. While it means that we may suffer for the irresponsible deeds of others, it also means that if we work in concert, our collective work and social responsibility may ensure not only our redemption but also that of strangers. The interrelationship that exists among us means that we are much stronger together than we could ever be apart, and that if we learn to harness our resources, energy, voice, skills, and creativity, we can change the world.

The 2020 pandemic forced this truth upon us all, during a time when everything that mattered was on the line, and we were being forced into war with an entity we could not see and could not combat. To survive this pandemic, we have not only been asked to sacrifice our individual freedoms in the name of a larger "good," but we were also told that the mechanisms that would be employed to achieve this "good" were untried, unproven, and in the end, may be ineffective. In short, we are required to step out on faith, onto an invisible path that would be paved and lit as we walk in it. We would be denied the luxury of a map to guide us, and given no warranty of success. Still, one truth remained. As we were forced to remain physically apart, we knew that we were, nevertheless, spiritually and emotionally bound in this together.

> "The interrelationship that exists among us means that we are much stronger together than we could ever be apart, and that if we learn to harness our resources, energy, voice, skills, and creativity, we can change the world."

With these tenets in mind, the Connecticut Bar Association, along with several local and specialty bar associations, professional organizations, corporations, government agencies, and legal



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aid organizations, pooled our resources to form the **2020 COVID-19 Pandemic Task Force**. With no playbook in hand, and with little time to create one, these organizations with various missions made a conscious effort to forego their individual interests to work towards collective goals. Serving as president of the Connecticut Bar Association during this time was as empowering as it was humbling. While I officially convened the task force, if any accolades are due for the success of our initiatives, they are attributable to the selfless acts and unyielding devotion of task force members, who were supported by the dedicated staff of the Connecticut Bar Association. The task force walked in the shadows of our leaders in the executive, legislative, and judicial branches as they forged ahead, on a journey of faith, with the sole goal of protecting the people of Connecticut. Their efforts ensured the bravest among us, including healthcare workers, first responders, janitors, grocery store employees, gas station attendants, and others on the front lines, did not toil in vain.

When we recall the pandemic that rocked our world in 2020, I hope that we will devote more attention to the lessons we learned about the importance of collective work and social responsibility. I hope that we pay homage to those who dedicated their time and lives to provide us all with a cloak of comfort and security during a time of turbulence and uncertainty. To them we owe a debt of gratitude, which can only be repaid with a promise to remember that together we are more dynamic than we could ever have been apart. ■

Join the CBA in Donating to Project Feed Connecticut

More than a dozen Connecticut professional organizations have partnered to establish Project Feed Connecticut to collect monetary donation to benefit the state's two largest food donation organizations—Foodshare and Connecticut Food Bank—as a response to the increased demands to feed the countless people in need of support during these unprecedented times.

Project Feed Connecticut is a joint effort by the Connecticut Bar Association, Hartford County Bar Association, CFA Society Hartford, Connecticut Chapter of the American College of Surgeons Professional Association, Connecticut Asian Pacific American Bar Association, Portuguese American Bar Association, George W. Crawford Black Bar Association, New Haven County Bar Association, Middlesex County Bar Association, Connecticut Society of Certified Public Accountants, the Connecticut Chapter of the American Institute of Architects, Pullman & Comley's ADR Group, the Connecticut Trial Lawyers Association, the South Asian Bar Association of Connecticut, the Connecticut Hispanic Bar Association, and the Connecticut Italian American Bar Association.

CBA immediate past president and chair of the 2020 COVID-19 Pandemic Task Force Public at Large Subcommittee, Jonathan M. Shapiro, and his subcommittee are spearheading Project Feed Connecticut. "We hope Project Feed Connecticut's joint efforts will both provide valuable information to the public and, more importantly, raise significant money to feed our fellow citizens during this pandemic. Every $10 raised provides 25 meals to those in need—far more than any of us can individually provide if we went shopping for food ourselves. At this critical time, every dollar matters and must be maximized," stated Attorney Shapiro.

The CBA has pledged to donate $16,000 to Project Feed Connecticut; to the Connecticut Food Bank and Foodshare will each receive $8,000 as a result of the CBA's donation.

Donations can be made through the CT Bar Institute, Inc., a 501(c)(3) organization, at ctbar.org/ProjectFeedCT. All donations received will be distributed equally to the Connecticut Food Bank and Foodshare.

Support Legal Aid with Your e-Cookbook Purchase

During the pandemic, more people are cooking at home than ever before. Find a new recipe submitted by one of your colleagues in the second edition of the e-cookbook *From Court to Cuisine*. All proceeds of this cookbook will be donated to Connecticut Legal Services, Greater Hartford Legal Aid, New Haven Legal Assistance Association, Inc., and Statewide Legal Services of Connecticut. Visit ctbar.org/cookbook to purchase your copy and help support these essential organizations today.

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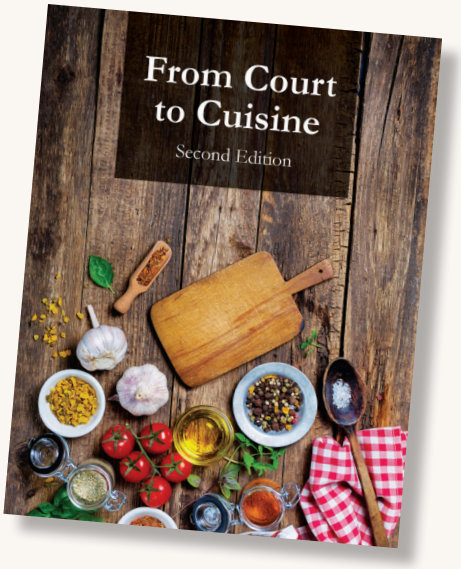

Real Property Section Makes White Paper for SB-320 Available

The CBA Real Property Section has produced a white paper in connection with the passage of SB-320 (October 2019), which requires that a Connecticut attorney be involved in the closing of any real estate transaction in the State of Connecticut. The white paper provides guidance on which aspects of real estate closings are considered the practice of law.

To learn more and access the white paper, visit ctbar.org/realpropertywhitepaper.

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Suffrage History Night at the CBA

President Ndidi N. Moses, Professor Gloria J. Browne-Marshall, President-elect Amy Lin Meyerson, and Vice President Cecil J. Thomas enjoy the reception at "The Unfulfilled Promise of the 15th and 19th Amendments" event.

In observation of the 19th Amendment Centennial, the CBA hosted "The Unfulfilled Promise of the 15th and 19th Amendments" on March 5, featuring constitutional law professor, playwright, and renowned scholar Gloria J. Browne-Marshall.

Professor Browne-Marshall recounted the history and events that led to the ratification of the 15th and 19th amendments and commented on what needs to be done today to ensure that all Americans have the right to vote. After her lecture, she signed her books and greeted guests.

"As we celebrate these milestone anniversaries of the 15th and 19th amendments, we must be cognizant of their full legacy," said Vice President Cecil J. Thomas. "Many legal and extralegal measures were taken, before and after those historical moments, to ensure that those marked as 'others' would remain excluded from the political process. Professor Browne-Marshall's address was powerful, insightful, and so timely." ■

PEERS AND CHEERS

Attorney Announcements

Austin Apanovitch has joined the firm of Kane Hartley & Kane PC as an associate. Attorney Apanovitch will practice in the areas of residential and commercial real estate transactions, estate planning, and probate administration.

Brian J. Clifford has joined Saxe Doernberger & Vita PC as an associate. Attorney Clifford has almost a decade of experience in litigation, including insurance coverage, from depositions and discovery through mediations, trials, and appeals.

Britt-Marie Cole-Johnson, of Robinson+Cole, has been elected to serve on the board of directors for the YWCA Hartford Region. She has been actively involved in the YWCA Hartford Region for more than nine years and has previously served as chair of the Board of Directors, the Governance Committee, and the Nominating Committee.

Christopher F. Droney, retired senior US Court of Appeals judge for the second circuit, has rejoined Day Pitney LLP's Hartford office as a partner in the Litigation Department. His practice will focus on complex litigation at state and federal levels. He will also represent clients in matters involving governmental and internal investigations and white collar defense.

Leslie P. King has joined Carlton Fields as a shareholder in its Hartford office. Attorney King is a construction litigator who was notably victorious on behalf of the City of Hartford in disputes involving its minor league baseball stadium.

Rebecca A. Iannantuoni and **Christopher A. ("Chris") Klimmek** have been elected partners at Day Pitney LLP. Attorney Iannantuoni is an individual clients partner in the New Haven office where she represents fiduciaries, handles estate administration, and advises individuals and families regarding all aspects of estate planning with a particular focus on elder law and planning for persons with special needs. Attorney Klimmek is a litigation partner in the Hartford office where he practices in the area of complex business disputes and has experience with trial and appellate litigation in state and federal courts, as well as arbitration proceedings.

Andrew R. Lubin, a principal with the law firm of Neubert Pepe & Monteith PC, has been named the Connecticut state chair for the American College of Mortgage Attorneys (ACMA). There are currently only 14 Connecticut lawyers who have been elected to the college. The American College of Mortgage Attorneys is a national association of private practice and in-house commercial real estate finance lawyers.

Adam Masin has joined the Hartford office of Drinker Biddle & Reath LLP as a partner in the products liability and mass torts group.

Hon. Douglas C. Mintz, former Connecticut Superior Court judge, has joined Carmody Torrance Sandak & Hennessey LLP as a partner in the firm's Litigation Group and a member of its Alternative Dispute Resolution practice area.

Meghan Smith has been named partner at Kahan Kerensky Capossela LLP. Attorney Smith practices in the business department and has extensive experience handling commercial and residential real estate transactions; commercial and residential landlord tenant matters; business formations; and contract drafting, review, and negotiation.

Richard L. Street has been elected managing partner at Carmody Torrance Sandak & Hennessey LLP. Previously, he served as assistant managing partner of the firm and as practice group leader of the firm's litigation group.

Firm/Organization Announcements

Robinson+Cole lawyer Ryan Leichsenring, Robinson+Cole Pro Bono Chair Peter Knight, and Robinson+Cole Managing Partner Stephen Goldman.

Robinson+Cole received the Diana Kleefeld Pro Bono Award from Connecticut Appleseed for its work on a special education research project, and other pro bono efforts, during the organization's "Good Apple" Awards. A group of R+C lawyers, including Gregory J. Bennici, Emily C. Deans, Peter K. Knight, Rachel V. Kushel, and paralegal Albina Yaikbaeva, recently assisted Connecticut Appleseed in a research project that examined how school districts are dealing with rising special education costs. Their findings will be incorporated in a report that will be disseminated to every school district in the state and to the Connecticut Association of Public School Superintendents (CAPSS), the Connecticut Association of Boards of Education (CABE), and to members of the state legislature's Education Committee. Additionally, Ryan V. Leichsenring was recognized for his role in the spin-off of an existing Connecticut Appleseed program, Connecting through Literacy: Incarcerated parents, their Children, and Caregivers (CLICC), to a new public charity. CLICC focuses on the use of mentoring and literacy activities to strengthen communication and deepen bonds between children and their incarcerated parents. ■

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

Professional Discipline Digest

VOLUME 29 NUMBER 1 | By JOHN Q. GALE

Reprimand issued by agreement for violation of Rule 1.3 where attorney agreed that he had not diligently represented his commercial client in the defense of two lawsuits. Attorney agreed to make restitution to client by complying with terms of judgment client had obtained against attorney. *Waterbury J.D. Grievance Panel v. Jason Gaston Doyon*, #18-0649 (8 pages).

Presentment ordered to be consolidated with another pending **presentment** where probable cause found that attorney violated Rules 1.3, 1.4, 1.5, and 8.1 and Practice Book Section 2-32(a)(1) and Disciplinary Counsel had filed additional allegations as to Rules 1.5(b) and 1.15(e). *Belli v. Wayne Anthony Francis*, #18-0467 (8 pages).

Reprimand issued for violation of Rules 1.1, 1.3, 1.5(a), and 8.1(2) and Practice Book Section 2-32(a)(1) where attorney accepted retainer to file a divorce but failed to institute the action but attempted to keep a portion of the retainer for actions he did take and where attorney failed to answer grievance. Attorney ordered to make restitution of part of retainer and take 3 hours of in-person CLE in ethics. *Benway v. Chris Gauthier*, #18-0652 (7 pages).

Presentment ordered for violation of Rules 8.1(2) and 8.4(4) and Practice Book Section 2-32(a)(1) where attorney acting as conservator was removed for failure to account to social security for use of ward's benefits and failure to file a final accounting with Probate Court and where attorney failed to answer grievance complaint. *Stoner-Sanborn v. Stephanie Elissa Czap*, #18-0605 (7 pages).

Presentment ordered for violation of Rules 1.1, 1.2(a), 1.3, 1.4(a), 1.4(b), 1.5(a), 1.15(e), 5.5, 8.1(2), 8.4(2), and 8.4(3) and Practice Book Section 2-32(a)(1) where attorney accepted a retainer and filed suit for client in Connecticut Federal Court but thereafter failed to respond to motions, court conferences, and deadlines causing case to be dismissed and clients to be sued in other states and judgments entered against them when attorney misrepresented that he could appear in those states; and when attorney failed to respond to grievance complaint. Attorney was already suspended in New York and Florida and disbarred in Connecticut for 7 years. *Hartford J.D. for G.A. 13 v. Dale James Morgado*, #18-0734 (8 pages).

Reprimand issued by agreement for violation of Rule 1.15(c) where attorney with lengthy disciplinary history (five reprimands, two suspensions, and a disbarment) used his IOLTA account for personal finances and where attorney agreed to a disposition of another case (#18-0176). *Bowler v. John J. Evans*, #18-0121 (10 pages).

Reprimand issued by agreement for violation of Rule 1.4 where attorney withdrew from probate appeal without notice to client depriving her of opportunity to retain substitute counsel or represent herself. *Fuller v. Leo E. Ahern*, #18-0517 (9 pages).

Reprimand issued by agreement for violation of Rules 3.3(a)(1) and 5.5(a) to a Rhode Island attorney not admitted to practice in Connecticut. *Cardoza v. PHV Peter A. Clarkin*, #17-0390 (11 pages).

Presentment ordered for violation of Rules 1.15 and 8.1(2) and Practice Book Sections 2-27, 2-28, and 2-32(a)(1) for overdraft of $90 in IOLTA account which triggered a request for audit with which attorney did not comply and where attorney did not answer the grievance complaint. *Bowler v. Veronica L. Gill*, #18-0062 (7 pages).

Presentment ordered for violation of Rules 8.1(1), 8.4(1), 8.4(2), 8.4(3), and 8.4(4) where attorney made knowingly false statements of material fact in affidavit filed in this grievance matter and in a small claims writ both alleging that client signed an assignment of personal injury proceeds to pay a loan admittedly made to client. *Cousar v. Charles J. Riether*, #17-0343 (12 pages).

Presentment ordered for violation of Rules 1.15(e), 4.1(1), 8.4(3), and 8.4(4) where attorney in personal injury matters prepared two different settlement statements (one for client, one for DAS) in at least 129 cases thereby underpay-

Continued on page 40 →

Prepared by CBA Professional Discipline Committee members from public infor-mation 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.

Rule 5.6(2) and Confidentiality Agreements

Image credit: skynesher/E+/Getty Images

DECEMBER 18, 2019

The Committee has been asked whether confidentiality agreements between parties that restrict the parties' lawyers from disclosing information that is publicly available in court files violate Rule 5.6(2) of our Rules of Professional Conduct because such agreements restrict "the lawyer's right to practice." For the reasons that follow, the Committee declines to opine that such confidentiality agreements violate Rule 5.6(2).

Rule 5.6(2) provides, in relevant part:

A lawyer shall not participate in offering or making:

* * *

(2) An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

The official commentary to Rule 5.6(2) states, in relevant part: "Subdivision (2) prohibits a lawyer from agreeing not

■ 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.

to represent another person in connection with settling a claim on behalf of a client."

Nothing in the Rule or the official commentary suggests that a confidentiality agreement restricting the disclosure of information was intended to fall within the prohibition set forth in Rule 5.6(2).

with the agreement. The Ohio Board also recommended that its opinion "be applied prospectively."

The Committee respectfully disagrees with the Ohio Board's conclusions and similar conclusions of a number of ethics bodies. *See, e.g.*, Chicago Bar Ass'n Comm. On Prof'l Responsibility, In-

"In general, however, you are required by Rule 1.6 to maintain confidentiality of all information relating to the representation of your client except as authorized by the client or as required by the Rules of Professional Conduct."

The requesting lawyer notes that the Ohio Board of Professional Conduct concluded in a recent opinion that confidentiality agreements that purport to restrict disclosure by one or more parties' attorneys of information that is available in a public court file violate Rule 5.6(b) because they restricts the lawyers' right to practice law."[1] Ohio Bd. of Prof'l Conduct Op. 2018-3. The Ohio Board observed that such confidentiality agreements "interfere with a lawyer's ability to advertise and market his or her services …." The opinion goes on to posit that "[t]he advertising of a lawyer's services and the solicitation of clients is an integral part of the practice of law and may not be restricted through a private settlement agreement." The Ohio Board concluded that when a lawyer's client intends to enter into an confidentiality agreement restricting a lawyer from disclosing information available in a public court file, the lawyer must explain to the client that it would be unethical for the lawyer for either party to participate in negotiating or drafting such an agreement. If the client proceeds regardless, the lawyer must withdraw from representing his or her client in connection

formal Ethics Op. 2012-10 (2013); Bar Ass'n of San Francisco Ethics Comm., Op. 2012-1 (2012); N. H. Bar Ass'n Ethics Comm. Op. 2009-10/6 (2011). As explained below, confidentiality agreements that merely restrict the *disclosure* of information by the clients' lawyers do nothing more than ratify confidentiality obligations lawyers already have to their respective clients and former clients under Rules 1.6 and 1.9. Such agreements generally do not impermissibly restrict the lawyer's right to practice under Rule 5.6(2) because they do not impinge upon the lawyer's freedom to represent other clients. Such confidentiality agreements neither expressly restrict a lawyer's ability to represent other clients, nor do they implicitly restrict the ability to represent other clients by, for example, restricting a lawyer's *use* of (as opposed to disclosure of) information. *See, e.g.*, Fla. Bar Ethics Op. 04-2 (2005)("To the extent this clause is merely a confidentiality agreement as to the terms of the settlement it does not pose an ethical problem, provided there is no legal prohibition against confidentiality of a particular settlement."); Penn. Bar Ass'n Legal Ethics and Prof. Resp. Committee Formal Opinion 2016-300 (2016)("Most ethics opinions conclude that negotiating for, agreeing to, and, ultimately, including a confidentiality provision precluding the dissemination of the fact of, or terms of, the agreement is not prohibited under the applicable Rules of Professional Conduct … This is true primarily because a lawyer is obligated under Rule 1.6 of the ABA Model Rules of Professional Conduct and its state law counterparts to keep information relating to the representation of the client confidential unless the client gives informed consent." (Citations omitted.)); N.Y. State Bar Ass'n Committee On Prof'l Ethics Opinion #730 (2000) ("The obligation to preserve the confidentiality of settlement terms does not effectively restrict the lawyer from representing other clients…. Since lawyers may not disclose confidential settlement terms without client consent, it is not an impermissible restriction on the right to practice law to require, as a condition of settlement, that the party's lawyer will not disclose this information.")

This Committee has addressed similar issues in the past. For example, in Informal Opinion 2011-08, the Committee concluded that confidentiality provisions in settlement agreements "do not prevent the lawyer from representing future clients having similar claims against the same [defendants]."[2]

More recently, in Informal Opinion 2013-10, the Committee concluded that a settlement agreement containing a non-disparagement clause prohibiting an attorney from making future disparaging statements about the opposing party did not violate Rule 5.6(2). There we noted: "So long as such clauses do not restrict the lawyer's ability to vigorously represent other clients, they may validly restrict the attorney's right to disparage the defendant outside of that sphere — such as for advertising or publicity purposes." Here, we drew a clear distinction between restrictions on representing other clients (not permitted under Rule 5.6(2)) versus restricting advertising and publicity (permitted under Rule 5.6(2)).

Our prior decisions are in accord with the ABA's Standing Committee on Ethics and Professional Responsibility's Formal Opinion No. 00-417. There, the ABA Committee stated:

> [I]t generally is accepted that offering or agreeing to a bar on the lawyer's disclosure of particular information is not a violation of Rule 5.6(b) proscription. For Example, Rule 5.6(b) does not proscribe a lawyer from agreeing *not to reveal* information about the facts of the particular matter or the terms of its settlement. This information, after all, is information relating to the representation of the attorney's present client, protected initially by Rule 1.6 (Confidentiality of Information) and, after conclusion of the representation, by Rule 1.9(c) (Conflict of Interest: Former Client). With respect to former clients, a lawyer may reveal information relating to the representation only with client consent or in certain limited circumstances not relevant here. A proposed settlement provision, agreed to by the client, that prohibits the lawyer from disclosing information relating to the representation is no more than what is required by the Model Rules absent client consent, and does not necessarily limit the lawyer's future practice in the manner accomplished by a restriction on the *use of information* relating to the opposing party in the matter. Thus, Rule 5.6(b) would not proscribe offering or agreeing to a nondisclosure provision.[3]

In other words, confidentiality agreements, including those that restrict a lawyer's disclosure of information contained in a public court file, have the same practical effect as if the parties agreed not to provide their respective lawyers with consent to disclose information about their matters pursuant to Rule 1.6 (or 1.9). The Committee sees no reason to deprive willing clients wishing to engage in such a lawful arrangement of representation by the clients' chosen counsel, especially when nothing in the text of Rule 5.6(2) or its commentary suggests such a prohibition.[4]

Rule 1.6 provides that lawyers have an obligation not to "reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by subsection (b), (c), or (d)" (none of which subsections apply in this circumstance). Rule 1.9 extends the same confidentiality obligations to information about a lawyer's former clients. Except as noted, therefore, it is up to the client or former client to determine whether and how a lawyer may disclose information related to a lawyer's representation of the client, regardless of whether the information is public or non-public. Rule 5.6(2) has, in this State, never been interpreted to override a client or former client's wish to keep information the lawyer possesses confidential. Yet, that is the practical effect of the Ohio Board's opinion and those similar to it. Clients are told by their lawyers "if you want me or any lawyer to represent you in negotiating this settlement agreement, you cannot include a confidentiality agreement that restricts my right to use public information about your matter in my advertising." The Committee does not believe Rule 5.6(2) was ever intended to dictate such a result.

Further, the Ohio Board's opinion does not, to this Committee's satisfaction, explain why the supposed prohibition in Rule 5.6(2) applies only to information in a public court file and not also to non-public information. A confidentiality agreement that applies to non-public information restricts a lawyer's ability to advertise and market his or her services in the same way that a confidentiality agreement applying to public information does. Yet neither the Ohio Board nor any other authority has explained why confidentiality agreements that apply to non-public information do not violate 5.6(2), but agreements restricting disclosure of publicly filed information somehow do. No rule of professional conduct distinguishes between public and non-public information. No rule's official commentary does so either. On the contrary, Rule 1.6 applies to "information relating to the representation" regardless of whether the information is public or non-public. *See* Informal Op. 05-01(2005)("In general, however, you are required by Rule 1.6 to maintain confidentiality of *all* information relating to the representation of your client except as authorized by the client or as required by the Rules of Professional Conduct." (emphasis added)). The Committee declines to engage in line-drawing between public and non-public information that does not have a sound basis in the Rules of Professional Conduct.

The Committee's role is not to make the rules; it is to interpret the rules as written, informed by the official commentary adopted by the judges of the Superior Court. Accordingly, the Committee views the invitation to expand the reach of Rule 5.6(2) as more appropriately directed to the Superior Court Rules Committee.

NOTES

1. In Ohio, the subsection at issue is Rule 5.6(b). In Connecticut, the same subsection is codified at Rule 5.6(2).
2. The Committee further noted that, pursuant to Rules 1.6(a) and 1.9(c), "a lawyer's desire to reveal confidential information obtained from past representations to pursue new matters is subject to the consent of the former client whom the lawyer represented." *Id*.
3. ABA model rule 5.6(b) is identical to Connecticut Rule 5.6(2). The respective rules' relevant official commentary is also identical.
4. An expanded view of the prohibition in Rule 5.6(2), such as set forth by the Ohio Board, would mean that lawyers could not participate in drafting settlement agreements with confidentiality agreements that restrict lawyers from disclosing information in public court files. This would, in the Committee's view, unreasonably deprive clients, who only wish to engage in a lawful pursuit of their interests, of the benefits of being represented by counsel.

Limited Scope Representation and Fee Agreements in Marital Dissolution Matters

Image credit: Andriy Popov/123rf

FEBRUARY 19, 2020

A lawyer with a family law practice asks whether it is ethically permissible to charge a client a flat (or "fixed") fee for handling only "the key parts" of a marital dissolution, with the client having the option to "elect along the way" to engage the lawyer for other specific services, on either a flat-fee or an hourly-rate basis, as the need for these services arises.

The requestor's inquiry gives rise to several related ethical concerns. First, the inquiry suggests that the lawyer intends to offer the same set of services to every marital dissolution client for a uniform, flat fee—offering, in effect, a standard, *prix fixe* "menu" of legal services to all dissolution clients, with additional menu choices available *a la carte*—rather than tailoring each flat-fee, limited scope engagement to the needs of the particular client. Second, the inquiry provides no indication that the requestor intends to provide the client with information sufficient to permit the client to make an informed decision[1] about engaging the lawyer on a limited scope, flat-fee basis. Specifically, while it appears that the agreement the lawyer envisions will identify the "key parts" of the representation for which the lawyer will assume responsibility, the inquiry provides no indication that the agreement will identify the tasks for which the client will be responsible, even though the client will be on his or her own with respect to those tasks unless and until the client and lawyer enter into a subsequent agreement assigning responsibility for some or all of them to the lawyer. Additionally, it is not clear from the inquiry that the requestor intends to provide prospective clients with explanations regarding the hybrid fee structure the request envisions adequate to meet the requirements announced in Rule 1.5 of the Connecticut Rules of Professional Conduct.

In the Committee's view, a limited scope engagement that is not customized to the particular client's matter, and does not include specific information with regard to the proposed division of labor as between lawyer and client, would run afoul of Rule 1.2(c)'s requirement that any limitation on the scope of representation be "reasonable under the circumstances" and supported by informed client consent.

We conclude, however, that, if the limitation of scope and all fees charged by the lawyer are reasonable under the circumstances, a lawyer may offer a marital dissolution client a limited set of services[2] at a flat fee, and may agree with the client that the lawyer will handle additional tasks on either a flat-fee or hourly-rate basis as the representation progresses, provided that the lawyer, before representation commences: 1) explains to the client the services the flat fee will cover; 2) outlines the other tasks that bringing the matter to conclusion is likely to require and for which—absent subsequent agreement—the client will be responsible; 3) explains the fee structure that will apply if the client elects to expand the scope of representation at a later date or the representation ends without the lawyer having performed all of the work covered by the flat fee; and 4) obtains the informed consent of the client as to the terms of the limited scope engagement, confirmed in writing.[3]

We note, too, that the lawyer must obtain the client's informed consent, confirmed in writing, to any subsequent change in the scope of the representation.

Limited Scope Representation and Informed Consent

In a limited scope representation (sometimes referred to as "unbundled" representation), a client hires a lawyer to assist with discrete tasks, such as providing legal advice with regard to a specific situation; reviewing, preparing, or "ghostwriting" legal documents; or preparing the client to appear *pro se* in a legal proceeding. The lawyer also may take total responsibility for certain parts of a matter, leaving others solely to the client.

The request before us envisions a standardized, limited scope engagement assigning responsibility for what the requestor terms the "key parts" of a marital dissolution to the lawyer, *i.e.*, "filing the dissolution, obtaining financial records, completing mandatory disclosure requirements, [and] negotiating and drafting a settlement and getting it approved."[4] The request offers as examples of additional legal services not covered by the fixed fee, but available, as needed, on either a fixed fee or an hourly rate basis as the matter is underway, *inter alia*, handling *pendente lite* custody, child support, and alimony motions. Significantly, it makes no mention of the client's responsibilities in the limited scope arrangement.

A lawyer may provide a limited set of services to clients in marital dissolution matters, but in each such case, the limitation on the scope of representation must be reasonable under the circumstances. *See* Rule 1.2(c). Assuming the limitation is reasonable and the client gives informed consent, Rule 1.2 "affords the lawyer and client substantial latitude to limit the scope of representation…." Rule 1.2 Commentary.

As an initial matter, we conclude that the "one-size-fits-all" limitation described by the request does not meet Rule 1.2(c)'s "reasonableness" standard. Some clients may not require all of the services in the bundle; a client with financial planning expertise, for example, may not need the lawyer's assistance with preparing mandated financial disclosures, which the requestor deems a "key part" of the dissolution to be handled by the lawyer, and includes within the flat fee in the proposed service model. Other services the requestor categorizes as optional, or "matter[s] of choice," may be key parts of a particular dissolution matter—e.g., motions addressing custody and child support where the divorcing parties have minor children, or a motion addressing spousal support where one party is employed and the other is not. In fact, it seems axiomatic that a limitation of the scope of representation that is reasonable in one client's circumstances may be unreasonable in another's, such that tailoring each limited scope engagement to the circumstances of the client engaging the lawyer is necessary.

Entering into a limited scope representation agreement with a marital dissolution client, fixed fee or otherwise, requires that the lawyer, at the outset, "determine what kind of legal problems [the client's] situation may involve" (Rule 1.1, Commentary). Conducting an introductory interview to gather the facts necessary for making that determination is critical to assessing whether a particular limitation of the scope of representation will be reasonable under the circumstances.[5] That assessment is likely to turn on, *inter alia*, the importance of the interests at stake, the complexity of the matter, the time required to address the issues presented by the matter, whether the tasks the lawyer will take on are sufficiently segregable from those to be handled by the client, and whether the client is capable of proceeding pro se or has access to other resources for assistance with some aspects of the matter.[6]

Both to identify the prospective client's legal problems and to make the crucial "reasonableness" assessment with respect to a contemplated limitation on the scope of the representation, family law attorneys must apply knowledge not only of the law governing marital dissolution, but also of "many other areas of state and federal law, such as estate planning, bankruptcy, and tax law."[7]

Further, as is the general rule, the lawyer must obtain the client's informed consent to the limited scope arrangement at the outset of the representation. Rule 1.2(c). "Obtaining the client's informed consent requires that the lawyer communicate adequate information and explanation about the material risks of and reasonably available alternatives to the limited representation." Conn. Informal Op. 09-01.[8]

Securing the client's informed consent in this context requires that the lawyer not only identify the client's legal problems, but also disclose to the client—at the outset of the representation—the reasonably foreseeable issues related to the client's problems, and divide responsibility for addressing them as between the client and the lawyer. The lawyer must advise the client not only of the tasks the lawyer will handle, both out of court and in court,[9] but also of the need to plan for self-representation—or additional legal counsel—regarding reasonably foreseeable issues outside of the scope of the engagement, rather than waiting for such issues to arise.[10]

As Mark A. DuBois and James F. Sullivan have noted,

> [f]or such a service model to work, the lawyer and the client must be able to reasonably identify the full range of legal work necessary to bring a matter to completion …. Inexperienced practitioners may not be able to adequately identify all of the work necessary for successful completion of a matter, and reaching an important milepost without a clear understanding of which party is responsible is a prescription for disaster. Some tasks involving complex work, such as producing a QDRO in a divorce case, may not be appropriately allocated to the client.[11]

Discharging these preliminary obligations can be particularly challenging in family matters, where emotions run high, "[p]retrial motions are plentiful …[,] and it is not uncommon for seemingly uncontested issues to become the subject of an emergency motion or … require[e] an expedited hearing."[12] Many an experienced family lawyer can attest to the speed with which a dissolution client's post-filing discovery of marital infidelity, for example, or of an opposing party's financial improprieties, or of child abuse perpetrated by an estranged spouse's significant other, or of child pornography on an estranged spouse's cell phone or computer, can transform what initially seemed a simple, uncontested divorce into a far more complex, fully contested matter.

Accordingly, while we conclude that the Rules require a lawyer contemplating entering into a limited scope agreement, at the outset, to identify the client's legal problems and the reasonably foreseeable issues related to those problems, and then to allocate responsibility for the tasks likely to be required to bring the matter to conclusion as between lawyer and client, we remain mindful that the most universally foreseeable aspect of family law practice may be that a particular issue not "reasonably foreseeable" as representation begins will emerge and require attention as representation progresses.

A lawyer entering into a limited scope engagement must remain alert to such late-blooming issues, of course, and promptly bring them to the client's attention if they arise. However, as is always the case, the drafters' introductory reminder that "[t]he Rules of Professional Conduct are rules of reason"[13] is the touchstone here: while the Rules require reasonable, lawyerly foresight, they cannot, and do not, require clairvoyance. That said, given the inherent unpredictability of family law cases, the prudent lawyer will be well-advised to caution the limited scope client, early on, that unanticipated developments are not uncommon in divorce cases, and sometimes warrant (or necessitate) expanding the scope of representation as representation progresses in order to protect important client interests.

Once the lawyer has secured the client's informed consent to the limited scope engagement, "[t]he lawyer must . . . memorialize [it] in the retainer agreement."[14] Note that not only the initial limitation of the scope of representation (Rule 1.2(c)), but also any change to the scope of representation during its course (Rule 1.5(b)), requires the client's informed consent, confirmed in writing. If the new tasks require the lawyer to appear in court on the client's behalf, Rule 1.5(b) requires that the attorney file a new limited appearance in the matter, as well.

Note, too, that limiting the scope of the lawyer's representation does not limit the lawyer's ethical obligations to the client, to the court, or to the public. All lawyers, including lawyers providing limited scope representation, among other duties, must perform competently (Rule 1.1), act diligently (Rule 1.3), communicate timely (Rule 1.4), maintain confidentiality (Rule 1.6), and avoid conflicts of interest (Rules 1.7, 1.8, 1.9, and 1.10).

Fee Agreements

Under Rule 1.5 and its Commentary, a lawyer's primary ethical obligation in determining the basis or rate of a fee to be charged for legal services is that the fee must be reasonable under the circumstances. Expenses, likewise, must be reasonable. Rule 1.5(a) sets out eight nonexclusive factors for a lawyer to consider—if relevant to the particular matter—in assessing reasonableness, among them: the time, labor, and difficulty involved; the skill required and ability of the lawyer; the fee customarily charged; and whether the fee is fixed or contingent.[15]

Although lawyers may employ flat fee structures less commonly than hourly rates in marital dissolution matters, the Rules do not preclude them so long as the lawyer's fee is reasonable. "In assessing a fee's reasonableness, what is ultimately at issue is 'the reasonable value of the services rendered and value received by the client.'"[16] With a sole exception unlikely to apply to limited scope, flat-fee engagements in the marital dissolution context,[17] Rule 1.5(b) requires that the lawyer communicate "[t]he scope of the representation, the basis or rate of the fee and expenses for which the client will be responsible … to the client, in writing, before or within a reasonable time after commencing the representation …."

The Committee's concern with the requestor's model in this regard lies with its recitation of the fee structure that would apply to the "*a la carte*" services available to limited scope clients upon request, as representation progresses. Per the request, clients who engage the lawyer in the proposed "key parts of the dissolution" service model would be able to "elect along the way to pursue other interim motions, which are really a matter of choice, also on a flat fee basis, *subject to limitations*." (*Emphasis added*.) In a follow-up communication, the requestor has explained what "subject to limitations" means: while the envisioned model would make an array of supplemental pretrial services available to clients on a flat fee basis, if a case did not settle and a trial was necessary, the lawyer would provide trial-related services only if the client agreed to pay for those services at the lawyer's customary, hourly rates.

The Committee discerns no ethical bar to a hybrid arrangement that would shift from fixed fee to hourly billing if a case goes to trial, provided that all fees are reasonable as required by Rule 1.5(a) and explained to the client and memorialized in the fee agreement at the outset as required by Rule 1.5(b). Although the lawyer's hope, and perhaps even expectation, may be that every limited scope, marital dissolution case will settle in advance of trial, given the aforementioned unpredictability of family law matters (*see* discussion, *supra* at 6-7), that almost any limited scope case may take an unanticipated turn that causes negotiations to collapse such that a trial becomes necessary seems at least reasonably foreseeable. For that reason, to comply with Rule 1.5(b), the lawyer must ex-

plain to the client, at the outset, the fee structure that will apply in that event. So, too, must the lawyer explain to the client the terms upon which the lawyer will reduce the fixed fee, or refund to the client a portion of the fixed fee paid in advance, if the lawyer does not perform some of the tasks covered by the fee (*e.g.*, if negotiations fail such that the lawyer does not draft a settlement agreement or shepherd it through the court, if the client discharges the lawyer (or vice versa) before the matter concludes, or if the case ends because the parties reconcile before the agreed-upon work is complete).[18]

To summarize, we conclude that to pass ethical muster, the limited scope, fixed fee engagement the inquirer describes requires a writing in which the lawyer, 1) sets out the amount of the fee and the expenses for which the client will be responsible, 2) explains which services will be included for the fixed fee and which parts of the matter will be the client's responsibility, and 3) specifies how all charges will be handled for tasks not covered by the fixed fee if the client wishes to expand the scope of representation once work on the matter is underway and the terms upon which the lawyer will reduce the fixed fee, or refund to the client a portion of the fixed fee paid in advance, if the lawyer does not perform some of the tasks covered by the fee. As bears repeating, the basis and rate of all fees, whether fixed or hourly, must be reasonable under the circumstances and explained to the client at the outset.

We offer, too, one final caveat with respect to fixed or flat fee arrangements: A lawyer operating pursuant to such an arrangement, whether in a full or limited scope matter, must take care to ensure that the capped nature of the arrangement does not adversely affect the lawyer's ability to provide competent representation to the client as required by Rule 1.1. In fact, a lawyer may not ethically enter into

> [a]n agreement … whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction.

Rule 1.5, Commentary

Even if the legal work necessary to complete the task or tasks specified in the flat-fee agreement takes substantially more time than the lawyer anticipates, then, the lawyer must complete the agreed-upon tasks, and do so competently (Rule 1.1), diligently (Rule 1.3), and at the agreed-upon price. For that reason, a lawyer contemplating entering into such an agreement should consider carefully all that accomplishing each of the agreed-upon tasks may require before setting the fixed fee for the lawyer's services. A fee established in the expectation of negotiating a divorce settlement in a matter of hours, for example, is unlikely to compensate the lawyer fairly if reaching agreement requires months of difficult negotiations. That the fee structure provide no incentive for the lawyer to provide the client with less-than-competent-and-diligent representation is an ethical imperative.

Conclusion

In sum, in the Committee's view, if the limitation of scope and all fees charged by the lawyer are reasonable under the circumstances, a lawyer may offer a marital dissolution client a limited set of services at a flat fee, and may agree with the client that the lawyer, at the client's request, will handle additional tasks on either a flat fee or an hourly basis as the representation progresses, but only if the lawyer, before representation commences: 1) explains to the client the services the fee will cover; 2) outlines the other, foreseeable tasks that bringing the matter to conclusion is likely to require, for which the client will be responsible absent subsequent agreement; 3) explains both the fee structure that will apply if the client elects to expand the scope of representation at a later date and the terms upon which the lawyer will reduce the fixed fee, or refund to the client a portion of the fixed fee paid in advance, if the lawyer does not perform some of the tasks covered by the fee; and 4) obtains the informed consent of the client, confirmed in writing, as to the limited scope arrangement. We note, too, that the lawyer must obtain the client's informed consent, confirmed in writing, to any subsequent change in the scope of representation. ■

NOTES

1. *See* Rule 1.4(b) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.").
2. It is noteworthy that Connecticut's judges first introduced limited scope appearances in family courts, apparently having concluded that limited scope representation, while perhaps not ideal, would be preferable to no representation whatsoever for parties of limited means. *See* P.B. 3 § 3-8(b); State of Connecticut Judicial Branch, Notice of Limited Appearance Pilot Program, available at https://www.jud.ct.gov/external/news/press366.htm (*last visited 9/10/19*).
3. We note that not all engagements in which a lawyer charges a flat fee for a portion of the representation are limited in scope. If the client and lawyer agree at the outset that the lawyer will represent the client for all parts of the matter, but will charge the client a flat fee for certain services and bill for others at an hourly rate, this would simply be a full scope representation with a hybrid fee arrangement. In such circumstances, neither lawyer nor client envisions the lawyer's allocating responsibility for any part of the representation to the client. Such an arrangement would be acceptable under the Rules so long as its terms are adequately disclosed to the client at the outset and the total amount charged is reasonable under the circumstances.
4. We assume that "get[ting the settlement] approved" refers to completing the procedural steps necessary to secure court approval of the settlement, rather than actually securing court approval, as a fee may not be so conditioned. *See infra* fn. 15.
5. Because the request before us envisions a service model in which the lawyer will handle what the lawyer determines to be the key parts of a dissolution case for a flat fee, we will reserve for another day consideration of the situation in which a client who will handle, or already has handled, the lion's share of a dissolution matter *pro se* seeks to retain a

lawyer to perform a single, discrete task, or a narrowly circumscribed set of tasks (e.g., opposing a motion for sole custody of minor children, drafting a QDRO, or reviewing a stipulation for settlement prior to the client's executing it and filing it in the court).

6. *See* Mark H. Tuohey III, *et al.*, HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE: A REPORT OF THE MODEST MEANS TASK FORCE, ABA (2003), at 63; *see also* Michelle N. Struffolino, *Limited Scope Not Limited Competence: Skills Needed to Provide Increased Access to Justice Through Unbundled Legal Services in Domestic-Relations Matters*, 56 S. Tex. L. Rev. 159, 164-65 (Fall 2014).
7. Struffolino, *supra* at 164-65; *see also* Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 U. Miss.-Kan. City L. Rev. 965, 968 (2007).
8. "'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Rule 1.0(f). *See also* Commentary to Rule 1.0(f).
9. Note that Rule 1.5(b) mandates that, if the limited scope representation will include court appearances, the lawyer's engagement agreement: identify the proceeding in which the lawyer will file the limited appearance; identify the court events for which the lawyer will appear on behalf of the client; and notify the client that after the limited appearance services have been completed, the lawyer will file a certificate of completion of limited appearance with the court, which will serve to terminate the lawyer's obligations to the client in the matter, and as to which the client will have no right to object.
10. *See* Rule 1.4(a)(3) and (b), obligating the lawyer to "keep the client reasonably informed" and explain matters well enough "to permit the client to make informed decisions regarding the representation."
11. Mark A. Dubois & James F. Sullivan, CONN. LEGAL ETHICS & MALPRACTICE, §§ 1-3, at 23 (2016).
12. Michelle N. Struffolino, *supra* at 180 (*citing Limited Assistance Representation (Unbundling) Training Materials*, Mass. Prob. & Fam. CT 3-5 (2009) (on file with the South Texas Law Review)).
13. Conn. R. Prof. Conduct, Scope.
14. Tuohey III, *et al.*, *supra* at 71, citing Colo. Bar Ass'n Ethics Comm., Formal Op. 101 (1998).
15. Rule 1.5 prohibits contingent fee agreements in dissolution cases. Rule 1.5(d) provides that "[a] lawyer shall not enter into an arrangement for, charge, or collect: (1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution of marriage or civil union or upon the amount of alimony or support, or property settlement in lieu thereof[.]"
16. ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT 79 (Ellen J. Bennett, Elizabeth J. Cohen & Helen W. Gunnerson, eds., ABA 8th ed. 2015), citing *Regions Bank v. Automax USA, L.L.C.*, 858 So.2d 593 (La. Ct. App. 2003).
17. Rule 1.5(b) exempts lawyers from the writing requirement "when the lawyer will charge a regularly represented client on the same basis or rate."
18. *See* Conn. Informal Op. 00-12 for a helpful discussion of the ethical issues that mitigate against lawyers' use of nonrefundable fee agreements (which the opinion distinguishes from nonrefundable retainer agreements) as a general matter, and of the particular ethical issues presented by non-refundable flat fee agreements (which the opinion refers to as nonrefundable, lump-sum advances) in marital dissolution cases.

2020-2021 CBA Officers

The installation of the CBA's incoming officers will occur at the CBA Annual Meeting, which will be held virtually on Monday, June 8. These officers will lead the CBA for the next bar year, beginning on July 1, 2020.

President

Amy Lin Meyerson will be installed as the 97th president of the CBA. Attorney Meyerson is a solo practitioner at The Law Office of Amy Lin Meyerson in Weston, where she practices in the area of domestic corporate law. She is a past president of the National Asian Pacific American Bar Association (NAPABA) and the NAPABA Law Foundation and a past chair of the American Bar Association's Solo, Small Firm and General Practice Division. Attorney Meyerson is the founder of the Connecticut Asian Pacific American Bar Association.

President-elect

Cecil J. Thomas will be installed as president-elect. Attorney Thomas is an attorney at Greater Hartford Legal Aid, where he has represented thousands of low-income clients, predominantly in housing matters, since 2006, and has obtained significant appellate and class action victories on behalf of low-income Connecticut residents. Attorney Thomas led the CBA's Diversity and Inclusion Committee from 2016 to 2019, and has held leadership roles with the UConn Law School Alumni Association, and the South Asian Bar Association of Connecticut.

Vice President

Daniel J. Horgan will be installed as vice president. Attorney Horgan is an experienced litigator with Horgan Law Office in New London, representing clients in various civil matters in both state and federal courts as well as the Mashantucket and Mohegan Tribal Courts. He has been chosen by his peers to frequently act as an arbitrator and mediator.

Secretary

Erin O'Neil-Baker will be installed as secretary. Attorney O'Neil Baker focuses her practice on immigration law and pursuing legal permanent status and citizenship for foreign nationals and defending individuals in removal/deportation proceedings. She is the founding partner of Hartford Legal Group LLC.

Treasurer

Margaret I. Castinado will be installed as treasurer. Attorney Castinado is a senior assistant public defender at the Office of the Public Defender in New Haven. She has defended thousands of clients with criminal matters since 1999.

Assistant Secretary-Treasurer

Amanda G. Schreiber will be installed as assistant secretary-treasurer. Attorney Schreiber is associate senior counsel at Cigna Health and Life Insurance Company where she handles complex litigation specializing in commercial healthcare and behavioral health. Her experiences include handling matters in state and federal courts, as well as arbitration proceedings across the country with a focus on The Employee Retirement Income Security Act (ERISA) and The Mental Health Parity and Addiction Equity Act (MHPAEA). She is the immediate past chair of the Young Lawyers Section.

Immediate Past President

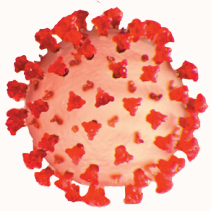
Ndidi N. Moses is an assistant United States attorney. She is also the civil rights coordinator for the civil division at the United States Attorney's Office in New Haven, where she coordinates and prosecutes the division's civil rights and affirmative fraud cases. She is a past treasurer of the CBA, past president of the George W. Crawford Black Bar, and past chair of the CT Judicial Selection Commission. She currently sits as a trustee of the Connecticut Women's Hall of Fame.

Image credit: CDC

Connecticut Bar Association

Responds to the COVID-19 Pandemic

2020 COVID-19 Pandemic Task Force



THE CONNECTICUT BAR ASSOCIATION formed the 2020 COVID-19 Pandemic Task Force (the "task force") to respond to the growing legal issues and needs in Connecticut arising from the COVID-19 pandemic and includes lawyers, judges, and professionals statewide who have agreed to volunteer their time and resources to ensure issues and concerns raised by the legal community and the public are met. The task force is lead by Barbara J. Collins, The Law Office of Barbara J. Collins; Monte E. Frank, Pullman & Comley LLC; and Dana M. Hrelic, Horton Dowd Bartschi & Levesque PC. For the most up-to-date information about the task force's efforts, visit ctbar.org/coronavirus.

Through the task force, leaders from various organizations have been able to maximize their resources to assist the various branches of government, the legal community, and the health care community with addressing the needs of the entire State of Connecticut. Specifically, the task force will work to identify legal needs arising from the pandemic, make recommendations to address those needs, and help mobilize lawyers and legal professionals to assist individuals who are in need.

In addition to the task force and subcommittee chairs, long-time CBA member Daniel A. Schwartz has provided invaluable support to the bar association as the idea behind the formation of these groups and has helped keep the bar informed of the efforts of the ABA and other bar associations throughout the country in response to this pandemic.

The task force has eight subcommittees to help meet the needs of the State of Connecticut, focusing on the following issues: executive orders and legislation, legal aid associations, the public at large, the legal profession, the financial impact on the legal profession, state and federal courts, technology and cyber security, and law schools and students. Each subcommittee is discussed in detail below.

The Eight Subcommittees

Liaison to the Executive and Legislative Branch Subcommittee

This subcommittee addresses issues related to executive orders issued by Governor Lamont and potential legislative actions that pertain to the intersection of Connecticut law practice and the COVID-19 public health crisis. The subcommittee works closely with the Judicial and Federal Branch Liaison Subcommittee to facilitate communication between and among the bar and the judicial, executive, and legislative branches of government. The goal of this subcommittee is to ensure justice can be accomplished as effectively as possible during and after the immediate COVID-19 State of Emergency, by ensuring that the legislative and executive branches are aware of concerns of the bar and are addressing these concerns in a manner that is fair and balances the demands of safety and justice. For the most up-to-date information about this subcommittee, visit ctbar.org/covid19-executive.

Chair: *Paul A. Slager, Silver Golub & Teitell LLP*

Legal Aid Subcommittee

This subcommittee is working with those serving Connecticut's most vulnerable populations to address critical civil legal needs amplified by the COVID-19 public health crisis. The subcommittee is working to recruit and train pro bono lawyers in matters such as eviction and foreclosure defense, government benefits, bankruptcy, consumer debt, and certain family matters. Lawyers are able to sign up to participate, and access on-demand webinars and trainings, through the CBA's website at ctbar.org/coronavirus. The Legal Aid Subcommittee will also advocate for appropriate executive, legislative, and judicial responsive measures that will alleviate the impact of the COVID-19 public health crisis. Connecticut's low-income residents need capable lawyers and effective legal responses to help them navigate these critical legal problems, and we hope you will join us in answering the call. For the most up-to-date information about this subcommittee, visit ctbar.org/covid19-probono.

Chair: *Cecil J. Thomas, Greater Hartford Legal Aid Inc.*

Public at Large Subcommittee

This subcommittee will be a source of support and information for the public regarding legal and non-legal issues. For instance, with respect to non-legal issues, the subcommittee is collaborating with other bar and trade associations in Connecticut to raise money through Project Feed Connecticut to help feed those in need during the COVID-19 pandemic. As of press time, Hartford County Bar Association, CFA Society Hartford, Connecticut Chapter of the American College of Surgeons Professional Association, Connecticut Asian Pacific American Bar Association, Portuguese American Bar Association, George W. Crawford Black Bar Association, New Haven County Bar Association, Middlesex County Bar Association, Connecticut Society of Certified Public Accountants, the Connecticut Chapter of the American Institute of Architects, Pullman & Comley's ADR Group, the Connecticut Trial Lawyers Association, the South Asian Bar Association of Connecticut, the Connecticut Hispanic Bar Association, and the Connecticut Italian American Bar Association have joined forces to raise money for Connecticut Food Bank and Food Share, who are providing support for those in need throughout the state. Donations can be made at ctbar.org/ProjectFeedCT. The subcommittee has also prepared a webpage with resources for the public and legal communities, which provides information on the many pressing issues presented by the pandemic. For the most up-to-date information about this subcommittee, visit ctbar.org/covid19-public.

Chair: *Jonathan Shapiro, Aeton Law Partners LLP*

Legal Profession Subcommittee

This subcommittee provides information and resources to assist attorneys and to advance the state of the legal profession during this global pandemic. The focus of this subcommittee is on how attorneys can adapt and successfully manage their law practice while "stay at home" orders and closures are in place to aid in the ongoing coronavirus pandemic fight, including information on running a remote law firm and meeting client needs, adapting marketing, website and social media platforms, cyber security and database protection issues, and other law practice management issues. This subcommittee also strives to address concerns and highlight successes of lawyers working to develop relationships, exchange ideas, offer guidance, and learn about current technologies, office management

practices, business development strategies, and the business of the practice of law during this time of social distancing. For the most up-to-date information about this subcommittee, visit ctbar.org/covid19-lawyers.

Chair: *Amy Lin Meyerson, Law Office of Amy Lin Meyerson*

Financial Impact on the Legal Profession Subcommittee

This subcommittee addresses the financial impact on and resources available to law firms and legal aid organizations to weather the storm during the national pandemic. The subcommittee has studied public and private financing options and insurance claims that are available to lawyers and law firms. The subcommittee has published guidelines to assist Connecticut lawyers in seeking financial remedies to assist them during the crisis. These guidelines include hyperlinks to federal and state government websites at which attorneys may request loans, grants, and payroll assistance. In particular, the subcommittee outlined federal programs offered by the Small Business Administration (SBA) and state programs offered by the Department of Economic and Community Development (DECD). Moreover, the guidelines provide lawyers and law firms with private funding options with private banks, credit unions, and other private lenders. For the most up-to-date information about this subcommittee, visit ctbar.org/covid19-financial.

Co-Chairs: *Ralph J. Monaco, Conway Londregan Sheehan & Monaco PC and Keith B. Gallant, Day Pitney LLP*

Judicial and Federal Branch Liaison Subcommittee

This subcommittee addresses issues related to the closure of state and federal courts and the bar's concerns regarding the practice of law during the pandemic. For instance: the chair of the subcommittee monitored the meeting of the Rules Committee at which it suspended many practice book rules. Through the work of the subcommittee members, which received input from many sections, the chair immediately responded to the Connecticut Judicial Branch with concerns that were immediately addressed. The subcommittee and the Judicial Branch have continued to have a direct line of communication so that the concerns of the bar are heard. For the most up-to-date information about this subcommittee, visit ctbar.org/covid19-judicial.

Chair: Monte E. Frank, Pullman & Comley LLC

Technology Subcommittee

This subcommittee explores and addresses technology and cyber security issues that arose during the pandemic, and its aftermath. The subcommittee produces webinars and resources to assist practitioners and the community with working remotely, and hold hearings, depositions, and other meetings virtually. The subcommittee has produced webinars and created resources on topics such as cyber security, data privacy, converting to a virtual work spaces, managing your law firm remotely, and conducting online research. For the most up-to-date information about this subcommittee, visit ctbar.org/covid19-technology.

Co-Chairs: *Frederic S. Ury, Ury & Moskow LLC and CBA President Ndidi N. Moses*

Law Student and Law Schools Subcommittee

This subcommittee will explore issues facing law students and law schools in light of the COVID-19 pandemic, especially in relation to bar admissions. For the most up-to-date information about this subcommittee, visit ctbar.org/covid19-lawschool.

Co-Chairs: *Hon. Anne C. Dranginis (Ret.), Pullman & Comley LLC and Dana M. Hrelic, Horton Dowd Bartschi & Levesque PC*

The CBA has created resource pages for both the legal community and the public, on topics that range from information on remote law practice management to financial resources for legal professionals to health and wellness resources to links of virtual tours of theme park rides, NASA, national parks, and museums. Access these resources at ctbar.org/covid19-resources.

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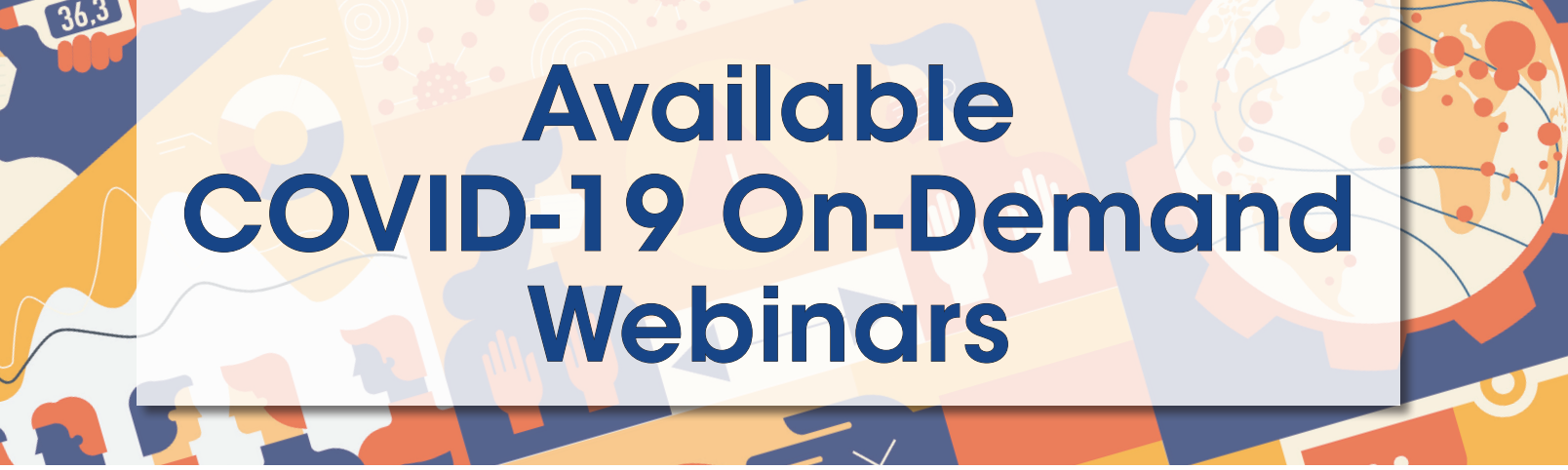

Available COVID-19 On-Demand Webinars

The CBA has made webinars available at no cost to bring members relevant and timely information on the legal profession and COVID-19. Below is a sample of available seminars.

CARES Act Programs to Help You through This Crisis

Presented by the Solo and Small Firm Section

About the Program

Confused by all the programs under the CARES Act? This program will provide an overview of the different programs available from the state and federal governments that will help you and your clients manage the COVID-19 crisis.

CLE Credit: CT: 1.0 CLE Credit (General)

COVID-19 Related Workplace Considerations: A Practical Discussion

Presented by the Labor and Employment Section

About the Program

Labor and Employment Section Chair Matthew Curtin (Murtha Cullina) and Education Liaison and Past Chair Paula Anthony (Berchem Moses) will present a discussion addressing the myriad employment law challenges employers and employees alike are dealing with due to the COVID-19 presentation. Attorneys Curtin and Anthony will provide pragmatic, practical thoughts on how to navigate the workplace in these unprecedented times.

CLE Credit: CT: 1.0 CLE Credit (General)

COVID-19 and Workers' Compensation Practice—Questions and Answers

Presented by the Workers' Compensation Section

About the Program

Join us for a free one-hour webinar on COVID-19 and workers' compensation practice. Topics will be presented jointly by a claimant's attorney and a respondent's attorney.

CLE Credit: CT: 1.0 CLE Credit (General)

COVID-19 and Criminal Justice in Connecticut

Presented by the Criminal Justice Section

About the Program

Cody N. Guarnieri (Brown Paindiris & Scott LLP), vice chair of the Criminal Justice Section and co-chair of the Hartford County Bar Association's Criminal Justice Committee, will present and host a discussion addressing the anticipated legal and procedural issues facing the state and federal criminal justice system in response to the COVID-19 pandemic. Attorney Guarnieri will endeavor to bring practitioners up to speed on the state of statutory; administrative; and executive rules, laws, and orders related to the criminal justice system, as well as offer practical thoughts on the path forward.

CLE Credit: CT: 1.0 CLE Credit (General)

COVID-19 & Insurance Coverage—A Primer on (Potential) Coverage Issues

Presented by the Insurance Law Section

About the Program

COVID-19 has upended businesses around the country, and policyholders and insurers alike are evaluating how this new risk may implicate insurance coverage. This program will provide an overview of several different lines of insurance coverage and how, depending on their terms, they may or may not respond to losses caused by COVID-19.

CLE Credit: CT: 1.0 CLE Credit (General)

COVID-19 and the Contract Issues that Arise

Presented by the Commercial Law and Bankruptcy Section

About the Program

This seminar will cover *force majeure* clauses, impossibility and impracticability, and Uniform Commercial Code (UCC) issues in relation to COVID-19.

CLE Credit: CT: 1.0 CLE Credit (General)

Cyber Safe at Home: How to Avoid Threats & Ensure Cyber Security While Working from Home

Presented by the 2020 COVID-19 Pandemic Task Force Technology Subcommittee in conjunction with the Cyber Security and Technology Committee

About the Program

This program will help lawyers understand the additional cyber threats posed when working from home, including specific COVID-19-themed risks, how to mitigate the risk of falling victim to a cyber-attack, and what to do in the event that a cyber-attack occurs.

CLE Credit: CT: 1.0 CLE Credit (General)

Emergency Orders Impacting CT Land Use Statutes in Response to COVID-19

About the Program

Attendees will develop an understanding of the executive order, implementation, procedures, and appeals.

CLE Credit: CT: 1.5 CLE Credits (General)

Executive Order No. 7Q—(HEC) Home Electronic Closing

Presented by the Real Property Section

About the Program

Connecticut has recently enacted Executive Order Number 7Q. This order creates the ability to utilize remote notarization in Connecticut as a way to maximize social distancing efforts to stop the spread of the virus. This program will take a deep dive into the order itself and put together a plan as to how you can utilize remote notarization.

CLE Credit: CT: 1.0 CLE Credit (General)

Taking Your Practice Home: Tips to Digitally Transform Your Law Practice Quickly & Easily

Presented by the 2020 COVID-19 Pandemic Task Force Technology Subcommittee in conjunction with the Cyber Security and Technology Committee

About the Program

Local IT experts will provide important and actionable information about how to practice from home, including insights on available technologies that you can use to work remotely without spending a lot of money.

CLE Credit: CT: 1.0 CLE Credit (General)

To access these seminars and more, visit ctbar.org/covid19ondemand.

LCL-CT: A Strong Connection in

By Amy F. Goodusky

The law is a profession rife with stress. The COVID-19 virus has brought panic, uncertainty, and disarray into courts, law offices and prisons. Routines are disrupted, scheduling orders blown to bits, incomes decimated, clients and employees distraught. The negative vagaries of working in this industry have increased by a factor of ten.

What of the legal professionals struggling with issues compounding the difficulty of practicing even before the pandemic hit: mental health problems, debt, addiction, dementia, suspension, disbarment? Where do they go? What do they do now?

They are being ably administered to by the offices of Lawyers Concerned for Lawyers (LCL).

The executive director of LCL has worked continuously to keep these attorneys, who are at grave risk, connected to sources of support. The office is staffed, and the phone lines remain open. The office is closed for in-person visits, but this is the only service affected by statewide provisos to stem the infection. Unless she is taking her beagle for a walk, a live, welcoming, knowledgeable, and sympathetic voice continues to answer. If you leave a message, she will call back.

Daily e-mail communications go out to those who depended on gathering at weekly support groups statewide, providing lists of online support meetings and instructions on how to connect via Zoom and other platforms. Anonymity is a priority; instructions for preserving it are emphasized. Contact lists for lawyers to connect to one another have been circulated daily, with more information added. LCL has drawn from its extensive list of volunteers and coordinated deliveries of food and other necessities to lawyers who are ailing or who cannot leave their homes. One volunteer provided a list of 50 virtual recovery meetings accessible via computer, tablet, or iPhone which has been forwarded to the contact list and is available to anyone who needs it. Persons who are ill or have a medical emergency are given appropriate instruction to call 911.

LCL's sister programs in other states have provided helpful links and methods of providing assistance to those in need, which have, in turn, been adapted and utilized to help those coping with problems other than the pandemic in Connecticut.

While the mental health needs of afflicted lawyers have been seamlessly addressed, LCL has increasingly seen another type of crisis. These are solo practitioners dragged in the undertow before the infection hit; without insurance, membership in professional organizations, recourse, or any idea when the siege will be over, they are appealing to the organization, which is ill-equipped to help them. There is no money for this in the plan that funds LCL. It cannot lobby on their behalf. These lawyers are worst affected by the present exigencies. They have nowhere to turn.

The volume of calls and e-mails seeking help from LCL has increased commensurate with the level of distress in the legal community. These calls have been answered with compassion and patience, as they have always been. The shelves are full here. There is no interruption in the flow. Help is available.

If you are a legal professional or law student coping with mental illness, substance use disorder or dependency, money issues, depression, anxiety, or stress related to practice, you can reach LCL at: 1(800)497-1422 or (860)563-4900 or via e-mail at either of these addresses: beth@lclct.org or info@lclct.org.

Image credit: metamorworks iStock/Getty Images

Uncertain Times

Amy F. Goodusky, a long-time member of the LCL-CT Board of Directors, former paralegal, rock 'n' roll singer, practicing attorney, and Connecticut Law Tribune *regular contributor who comes out of semi-retirement to share her thoughts about the LCL-CT program in these challenging times.*

Lawyers Concerned for Lawyers hosts a weekly 12-step lawyer only meeting for members of the Connecticut legal community dealing with any form of substance use disorder or process disorder. The meetings are held every Wednesday at 6:15 p.m. In response to the current COVID-19 crisis the weekly 12-step lawyer only meeting is now being held online. For more information, call (800)497-1422 or (860)563-4900 or e-mail beth@lclct.org.

The Advocates' Connection is a non-12 step lawyer-only meeting that provides CT attorneys with a private forum to discuss concerns and issues relating to stress, anxiety, depression and other emotional or mental health topics impacting their personal and professional lives. The meeting is facilitated by a mental health professional but no individual or group psychotherapy is provided. During the current COVID-19 crisis the Advocates' Connection meeting will be held online and on a more frequent schedule. For more information, call (800)497-1422 or (860)563-4900 or e-mail beth@lclct.org.

Telecommuting with the Tiger King: Cultivating Wellness in the Time of COVID-19

By Karen DeMeola

PTSD RELATED ANXIETY requires me to be in a constant state of vigilance, waiting for the other shoe to drop, and always planning for the figurative or literal parade of horribles. I am a half-hearted prepper; I have bins of supplies, but not a single non-perishable food item or bottle of water. I am not dedicated enough to homestead but have a potbelly pig and am restocking our chicken coop. I thought I would be ready for an apocalypse, but nothing quite prepared me for COVID-19.

The difficulties of telecommuting are not just about finding the right location but also about the distraction and the reminders of what you need, lack, and want. That tape dispenser I never use—I needed that. The plants I neglected to take home have likely already perished. And all my work people—with whom I spend more time than I do my spouse—were no longer surrounding me on a daily basis. Everything changed overnight, and I quickly went into crisis mode; which for me means ignoring my own needs while I make sure everyone else is okay. I work long hours, eat odd things at odd times, drink a lot of caffeine, and sleep fitfully. I forget everything other than the crisis. I found myself documenting the daily counts from the state COVID-19 page, doing my own comparison, reading everything on the CDC site, obsessing about the varied models outlining how long the outbreak would last and how many would die. Then obsessed about dying. I was fine until I wasn't. The Life Straws, canteens, plastic sheeting, Purell, soap, tents, hammocks, and duct tape are nice to look at but didn't help with the anxiety, fear, and isolation.

Recognition

PRACTICE MINDFULNESS, WELLNESS & SELFCARE

I quickly realized that I needed to take a breath (which I did obsessively to ensure that I didn't have fibroids in my lungs like some random Instagram post instructed) and a break. I reminded myself I needed to practice what I preach: mindfulness, wellness, and self-care. I am the worst at taking care of myself and needed help. Thankfully my wife is also home for the

Image credit: iNueng iStock/Getty Images

Image credit: Ekaterina Pushina/Getty Images+ (2)

next seven weeks and is grounded in the practice of yoga, meditation, and intention.

Finding Your Zen

BLOCK OFF FOCUS TIME

Days of WebEx meetings are challenging. I added Microsoft Analytics to my routine, which blocks off "focus time" at random intervals each day and reminds me to stand up, focus on e-mail, or do anything but a video or phone conference. That wasn't quite enough so I added a lunch break, found online gentle yoga sessions I could use after work, and took evening walks to the Willimantic River, which sits behind our home. We worked in the yard, played with the dog, hung our hammocks, and moved the chicken coop. My mind is clear when I am working in the yard. Our walks are mostly spent with me rambling about the million things I need to do—until we reach the water when I am finally blissfully quiet. Yoga is much harder as it requires focus, which is difficult to give at this time.

Finding Normalcy in the Abnormal

MAINTAIN A ROUTINE

Every Sunday we go to Toast Four Corners for brunch. There is nothing like having a local that knows that you like cinnamon swirl French toast, bacon, and a Godiva chocolate-filled cup of coffee. We miss our routine and decided to create our own Sunday brunch. It is certainly different, but creating the brunch vibe at our

kitchen table is delightful—and we don't close. Treating ourselves in our own home no longer feels like work. I don't know if we will continue this as we miss our friends and familiar faces from our community.

Stay Connected and Have Fun


CONNECT WITH FRIENDS AND FAMILY

The best part of my week is the Friday afternoon recap I scheduled for all staff. I get to see everyone in their natural habitat: laundry piles, unique wallpaper, amazing art, screaming kids, barking dogs, and all kinds of hair. We are all more authentic and connect so easily in that once a week call. The challenges of working remotely fade away each Friday.

Connecting with friends and family via Zoom or Facetime just to check in, reminisce about UConn's March Madness history and what could have been this year, or to share a cup of coffee or a cocktail. Online book groups, board games, trivia games, and scavenger hunts are amazing ways to connect with people outside your family and work life.

Resources

Lawyers Concerned for Lawyers: lclct.org

ABA COVID-19 Mental Health Resources: americanbar.org/groups/lawyer_assistance/resources/covid-19--mental-health-resources

Centers for Disease Control and Prevention: cdc.gov

***The New York Times* Crossword puzzle:** nytimes.com/crosswords
Free to print or play online

Calm: calm.com/blog/take-a-deep-breath
This link provides free resources through Calm.com

Netflix.com

Hoopla and Overdrive: Apps that allow you to connect your library card and access online books for free

It is hard to imagine having fun in a pandemic. But I found fun in Netflix's *Tiger King*. It is eye-opening, ridiculous, amazingly entertaining, unbelievable, and will be seared into my brain for all eternity. I have connected with more people over *Tiger King* than any other topic during this pandemic.

Be Well

It is difficult to stay well in periods of uncertainty, fear, anxiety, and isolation. It can be a challenge for some to get out of bed and face the day. It is not easy to transition to remote work, homeschooling children, online learning, and online grocery shopping. Reach out for help if you need it, and be good to yourself and others. Connect with someone you know is without family or struggling in other ways. Sometimes that one connection can be a lifeline to the outside world. And, as my therapist reminds me, in the uncertainty, it is not about having the answers it is about being present. ■

Be well.
Karen

Karen DeMeola *is a past president of the Connecticut Bar Association and the assistant dean for finance, administration, and enrollment at UConn School of Law.*

Image credit: miakievy/ DigitalVisionVectors GettyImages

Casemaker
Online Legal Research

By CORRINE KING

Included in your Connecticut Bar Association membership is access to online legal research through Casemaker. In Connecticut, Casemaker is available exclusively to CBA members and relied upon by the State of Connecticut Judicial Branch. To access Casemaker, visit ctbar.org/Casemaker.

About Casemaker

More than 400,000 attorneys nationwide conduct over six million searches per year using Casemaker's extensive legal classification and an advanced search engine. Last year, CBA members conducted more than 275,000 unique Casemaker searches.

The Casemaker libraries include all federal supreme, circuit, district, and bankruptcy court decisions, as well as case law going back more than 100 years in many states. You can find the US Code and Constitution, the Code of Federal Regulations, the Federal Register, plus statutes, session laws, administrative codes, court rules, and more for every state. Casemaker also includes Connecticut orders, ethics opinions, Mashantucket Pequot and Mohegan Tribal Court rulings, and Workers' Compensation decisions.

Up-to-Date Information and System Capabilities

Case law is published daily on Casemaker, and attorney editors continuously update state and federal statutes and codes, including the notation of future changes.

In 2019, Casemaker released Casemaker4, which has improved search speed, a modern interface to enable more intuitive site navigation, and upgraded design responsiveness to better accommodate mobile devices.

Tools

Casemaker includes a variety of tools to help lawyers conduct legal research. Casemaker is filled with organizational features. You can create individual folders to store your research, and they can be renamed, reorganized, or deleted with just a few clicks. Casemaker makes it possible to write, post, and save notes directly to the documents being viewed.

During the COVID-19 pandemic, the CBA is offering non-members the opportunity to conduct online legal research for FREE. Interested attorneys and legal professionals will be granted a one-month trial membership to access Casemaker.

Through **CaseDigest**, Casemaker's attorney editors summarize appellate decisions for the state and federal circuits daily, enabling you to monitor the latest developments in your area of practice, jurisdiction, or court.

With **Citecheck**, you can check the citations in your briefs, pleadings, and other documents by uploading your file and using Citecheck to analyze every citation, providing you with a report of good law, negative treatments, and potential citation format errors.

Casemaker's negative citator, **CaseCheck+**, enables you to know instantly if the case you are reading is still good law. CaseCheck+ works effortlessly to identify whether a case has been treated negatively by subsequent cases. You can link to negative treatments and quickly review the citation history for both state and federal cases.

In addition to the tools included in Casemaker, there are also links to special pricing on resources you can purchase to enhance your practice, including expert research, analysis, writing solutions, samples of over 65,000 legal forms, public records legal research, investigative data service, and more.

Cost Savings

Because Casemaker is included in your CBA membership, you can save money on higher cost legal research services. Casemaker is known for the completeness, accuracy, and currency of its content collections.

Additional Support

Casemaker offers webinars four times a month and a comprehensive, one-hour video guide is available on-demand. Access these resources at ctbar.org/casemakertraining. Casemaker has live customer support available Monday through Friday 8 a.m. until 8 p.m. EST. ■

Corrine King is the marketing lead at the Connecticut Bar Association.

CBA Emeritus Pro Bono Attorney Honor Roll:

A Call to Pro Bono Service for All Retired and Non-Practicing Attorneys to Assist with COVID-19 Response

By AMY LIN MEYERSON

To address the legal needs arising from the coronavirus pandemic and seeing the growing need to further narrow the access to justice gap, we have established the new and expanded CBA Emeritus Pro Bono Attorneys program. This program features:

- Discounted CBA membership dues for retired attorneys (visit ctbar.org/specialmembershipprograms to learn more)
- Opportunities to engage in pro bono throughout the state under the supervision of an organized legal aid society, a state or local bar association project, or a court-affiliated pro bono program[1]
- Exempt from MCLE and Client Security Fund requirements[2]
- CBA and CT Judicial Branch provided training and support
- CBA provided temporary professional liability coverage for pro bono work
- Appearance on the CBA Emeritus Pro Bono Attorney Honor Roll

Image credit: Bignai iStock/Getty ImagePlus

Following a change in Connecticut's Practice Book Rules that permitted lawyers registered as "retired" with the superior court to engage in pro bono work under the supervision of a legal services organization or with a CBA sponsored pro bono project,[3] in 2014, a forward-thinking group, including Krista Hess, Peter Arakas, Diane Whitney, Pat Kaplan, and Past CBA Presidents Norm Janes and Lou Pepe, through the CBA Pro Bono Committee and in collaboration with the Judicial Branch, established the Emeritus Small Claims Volunteer Attorney Program in Hartford.[4] This program gives retired and non-practicing lawyers the opportunity to provide legal advice to self-represented litigants in small claims court. These volunteer attorneys meet one-on-one with clients and give them brief advice about procedural questions, how to present their claims or defenses, and what they might need by way of documentary or testamentary evidence. The CBA provides the training and professional liability coverage for attorneys volunteering for this program. The Emeritus Small Claims Volunteer Attorney Program operates in Hartford, Middletown, and New Haven.[5]

"Emeritus attorney pro bono programs have at least three policy implications for delivery of direct services. The first impact is that the programs offer additional resources and are one method of supplementing existing legal services in light of growing need and finite resources. The second is that emeritus attorneys are well-equipped to present community legal education programs, which have the potential to help seniors and low- and moderate-income individuals avoid legal crises. The third is that emeritus attorneys may be more readily used to reach out to provide legal services to homebound residents; residents of hospitals, long-term care facilities, and hospices; clients in rural and urban areas with limited transportation; and others who are unable to come to an office or clinic."[6]

These pro bono opportunities for emeritus attorneys are designed to have very flexible time commitments. For example, the pro bono work available through the Judicial Branch's Volunteer Attorney Programs generally requires only a two- to three-hour time commitment. "Many attorneys retire because they want more control over their time," says Peter Arakas. The CBA Emeritus Pro Bono Attorney program allows retired and non-practicing lawyers to

provide access to justice at times that fit within their schedules.

"Why do I do pro bono work? Because I have the tools to change peoples' lives and because it would be selfish not to do so. But also because if I did not do this work, I would be missing some of the most rewarding experiences I have ever had," says Diane Whitney, chair of the Land Use section at Pullman & Comley. "My practice for the last 30 years or so has been limited to environmental and land use matters. I would never have expected to represent a 'shaken' baby, a young person seeking to be emancipated from her abusive parents, a family from Italy escaping from an abusive husband/father, a parent trying to keep his children in this country and away from what he believed to be an Isis threat in his native country, or a mother trying to recover 15 years of past-due child support. But I have done all that and a lot more, all outside my normal practice areas."

During this time of social distancing, legal aid organizations in Connecticut have instituted temporary direct legal information and advice phone lines. For the Greater Hartford area, call 860-541-5070. Outside of Greater Hartford, call Statewide Legal Services at 1-800-453-3320 or visit www.ctlawhelp.org.

Become a CBA Emeritus Pro Bono Attorney today! For more information, contact our Member Service Center at info@ctbar.org. #CBAEmeritusProBono ■

NOTES

1. *See* pro bono opportunities at CTLawHelp.org.
2. P.B. 2020, Sec. 2-27, 2-27A & 2-70.
3. P.B. 2020, Sec. 2-55 (e) states, "[a]n attorney who has retired pursuant to this section may engage in uncompensated services to clients under the supervision of an organized legal aid society, a state or local bar association project, or a court-affiliated pro bono program."
4. "Retired Attorneys: Bridging the Pro Bono Gap" by Krista Hess and Peter Arakas, CT Lawyer, Summer 2017, p. 28.
5. https://jud.ct.gov/volunteer_atty_prgm.htm
6. Holly Robinson, No Longer on Their Own: Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs, https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/V2_pro_bono_emeritus_brochure_3_5.pdf

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.*

Curcio Rides Again

By CHARLES D. RAY and MATTHEW A WEINER

Photo credit: AdShooter/E+/Getty Images

***U.S. National Bank Association v. Crawford*, 333 Conn. 731 (2019)** brings us the Supreme Court's most recent excursion into the realm of final judgments and the intricacies of *State v. Curcio*, 191 Conn. 27 (1983). But before we get to Crawford, we need to tell you about the appellate court's decision in *Equity One, Inc. v. Shivers*, 150 Conn. App. 745 (2014), which the Supreme Court overruled in *Crawford* but served as the catalyst for the final judgment analysis that split the *Crawford* court.

Shivers was a mortgage foreclosure case. The trial court ordered a foreclosure by sale and a committee was appointed to conduct that sale. The defendant filed a petition in federal bankruptcy court two days before the sale was set to take place. That filing set in place the automatic bankruptcy stay, which brings to a halt any efforts or further efforts to recover a claim against the bankruptcy debtor that arise before the date of the bankruptcy filing. The appointed committee, hoping to get paid for the work it did to get the sale ready, filed a motion in the trial court pursuant to General Statutes § 49-25, which provides that if a foreclosure by sale does not take place for any reason, "the expense of the sale and appraisal or appraisals shall be paid by the plaintiff and be taxed with the costs of the case." In other words, the bank pays now and the debtor pays later.

The wrinkle in *Shivers* was that the committee filed its § 49-25 motion and the trial court granted that motion while the federal bankruptcy stay was in place. The question posed and resolved by the Appellate Court was whether the bankruptcy stay had been violated. The Appellate Court held that it had. Although recognizing that the filing and granting of the motion did not directly affect the debtor, the Appellate Court concluded that "unusual circumstances" were at play given that the defendant debtor was, in effect, obligated to indemnify the bank in the form of costs. Given that "identity" between the debtor and the committee, the Appellate Court held that the bankruptcy stay applied to the § 49-25 motion for fees.

The *Shivers* decision was not well received in the world of bankruptcy practice, at least not by those who get appointed as sale committees and would, as a result of *Shivers*, need to sit and wait to get paid until a bankruptcy stay was either lifted or came to its natural conclusion. Taking the bull by the horns, one appointed committee person sought and obtained the lifting of the stay in federal bankruptcy court. There, Judge Dabrowski, on the basis of two decisions that pre-dated *Shivers*, held that with due respect to the Appellate Court, they got it wrong. *In re Tasillo*, 2015 WL 78770 (Bankr. D. Conn. Jan. 6, 2015). And while that was all well and good, moving to lift the stay in order to get paid by the bank in a state court foreclosure action was counterproductive (and expensive), considering the seemingly clear mandate of § 49-25.

So *Shivers* was skating on thin ice, which brings us at long last to *Crawford*, which included a foreclosure by sale, the appointment of a committee, the filing of a bankruptcy petition, a § 49-25 motion, and the *Shivers* based denial of that motion by the trial court. Grabbing more bull horns, the committee in *Crawford* filed a writ of error and asked the Supreme Court to overrule *Shivers*. It did, concluding that the Appellate Court lacked subject matter jurisdiction to extend the bankruptcy automatic stay provisions to proceedings against nondebtors; i.e., the banks being asked to pay committee fees and costs for sales that did not take place. But overruling *Shivers* was, in the end, the easy part.

Getting to the end proved much more difficult. First, there was the final judgment question, which, it turns out, was a good one, given that the foreclosure action was

on hold rather than at an end when the writ was filed and, on top of that, the trial court denied the § 49-25 motion without prejudice to the committee reclaiming it once the automatic stay was no longer in place. Second, there was the issue of mootness, which came into play by the simple fact that the bankruptcy matter had been dismissed and the automatic stay with it long before the Supreme Court issued its decision in *Crawford*. The final judgment issue is the more interesting of the two, mootness having been ultimately resolved under the exception for orders that are capable of repetition yet evading review.

Indeed, it was the final judgment issue that split the Court. The committee tried to skirt the final judgment issue by claiming that the proceedings involving the § 49-25 motion were, in essence, a separate third-party claim that had been finally resolved. That didn't work, the majority (then Justice Robinson for himself and Justices Palmer, D'Auria, and Ecker) concluding that, given the trial court's ruling that the motion could be renewed once the bankruptcy stay went away, the denial order was interlocutory rather than final.

That left the limited ways in which an interlocutory order can be treated as a final judgment for purposes of an immediate appeal. If you, like us, thought that this might be a good instance in which to invoke General Statutes § 52-265a, think again. Although that statute allows a discretionary appeal of an interlocutory order that involves a matter of substantial public interest, it, like a direct appeal, is limited to a "party" to the underlying action, which the committee is not, as evidenced by the writ of error rather than an appeal.

So now, finally, we're into the meat of *State v. Curcio*, that all-purpose bowl of mush that even the majority recognizes as having produced a body of case law that "is hardly a model of clarity or consistency" and that can seemingly support both sides of the question of whether a particular interlocutory order is immediately appealable. Here, we're dealing with the second prong of *Curcio*, under which an immediate appeal may be taken where the order "so concludes the rights of the parties that further proceedings cannot affect them." The majority offers a number of reasons why this test applies to the order in *Crawford*.

First, an immediate appeal would not run afoul of the public policy against piecemeal appeals because it would have no impact on the "speedy and orderly" resolution of the underlying foreclosure case, given that the committee was not a party to that case and the issue raised in the writ of error implicates a right that is separable from and collateral to the rights being resolved in the foreclosure case. In this regard, the majority found persuasive the fact that without an immediate appeal, the issue of whether *Shivers* was correctly decided would likely never get resolved, because once the stay gets lifted the committee's motion will be granted and the issue will become moot.

Second, according to the majority, the trial court's ruling threatens to abrogate a right that the committee now holds—the right to be reimbursed for its fees and costs under § 49-25. Third, the majority relies on the fact that the issue of whether *Shivers* was correctly decided does involve a question of "some public importance." Namely, the possible reluctance of attorneys to serve as committees of sale where they are forced to sit and wait rather than get paid in cases where the debtor files a bankruptcy petition or, alternatively, head to bankruptcy court in order to lift the stay. Finally, considering the issue now would not result in an influx of appeals in related circumstances. Indeed, reviewing the issue would resolve it once and for all, a result that makes sense given that the alternative, at least for the majority, would mean that the issue never gets resolved.

For the dissent (Justice McDonald, for himself and Justice Mullins and Kahn), allowing an appeal in these circumstances does nothing to improve the state of the Court's *Curcio* jurisprudence. First, while mere delay might impinge on an existing right, it does not destroy the legal and practical value of the right of the committee to recover its fees and costs. The committee can wait, get the stay lifted or, perhaps, bring a declaratory judgment action seeking to overrule *Shivers*. Second, public policy, according to the dissent, plays no role in a *Curcio* analysis. The legislature could have included writs of error in the public policy exception set forth in § 52-265a but did not. And if the issue is finally resolved in the trial court once any bankruptcy stay disappears, there likely will be no need for any appeal at all.

In the eyes of the dissent, the majority's approach "exacerbates the already murky state of [the Court's] final judgment jurisprudence…." And while it may not disagree completely with that charge, the majority concludes that an immediate appeal in this situation "merely provides a pragmatic solution to a problem of the courts' own creation that would otherwise remain forever unresolved." Can both sides be right? Or is there a correct answer buried somewhere in all of this? If precision and certainty in a *Curcio* analysis are what you crave, the dissent is more convincing. If, on the other hand, you don't mind a little opaqueness, the majority approach should be right up your alley. But in the end, *Shivers* was clearly standing in the way of lawyers promptly being paid—never a good place to be. ■

■ 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

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Administrative Law

High Watch Recovery Center, Inc. v. Department of Public Health, 69 CLR 307 (Cohn, Henry S., J.T.R.), holds that the rule that an appeal to court under the Administrative Procedure Act may be taken from an agency decision only if the decision was entered in a proceeding in which a hearing was "required by statute or regulation," Conn. Gen. Stat. § 4-166(2), bars an appeal from a proceeding in which the agency voluntarily holds a hearing, even though pursuant to a separate statute applicable specifically to the appellant's business a mandatory hearing could have been requested. The opinion holds that there is no right to appeal from a decision by the Department of Health approving a certificate of need for the establishment of a substance abuse facility, Conn. Gen. Stat. § 19a-638, even though a mandatory hearing could have been requested.

The statute disqualifying persons convicted of specified crimes from eligibility to hold a pistol permit applies to comparable crimes committed under the laws of other states. *Stratford Police Dept. v. Board of Firearms Permit Examiners*, 69 CLR 267 (Cordani, John L., J.). The opinion holds that a resident of this state who was convicted in 2006 under New York law for the possession of a controlled substance is permanently ineligible for a pistol permit in this state, because the same conduct, if committed in this state, would violate one of the statutes listed in Conn. Gen. Stat. § 29-28. The opinion reasons that the statutory list of disqualifying crimes presented in the statute establishes the nature of the conduct for which an applicant is statutorily considered to be unsuitable to receive a pistol permit.

Civil Rights

Hasiuk v. Colt Defense, LLC, 69 CLR 355 (Budzik, Matthew J., J.), holds that the provision of the Connecticut Discriminatory Practices Act reciting that an award of attorneys fees to a plaintiff that prevails on a discrimination complaint "shall not be contingent upon the amount of damages requested by or awarded to the complainant," Conn. Gen. Stat. § 46a-104, establishes a strong public policy in favor of awarding attorneys fees as an incentive to attorneys to prosecute such claims, even for prevailing plaintiffs who recover only nominal damages. This opinion awards attorneys fees of approximately $95,000 to a plaintiff who recovered damages on a workplace hostile environment claim for discrimination based on national origin only in the very nominal amount of $1.00.

The Discriminatory Practices Act, Conn. Gen. Stat. § 46a-58, Connecticut's foundational civil rights statute that prohibits interference with the constitutional rights of identified categories of persons with respect to a broad range of life activities, may not be relied on to remedy claims based on *employment* discrimination because the more targeted Connecticut Fair Employment Practices Act, Conn. Gen. Stat. § 46a-60 et seq., has been interpreted as displacing the Discriminatory Practices Act with respect to employment-related claims. As a result, the broader remedies available under the Discriminatory Practices Act, such as emotional distress damages and attorneys fees, are not available to remedy CFEPA violations. *State of Connecticut Judicial Branch v. Gilbert*, 69 CLR 229 (Cordani, John L., J.). The opinion is also useful for its holding that the authorization for an award of back pay to remediate a discriminatory employment practice, as authorized by Conn. Gen. Stat. § 46a-86(b), may include an allowance for lost pay incurred as a result of being forced to take time away from work to attend court proceedings for the prosecution of a party's claim.

Corporations and Other Business Organizations

Link v. Link, 69 CLR 330 (Noble, Cesar A., J.), holds that an LLC member's prosecution of a petition for the dissolution of a closely-held LLC does not automatically disqualify the member from also prosecuting a derivative action against the other members on claims of diversion and misuse of corporate assets and a lockout of the plaintiff. The defendant/members claim that the plaintiff's attempt to dissolve the entity is contrary to the LLC's interests as well as their own interests and therefore the plaintiff cannot comply with the requirement that the plaintiff in a derivative action be able to fairly and adequately represent the interests of the LLC and the other members. The opinion reasons that the interests of the plaintiff are not inconsistent with those of the LLC, and any recovery on the derivative claims will also benefit the defendants as LLC members.

A member of an LLC engaged in the business of purchasing and refurbishing residential properties may not recover for another member's retention of the proceeds of sales of LLC properties, under a theory of either conversion or a violation of the statutory theft statute, because the claimant does not have a personal property interest in either the refurbished residential properties or the proceeds from their

sale. *Mahato v. Khadka*, 69 CLR 316 (Taylor, Mark H., J.).

Family Law

Zealand v. Balber, 69 CLR 323 (Kavanewsky, John F., J.), holds that although a gift of an engagement ring is generally presumed to be conditional on the occurrence of a marriage, with the parties' intent that the ring be returned if there is no marriage, the presumption is defeated by a long period of living together in an intimate but unmarried relationship. This opinion awards the ring to the donee as part of a judicial partitioning of the parties' assets upon the termination of their relationship.

The opinion in *Tilsen v. Benson*, 69 CLR 241 (Klau, Daniel J., J.), involves the dissolution of a marriage between Jewish spouses and a dispute over a clause of the parties' "Ketubah," a religious contract frequently formed before a Jewish marriage, reciting that the parties agree to "live in compliance with Torah law all the days of their lives." The parties disagree as to amount and form of payment that will be due the wife under Torah law and are expected to provide competing testimony from rabbinical experts. The opinion holds that the court lacks subject matter jurisdiction over the dispute because it cannot be resolved without the court rendering an interpretation of religious dogma.

Health Law

Western Connecticut Health Network v. Ainger, 69 CLR 341 (D'Andrea, Robert A., J.), holds that a patient whose health insurance was unexpectedly canceled retroactively to a period before substantial hospital costs were incurred may be required to personally compensate the hospital at its full "pricemaster" rates, i.e., at the rates each hospital must file with the Health Systems Planning Unit of the Department of Health's Office of Health Strategy from which insurer discounts are negotiated, Conn. Gen. Stat. § 19a-681. The opinion seems to suggest but does not directly hold that a hospital has no discretion to accept a lesser rate, at least from individual patients that cannot meet the statutory definition of a health service's "payer," Conn. Gen. Stat. § 19a-646(a)(4).

A private citizen lacks standing to prosecute a civil action to enforce provisions of the public health code. *Richey v. Ellington*, 69 CLR 278 (Sheridan, David M., J.). Rather, exclusive jurisdiction over the enforcement of the Code is delegated to the Department of Health and to local municipal health officials. The opinion holds that a property owner lacks standing to prosecute an action against a municipality for contamination to a private well caused by storm water runoff.

Pensions and Other Employee Benefit Plans

An employer's unilateral imposition of an oversight program for an employer's employee medical insurance constitutes an unfair labor practice for failing to engage in collective bargaining, where the four-tier oversight program (a) requires prior approval to confirm the efficacy of drugs before a physician-recommended drug may be used by an employee, (b) adds oversight for the use of opioids; (c) requires that employees try generic drugs before using a brand specified by a physician; and (d) requires oversight of the quantity and concentration of drugs prescribed for employees. *Waterbury v. State Board of Labor Relations*, 69 CLR 347 (Cordani, John L., J.).

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 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).

Torts

Riccio v. Bristol Hospital, Inc., 69 CLR 303 (Morgan, Lisa K., J.), holds that an experienced attorney's failure to include in the opinion of negligence accompanying a medical malpractice complaint a description of the author's professional qualifications, as required by Conn. Gen. Stat. § 52-190a, resulting in a dismissal of a medical malpractice action, does not constitute a "matter of form" or "mere mistake or inadvertence," within the meaning of the Accidental Failure of Suit Statute, Conn. Gen. Stat. § 52-592. Therefore an action dismissed for such a failure may not be saved in reliance on the savings statute.

A Superior Court opinion holds that the

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Plate #4:
The Financial "Tipping Point"

By AMANDA G. SCHREIBER

Amanda Gordon 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*

Much like the trite and overused, but still applicable term "American dream," I think most lawyers went to law school to achieve the "lawyer dream." The sincere hope of becoming a great thinker and leader in our society drove most lawyers I know, regardless of age, to pursue a career in the law. With that came a hope that their perseverance and dedication to the craft would translate into the life they wanted to lead, both from an employment and personal perspective. Unfortunately for many young lawyers today, that dream has not come to fruition.

My articles this year have encompassed an analogy to a circus themed show in Hartford where I watched a plate spinner and likened his performance to the life of a young lawyer. I could see the metaphorical plates of work, family, and health and wellbeing flipping and spinning through the air—and have tracked those thoughts in the hopes of supporting our newest members in their struggles while bringing to light the perspective of this generation for our older colleagues.

The financial plate is the last and final plate I will discuss in this series. In my opinion, it is the paper plate. Unlike the other plates that can come crashing to the ground, smashing to a million pieces, the paper plate has a lot of flexibility to bend and shape to the life and goals you seek to accomplish. But uniquely, there is the concern of it becoming oversaturated, wearing a hole right through the middle, rendering it useless.

After much discussion with colleagues, I have found the underlying reason for the damage to this financial plate stems from a compilation of factors.

Perhaps the biggest reason for oversaturation of the financial plate is the burden of rising tuition costs and student loans. According to the American Bar Association, in 1985 the national average for private school tuition was $7,526, which would have cost a student $17,871 in 2019 based on standard inflation rates. Instead, average tuition in 2019 was $49,312, equating to 2.76 times the expense in 2019 as it was in 1985 after adjusting for inflation. The same holds true for public school tuition, which was $2,006 in 1985 and would have cost a student $4,763 in 2019. Instead, national average tuition was $28,186. In other words, public school was 5.92 times as expensive in 2019 as it was in 1985 after adjusting for inflation. As such, law students often graduate six figures in debt, heaping their law school loans on top of their already growing undergraduate financial obligations. Although most pay the loans to keep the proverbial plate spinning, the reality is that accumulating interest weighs down the plate with every turn. It is not as simple as just "pay the loans."

In addition, we now heap on to that plate the significant recession and setback of the legal industry in the last decade. Just as many young lawyers were emerging from school, firms reduced their hiring and even started laying off new hires. For those that were lucky enough to keep their jobs, salary cuts were inevitable. Although there has been some rebound in recent years, this preliminary setback had a severe and swift impact to many young lawyers' financial situation, loading their plate as bills piled without supporting income. Further, many young lawyers acknowledge that their career decisions have had to be financially driven. In other words, even if a young lawyer dreamt of a job in the public sector or a nonprofit, the reality of student loans coupled with a tumultuous economy made that path not feasible.

Image credit: MHI/DigitalVision Vectors/Getty Images

Finally, because young lawyers start their career after years of schooling, earning a decent salary for the first time often coincides with other major life decisions, such as starting a family or buying a house. Colleagues have shared with me stories of not being able to be on the mortgage for their own house because of the weight of their loans. Or the very real discussion with their spouse as to whether having a second child is financially reasonable, considering the ever-increasing and substantial cost of daycare. For those in our profession that have made it work, they share that they have to accept carrying and leveraging debt as a fact of life—flexing that paper plate back and forth, hoping it doesn't wobble too much to become permanently destroyed.

Admittedly, my legal career did not follow the standard trajectory. I graduated from undergraduate college and got a job as an internal auditor, essentially doing accounting work. I did that job for six years, during which I returned to school to obtain my law degree. I am glad for that decision, but my choice to change careers makes my experience unique compared to many of my young colleagues. That said, after listening to responsible, resourceful, and successful bar members talk about the crushing impact the aforementioned financial compilation has had on their life, I thought it important to acknowledge it as the fourth plate that young lawyers work to keep spinning. Given the private nature of finances, I am not quoting any individuals as I have done in prior articles, but I wholeheartedly thank each person who lent their thoughts and shared their difficult stories with me.

In light of the current COVID-19 pandemic, the financial issues discussed above have become even more pronounced for most lawyers, regardless of age. Although the issue is much more complex than this brief article allows, I encourage our bar to acknowledge this topic openly and discuss this burden as a community that offers acknowledgment, assistance, and understanding—rather than shame and judgement—to our members. Many of our legal colleagues will require support for years to come in light of current and unfortunate circumstances. We are all in this together. ■

PDD

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ing DAS liens of about $263,000 in total. DAS was repaid by attorney's firm, from escrowed funds, and by the firm's insurance carrier. *Windham JD Grievance Panel v. Louis Mark Rubano*, #18-0144 (7 pages).

Presentment ordered for violation of Rules 1.2, 1.3, 1.4(a)(1), (2), (3) and (4), 1.5(a), 1.15(e), 8.4(1), and 8.4(4) where attorney in divorce matter accepted a retainer and thereafter failed to send billing statements; failed to communicate with client allowing divorce to enter pursuant to a settlement she had not seen and of which she was not informed; failed to advise of settlement timing and then failed to tender the settlement proceeds to her in a timely fashion (three months after multiple requests); and failed to answer grievance complaint. Additional violations of Rules 3.3 and 8.1(2) added by panel. *Service-Corso v. Sean Patrick Barrett*, #18-0616 (10 pages). ■

Highlights

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opinion of negligence accompanying a medical malpractice complaint need not be from an author certified in precisely the same specialty as the defendant; rather, certification need only be in a field that serves the same general medical practice area as the defendant and requires skills overlapping those needed for the contested treatment of the plaintiff. *Sacco v. Littlejohn*, 69 CLR 314 (Krumeich, Edward T., J.).

■ Trade Regulation

The "ascertainable loss" element of a CUTPA claim is not satisfied solely by the fact that attorneys fees have been incurred to pursue the cutpa claim. *National Loan Acquisitions Co. v. Olympia Properties, LLC*, 69 CLR 335 (Wilson, Robin L., J.).

The plaintiff in a trade secrets case has the initial burden of disclosing with particularity the alleged misappropriated trade secrets, to allow the defendant an opportunity to avoid unnecessarily disclosing its own trade secrets. *Edgewell Personal Care Co. v. O'Malley*, 69 CLR 246 (Lee, Charles T., J.). ■

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