

Volume 30 | Number 6

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# CT

# LAWYER



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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.

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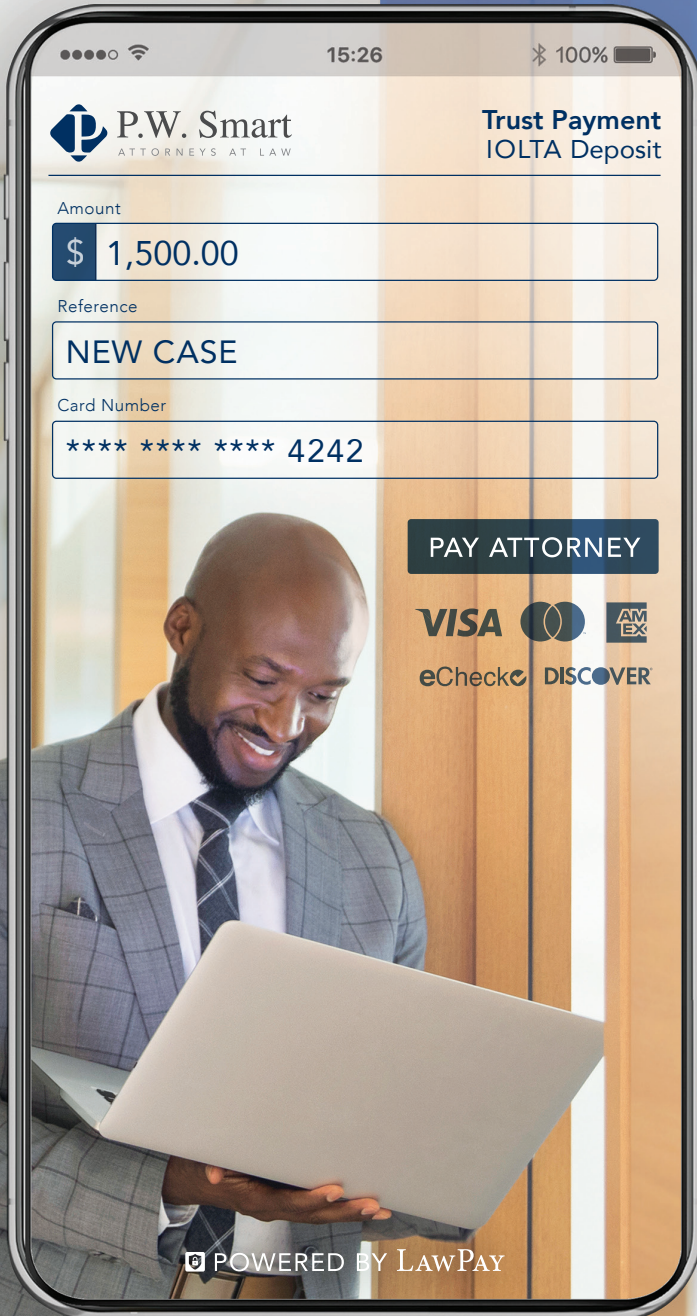
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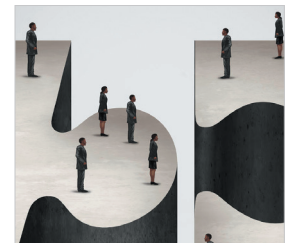
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## SEND US YOUR IDEAS

Contact editor@ctbar.org.

Article submissions or  
Topic ideas are welcome.

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# Balancing Listening and Speaking to Become Authentic, Vulnerable, and Effective Leaders

By NDIDI N. MOSES

**“The ear of the leader must ring with the voices of the people.”**

— Woodrow Wilson

**T**he theme for this bar year: “Balance for a Better Legal Profession,” sought to remind us all that to achieve success, we need to achieve balance in everything we do. It was a blessing and a pure pleasure for me to be able to discuss this topic with you over the last bar year through the President’s Message column in *CT Lawyer*. Each article was as much of a reminder to me, as it was to you, that we all need to balance: customs with innovation, work with play, tribalism with community, networking to advance our own goals and being unofficial ambassadors for others, individual freedom with collective responsibility, and as this article will discuss—listening and speaking. In retrospect, this article should have been the first article I wrote for the President’s Message. While it is the most important balancing act of them all, it is also the one I have worked this entire bar year to master, to make sure the Connecticut Bar Association (CBA) was effectively serving the needs our members and the community.

My inspiration to write this article on listening came quite unexpectedly at a meeting of a professional association I was attending on behalf of the CBA. At the meeting, which was filled with bar leaders from all over the country, one of the most controversial resolutions on the agenda

*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.*



before the governing body passed with almost no opposition, and no public debate. The resolution passed with no opposition, even though, when the meeting commenced, I noticed the eager aspects of participants, who anxiously waited for what they thought would be a heated and controversial discussion. I realized I underestimated the attention the resolution had received when I noticed the swarm of reporters hovering around the meeting *like honey bees*. Yet, the controversial and impassioned debate everyone was expecting did not occur, and a resolution that started with resistance by a vocal minority—passed quietly. No one but those intimately close to the discussions were aware of *why* the moons and stars re-aligned, causing the tides to turn, and ushering in the ultimate success of the resolution. As an observer, I can only imagine the shift occurred when the drafters of the resolution made a conscious decision to carefully listen more than they passionately spoke. Specifically, instead of trying to convince people to listen to their pitch in favor of the resolution, the brave crusaders for the resolution began to listen to the concerns raised by those in opposition, and spoke only to address specific concerns, miscon-

ceptions, and devise solutions. In the end, the resolution passed with little amendment, and those originally opposed to it vocally supporting it.

The cynics among us may wonder whether the drafters’ decision to listen, silently, was driven by their masterful implementation of one of *The 48 Laws of Power* by Robert Greene (1998). After all, in the book, Law #4 does encourage us to “say less than necessary...[because] [p]owerful people impress and intimidate by saying less.” Yet, other more aspirational books call for the same tactics, but for better reasons. In Stephen Covey’s, *The 7 Habits of Highly Effective People*, he reminds readers to “seek first to understand, then to be understood.” In his book, Covey notes that many of us fail to really listen to what people are saying, fail to empathize, and in doing so we fail to communicate effectively. Our failure to communicate not only leads to miscommunication, but lost opportunities to deescalate situations. In fact, one of my favorite authors, Dale Carnegie, discussed this premise in his book, *How to Win Friends and Influence People*. In the book, Carnegie encourages us to be better listeners, noting that active listening is a



way of proving to people that they are sincerely appreciated and respected members of a team or community. For this reason, in his book, Carnegie's rules for success focus on people paying attention to the needs and desires of others, and learning to communicate with them by first comprehending the language they speak and seeing the world from their perspective.

After leaving the meeting of the professional association, one question remained in my mind as the controversial resolution passed with no opposition: how did the drafters get their opponents to let down their guard and express themselves so a dialog could begin? The answer came to me at a meeting of bar presidents, when a guest speaker reminded bar leaders of the importance of being authentic and vulnerable in leadership. The discussion was so powerful, I ordered a copy of two of the books discussed: *The Power of Authentic Leadership: Activating the 13 Keys to Achieving Prosperity Through Authenticity*, by Jeff Davis and Brené Brown's, *Daring Greatly: How the Courage to Be Vulnerable Transforms the Way We Live, Love, Parent, and Lead*. The premise is simple—other people will not trust you enough to open themselves up to you if you are not being true to yourself by being *authentic* in your leadership style. If you are being authentic, you are also being vulnerable, and if you are being vulnerable, it means your guard—*your shield, sword, and armor*—are down and there is nothing to fear. I began to appreciate what the drafters of the resolution were doing, and what I overlooked during their presentation. They were doing more than actively listening—they were having an authentic, vulnerable, and honest conversation with their opposition, without their sword, shield, or armor. They truly wanted to connect and understand the other side's point of view, and it showed in their approach and presentation. Their authenticity revealed a vulnerability that made them relatable and no longer threatening, thereby opening the channels for communication.

We can, at least secretly, admit that law school's Socratic method taught us to hide our vulnerabilities. For many of us,

this translated to a reluctance to acknowledge our limitations and need for additional instruction. Many of us trudge through life trying to find answers by ourselves, before admitting our unfamiliarity with issues and seeking the counsel of others. In doing so, we protect our egos, but we miss opportunities to foster our growth and development in other ways, because we pass over opportunities to connect on a deeper level with others. The masks we wear to avoid looking uninformed prevent us from being authentic and relatable to others. We weigh down our shoulders with the unrealistic idea that we should know the answer to every

Connecticut Bar Association commenced this year to allow the organization to obtain feedback from our members and the legal community.

Recognizing that surveys typically receive low participation rates, we planned to pair them with listening sessions and focus groups. The onset of the 2020 pandemic forced us to delay these efforts until the crisis was over, and also gave me time to reflect on this advanced approach to listen to the needs of our members. I began to realize that these efforts, geared at opening the lines of communication, may be received more positively if an authentic

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**“They were doing more than actively listening—they were having an authentic, vulnerable, and honest conversation with their opposition, without their sword, shield, or armor.”**

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question, and are blinded by the mistaken belief that by asking others to educate us we become inferior.

In refusing to opening up and listening to others, we miss valuable opportunities to learn from our mistakes, maximize our potential, and maybe even serve as an inspiration for others who are trying to navigate out of the illusion of perfection when faced with its grim reality. We also miss opportunities to discover the wealth of knowledge and wisdom of those around us, bursting at the seams with insightful ideas, hidden talents, and untapped potential.

The application of these concepts to everything in life is endless, but since this is my final article as president of the CBA, I will focus on how it impacted my thoughts on the numerous initiatives the

conversation proceeded them. To be clear, I am not suggesting the legal community and the bar association are at odds on the importance of communicating with each other. Rather, I began to ponder if, perhaps, the tools the CBA had planned on using to open the lines of communication needed a different, more *authentic*, introduction and approach. Otherwise, requests to fill out surveys and requests to participate in listening sessions and focus groups, which are intended to open up lines of communication, could be perceived as competing with the limited time, resources, and energy of our members, and others in the legal community. In this way, our goal of encouraging discourse could be compromised at the outset.

To offset this, I decided to write this final article. If you take anything away from this article, let it be that the CBA wants

*Continued on page 44 →*

# News & Events

## CBA Celebrates 2020 Law Day

More than 120 legal professionals and middle and high school students attended the CBA's annual Law Day event, "Your Vote, Your Voice, Our Democracy: Celebrating the Centennial of the Nineteenth Amendment in the Age of COVID-19," which was held virtually on Friday, May 8. Guest speaker Secretary of the State Denise W. Merrill wove the American Bar Association's Law Day theme, celebrating suffrage history and the centennial of the Nineteenth Amendment, into a discussion about voting challenges today, especially in light of the COVID-19 pandemic. The event was organized by the CBA's Civics Education Committee and co-sponsored by Connecticut's numerous affinity and local bar associations, including the Connecticut Asian Pacific American Bar Association, Connecticut Trial Lawyers Association, Fairfield County Bar Association, Hartford County Bar Association, The Greater Bridgeport Bar Association, Greater New Britain Bar Association, Litchfield County Bar Association, Middlesex County Bar Association, New Haven County Bar Association, Tolland County Bar Association, and Waterbury Bar Association. The event served as the culmination of the CBA's yearlong efforts to commemorate the centennial of the 19th Amendment with events that included lectures and a statewide scavenger hunt.

Law Day is a national effort, held since 1957, to celebrate the rule of law, providing an opportunity to understand

how law and the legal profession protect our liberty, strive to achieve justice, and contribute to the freedoms that all Americans share. Traditionally, the CBA's Civics Education Committee, co-chaired by Karen DeMeola and Jonathan Weiner, observes Law Day at the Connecticut Appellate Court in Hartford by hosting an event featuring an interactive activity, such as a debate or essay and art contest, for middle and high school students. The event was held virtually this year as a result of the COVID-19 pandemic.

"The committee's initial disappoint-

ment of having to cancel this year's interactive event, which would have featured Mercy High School students acting as prominent figures in the history of women's suffrage and the struggle to ratify the Equal Rights Amendment, was greatly relieved by the overwhelming response from both the bar and the public schools to the virtual event featuring Secretary of the State Merrill, who is a longtime friend of both civics education and the CBA," said Civics Education Committee Co-Chair Jonathan Weiner. "We're looking forward to providing more events like this in the coming year to expand access to civics education across Connecticut, especially in light of post-COVID-19 restrictions on school activities."



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# CBA Establishes Policing Task Force

The CBA has established the **Policing Task Force** to convene community and law enforcement leaders in an earnest and frank dialogue about where we find ourselves in 2020. The Task Force will facilitate conversations with a diverse group of community leaders, law enforcement officials, and attorneys to hear the concerns raised by community members and to consider potential solutions in order to recommend reforms to policies, procedures, training, and culture in police departments. The goal is to ensure that our police departments have the policies and practices that best support fairness, procedural justice, transparency, and accountability. The Task Force is chaired by Deirdre M. Daly, former United States Attorney for the District of Connecticut and a partner at Finn Dixon & Herling LLC; Reverend Keith A. King, pastor at Christian Tabernacle Baptist Church and an attorney; and Alexis Smith, executive director of New Haven Legal Assistance Association.

The Task Force will focus on:

- Facilitating conversations between the community and law enforcement regarding excessive force, police mis-



conduct, and systemic discrimination.

- Examining the hiring, disciplinary, and firing practices of police departments; the reporting and review of incidents of misconduct; and the role of the community in the review of police misconduct and the recruitment of police officers.
- Reviewing police department's training, policies, and practices relating to use of force, de-escalation, and officer wellness.
- Making recommendations to improve accountability and transparency.

For more information on the task force, visit [ctbar.org/policing-task-force](http://ctbar.org/policing-task-force)

## Three Attorneys Recognized with 2020 CLABBY Awards



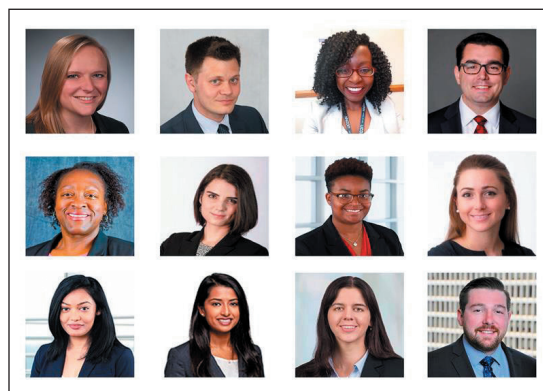
Attorneys *Matthew K. Beatman, John L. Cesaroni, and Charles A. Maglieri*

Attorneys **Matthew K. Beatman, John L. Cesaroni, and Charles A. Maglieri** were recognized with 2020 CLABBY awards by the CBA Commercial Law and Bankruptcy Section. The CLABBY awards, established in 2016, are presented by the section each year to honor the professional achievements of section members.

Matthew K. Beatman received the 2020 Service to the Profession Award for his section leadership, development of educational programs, and delivery of pro bono services. Attorney Beatman is a shareholder and partner at Zeisler & Zeisler PC in Bridgeport.

John L. Cesaroni received the 2020 Rising Star Award for his consistent and meaningful participation in section activities and meetings and implementation of section initiatives. Attorney Cesaroni is an associate at Zeisler & Zeisler PC in Bridgeport.

Charles A. Maglieri received the 2020 Career Achievement Award for his professionalism and exemplary practice of commercial and bankruptcy law for more than 35 years. He is a sole practitioner at his firm the Law Offices of Charles A. Maglieri in Bloomfield.



2019–2020 Presidential Fellows

## Apply Now to the Presidential Fellows Program

The CBA is now accepting applications for the Presidential Fellows program. The goal of this program is to further encourage and increase the active involvement of young lawyers, lawyers who no longer qualify for membership in the Young Lawyers Section, and diverse lawyers with an opportunity to become more involved in the substantive work of CBA sections and further develop their leadership abilities. Each appointment will be for a period of two years.

Visit [ctbar.org/Fellows](http://ctbar.org/Fellows) for more information and to apply. Applications are due Friday, July 31.

## IN MEMORIAM

### Hon. Kevin Dubay

**Judge Kevin Dubay** passed away on March 6 at the age of 65. He earned his undergraduate degree from Tufts University and his JD at UConn Law School. Judge Dubay served with distinction on the Connecticut Superior Court since 2001 and he spent many years presiding over the complex litigation docket. Prior to his judgeship, he was appointed Corporation Counsel for the City of Hartford, working in the administration of his dear friend, the late Mayor Mike Peters.

### Hon. Cara F. Eschuk

**Judge Cara F. Eschuk** passed away on April 11 at the age of 68. She graduated from the University of Wales at Aberystwyth with a degree in law and earned her JD from UConn Law School after moving to Connecticut. Judge Eschuk practiced with Carmody & Torrance in Waterbury and went on to join the State's Attorney's Office in Waterbury where she specialized in the prosecution of child abuse. She attended and later taught classes on the subject at the National Advocacy Center in South Carolina. In 2003, continuing her work with children, she became supervising attorney at the Waterbury Juvenile Court State's Attorney's Office until March of 2008 when she was appointed a superior court judge by Governor M. Jodi Rell.

### Hon. Glenn E. Knierim

**Judge Glenn E. Knierim** passed away on May 9 at the age of 89. He received his undergraduate degree from Cornell University and went on to attend the evening division at UConn Law School while also working at Connecticut General Life Insurance Company. He became judge of the Simsbury Probate Court in 1966, a role he held for 32 years, along with serving as the administrative head of

the Probate Court system from 1973 to 1989. Judge Knierim held numerous leadership positions in the bar and served on the executive board of the National College of Probate Judges. As a dedicated resident of Simsbury, he served on town's Planning and Ethics Commissions and chaired the committee that wrote the town's first charter.

### William J. Doyle

**William J. Doyle** passed away on April 18. He was a graduate of Fairfield University and St. John's University School of Law. In 1963, he joined the 18-lawyer Wiggin and Dana LLP in New Haven, where he went on to become a partner and head of the firm's litigation practice. He was appointed by the federal judges in Connecticut to serve as a special master and by the chief justice of the Connecticut Supreme Court to sit as a special trial referee. Attorney Doyle served as principal trial lawyer for Yale University for over 25 years and taught as a member of the adjunct faculty. Additionally, he served as chair of the CBA's Federal Practice Section and Lawyer-to-Lawyer Dispute Resolution Committee.

### Christopher P. McCormack

**Christopher P. McCormack** passed away on April 30 at the age of 63. He received a BA in musicology from Yale, a Master of Music degree from Eastman School of Music, and obtained his law degree from Fordham University. Attorney McCormack began his legal career as a clerk for Judge Thomas Meskill, worked for Tyler Cooper & Alcorn in New Haven for 17 years, and joined Pullman & Comley LLC in 2004 where he specialized in environmental litigation. He served as CBA Environmental Law Section chair from 2015-2017,

and served as the section's legislative liaison for the past few years, providing "must-read" updates for the section.

### Albert R. Moquet

**Albert R. Moquet** passed away on May 29 at the age of 96. He received his undergraduate degree from the University of Connecticut and his JD from Boston University Law School. After law school, Attorney Moquet joined the private practice of Francis J. Moran and John E. McNerney and practiced as a litigator for 25 years before becoming a partner in the firm of Barberio Staley and Moquet. He was admitted to practice in all Connecticut Courts, Federal District Court, the Second Circuit Court of Appeals, the US Supreme Court, and the Mashantucket Pequot Trial Court and was a member of the American Bar Association, the Connecticut Bar Association, and the New Haven County Bar Association.

### Robert Percy

**Robert Percy** passed away on March 16 at the age of 74. He earned a degree in engineering from Rensselaer Polytechnic Institute and earned his JD from UConn Law School. Before entering private practice, he worked for the IRS Chief Counsel's Office where he met his future legal partner, Richard G. Convicer; they went on to form the law firm of Convicer & Percy LLP. Additionally, he was a member of CBA Tax Section Executive Committee.

### Matthew N. Perlstein

**Matthew N. Perlstein** passed away on February 19 at the age of 74. He was a graduate of Bard College and Boston University School of Law. Since 1991, he concentrated his practice on condominium and community



## IN MEMORIAM

association law, representing condominium, community, and homeowner associations. He served on the advisory committees to the Connecticut Law Revision Commission that adapted the original Uniform Common Interest Ownership Act and two revisions of the Act for use in Connecticut. He was a member of the CBA Real Property Section Executive Committee and chaired the committee that prepared the original *Connecticut Common Ownership Manual* as well as was lead author of the second edition of the manual (both published by the Connecticut Bar Association).

### Ellery E. Plotkin

Ellery E. Plotkin passed away on April 2 at the age of 67. He was a

graduate of the University of Connecticut and Hofstra University School of Law. Attorney Plotkin, of the Law Offices of Ellery E. Plotkin LLC in Norwalk, specialized in bankruptcy law and served as a member of the CBA Commercial Law and Bankruptcy Section. As a long-time resident of Fairfield, he was committed to community service, having served as a Democratic Town Committee member and former chairman of the committee; an RTM member; and a commissioner on the Fairfield Parks and Recreation Commission.

### Stephen E. Ronai

Stephen E. Ronai passed away on April 30 at the age of 83. He was a

graduate of Columbia College of Columbia University and Yale Law School and was a nationally recognized expert in a broad range of health care industry provider legal issues. Attorney Ronai served as a partner at Murtha Cullina LLP for 20 years, where he provided leadership as chairman of the Health Care Department and as a mentor to many of the health care lawyers that served provider clients through the firm. He was a member of the CBA Health Law Section and held numerous leadership positions in health care provider organizations and health care educational institutions.

## CBA and Local Law Firms Launch Virtual Small Business Legal Clinic

The CBA is sponsoring a statewide **COVID-19 Small Business Virtual Legal Clinic** (the COVID-19 Clinic) along with Robinson+Cole and other area law firms. The purpose of the clinic is to help Connecticut's entrepreneurs and small businesses that have suffered adversely from the impact of the COVID-19 pandemic by providing free, limited-scope legal guidance during 45-minute telephone or video calls with a volunteer attorney. The COVID-19 Clinic is expected to run through August 2020.

The COVID-19 Clinic offers the opportunity for Connecticut-based entrepreneurs and small businesses with twenty five (25) or fewer employees to ask questions relating to COVID-19 assistance available under federal or state programs as well as broader legal questions relating to challenges they face as a result of the COVID-19 pandemic. Topics in which small businesses can receive support include loans and grants, contracts and force majeure clauses, employment law matters, real estate and commercial leasing issues, and insurance matters.

Volunteer Connecticut attorneys will provide free, limited-scope legal guidance during 45-minute telephone or video calls with a Connecticut-based entrepreneur or small business. Consultations will include helping Connecticut



small business owners understand the legislative language in the CARES Act and Paycheck Protection Program (PPP).

Attorneys and Connecticut-based entrepreneurs or small businesses interested in participating in the COVID-19 Clinic should visit [ctbar.org/smallbusinessclinic](http://ctbar.org/smallbusinessclinic) to learn more and register. Questions regarding the Clinic should be directed to [smallbusinesscovid19virtualclinic@ctbar.org](mailto:smallbusinesscovid19virtualclinic@ctbar.org).

## PEERS AND CHEERS

### Attorney Announcements

**Audrey Blondin**, of Blondin Law Office LLC in Torrington, received her Master of Public Health (MPH) degree from UConn this year. She was the recipient of the school's 2020 Susan S. Addiss Award in Applied Public Health Practice, which recognizes the graduating MPH student who best exemplifies the qualities of the award's namesake: public health advocacy, leadership, demonstrated commitment, and academic performance.

**Daniel L. King** has been named a partner of The Law Office of P. Michael Lahan and the firm name has been changed to Lahan & King, LLC. The Norwich firm limits its practice to wills, trusts, elder law, and probate administration.

Robinson+Cole Litigation Section co-chair **Rhonda J. Tobin** was selected by the *Hartford Business Journal* for inclusion in its 2020 "Women in Business" recognition. Attorney Tobin is among 15 honorees who demonstrate business success, confidence in themselves and their organizations, and a strong track record of professional leadership. Attorney Tobin has represented insurance companies for almost 30 years in litigation of

disputes involving insurance and reinsurance coverage, insurance bad faith and extracontractual liability, and professional liability.

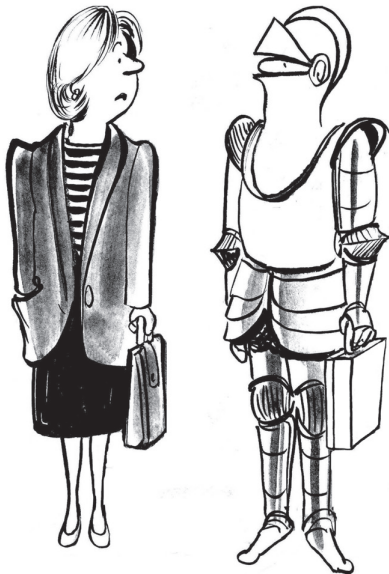
### Firm/Organization Announcements

The CBA Veterans and Military Affairs Section's Executive Committee donated \$500 of their section funds to Columbus House to help homeless veterans affected by COVID-19. The section was inspired by the CBA's donation to Project Feed Connecticut and redirected the money allocated to their May meeting for the donation.

The Hartford law firm of **Alderman & Alderman** has elected to set aside an hour a day to provide free legal services to Connecticut businesses impacted by COVID-19. In addition to other pro bono services, free telephone consultations will be offered from 1:30 p.m. to 2:30 p.m., Monday through Friday. This free support is intended for local businesses that were forced to close, or are suffering extreme financial difficulty, as a result of COVID-19. ■

**PEERS and CHEERS SUBMISSIONS**  
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# Professional Discipline Digest

VOLUME 29 NUMBER 2 | By MICHAEL F. ROMANO

**Reprimand** ordered after hearing for violation of Rule 4.2 of the Rules of Professional Conduct by communicating with a represented party without consent of counsel in that the attorney negotiated and obtained the signature of a party on a divorce agreement while the party was still represented by counsel; and for violation of Rule 8.4(3) by failing to fully inform the court that the attorney had mistakenly worked out an agreement with a still represented party and by failing to inform the court that counsel for the party did not know the parties were intending to finalize a divorce; and for violation of Rule 8.1(2) of the Rules of Professional Conduct by failing to respond to a lawful demand for information and Practice Book § 2-32(a)(1) by failing to file an answer to the grievance complaint. *Chomick vs. Tony Anthony*, #18-0226 (9 pages).

**Attorney** ordered by agreement to attend a three-credit continuing legal education course (CLE) in Connecticut law for violation of Rule 8.1 of the Rules of Professional Conduct. *Sawyer vs. Jonathan Lee Hull*, #18-0377 (11 pages).

**Attorney** ordered by agreement to attend a three-credit CLE in ethics for violation of Rules 1.1, 3.3 and 8.4(3) and (4) of the Rules of Professional Conduct. *Waterbury vs. Ross W. Hakala*, #18-0454 (11 pages).

**Attorney** ordered by agreement to attend a three-credit continuing legal education course (CLE) in ethics and to make restitution in the amount of five hundred dollars for violation of Rule 1.5(b) of the Rules of Professional Conduct by failing to provide a fee agreement or a billing statement to the complainant. *Allen vs. Walter Ambrose Shalvoy, Jr.*, #18-0662 (10 pages).

**Presentment** ordered after hearing for violation of Rule 1.3 of the Rules of Professional Conduct by failing to record a warranty deed and a mortgage in a real estate transaction, failing to pay conveyance and property taxes, failing to prepare accurate documents, all of which constitutes a lack of diligence, and for violation Rule 8.4(4) in that the above behavior constituted conduct prejudicial to the administration of justice, and for violation of Practice Book § 2-32(a)(1) for failing to file an answer to the grievance complaint. *Champagne vs. Alan Michael Giacomi*, #18-0703 (7 pages).

**Presentment** ordered by agreement to consolidate finding of probable cause for violations of Rules 3.1 and 8.4(3) of the Rules of Professional Conduct with all pending disciplinary matters before the court. *Schoenhorn vs. Neil Johnson*, #19-0122 (8 pages).

**Attorney** ordered by agreement to attend a three-credit continuing legal education course (CLE) in ethics for alleged violation of Rule 8.4(4) of the Rules of Professional Conduct and Connecticut Practice Book § 2-32(a)(1). *Bouteiller vs. M. Leonard Caine III*, #18-0751 (8 pages).

**Presentment** ordered after hearing for violation of Rule 1.3 of the Rules of Professional Conduct by delaying and failing to record an attachment until after the property had been conveyed; by violation of Rule 1.4 of the Rules of Professional Conduct by failing to keep the complainant reasonably informed regarding the status of the representation and by being non-responsive to the complainant for a period of time; and for violation of Rule 8.1(2) of the Rules of Professional Conduct and Practice Book § 2-32(a)(1) by failing to re-

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

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

A complete reprint of each decision may be obtained by visiting [jud.ct.gov/sgc-decisions](http://jud.ct.gov/sgc-decisions). Questions may be directed to editor-in-chief, Attorney John Q. Gale, at [jgale@jgglaw.com](mailto:jgale@jgglaw.com).

spond to grievance complaint without demonstrating good cause. Panel directed Disciplinary Counsel to add include a violation of Rule 1.1 to the presentment. *Lemire v. Kelly Anne Carden*, #18-0464 (5 pages).

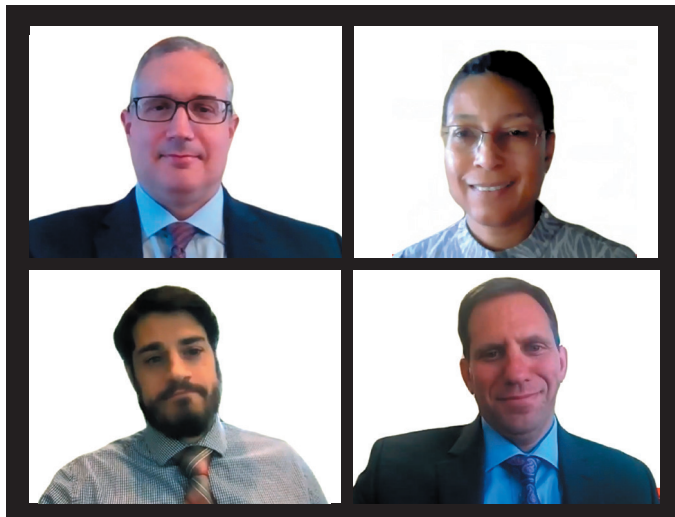
**Presentment** ordered after review of exhibits filed at hearing where neither complainant nor respondent appeared, finding that the attorney violated Rule 3.4(3) of the Rules of Professional Conduct by failing to comply with court ordered child support payments and court ordered costs resulting in unpaid obligations of \$127,747.50 CAD, which failure constitutes conduct prejudicial to the administration of justice in violation of Rule 8.4(4) of the Rules of Professional Conduct. *Jiang v. Eric M. Parham*, #18-0644 (5 pages).

*Continued on page 44 →*



# CBA Holds 2020 Annual Meeting

The Connecticut Bar Association held its 2020 Annual Meeting on June 8 to thank the 2019-2020 CBA officers for their service and install the 2020-2021 CBA officers.



*Outgoing Officers:*

*Vincent P. Pace (Treasurer 2016-2020), Dahlia Grace (Secretary 2018-2020), David A. McGrath (Assistant Secretary-Treasurer 2019-2020), and Jonathan M. Shapiro (Immediate Past President 2019-2020)*

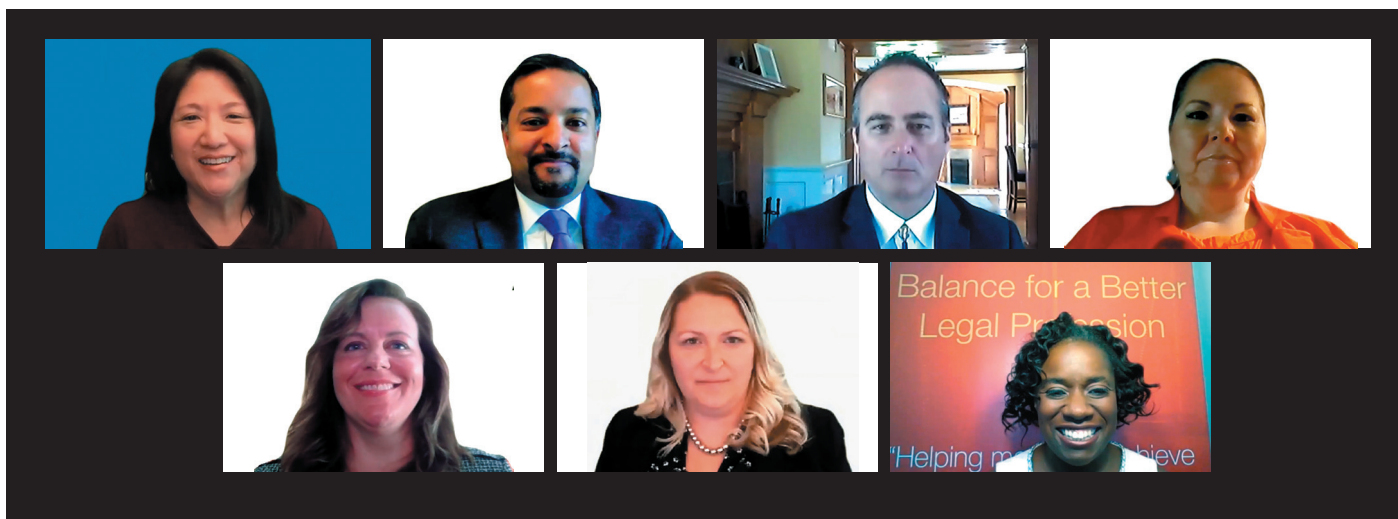
**E**XECUTIVE DIRECTOR Keith J. Soressi welcomed over 150 attendees to the virtual event and began with a moment of silence to honor those that have passed away this past bar year.

Ndidi N. Moses, president for the 2019-2020 bar year, then provided a year in review in reference to her theme for her presidency, “Balance for a Better Legal Profession,” which focused on “balancing customs with innovation, work with play, tribalism with community, networking to advance our own goals and being unofficial ambassadors for others, individual freedom with collective responsibility, listening and speaking.”

She went on to address the recent demonstrations throughout the country in response to the death of George Floyd in regard to the role of the profession: “As lawyers...we swore an oath to ensure the rule of law is protected by ensuring the scales of justice are balanced. So it follows logically that when those scales are unbalanced, it is incumbent on us as a profession to realign them to ensure they are balanced once again.”

President Moses then announced that the CBA has created a Policing Task Force, which will convene community and law enforcement leaders in an earnest and frank dialogue about where we find ourselves in 2020. Learn more on page 7 of the News & Events section of this issue.





Plaques were then presented to the outgoing officers for their dedicated service to the organization: Vincent P. Pace (Treasurer 2016-2020), Dahlia Grace (Secretary 2018-2020), David A. McGrath (Assistant Secretary-Treasurer 2019-2020), and Jonathan M. Shapiro (Immediate Past President 2019-2020).

President Moses virtually passed the gavel to incoming President Amy Lin Meyerson, who was introduced by Cindy Citrone, founder and chief executive officer of Citrone 33 and EMBRACE Pittsburgh. As longtime friends, Ms. Citrone reflected on their mutual philanthropic work and said of the incoming president, "When Amy commits to something, she gives it 100 percent and makes sure it gets done and gets done the right way."

The 97th president of the association, Amy Lin Meyerson, is a solo practitioner of The Law Office of Amy Lin Meyerson in Weston where she practices in the area of domestic corporate law, concentrating in formation and growth of emerging businesses, mergers and acquisitions, corporate finance, computer law, and venture capital.

The new president shared her vision for the 2020-2021 bar year; she explained that throughout her career, she has "seen firsthand the power of connecting with others involved in the law and legal community, and the resulting success in promoting justice and strengthening our legal profession. It is, with that in mind, that this year's theme is **Connect to Succeed!**" which reinforces the CBA's commitment to ensure the benefits of bar membership are realized and to serve as the voice of the legal profession within the organized bar and with the public in Connecticut. President Meyerson then introduced the "ABC's of the CBA," which outline the principles of the theme: **A**dvance Justice, **B**roaden Networks, and **C**hampioning Our Communities.

She concluded her remarks with a note to her CBA family: "as we move strategically forward, many things about this bar year will

*2020-2021 Officers:*

*Above: President Amy Lin Meyerson; President-elect Cecil J. Thomas; Vice President Daniel J. Horgan; Treasurer Margaret I. Castinada*

*Below: Secretary Erin O'Neil-Baker; Assistant Secretary-Treasurer Amanda G. Schreiber; and Immediate Past President Ndidi N. Moses*

*Right: 2020-2021 CBA President Amy Lin Meyerson's theme for her bar year is **Connect to Succeed!***



not look anything like the past 96 CBA years. But regardless of the adaptations we have to make, you can rely upon us to continue to deliver the outstanding services and programs you need to be the exceptional legal professionals our citizens and communities rely upon. With your safety, health, and overall well-being at the forefront of our minds, we will plan and shape our legal landscape to bring you the full benefits of CBA membership. I believe that we will rise to meet this challenge through perseverance and innovation."

President Meyerson then introduced her fellow incoming CBA officers: President-elect Cecil J. Thomas, Vice President Daniel J. Horgan, Treasurer Margaret I. Castinada, Secretary Erin O'Neil-Baker, Assistant Secretary-Treasurer Amanda G. Schreiber, and Immediate Past President Ndidi N. Moses.

CBA Executive Director Keith J. Soressi closed the meeting by stating, "I am excited about the future of the bar and the profession as a whole." ■

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**Wednesday, July 22**  
6:00 p.m. - 8:00 p.m.  
Zoom Meeting

Join us to honor this year's impressive awardees, as well as attorneys observing the 50th anniversary of their admission to practice in Connecticut.

**Learn more and register online at**  
**[ctbar.org/awards](http://ctbar.org/awards).**

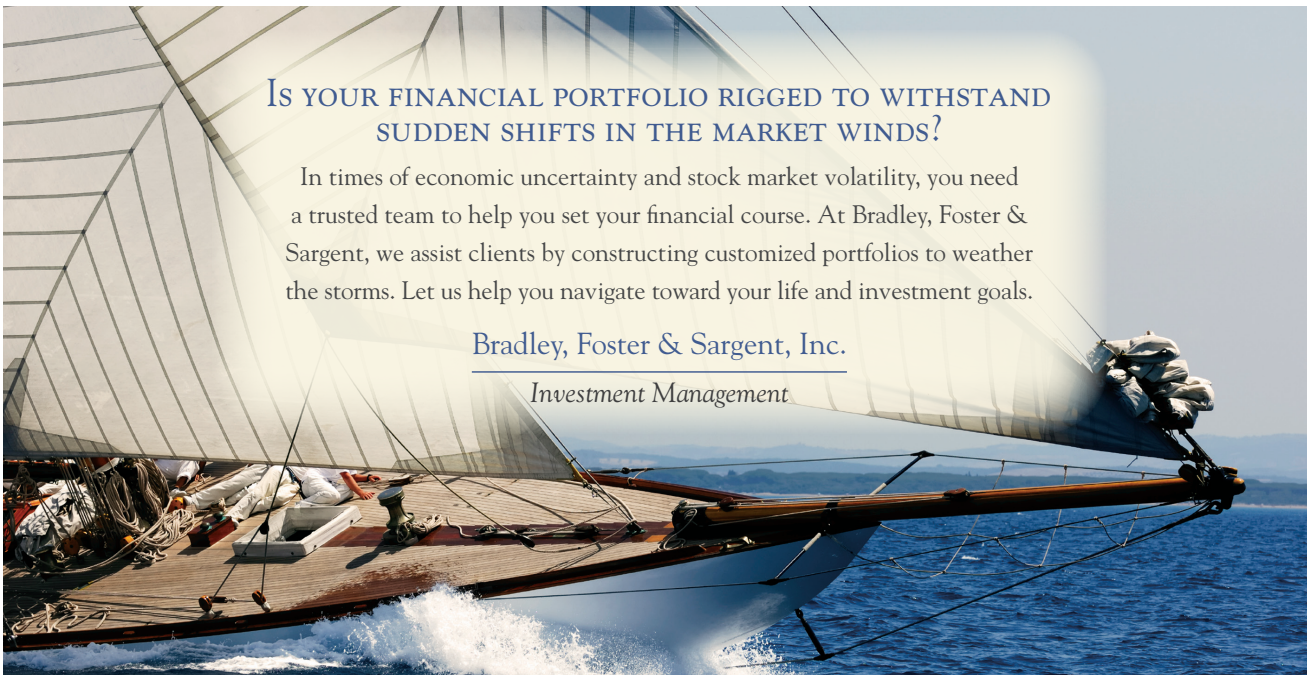


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## Join a Section

**C**BA sections provide members with networking and professional development opportunities within the organization. There are more than 40 substantive sections in a range of practice areas and members can join at any time during the bar year for an additional fee. Students and members in their first year of bar admittance may join up to three sections for free.

Each section has its own member-exclusive landing page with access to resources such as leadership contact information, a directory of section members, upcoming events, meeting minutes, related latest news, and SideBar.

### Online Discussion Board

SideBar is an e-mail listserv tool that provides section members with the ability to communicate electronically with other section members. Members can post upcoming meeting notices, share documents and industry news, seek or exchange referrals, and much more. The listserv can



function through e-mail or by logging into the online community at [sidebar.ctbar.org](http://sidebar.ctbar.org) where past conversations and documents are archived and can be easily accessed. This tool is invaluable in expanding your network by connecting with colleagues daily.

### Meetings

Many sections meet regularly either in-person (when adherent to public safety

standards) or through conference/zoom calls. Meetings allow members to advance their practice through networking with colleagues in a non-adversarial setting, remain update-to-date on the latest developments in the law, and have the opportunity to earn CLE credit.

Over half of all CBA members are in at least one section. Learn more and join your colleagues today at [ctbar.org/sections](http://ctbar.org/sections). ■

## Available Sections

Administrative Law	Commercial Law and Bankruptcy	Estates & Probate	Intellectual Property	Solo and Small Firm
Alternative Dispute Resolution	Construction Law	Family Law	International Law	Sports & Entertainment Law
Animal Law	Consumer Law	Federal Practice	Labor & Employment Law	Tax
Antitrust and Trade Regulation	Criminal Justice	Financial Institutions	LGBT	Veterans and Military Affairs
Appellate Advocacy	Disability Law	Franchise, Distribution & Dealer Law	Litigation	Women in the Law
Business Law	Education Law	Health Law	Media and The Law	Workers' Compensation
Child Welfare and Juvenile Law	Elder Law	Human Rights & Responsibilities	Paralegals	Young Lawyers
Commercial Finance	Energy, Public Utility and Communications Law	Indian Law	Planning & Zoning	
	Environmental Law	Insurance Law	Professional Discipline	
			Real Property	

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CONFERENCE



**The Connecticut Legal Conference is the CBA's largest event, with over 40 top-rate practical programs, sponsors and exhibitors, and compelling plenary speakers.**

**Due to the COVID-19 pandemic this year's conference will be held virtually from September 14-16, 2020. The safety of attendees is of the utmost importance to the CBA.**

## **The virtual Connecticut Legal Conference will include:**

- Over 40 practical CLE seminars in 11 tracks
- National negotiation instructors from SAB Negotiation Group
- Full track of ethics seminars, including Safe Harbors and Calm Seas  
Attend this seminar (PE01 or PE04) and earn up to 7.5 percent premium credit off two years on professional liability insurance offered through this CBA exclusively endorsed program, underwritten by CNA.
- Annual review of case law
- An opportunity to connect with exhibitors to learn about the latest services to enhance your practice of law
- Network virtually with conference attendees

## **Cost**

**\$199 3-Day All Conference Access Member Rate**

9 live credits and access to all conference seminar recordings\*

**\$89 1-Day All Day Access Member Rate**

3 live credits and access to seminar recordings presented on day of conference purchased\*

**Learn more and register at [ctlegalconference.com](http://ctlegalconference.com)**

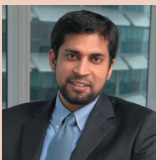
\*Access expires 12/31/20





## Featured Speakers

**Shahzad Bhatti, Celia Chase, and Haroon Kalam**  
SAB Negotiation Group



Shahzad Bhatti is an international trainer who focuses on social impact initiatives to improve the state of the world. Attorney Bhatti is a former lecturer on negotiation skill and theory at Harvard Law School and has worked in private equity.



Celia Chase is a seasoned leader, who has held senior-level positions in the technology industry and has an in-depth background in strategy and marketing. She has created her career building and managing global, high-performing teams that focus on bottom-line growth.



Haroon Kalam is a senior consultant at the SAB Negotiation Group and works with his Fortune 500 clients in the areas of procurement, sales, and digital and emerging technologies. He has published on how organizations use data-driven techniques to harness technology and market and reach new audiences.

**Don't Miss Their Seminar—Effective Negotiating: Dynamic Negotiation Training**  
*Sponsored by Kronholm Insurance Services*

# Seminars by Track

## The President's Track

### **PT01 AAA Roadside Assistance for the Legal Profession: Advances in Technology, Artificial Intelligence, and Alternative Fee Arrangements**

CLE Credit: 2.0 CT (Ethics); 2.0 NY (1.0 Ethics; 1.0 D&I)

### **PT02 Connecticut's Eviction Crisis and the Right to Counsel Movement**

CLE Credit: 1.0 CT (Ethics); 1.0 NY (D&I)

### **PT03 Strategies for Teaching Implicit Bias to Legal Professionals**

CLE Credit: 1.0 CT (Ethics); 1.0 NY (D&I)

### **PT04 Then They Came for Us: The Perils of Silence**

CLE Credit: 2.0 CT (Ethics); 2.0 NY (D&I)

## The Business Law Track

### **BL01 Navigating Opportunities and Risks Presented by Artificial Intelligence (AI): Intellectual Property, Data, and Regulatory Challenges**

CLE Credit: 2.0 CT (General); 2.0 NY (1.0 AOP; 1.0 LPM)

### **BL02 State and Local Responses to the Tax Cuts and Jobs Act**

CLE Credit: 1.0 CT (General); 1.0 NY (AOP)

### **BL03 The End of the Commercial Relationship Test and Other Recent Significant Developments in CUTPA Jurisprudence**

CLE Credit: 2.0 CT (General); 2.0 NY (AOP)

### **BL04 Anatomy of a Trademark Case**

CLE Credit: 2.0 CT (General); 2.0 NY (AOP)

## The Diversity and Inclusion Track

### **DI01 Women and the Legal Profession over the Decades**

CLE Credit: 2.0 CT (Ethics); 2.0 NY (D&I)

### **DI02 The Business Case for Lawyer Well-Being**

CLE Credit: 1.0 CT (Ethics); 1.0 NY (Ethics)

### **DI03 Intro to Disability Awareness and Etiquette for Businesses and Individuals**

CLE Credit: 1.0 CT (Ethics); 1.0 NY (D&I)

## The Ethics Track

### **PE01 Safe Harbors and Calm Seas**

CLE Credit: 2.0 CT (Ethics); 2.0 NY (Ethics)

### **PE02 Ethics: 2019—The Year in Review**

CLE Credit: 1.0 CT (Ethics); 1.0 NY (Ethics)

### **PE03 The Ethical Duty of Technology Competence: What Every Lawyer Needs to Know**

CLE Credit: 1.0 CT (Ethics); 1.0 NY (Ethics)

### **PE04 Safe Harbors and Calm Seas**

CLE Credit: 2.0 CT (Ethics); 2.0 NY (Ethics)

## The Family Law Track

Sponsored by Management Planning Inc

### **FL01 Domestic Violence in 2020: What Every Family Lawyer Needs to Know**

CLE Credit: 2.0 CT (General); 2.0 NY (AOP)

### **FL02 Alimony Retrospective: A Discussion on Case Law and Settlement Strategies since the Implementation of the Tax Cuts and Jobs Act**

CLE Credit: 1.0 CT (General); 1.0 NY (0.5 AOP; 0.5 Skills)

### **FL03 Defining an Emergency: Navigating the Drafting and Prosecution of Emergency Motions in Family Court**

CLE Credit: 1.0 CT (General); 1.0 NY (AOP)

### **FL04 Family Law Year in Review**

CLE Credit: 2.0 CT (General); 2.0 NY (AOP)

### **FL05 Social Security and Divorce: A Primer for the Divorce Practitioner**

CLE Credit: 1.0 CT (General); 1.0 NY (AOP)

## The Hot Topics Track

Sponsored by Huseby

### **HT01 Coverage for an American Epidemic: Insurance Coverage Issues Stemming from Opioid Litigation**

CLE Credit: 1.0 CT (General); 1.0 NY (AOP)

### **HT02 Regulatory Changes on the Horizon**

CLE Credit: 1.0 CT (Ethics); 1.0 NY (Ethics)

### **HT03 Accessing Community-Based Care for Disabled Individuals under Age 65**

CLE Credit: 1.0 CT (General); 1.0 NY (AOP)

### **HT04 Administrative Hearings under the CT Uniform Administrative Procedure Act (UAPA)—Winning Strategies Update**

CLE Credit: 1.0 CT (General); 1.0 NY (Skills)

### **HT05 Seeing All Sides of Investments in Early Stage Companies**

CLE Credit: 1.0 CT (General); 1.0 NY (AOP)

### **HT06 An Introduction to Gaming Law**

CLE Credit: 2.0 CT (General); 2.0 NY (AOP)

## The Legal Technology Track

### **LT01 Working with 21st Century Clients**

CLE Credit: 2.0 CT (1.0 Ethics; 1.0 General); 2.0 NY (0.5 D&I; 0.5 Ethics; 1.0 LPM)

### **LT02 Casemaker: Helping in Your Everyday Practice**

CLE Credit: 1.0 CT (General); 1.0 NY (LPM)

### **LT03 Artificial Intelligence: How It Is Going to Change How You Practice Law**

CLE Credit: 1.0 CT (0.5 Ethics; 0.5 General); 1.0 NY (0.5 Ethics; 0.5 LPM)

### **LT04 Cybersecurity: Understanding and Reducing Lawyers' Essential Risks**

CLE Credit: 2.0 CT (1.0 Ethics; 1.0 General); 2.0 NY (1.0 AOP; 1.0 Ethics)

## Don't Miss These Seminars

### The Negotiation Track

#### **NE01 Effective Negotiating: Dynamic Negotiation Training by the SAB Group**

*CLE Credit: 2.0 CT (General); 2.0 NY (Skills)*

#### **NE02 Appellate Oral Argument from the Inside Out**

*CLE Credit: 1.0 CT (General); 1.0 NY (Skills)*

#### **NE03 Representing Clients in Mediation: A Different Kind of Advocacy**

*CLE Credit: 2.0 CT (General); 2.0 NY (Skills)*

#### **NE04 Effective Negotiating: Dynamic Negotiation Training by the SAB Group**

*CLE Credit: 2.0 CT (General); 2.0 NY (Skills)*

### The Real Property/Environmental Law Track

*Sponsored by CATIC*

#### **RP01 Real Property Case Law Year in Review and What You Need to Know about the Various Form Contracts**

*CLE Credit: 2.0 CT (General); 2.0 NY (AOP)*

#### **RP02 What Every Practitioner Should Know about the Standards of Title**

*CLE Credit: 1.0 CT (General); 1.0 NY (AOP)*

#### **RP03 Ethical Issues That Can Arise in Commercial Real Estate Transactions**

*CLE Credit: 2.0 CT (Ethics); 2.0 NY (Ethics)*

### The Workplace Track

*Sponsored by Injured Workers Pharmacy LLC*

#### **WP01 Current Issues in the Workers' Compensation System**

*CLE Credit: 2.0 CT (General); 2.0 NY (AOP)*

#### **WP02 The ADA at 30: Hot Topics**

*CLE Credit: 1.0 CT (General); 1.0 NY (AOP)*

#### **WP03 The (Usually) Avoidable Catastrophe: Workers' Compensation Offsets in Social Security Disability Claims**

*CLE Credit: 1.0 CT (General); 1.0 NY (AOP)*

### The Updates in Case Law Track

#### **CL01 Annual Review of Connecticut Supreme and Appellate Court Cases**

*CLE Credit: 1.0 CT (General); 1.0 NY (AOP)*

#### **CL02 Commercial Law and Bankruptcy: The Year in Review**

*CLE Credit: 2.0 CT (General); 2.0 NY (AOP)*

#### **CL03 Updates in Construction Law: A Review of Key Construction Law Decisions in the Past Year**

*CLE Credit: 2.0 CT (General); 2.0 NY (AOP)*

#### **CL04 Land Use Law in Review: Important Caselaw Decisions and Impacts of the COVID-19 Executive Orders**

*CLE Credit: 2.0 CT (General); 2.0 NY (AOP)*

### The Business Law Track

#### **BL01 Navigating Opportunities and Risks Presented by Artificial Intelligence (AI): Intellectual Property, Data, and Regulatory Challenges**

*Presented by the Intellectual Property Section*

##### **About the Program**

Principally due to the success of various machine learning techniques, AI is no longer a technology of the future. Industrial actors increasingly adopt AI-based applications to improve their business operations or bring innovative products to market. And consumers routinely engage with AI that power speech recognition systems, social media feeds, mortgage apps, and myriad others. Hundreds of billions of dollars have been invested in AI development this decade alone, and global business value derived from AI is reported to have exceeded \$1 trillion in 2018 and is forecast to reach almost \$4 trillion in 2022. While the economic value of AI technology is unquestionable, it poses unique challenges with respect to intellectual property, managing and protecting data, and regulatory oversight.

This program will provide practitioners with practical guidance for identifying and managing legal risks and opportunities relating to AI systems by focusing on intellectual property, data privacy and security, and current and future regulatory environments. In addition, specific attention will be given to issues affecting digital health and insurance technologies.

##### **You Will Learn**

- About legal and business considerations in protecting intellectual property, including patents and trade secrets, in AI or machine learning (ML) systems, and managing exposures to other's intellectual property
- About the content laws and regulations affecting the access to and use of data for training AI or ML systems and data output for such systems
- About current regulatory requirements and future considerations relating to the use of AI and ML systems, including in the areas of digital health and insurance technologies

##### **Speakers**

**Matthew F. Fitzsimmons**, Shipman & Goodwin LLP, Hartford  
**Bill Goddard**, Electromagnetic Advisors Inc., Hartford  
**Thomas Hedemann**, Axinn Veltrop & Harkrider LLP, Hartford  
**Peter Kochenburger**, UConn School of Law, Hartford  
**Matthew Murphy**, Axinn Veltrop & Harkrider LLP, Hartford  
**Brooke J. Oppenheimer**, Axinn Veltrop & Harkrider LLP, Hartford  
**Ankur Parekh**, Pratt & Whitney, East Hartford  
**Jeremy Pearlman**, Office of the Connecticut Attorney General, Hartford

*CLE Credit: 2.0 CT (General); 2.0 NY (1.0 AOP; 1.0 LPM)*

A complete listing of all of the courses at the Connecticut Legal Conference, including seminar descriptions and speakers, can be found online at [ctlegalconference.com](http://ctlegalconference.com).



# Don't Miss These Seminars (continued)

## The Diversity and Inclusion Track



### DI01 Women and the Legal Profession over the Decades

Presented by the Diversity & Inclusion Committee and the Women in the Law Section

#### About the Program

As Sarah Grimke once said: "But I ask no favors for my sex... All I ask of our brethren is, that they will take their feet from off our necks, and permit us to stand upright..." In honor of the 19th Amendment Centennial, where women were granted the right to vote, the Diversity & Inclusion Committee and the Women in the Law Section present a moderated intimate conversation about women and diversity in the legal profession over several decades.

#### You Will Learn

- How the legal profession has changed over the decades as it relates to women
- What more needs to be done within the legal profession for women
- What attendees can do to move the needle to a more inclusive legal profession of diverse women

#### Speakers

**Hon. Joette Katz (Ret.)**, Shipman & Goodwin LLP, Hartford

**Tanya A. Bovée**, Jackson Lewis PC, Hartford

**Margaret Castinado**, Office of the Public Defender, New Haven

**Je'Quana S. Orr**, Robinson+Cole, Hartford

**Michelle Querijero**, Allied World Assurance Company, Farmington

**Diane W. Whitney**, Pullman & Comley LLC, Hartford

#### Moderator

**Anika Singh Lemar**, Yale Law School, New Haven

*CLE Credit: 2.0 CT (Ethics); 2.0 NY (D&I)*

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## The Hot Topics Track

### HT01 Coverage for an American Epidemic: Insurance Coverage Issues Stemming from Opioid Litigation

Presented by the Insurance Law Section

#### About the Program

Drug overdose is now the leading cause of death for Americans under the age of 50. This epidemic has sparked over 3,000 lawsuits throughout the nation against pharmaceutical companies, suppliers, distributors, and health care providers for their alleged role in contributing to the epidemic. With the targets of these lawsuits vigorously defending these suits, it was inevitable that complex insurance coverage issues would emerge. This program will analyze the insurance coverage issues implicated by the opioid epidemic, including an overview of the existing litigation and decisions to date.

#### You Will Learn

- The general background behind the opioid crisis
- An overview of the litigation the opioid crisis has spawned
- The insurance coverage issues raised by the opioid epidemic and existing litigation
- Anticipated future litigation and the coverage issues that will likely result

#### Speakers

**Daniel E. Bryer**, Robinson+Cole, New York, NY

**Brian J. Clifford**, Saxe Doernberger & Vita PC, Trumbull

**Kevin P. Dean**, Marsh USA Inc., New York, NY

*CLE Credit: 1.0 CT (General); 1.0 NY (AOP)*

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## The Hot Topics Track



### HT02 Regulatory Changes on the Horizon

#### About the Program

Several states are moving forward with exploring new regulations for the profession. Connecticut has instituted a new task force to look at the practice of law. This seminar will explore regulatory changes being proposed in a few states. We will discuss why Supreme Courts are considering these changes and the implications it will have for lawyers from small and large firms.

#### You Will Learn

- About how the profession may change how it delivers legal services in the next few years
- How law firms can plan for the future in a new regulatory environment

#### Speakers

**Jayne Reardon**, Illinois Supreme Court Commission on Professionalism, Chicago, IL

**Frederic S. Ury**, Ury & Moskow LLC, Fairfield

*CLE Credit: 1.0 CT (Ethics); 1.0 NY (Ethics)*

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## The Hot Topics Track

### HT03 Accessing Community-Based Care for Disabled Individuals under Age 65

Presented by the Elder Law Section

#### About the Program

This program will include an overview of Connecticut waiver programs, the functional and financial eligibility requirements for programs, and when these programs apply and when they don't.



## You Will Learn

- What a waiver is and when it will and won't help
- How to get personal care assistance for individuals under 65
- Which Husky is which, what's a coverage group, and why it matters
- What a client can do short of a nursing home

## Speaker

**Lisa Nachmias Davis**, Davis O'Sullivan & Priest, New Haven

*CLE Credit: 1.0 CT (General); 1.0 NY (AOP)*

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## The Legal Technology Track

### LT01 Working with 21st Century Clients



*Presented by the Litigation Section*

#### About the Program

Clients today have much different expectations than clients did a generation or two ago. Learn from industry leaders in the law and law firm management how to anticipate, meet, and exceed those evolving expectations.

#### You Will Learn

- Alternate fee arrangements—what works, what doesn't, and what clients want, need, and expect
- Cutting edge technology—what you need to know and what you need to have
- Diversity—what clients expect and how it benefits both of you

#### Speakers

**David P. Atkins**, Pullman & Comley LLC, Bridgeport

**Silvia L. Coulter**, LawVision, Manchester, MA

**An-Ping Hsieh**, UConn School of Law, Hartford

#### Moderator

**James F. Sullivan**, Howard Kohn Sprague & FitzGerald LLP, Hartford

*CLE Credit: 2.0 CT (1.0 Ethics; 1.0 General); 2.0 NY (0.5 D&I, 0.5 Ethics; 1.0 LPM)*

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## The Negotiation Track

### NE03 Representing Clients in Mediation: A Different Kind of Advocacy

#### About the Program

Representing clients before and during negotiation in a mediation setting calls for a very specific form of advocacy, different from traditional litigation advocacy. Lawyers need advanced negotiation skills and a sophisticated understanding of the role and potential power of the mediator. This program is presented by members of the Connecticut Mediation

Association, who will present the theory of what “mediation advocacy” should be, both in the preparation and counseling phases and during the mediation itself. We will demonstrate and deliver “best practices” for ethical and effective representation in civil and family mediation that enhance the promise and principles of mediation rather than undermine the potential for resolution and creative problem-solving that mediation offers.

#### You Will Learn

- Elements of interested-based negotiation, what makes for an effective mediation, and the proper role of a mediator
- Best practices for counseling and preparing clients for the negotiation that will occur during the mediation, including their active role in the mediation sessions
- Best practices for working with a client, counterpart, and mediator during mediation sessions in order to advance negotiation and a problem-solving environment, rather than engaging in counterproductive behaviors more typical and appropriate for a courtroom

#### Speakers

**Hon. Lynda B. Munro (Ret.)**, Pullman & Comley LLC, Bridgeport

**Brendan Holt**, Holt Law LLC, Woodbridge

**Carolyn Wilkes Kaas**, Quinnipiac University School of Law, Hamden

**Andrew Marchant-Shapiro**, River Bridge Resolutions LLC, Wallingford

**Brendan J. Murphy**, Murphy Law Center, Willimantic

*CLE Credit: 2.0 CT (General); 2.0 NY (Skills)*

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## The Workplace Track

### WP02 The ADA at 30: Hot Topics

*Presented by the Labor and Employment Section*

#### About the Program

This presentation will provide a brief overview of the ADA, past and present, the implications of the ADA on assistance animals in the workplace, and providing leaves of absence as a reasonable accommodation.

#### You Will Learn

- ADA historical and present overview
- Parameters of assistance animals in the workplace
- Granting leave of absence requests as a reasonable accommodation

#### Speakers

**Meredith G. Diette**, Berchem Moses PC, Milford

**Michelle M. Duprey**, City of New Haven, New Haven

#### Moderator

**Paula N. Anthony**, Berchem Moses PC, Milford

*CLE Credit: 1.0 CT (General); 1.0 NY (AOP)*

SPECIAL FEATURE AT THE CLC

# AND THEN THEY CAME FOR US: THE PERILS OF SILENCE

By Amy Lin Meyerson

*“Don’t be afraid to  
speak up.”*

— Fred T. Korematsu

I HAD THE HONOR OF GETTING TO KNOW FRED T. KOREMATSU and his family, including his daughter Dr. Karen Korematsu, though our work with NAPABA and NLF. Join us as we celebrate Fred’s legacy and speak up!

On February 19, 1942, in response to the Imperial Japanese Navy’s attack on Pearl Harbor, President Franklin D. Roosevelt issued Executive Order 9066,<sup>1</sup> which authorized and directed the US Secretary of War to remove over 120,000 Americans of Japanese ancestry, including 70,000 American citizens by birth, living on the US West Coast, from their homes. Their assets were frozen and they were imprisoned in detention camps.<sup>2</sup> Approximately 17,000 of those incarcerated were under the age of 10. Anyone who was at least ¼th Japanese ancestry was incarcerated.

On March 27, 1942, General John L. DeWitt issued an order making it a crime for Japanese Americans to leave Military Area 1 (California, Oregon, Washington, and Arizona).<sup>3</sup> DeWitt concluded that their race made Japanese Americans inherently disloyal:

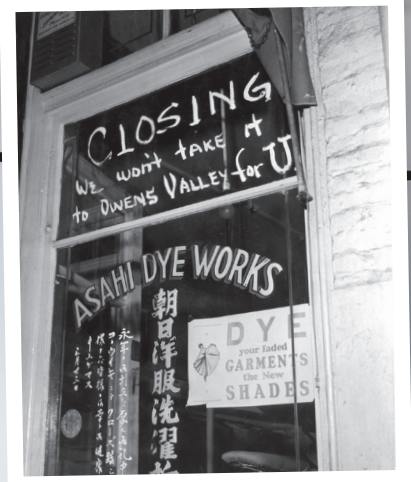
The Japanese race is an enemy race and while many...born on United States soil, possessed of...citizenship, have become “Americanized,” the racial strains are undiluted....It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies, of Japanese extraction, are at large today....The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.<sup>4</sup>

At the age of 23, Fred T. Korematsu refused to go to the government’s incarceration camps for Japanese Americans. On May 30, 1942, while waiting to meet his girlfriend on a street, he was arrested and convicted of defying the government’s order.<sup>5</sup> Fred appealed his case all the way to the United States Supreme Court asserting that Executive Order 9066 violated the Fifth Amendment of the US Constitution. In 1944, the US Supreme Court ruled against him, passively accepting without question the government’s claim that the incarceration was justified due to military necessity.



Photo credits: travelarium/123rf.com, National Archives







## And Then They Came for Us

In his dissent, Justice Robert Jackson wrote: “the Court for all time has validated the principle of racial discrimination ... and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.”<sup>6</sup>

In 1945, the Supreme Court held in *Ex Parte Mitsuye Endo*, 323 U.S. 283 (1944) that the War Relocation Authority “has no authority to subject citizens who are concededly loyal to its leave procedure.”

The last Japanese American detention camp closed in March 1946. President Gerald Ford officially repealed Executive Order 9066 in 1976.

In 1983, Professor Peter Irons, a legal historian, together with researcher Aiko Herzig-Yoshinaga, discovered key documents that US intelligence agencies had hidden from the US Supreme Court in 1944. The documents consistently showed that Japanese Americans had committed no acts of treason to justify mass incarceration.

One such piece of hidden evidence was a report from the Federal Communications Commission’s radio intelligence chief, George Sterling, that stated:

The General launched into quite a discourse [about] radio transmitters operated by enemy agents...sending messages to ships at sea....Since General DeWitt...seemed to believe that the woods were full of Japs with transmitters, I proceeded to tell him and his staff...of the FCC monitoring program. I know it virtually astounded the General’s...officers....Frankly, I have never seen an organization that was so hopeless to cope with radio intelligence requirements....The personnel is unskilled and untrained. Most are privates who can read only ten words a minute. They know nothing

about...[the] technical subjects so essential to radio intelligence procedure. They take bearings...on Japanese stations in Tokyo...and report to their commanding officers that they have fixes on Jap agents operating transmitters on the West Coast. These officers, knowing no better, pass it on to the General, and he takes their word for it. It’s pathetic to say the least.<sup>7</sup>

With this new evidence, a pro bono legal team that included Don Tamaki, whose family was initially incarcerated in a horse stall at a Bay Area race track that had been converted into a temporary prison camp, Dale Minami and the Asian Law Caucus re-opened Korematsu’s 40-year-old case on the basis of government misconduct. On November 10, 1983, Fred’s conviction was overturned in a federal court in San Francisco. It was a pivotal moment in civil rights history.

Judge Marilyn Hall Patel of the Federal District Court wrote about the Supreme Court precedent:

It stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting our constitutional guarantees....[I]n times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability....[I]n times of international hostility...our institutions, legislative, executive and judicial, must be prepared to protect all citizens from the petty fears and prejudices that are so easily aroused.<sup>8</sup>

In 1988, Congress issued a formal apology and passed the Civil Liberties Act, awarding \$20,000 each to over 80,000 Japanese Americans as reparations for their treatment.

Seventy-four years later, in the so-called

“Travel Ban” case, Chief Justice Roberts described the *Korematsu* ruling as “... gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—“has no place in law under the Constitution.”<sup>9</sup> However, Roberts then summarily declared: “*Korematsu* has nothing to do with this case,”<sup>10</sup> and passively accepted the government’s argument that the Travel Ban was within the president’s expansive powers over matters of immigration and national security.<sup>11</sup> The Court did not ask whether the ban was necessary for the nation’s safety, or if it was instead, merely the fulfillment of a campaign promise for “a complete shutdown of Muslims entering the US.”<sup>12</sup> Critics pointed out that the Court’s unquestioning, passive deference to the government when it invokes “national security” was essentially what the Court did in *Korematsu*—to its everlasting shame,<sup>13</sup> raising the question of whether one injustice was exchanged with another.<sup>14</sup>

For his civil rights activism, in 1998, Fred T. Korematsu received the Presidential Medal of Freedom, the nation’s highest civilian honor, from President Bill Clinton. In 2010, the State of California passed the Fred Korematsu Day bill, making January 30 the first day in the United States named after an Asian American. Fred’s growing legacy continues to inspire people of all backgrounds and demonstrates the importance of speaking up to fight injustice.

CLC The Presidential Track Session PT04 will feature a film screening of *And Then They Came for Us: The Perils of Silence*, the ABA Silver Gavel award-winning documentary that tells the story of the Japanese Americans who were sent to concentration camps in the western interior of the United States during World War II.

Following the film, join in a discussion of the role of lawyers and rule of law with panelists, including Dr. Karen Korematsu,



Learn more about this topic at the 2020 Connecticut Legal Conference in **PT04 And Then They Came for Us: The Perils of Silence**. Register online at [ctlegalconference.com](http://ctlegalconference.com).



founder and executive director of the Fred T. Korematsu Foundation; Donald K. Tamaki of Minami Tamaki LLP; and Alicia R. Kinsman of the Connecticut Institute for Refugees and Immigrants. ■

*Amy Lin Meyerson is the solo practitioner of The Law Office of Amy Lin Meyerson in Weston and the 2020-2021 CBA president. She is a past president of the National Asian Pacific American Bar Association (NAPABA) and the NAPABA Law Foundation (NLF), and is a member of the American Bar Association's Representative and Observers to the United Nations.*

**NOTES**

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10. *Trump v. Hawaii*, 138 S. Ct. at 2423
11. *Trump v. Hawaii*, 138 S. Ct. at 2420
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EVICTED  
NOTICE

“For a man’s house is his castle, et domus sua cuique est tutissimum refugium (and each man’s home is his safest refuge)”

—Sir Edward Coke,  
*The Institutes of the Law of England* (1628)

“If incarceration had come to define the lives of men from impoverished black neighborhoods, eviction was shaping the lives of women. Poor black men were locked up. Poor black women were locked out.”

—Matthew Desmond,  
*Evicted: Poverty and Profit in the American City* (2016)

Image credit: mrdoomits/Stock/Getty Images Plus



# Connecticut's Eviction Crisis and the Right to Counsel Movement

I BEGAN MY CAREER AT GREATER HARTFORD LEGAL AID, INC. immediately after graduation from the University of Connecticut School of Law. I came to that position with many different interests and passions. Foremost was a desire to use my law degree to help those in need, informed by my personal beliefs and my law school experiences. American legal history was and remains a secondary interest, born from my academic pursuits prior to law school. It was in that latter context that I first learned the legal maxim quoted above, which finds expression in our jurisprudence in the early adoptions of English common law, in grievances identified within the Declaration of Independence, and in the Fourth Amendment's protections against unreasonable searches and seizures.

A few months after my admission to the Connecticut bar, I tried my first case, an eviction action for nonpayment of rent brought against my client, a Latinx single mother from Hartford. As we

prepared for trial, I learned that my client had actually paid all of her rent. My client found herself defending against a frivolous nonpayment of rent claim, likely because she had complained repeatedly to her landlord about the condition of her apartment. Thankfully, my client prevailed in that trial.

Since that early experience, I have represented thousands of tenants facing evictions and other housing issues. As I write this, the nation is reeling from the violent deaths of George Floyd, Ahmad Arbery, Breonna Taylor, and countless other Black men and women. My hope is that we will come out of these tragedies with a new resolve to identify and address structural racism's many pillars. When Mr. Desmond describes evictions as a corollary to mass incarceration, those words ring true, as I consider that the significant majority of our housing clients, and those that I have observed in Housing Court over the years, are people of color. A recent study conducted by the American Civil Liberties Union found that evictions are filed against Black female renters at double the rate of white renters or higher in 17 of 36 examined states.<sup>1</sup> For my clients, and for the tens of thousands of Connecticut residents facing eviction every year without an attorney, home is no "castle" and certainly no "safest refuge." The permanence and stability that those words evoke are empty promises.

Connecticut was in the midst of an unaddressed eviction crisis before the COVID-19 pandemic. According to 2016 data analysis by Princeton's University's Eviction Lab,<sup>2</sup> four of our major municipalities are among the top 100 cities with the highest eviction rates in the country. Waterbury ranks 22nd on the list, Hartford 29th, Bridgeport 39th, and New Haven 69th. In just these four cities alone, 6,531 households face eviction every year, or 18 households per day. On average, 20,000 evictions are filed throughout Connecticut every year.<sup>3</sup> A recent Connecticut Department of Housing survey of landlords estimates that the eviction rate in

BY CECIL J. THOMAS



## Eviction Crisis and the Right to Counsel Movement

Connecticut is expected to rise to almost double, or even triple,<sup>4</sup> the current rate as a result of the economic impact of COVID-19.<sup>5</sup> Such an onslaught will have a devastating impact on Connecticut's rental market, court system, and access to justice gap. Evictions also present significant and enduring harms for families. In addition to the very real threat of homelessness, unstable housing affects education, employment, health, and well-being. Records of a prior eviction operate much like a criminal record, barring tenants from securing better homes in the future.

Unlike criminal cases, there is no right to counsel, with a few limited exceptions, in civil legal matters like evictions. Evictions are particularly difficult to navigate without the assistance of counsel, as Connecticut's summary process laws allow for an expedited process, with a median duration of 29 days.<sup>6</sup> In recent years, the "Civil Gideon" movement has sought to address this problem. According to the 2017 Legal Services Corporation Justice Gap Report, 86 percent of civil legal problems reported by low-income Americans received inadequate or no legal help, and 71 percent of low-income households experienced at least one civil legal problem in the prior year.<sup>7</sup> The situation for tenants facing eviction is particularly stark. Studies estimate that more than 90 percent of tenants facing eviction, nationwide, do not have representation, while landlords are represented in approximately 90 percent of cases.<sup>8</sup>

In 2016, the Connecticut General Assembly undertook its own study of the state's access to justice gap, forming the Task Force to Improve Access to Legal Counsel in Civil Matters, led by CBA Past President Bill Clendenen and Dean Timothy Fisher of the University of Connecticut School of Law. The report made a number of recommendations to address the access to justice gap, including the establishment of a pilot project to provide counsel to tenants facing eviction:

Given the prevalence of housing-related legal issues among low-income Connecticut residents, the high percentage of cases in which landlords are represented, but tenants are not, the huge difference having a lawyer can make for a tenant being sued for eviction, and the devastating effects of eviction, homelessness, and prolonged housing instability, it is imperative that access to counsel for low-income tenants in eviction proceedings be improved dramatically. While significantly expanding access to counsel for tenants in eviction proceedings will require considerable initial funding, there is ample evidence that doing so will eventually save Connecticut far more than it will cost. To demonstrate the efficacy of such a resource-intensive initiative, we recommend establishing a smaller-scale pilot program similar to those that have recently been undertaken in New York City, Massachusetts, and Washington, D.C.<sup>9</sup>

Since this report was released almost four years ago, we have yet to implement this recommendation in Connecticut. In the meantime, New York City, San Francisco, Newark, Cleveland, and Philadelphia have all enacted laws guaranteeing counsel to tenants, while numerous other jurisdictions have made significant investments in increasing access to justice for tenants facing eviction.

The Connecticut Bar Association will be hosting a session on this topic at the Connecticut Legal Conference. John Pollock, coordinator of the National Coalition for a Civil Right to Counsel, will join me and other speakers to address Connecticut's eviction crisis and the growing civil right to counsel movement. Please consider joining us, to learn more, and to help advance this important access to justice issue here in Connecticut. ■

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*Cecil J. Thomas is the 2020-2021 president-elect of the Connecticut Bar Association. He 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.*

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# Effectively Persuading Different Counterparts: **NEGOTIATION TIPS FOR LAWYERS**

By the SAB Negotiation Group

**N**EGOTIATION IS FUNDAMENTALLY PREMISED ON THE IDEA OF PERSUADING your counterpart to agree with you because they feel you are right or because they think you are right. The challenge, of course, is that—no matter how big or sophisticated the negotiation is—there is a human being on the other side of the table and different people may react differently to the same negotiation or persuasion strategy. Most of us are already pretty good at strategically preparing for a negotiation that involves finding out what your counterparty needs to hear to be persuaded—What are their interests? What risks are keeping them up at night? What options might they accept, and what will they



## Negotiation Tips for Lawyers

reject out of hand? As important as these substantive factors are, there's something that many negotiators forget to take into account. Negotiating well isn't just about saying what the other person needs to hear, it's also how they need to hear it.

We've all had the experience of giving an argument or presentation to multiple people and seeing wildly different results. An explanation that leaves one person yawning will make another sit up and take notice; an argument may be a hit in one meeting and evaporate in another, making no particular impression one way or another. This may be the result of the content and diverse opinions about the merits of your position, but it could also be a problem of style. People simply respond differently to different styles of communication. Even if the content doesn't change, targeting the arguments and/or presentation to the audience can make a tremendous difference in how well it is received.

### A SINGLE TARGET APPROACH

A classic negotiation trap is that most people structure their communication around a single audience: themselves. In other words, we tend to argue or negotiate with other people in the way we ourselves would want to be persuaded—by using the kinds of arguments that we find persuasive and interesting. One common approach in persuasion is the use of research and data to support a position. Whereas you might find scientific support for an argument very compelling, and tend to look for validation by experts when you hear a new proposal, others may be looking for other forms of evidence to be convinced. If you were talking to yourself, that would be a great strategy. When you're working with someone else, however, it's likely to fail unless they share your perspective on what is persuasive. Every person you interact with has their own set of preferences, and you need to match your commu-



**Not every message is equally clear to every audience.**

nication with those preferences to get the most persuasive value out of your work.

Understanding another person's style of communication is not always easy. In an ideal world, where we have unlimited time and access to information, the best way to craft an argument for our counterpart would be to really study the way they communicate and analyze the questions they ask and the answers they give. But inside a negotiation there's rarely enough time to really develop a de novo analysis like that. Therefore, communication experts have created a variety of different models to use to do that work for you. There are several groups that have

come up with ways to segment the personality profiles of your counterparts (eg, Myers-Brigg, DISC, and the like), but not all have them are useful in the negotiation context. The three-part model we use at SAB is designed to give people a more sophisticated set of tools specific to the negotiation and persuasion context but without unnecessary complexity.

Regardless of the model you choose to use to categorize your counterparts quickly and accurately, it is best to focus on a few axes to try and pin down how the other person likes to be persuaded, such as:

- ◆ Are they focused on **past success** or **future results**?
- ◆ Do they make decisions based on **emotional** appeal (how they feel) or **logical** arguments (what they think)?
- ◆ Do they care more about a solution **that's easy to implement** or the **specific details** of how the proposal will be structured?



Learn more about this topic at the 2020 Connecticut Legal Conference in sessions NE01 or NE04—**Effective Negotiating: Dynamic Negotiation Training**. Register online at [ctlegalconference.com](http://ctlegalconference.com).



◆Do they care about **what others have done** in similar situations, or are they focused mostly on **their own situation**?

Answering questions like these makes it easier to figure out how to structure a presentation or argument to be as persuasive as possible, independent of the content, by tailoring it to match the other side's communication priorities. If you don't know the answer to one or more of the above questions, then a properly prepared negotiator comes to a meeting with an argument designed for every perspective. It feels like more work in the beginning but, as you get better at it, you will find that it flows much more naturally and gives you a lot more control over negotiations.

#### A BROADER APPROACH

While it's easier to carefully tailor communication when you're working with

a single counterpart, you will often find yourself dealing with more challenging scenarios—both because it's hard to pin down a person's style that exactly and because most negotiations involve multiple people on the other side of the table. Understanding the axes that drive differences in communication styles makes it easier to plan for diverse audiences as well as for individuals whose styles are unclear. Consider the questions we posed above. Should you focus on the big picture or details? Emotions or logic? The past, present, or future? When communicating to more than one person (especially a larger group), you will likely need to do all of the above. As much as possible, make an argument that appeals to each persuasion profile along the way, so that no matter how the other side likes to communicate, they'll find something persuasive in what you're saying. If you're working with a large group, you want the big pic-

ture thinkers and the detail people to each think you're talking to them. A structural model makes this easier by giving you targeted messages to send to each profile within the group.

We tend to negotiate with other people as if we were talking to ourselves. Understanding and applying the persuasion profiles described above allows us to control the dynamic so that the other side of the table hears our message as if they were speaking it themselves such that they are most likely to be persuaded. ■

*The SAB Negotiation Group is a specialized negotiation training and consulting firm founded by alumni of Harvard Law School which has consulted on over \$160 billion worth of transactions across six continents and 44 countries. They will be providing negotiation training at the Connecticut Legal Conference.*



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# Should Connecticut Have a Veteran Treatment Court?

By JOSHUA GRUBAUGH

**V**ETERAN TREATMENT COURTS (VTCs) have expanded across the country since the first one was created in 2008 by the presiding judge of the Buffalo, NY Drug and Mental Health Court. Judge Robert Russell had noted the growing number of veterans appearing on the docket and believed a mentoring program involving fellow veterans would lead to better outcomes for offenders and the state. Soon after launching the Buffalo VTC, other judges, veterans service organizations, and elected officials who had seen the same uptick in veteran criminal conduct copied the VTC model and deployed it throughout the US.

In the last 12 years, roughly 40 states have enacted some version of a VTC putting Connecticut in the minority of jurisdictions without one. Members of the Veterans and Military Affairs Section of the Connecticut Bar Association have formed an exploratory committee to investigate whether a VTC would better serve our veteran community and make sense for various stakeholders around the state. To be clear, this article is not an endorsement of VTCs for Connecticut. Rather, we write this article to share facts we have gathered, to solicit any ideas or feedback, and to start a conversation.

The information presented in this article is condensed from our own research, and from interviews of representatives who administer VTCs in New York, Rhode Island, New Hampshire, and Maine. We chose to focus on those four states to understand how others in the Northeast approach their programs.

When conducting these interviews, we wanted to understand how each VTC was organized, how they determined which veterans were eligible for services, who paid for the program, the



burden on judicial and other post-conviction state resources, and the effectiveness on veteran rehabilitation.

## The Structure of a VTC

A VTC is meant to provide support and services to veterans accused of criminal conduct. Modeled after drug and mental health courts, the idea is to emphasize treatment over punishment. What a VTC looks like in practice varies widely from jurisdiction to jurisdiction. The key components of a VTC are 1) judicial oversight, requiring regular court appearances for veterans to ensure compliance with a therapeutic program; 2) mentoring by fellow veterans, or someone associated with the VA or a veteran service organization; and 3) the ability of the veteran to be connected with social services as well as mental and medical care.





For New Hampshire, their VTCs grew out of specialty courts. In 2017, the legislature provided that superior and circuit courts may establish a separate track, or docket, for veterans with mental health and substance abuse issues. The legislation cited ten key components necessary for a VTC, which, essentially, ask for the same guidelines mentioned above: a non-adversarial approach to veterans' care, continued judicial monitoring, mental health, drug and alcohol education, and partnership with the VA and community-based organizations.

In New Hampshire, there is no bar to what crimes are eligible for participation. However, the need to have the prosecutor and judge buy-in to get the veteran in the program means serious violent offenses do not qualify. Entry into and completion of a

treatment program may occur before or after a plea or sentence, depending on the offense and location of the VTC. One year after completing all court ordered programs and conditions, a veteran may file for annulment of their conviction, arrest, or sentence.

Maine grew their VTCs out of drug courts. The Maine legislature empowered their chief justice of the Supreme Judicial Court to establish VTCs, as well as to promulgate administrative orders and court rules. Up until relatively recently, only Augusta had a VTC, but a second one opened in Portland in 2019. Maine does not limit the type of offenses covered in their VTC. The interviewee we spoke with indicated he is seeking publication of guidelines to offer clearer rules, but as of now there are few limitations on what offense will bar entry. However, by practice the most seri-



## Veteran Treatment Court

ous criminal offenses, such as murder and rape, are not program eligible.

Rhode Island's VTC is much more restrictive in terms of offenses that are eligible than Maine and New Hampshire. The VTC is only available in their District Court, limiting eligibility to those committing misdemeanor offenses that cap confinement at 12 months. It is also a jail diversion program, unlike some other VTCs that involve a sentence to confinement.

New York, by far the largest state of the four discussed here, also has the most VTCs. As is true in each of the four states we profiled, VTCs are not located in every county or judicial district. And there may be some differences over what offenses are eligible for the program in different counties within the state, depending on the judge and prosecutor in a region. Of New York's 62 counties, 37 have VTCs. The veteran must first plead guilty to be program eligible. Once an offender successfully completes the program, they can get a reduced sentence, and in some cases, expunge the offense.

### Eligibility for a VTC Based on Veteran Status

38 U.S. Code § 101 defines veteran to mean "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." In order to qualify for VA benefits, such as VA health care, a veteran must meet this statutory definition. This limits VA services to veterans with honorable or general, under honorable conditions, unless the veteran receives a discharge upgrade or VA recharacterization of the veteran's discharge status.

While that is the federal definition, each state makes its own determination on program eligibility. Being more inclusive than the federal government, though, increases costs to the state, because the VA will not cover medical care for veterans with "bad paper" discharges. Per a June 2016 inventory conducted by the Department of Veterans Affairs, most VTCs do not restrict eligibility to participate in the court program based upon the VA determination of eligibility.<sup>1</sup> VTCs typically use a more inclusive definition of veteran. Of the four Northeastern states we looked at, New York and Maine align with that majority.

New Hampshire used to allow veterans with bad discharges into their VTC program, but the funding source providing for that additional care dried up. So now New Hampshire requires the veteran to be VA eligible to enter a VTC.

Rhode Island is the most restrictive of the four states. In Rhode Island, the offender must have a trauma related offense to be program eligible. So not only does Rhode Island restrict access to a veteran based on federal eligibility for VA health care, they also require a nexus between military trauma and the crime.

For reference, the current Connecticut definition of veteran in CGS § 27-103(a)(2) defines a veteran as (1) honorably discharged

or released under honorable conditions from active service in the armed forces or (2) discharged under conditions other than dishonorable or for bad conduct and has a "qualifying condition" (i.e., a diagnosis of post-traumatic stress disorder or traumatic brain injury, or who have disclosed a military sexual trauma experience).

### Costs of a VTC/Burden on Judicial Resources

To help reduce the administrative burden of starting a VTC, each of the four Northeastern states relied on the existing docket of a specialty court. For example, in New Hampshire, many of the VTCs started when judges found extra time on their docket when the specialty court had low attendance. The court would meet once a week or once a month at the same date and time, depending on the veteran population size and court availability.

There is also a need for judicial monitoring of the case, as the veteran proceeds through the treatment program. The representatives I spoke with indicated that these are non-adversarial proceedings typically without defense counsel present, where the program administrator advises the judge on the veteran's progress.

Another way to reduce costs is to rely on VA involvement, such as the Veterans Justice Outreach (VJO) specialists, who will work within the judicial system to identify veterans and link them up with VA services as soon as possible. There is also federal grant money available to start and run a VTC.

The Bureau of Justice Assistance (BJA) provides implementation grants up to \$500,000 for a period of 48 months. "Implementation grants are available to eligible jurisdictions that have completed a substantial amount of planning and are ready to implement an evidence-based adult drug court and veterans treatment court."<sup>2</sup> There are enhancement grants for VTCs already established, as well as statewide grants to help improve the efficacy of state agencies to enhance and expand VTCs or to help fund sub-jurisdictions not otherwise operating under a grant of money.

According to the BJA website, New York and Rhode Island have VTCs that are relying, in part, on a BJA grant. But the representative from Rhode Island indicated the money from the grant dried up, and their VTC is now run through the state budget. New York and Maine also rely on volunteers and community-based organizations to defray some of the costs associated with mentoring and counseling veterans. Information was not gathered on the exact cost for each jurisdiction to run their programs.

The cost of incarceration versus the cost of a diversionary program is also highly relevant to making a fully informed decision over the efficacy of a VTC. There are resources suggesting studies point to a large savings associated with drug courts, when treatment is pursued instead of incarceration for low level drug offenses. Those studies suggest the cost savings associated with reduced recidivism substantially outweigh the upfront medical and treatment costs. But this author is unfamiliar with the efficacy of

those studies, the cost of incarceration in Connecticut, and other relevant data points. Certainly, further discussion of implementing a VTC in Connecticut should grapple with that data.

## Effectiveness on Reducing Recidivism and Rehabilitating Veterans

At this time, it appears detailed data on the effectiveness of VTCs in preventing future crimes is lacking. Each of the four individuals interviewed for this article expressed anecdotal evidence on the effectiveness of VTCs in reducing recidivism and creating better outcomes for veterans. However, the data does not demonstrate these anecdotes are representative, nor does it refute the possibility they are representative.<sup>3</sup>

Simply put, there does not appear to be sufficient data to confidently assert VTCs are a significant improvement to the lives of veterans. Perhaps additional data will develop relatively soon.

## Does a VTC Make Sense for Connecticut?

Members within the Veterans and Military Affairs Section disagree whether Connecticut should develop a VTC. The arguments in favor highlight the unique nature of military service, the difficulties many veterans face reintegrating to civilian society, and the benefits of a mentoring program that features veterans helping each other.

The arguments against do not believe it fair, or even constitutional, to carve out special treatment under criminal law for any select group of individuals. That concern extends to the fair and equal treatment of all citizens in general and to crime victims in particular.

There also does not appear to be sufficient data, as of yet, to know whether VTCs better serve veterans than traditional diversionary programs. In Connecticut, under the accelerated rehabilitation statute, veterans already receive special status. They get two uses of the program within ten years, a benefit other criminal defendants do not receive.

So we in the Veterans and Military Affairs Section hope this article starts a conversation over the utility of VTCs in Connecticut. The next steps may include bringing in speakers to our meetings who can further educate us and any other interested party. We may also pursue a symposium if there is sufficient interest in learning more about VTCs.

If anyone has any ideas, information, suggestions, corrections, or anything they want to share at all relevant to this article, please feel free to reach out to the author at [Joshua.Grubaugh@gmail.com](mailto:Joshua.Grubaugh@gmail.com), and I'll make sure to share it with our section. Thank you for reading. ■

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*Joshua Grubaugh is the principal of Grubaugh Law in New Haven. He is a veteran, and member of the CBA's Appellate Advocacy, Criminal Justice, and Veterans and Military Affairs Sections. His practice focuses on veteran disability and court-martial appeals.*

### NOTES

1. Flatley, B., Clark, S., Rosenthal, J., & Blue-Howells, J. (2017). Veterans Court Inventory 2016 Update: Characteristics of and VA involvement in Veterans Treatment Courts and other Veteran-focused court programs from the Veterans Justice Outreach Specialist Perspective. Washington, DC, US Department of Veterans Affairs, Veterans Health Administration, March 2017. Retrieved from: <https://www.va.gov/HOMELESS/docs/VJO/2016-Veterans-Court-Inventory-Update-VJO-Fact-Sheet.pdf>.
2. <https://bja.ojp.gov/program/drug-court-discretionary-grant-program/overview>
3. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5776060>

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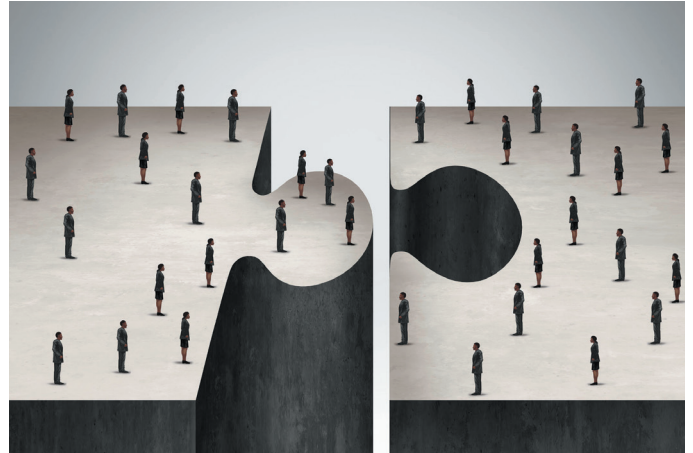
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# CBA Responds to COVID-19's Impact on the Access to Justice Gap

By **AMY LIN MEYERSON**



**W**ith the continued spread of the coronavirus across the globe, we feel the impact on our lives and our communities and the heightened concern for our well-being and safety. Effective as of 8:00 p.m. on Monday, March 23, 2020, as part of Connecticut Governor Lamont's Stay Safe-Stay Home Initiative, all workers at non-essential businesses in the state were ordered to work from home. "The Governor is encouraging all businesses to employ, to the maximum extent possible, any telecommuting or work-from-home procedures that they can safely implement. The Governor's order excludes any essential business or entity providing essential services or functions, such as healthcare, food service, law enforcement, and similar critical services."<sup>1</sup> The economic impact of COVID-19 will significantly increase the number of low-income Connecticut residents who need civil legal assistance.

As we actively monitor the pandemic situation and track guidance provided by our state medical associations,<sup>2</sup> the CDC and the World Health Organization, I took some time to visit with Cecil J. Thomas to learn about the work he and his colleagues are doing and what each of us can do to address the legal needs of the most vulnerable among us.

Cecil J. Thomas is an attorney at Greater Hartford Legal Aid, Inc. (GHLA), where he represents low-income clients, predominantly in housing matters. He has led appellate and class action litigation resulting in significant victories on behalf of low-income Connecticut residents, including a multi-million dollar class action

settlement to benefit Hartford tenants displaced from their condemned homes.<sup>3</sup> In addition to serving as incoming CBA president-elect and incoming chair of the CBA Pro Bono Committee, Cecil is the president of the University of Connecticut Law School Alumni Association. He is co-chairing the Legal Aid Subcommittee of the CBA COVID-19 Task Force, along with Alexis Smith of New Haven Legal Assistance Association and Dahlia Grace of Connecticut Legal Services.

## How are Connecticut's legal aid programs serving their clients during this time of social distancing?

In addition to individual representation, attorneys from all of Connecticut's legal services programs have been actively engaged in the systemic advocacy necessary to protect Connecticut's low-income residents at this difficult time. The depth and breadth of this advocacy is truly amazing. You can review some of those advocacy efforts at [ctlawhelp.org/en/covid-19-advocacy](http://ctlawhelp.org/en/covid-19-advocacy).

In addition, Greater Hartford Legal Aid, Connecticut Legal Services, and New Haven Legal Assistance Association have collaborated to prepare several topical webinar briefings. Hundreds of participants have joined each presentation to learn timely and relevant information about the legal rights of low-income individuals, changes in the law, and important resources and tools.

On March 25, 2020, GHLA developed a new strategy to meet our clients' still-urgent and changing needs for legal ser-

vices by instituting a temporary direct legal information and advice phone line. It provides more access to our attorneys and serves as another portal to legal information, advice, and help. We distribute information about our remote services through electronic communications, social media, and fliers in English and Spanish. For the Greater Hartford Area, clients may call (860)541-5070. Clients seeking assistance outside of the Greater Hartford Area can call Statewide Legal Services at 1(800)453-3320.

## How is the CBA responding to the most pressing legal issues for low-income clients arising as a result of the pandemic?

The Legal Aid Committee of the CBA COVID-19 Task Force is coordinating with the legal aid organizations and attorneys serving Connecticut's most vulnerable populations to address issues such as evictions, benefits, and family law matters. Currently, the subcommittee is focused on two initiatives: 1) developing CBA Pro Bono Connect, a call for pro bono volunteers in the areas of civil legal needs (e.g., housing, family, consumer, special education) that are likely to be the most impacted by the COVID-19 crisis; and 2) monitoring, with the assistance of the Connecticut Bar Foundation, the impact of COVID-19 on legal aid funding.

On the first initiative, CBA Pro Bono Connect, we have developed a call for pro bono volunteers, together with a web portal where lawyers will be able to sign up to participate, express their preferences, and be matched with an organization that provides that type of pro bono referral. At-



torneys who sign up, and pledge to take at least one pro bono referral from one of Connecticut's legal services providers, will be able to access training materials and webinars free of charge. Committee members have developed those trainings, which are being posted to the CBA Education Portal. Of course, we hope participants will elect to pay for those CLE trainings, as the proceeds from these pro bono trainings have been designated to benefit Connecticut's legal services program.

On the second, the Connecticut Bar Foundation is gathering information on the impact of COVID-19 on IOLTA and court filing fees, two important funding sources for legal services in Connecticut that have been impacted by the economic impact of the current pandemic. It is an unfortunate reality that financial resources for legal aid are decreasing, at a time when the need for those services is increasing.

### **What should pro bono attorneys do to help during the coronavirus pandemic?**

Sign up to join our new pro bono initiative, CBA Pro Bono Connect! Connecticut's low-income residents need your time and expertise now more than ever. Visit [ctbar.org/CBAProBonoConnect](http://ctbar.org/CBAProBonoConnect) to join us in this new push to increase pro bono representation.

Share best practices and resources. The CBA has collected and continues to update resources on its website at [ctbar.org/covid19-resources](http://ctbar.org/covid19-resources). If you have additional resources you have been using to assist your pro bono clients, please send those to the CBA at [communications@ctbar.org](mailto:communications@ctbar.org).

Volunteer for the numerous pro bono opportunities available on [CTLawHelp.org](http://CTLawHelp.org), a website that was created by several non-profit legal aid organizations whose shared mission is to improve the lives of Connecticut residents by providing free legal help to people with very low income.

Sign up to volunteer for Connecticut Free Legal Answers,<sup>4</sup> an online civil legal ser-

vice for people who cannot afford to pay for an attorney. The service is a cooperative effort of the Connecticut Bar Association and the American Bar Association. Connecticut Free Legal Answers helps low-income people. Those seeking assistance are screened by income. Volunteer attorneys log on at their convenience to privately and anonymously answer questions on topics including family law matters such as divorce, child support, adoption and name change as well as domestic violence, bankruptcy, consumer issues, education, employment, housing, worker's compensation, wills, and estate planning.

You also can volunteer for the COVID-19 Small Business Virtual Legal Clinic,<sup>5</sup> a collaborative project among the CBA, Lawyers for Good Government and area law firms. "Hundreds of thousands of small business owners, many of whom already operate on very narrow margins, are struggling with questions about how their businesses will survive the COVID-19 pandemic. Not only do these businesses provide necessary services in communities all over the country; they provide employment, job training, and other benefits. Their survival is essential to strong neighborhoods."<sup>6</sup>

Be prepared to volunteer when temporary relief measures are lifted and courts resume their regular case loads. Many of our clients will find themselves in more dire situations than before the stay in place order was issued. We also are preparing for a great increase in the number people seeking assistance.

### **Are you worried that there won't be enough pro bono providers to meet new legal needs associated with COVID-19?**

The need for civil legal services always exceeds available resources. We have an important ethical obligation to help address that access to justice gap, for the good of society, the profession, and the rule of law. I firmly believe that by working together, we can make important strides in addressing the civil legal needs of Connecticut's low-income residents. I understand

the pressures that face all of us, particularly now as we balance many changes, new roles and new obligations, as a result of this pandemic. Yet ours is a heroic profession, one that has always been on the front lines of protecting the rule of law. I am proud of the CBA's commitment to access to justice, and I know our members will answer the call to provide pro bono representation at this difficult time.

### **What are other ways people may help?**

You can make a donation to Project Feed Connecticut<sup>7</sup> that 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 to provide financial support to Food Share<sup>8</sup> and Connecticut Food Bank.<sup>9</sup>

Many other volunteer opportunities from making Personal Protection Equipment for yourself and health care workers to assisting elderly homebound neighbors with errands are listed on the CBA website on the For the Public resources page under the How to Help & Volunteer subcategory.<sup>10</sup>

Many thanks to Cecil and all of the members of our legal profession for providing

*Continued on page 44 →*



*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.*

# *Burke v. Mesniaeff*, 334 Conn. 100 (2019): Love, Marriage, and...Trespass?

By CHARLES D. RAY and MATTHEW A WEINER

**C**an a spouse ever trespass on property owned by the spouse's husband? What if the spouse has a key, or the husband didn't perceive his spouse to be trespassing when the trespass allegedly occurred? And what happens when the trial court butchers a charge on one special defense, but not another? Must a retrial necessarily follow? These were some of the questions the Court faced in *Burke v. Mesniaeff*, 334 Conn. 100 (2019).

The plaintiff, Elizabeth Burke, and the defendant, Gregory Mesniaeff, were married in 1989. Nine years later, Mesniaeff purchased a house in Sharon that he titled solely in his name. Although Mesniaeff spent more time at the Sharon home than did Burke, Burke had keys to the house, stayed there occasionally, had painted the inside, and stored personal possessions—including clothing—there. Both Mesniaeff and Burke listed the Sharon house as their residential address on their Connecticut drivers' licenses.

Because the Sharon house is subject to a historic preservation easement, it must occasionally be opened to the public for viewing. As a result, Mesniaeff invited members of The Questers, a historical preservation organization of which he was a member, to tour the house on the afternoon of December 5, 2009. Mesniaeff did not invite Burke to attend the tour "because she was not a member of The Questers, they were not 'on the best terms at that time,' and he was 'afraid that there could be some problems if she was there.'"

It turns out that Mesniaeff's gut feeling was correct. When Burke learned, from



an online posting, that the tour had been scheduled and realized that her husband had not invited her, she decided to go to the house "because she was convinced that [Mesniaeff] would deny the existence of the historic house tour, and she 'couldn't take the lying anymore....'"

When she arrived at the Sharon house—where Mesniaeff and three other members of The Questers were inside—Burke did not park in the driveway. Instead, she parked at a neighboring guest cottage. After entering through a back entrance, Burke encountered Mesniaeff, who was standing with a female guest. According to the female guest and Mesniaeff, Burke flew into a rage and demanded to know who the woman was and why she was in Burke's house. Mesniaeff believed, based on Burke's behavior and past experience, that she posed a risk of harm to his guests.

After asking Burke to leave, Mesniaeff grabbed her arm and "escorted" her out of the house and toward the place where he believed she had parked. Burke strug-

gled, trying to return to the house. Along the way, a couple driving by in a car observed the pair and heard Burke screaming that she was being assaulted by her husband. While one of them called the police, the other placed himself between Burke and Mesniaeff. At that, Mesniaeff returned to the house, apologized to his guests, and drove them to the train station. Upon his return from the train station, Mesniaeff encountered the police and cooperated with their investigation. Burke and Mesniaeff later divorced.

Burke thereafter filed a personal injury lawsuit against Mesniaeff based on his conduct at the Sharon house. Burke alleged, among other things, that Mesniaeff had assaulted her. Mesniaeff raised a number of special defenses, including that his actions were in defense of others and that his actions were justified because Burke was "trespassing on [his] property."

During the charge conference that followed an eight-day jury trial, the parties disagreed as to whether Burke's alleged



trespass was a proper defense to her claims. Burke argued that she could not, as a matter of law, commit trespass because the Sharon house was marital property. Mesniaeff claimed that, because the house was in his name only, it was appropriate for the trial court to instruct the jury that, if Burke was engaged in committing a criminal trespass, Mesniaeff was justified in using physical force to end the trespass. Noting the conflicting evidence before the jury, the trial court decided to give the instruction and leave it to the factfinder to decide. The trial court also included a defense of others instruction in its final charge.

After multiple requests to rehear evidence, the jury returned a verdict in favor of Mesniaeff. Specifically, the jury found that Mesniaeff had committed an intentional assault and battery against Burke, but that “recovery was barred by...the special defenses of justification and defense of others.” Burke appealed to the Appellate Court which, in a 2-1 decision, affirmed. *Burke v. Mesniaeff*, 177 Conn. App. 824 (2017).

Before the Supreme Court, Burke made several arguments. First, she claimed that the trial court improperly had instructed the jury that Mesniaeff’s conduct could be justified by Burke’s alleged trespass because she had a legal right to be present at the shared marital residence. Second, she contended that this improper instruction had “irrevocably tainted the jury’s finding that [Mesniaeff] was acting in defense of others because a criminal trespasser’s refusal to leave when so instructed by the rightful owner’ is inherently threatening...” (Internal quotation marks omitted.) Third, she argued that the evidence was insufficient to support a finding that Mesniaeff had acted in defense of others.

Justice Ecker, writing for himself, Chief Justice Robinson, and Justices Palmer, Mullins, and Vertefeuille, agreed with Burke that the trial court had improperly instructed the jury with respect to justification, but nevertheless affirmed the judgment. To begin, Justice Ecker examined the criminal trespass statute, General

Statutes § 53a-20, to determine whether a justification defense premised on the right to terminate a criminal trespass applied under the facts of this case. He concluded that it did not.

Justice Ecker explained that “[b]oth criminal trespass and defense of premises contain a scienter requirement. Specifically, in order to commit a criminal trespass, the trespasser must know that he is not privileged or licensed to enter or remain on the premises and, in order to be justified in using physical force to prevent or terminate the commission...of a criminal trespass...” (Citation omitted; internal quotation marks omitted.) Thus, contrary to the positions taken by both parties, there is no black and white rule when it comes to married couples. Instead, the answer to the question of whether one spouse may trespass on the property of another depends on whether the “trespassing” spouse had a possessory or occupancy interest in the premises and, if she did not, whether she knew that. Both inquiries are highly fact specific, with the first depending on factors such as “the relationship status of the spouses (i.e., whether the parties are legally separated or involved in divorce proceedings), the existence of extended periods of separation, the applicability of any relevant court orders, the establishment of separate residences, the existence of any agreements regarding access to the subject property, and the method and manner of entry.”

In this case, the evidence established that Burke had a possessory or occupancy interest in the house because she had a key to it, would go back and forth between it and the parties’ primary marital residence, kept personal belongings there, listed it as her address on her driver’s license,

and the parties were neither divorced nor separated. In addition, Mesniaeff himself testified that, at the time he removed her, he did not think that Burke was criminally trespassing. Because the evidence established that Burke had a possessory or occupancy interest in the house and that Mesniaeff did not remove her to terminate a trespass, the trial court should not have given the defense of premises instruction.

Burke, however, was not entitled to a new trial because the error was harmless in light of the jury’s determination that Mesniaeff had acted in defense of others. Notwithstanding Burke’s assertion that “criminal trespassers are ‘inherently threatening,’ and, therefore,...the trial court’s improper reference to criminal trespass...infected...the entire trial,” defense of others was still “an independent, freestanding special defense” distinct from the problematic trespass defense. It also was supported by evidence in the record, including testimony from two of Mesniaeff’s guests that “they were afraid of [Burke] and felt physically threatened by her out of control behavior.”

Justice D’Auria, writing for Justice Kahn and himself, concurred. In his concurring opinion, Justice D’Auria focused on the question of whether the improper jury instruction on criminal trespass required a new trial. Noting that, since 1974, the Court has placed on an appellant “the substantial burden of demonstrating that an erroneous charge on one count or defense tainted the consideration of the remaining counts or defenses,” Justice D’Auria

*Continued on page 43 —*



**Charles D. Ray** is a partner at McCarter & English LLP, in Hartford. He clerked for Justice David M. Shea during the Supreme Court’s 1989–1990 term and appears before the Court on a regular basis.



**Matthew A. Weiner** is Assistant State’s Attorney in the Appellate Bureau of the Office of the Chief State’s Attorney. ASA Weiner clerked for Justice Richard N.

Palmer during the Supreme Court’s 2006–2007 term and litigates appellate matters on behalf of the State.

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

# Highlights

## Recent Superior Court Decisions

The Connecticut Law Reporter is a weekly publication containing the full text of Superior Court opinions. For copies of the opinions described here, or information about the reporting service, call (203) 458-8000 or write The Connecticut Law Book Company, P.O. Box 575, Guilford, CT 06437.

### ■ Arbitration

A court's authority under the Arbitration Act to "to protect the rights of the parties," Conn. Gen. Stat. § 52-422, includes the authority to stay an ongoing arbitration proceeding following the arbitrator's refusal to reschedule hearings to accommodate the movant's need to travel to Europe to attend to unrelated business matters. The opinion denies the request for lack of evidence as to the nature of the business requirements and the availability of electronic means for the defendant to participate in the arbitration hearings. *Hammond v. Mantz Construction, LLC*, 69 CLR 481 (Krumeich, Edward T., J.).

Related agreements should be construed together to determine whether an arbitration clause in one agreement applies to another agreement not containing such a clause, provided the agreements contain cross references, relate to the same subject matter and involve the same parties. *Thurston v. Thurston Associates, LLC*, 68 CLR 746 (Wilson, Robin L., J.).

### ■ Civil Procedure

Abode service of process at an address incorrectly stated by an agent of the defendant in a statutorily required filing with a state agency is invalid unless the plaintiff is able to establish that the error was made with an intent to avoid service. *York Hill Trap Rock Quarry Co. v. Pavement Maintenance Services, Inc.*, 69 CLR 249 (Young, Robert E., J.).

A plaintiff's statutory right to voluntarily withdraw a complaint, Conn. Gen. Stat. § 52-80, is not defeated by pending motions to intervene filed by nonparties. *Rigdon v. Pilla*, 69 CLR 53 (Kowalski, Ronald E., J.).

Service of process in an action against any municipal "board, commission, department or agency" may be made only on a town clerk; service on an assistant town clerk is inadequate. *Foster v. Greenwich Board of Education*, 69 CLR 434 (Sommer, Mary E., J.).

A public school district exists as an entity independent of the district's board of education. Therefore the only statutory authorization for service of process against a school district is Conn. Gen. Stat. § 52-57(b) (4) which requires service "upon its clerk or one of its committee." Service upon any other town department or official, including the town clerk, would be insufficient. *Mulvihill v. Danbury Public Schools*, 68 CLR 849 (D'Andrea, Robert A., J.).

The Offer of Compromise Statute, Conn. Gen. Stat. § 52-192a, applies to class actions, even though there may be some unique procedural difficulties such as obtaining class approval for the acceptance of an offer and the right of class members to opt out of the class. *Paetzold v. Metropolitan District Commission*, 69 CLR 436 (Moukawsher, Thomas B., J.).

### ■ Criminal Law and Procedure

A petition for a new trial on a criminal conviction is a civil proceeding and therefore there is no statutory or constitutional requirement for appointment of counsel for the prosecution of such a petition by an indigent criminal defendant. *Khuth v. State*, 69 CLR 384 (D'Andrea, Robert A., J.) (*Khuth I*).

Scientific evidence relied on to justify recent rulings that long sentences for crimes

committed while a defendant was under the age of majority are unconstitutional is no longer "new" and therefore may not be relied on to satisfy the "newly discovered evidence" exception to the three-year limitations period to seek a new trial for sentences imposed for crimes allegedly committed at an older age. *Khuth v. State*, 69 CLR 427 (D'Andrea, Robert A., J.) (*Khuth II*). The opinion acknowledges that the 17-year cut-off age for recognizing delayed brain development when imposing long criminal sentences is somewhat arbitrary, but reasons that the body of relevant knowledge concerning brain development has not significantly evolved since 2004, the date of the crime involved in this case.

The 2018 amendments forbidding the imposition of special parole for drug-rated offenses, with an effective date of October 1, 2018, Conn. Gen. Stat. § 54-125e, do not apply retroactively to sentences entered before that date. *State v. Peterkin*, 69 CLR 432 (Droney, Nuala E., J.).

### ■ Employment Law

Arbitration and choice of law clauses in an online, electronic job application are enforceable provided the form is reasonably designed. *Edmundson v. Bridgeport Board of Education*, 69 CLR 270 (Welch, Thomas J., J.). The opinion holds enforceable as an employment contract an online application which required that each clause be accepted by checking a box following the clause, and that provided clear descriptions of the contractual undertakings, even though the application was signed before the job was formally offered.



A choice of law provision of an employment contract that would defeat relief comparable to that available under the Connecticut wage laws is unenforceable as a violation of Connecticut public policy. *Farrell v. Capula Investment U.S., LP*, 69 CLR 486 (Sommer, Mary E., J.). The opinion holds that a choice of law clause in an employment agreement between a limited partnership organized under Delaware law and an employee working at the LP's principal place of business in this state is unenforceable, because Delaware does not recognize wage claims for services provided out of state. The opinion also holds: (1) A forum selection clause of an employment contract is unenforceable if a shorter limitations period in the foreign jurisdiction would defeat an employee's claim for wages; and (2) the same forum selection clause is unenforceable if the agreement was entered without an opportunity for the employee to negotiate due to the employer's superior bargaining power.

### ■ Insurance Law

An automobile insurer that extends basic coverage to rental cars must also extend the policy's UIM coverage to rented vehicles. *Lollar v. Progressive Direct Insurance Co.*, 69 CLR 437 (Taylor, Mark H., J.). This opinion holds that a passenger of a rental vehicle who has coverage under a policy covering a vehicle owned by the lessee/operator that extends to rental vehicles is entitled to UIM coverage, even though the operator's policy purports to exclude UIM coverage of rental vehicles.

A motor scooter (with a seat height of less than 26" and piston capacity of less than 50 cc's) is not a "motor vehicle" within the meaning of the motor vehicle statutes, Conn. Gen. Stat. § 14-1(58). *Hernandez v. Progressive Direct Insurance Co.*, 69 CLR 379 (Wilson, Robin L., J.).

### ■ Law of Lawyering

Communications during a pre-representation interview between an attorney and a potential client in the presence of the client's long-term live-in companion are protected by the attorney/client privilege both with respect to the client and

the companion, even though no representation of the companion was under consideration. Furthermore, communications between counsel and the companion in preparation for and during the companion's deposition concerning the client's claim are also privileged. *Marino v. Urological Associates of Bridgeport, P.C.*, 69 CLR 318 (Stewart, Elizabeth, J.).

Photos of an accident scene taken by an attorney representing one of the parties are not protected under the attorney work product privilege. In this personal injury action for a fall at a clothing store, the defendant's attorney is required to comply with a request for the production of photos taken of the accident area shortly after the plaintiff's fall. *Tapia v. Gap, Inc.*, 69 CLR 359 (D'Andrea, Robert A., J.).

### ■ Real Property

*Bridgeport Park Apartments, Inc. v. Koleznikov*, 69 CLR 236 (Spader, Walter M., J.), holds that the Supreme Court's 2019 ruling in *U.S. Bank v. Blowers* expanding the special defenses that may be asserted in a foreclosure action does not apply to foreclosures of condominium common charge liens.

A trial court's postjudgment jurisdiction to enforce a final judgment in favor of an original plaintiff who prevailed in an action for trespass and the overburdening of an easement includes the authority to substitute as plaintiff a successor to the original plaintiff's interests, and to rule on the substituted plaintiff's motion for a permanent injunction and for civil contempt. Furthermore, such action may be taken without opening the judgment. *FirstLight Hydro Generating Co. v. Stewart*, 69 CLR 399 (Brazzel-Massaró, Barbara, J.).

A restrictive covenant of a deed reciting that neither of two adjoining property owners may "erect or maintain any division fences or hedges other than a stone fence, brick fence or hedge ... over five feet in height," creates a view easement restricting the height of any fence; however, the covenant cannot be construed as creating a view easement that encom-

passes landscaping performed on other portions of the properties. *Freidheim v. McLaughlin*, 69 CLR 461 (Hernandez, Alex V., J.).

### ■ Trusts and Estates

*Cook v. Purtill*, 68 CLR 866 (Sferrazza, Samuel J., J.T.R.), holds that a failure to comply with the statutory requirement for the commencement of a probate appeal that, in addition to "service" of a copy of the complaint on "each interested party," Conn. Gen. Stat. § 45a-186(b), a copy of the complaint be mailed "to the Probate Court that rendered [the ruling]," Conn. Gen. Stat. § 45a-186(c), is not a jurisdictional defect. However, a failure to mail a copy to the Probate Court must be cured because it is the mailed copy that initiates the Probate Court's duty to prepare and deliver to the Superior Court a transcription of the probate proceedings.

Probate court approval of a sale of real property owned by a decedent's estate does not bar a civil action challenging the transaction brought by a party claiming to have an earlier contract with the administrator for the sale of the same property. *Mandell v. Dolloff*, 69 CLR 49 (Shapiro, Robert B., J.T.R.). The opinion holds that while the probate court has jurisdiction over the breach of contract claim pursuant to its statutory authority to "determine title or rights of possession and use in and to any real, tangible or intangible property" that is part of a decedent's estate, Conn. Gen. Stat. § 45a-98, the Superior Court has concurrent jurisdiction over the same claim, pursuant to the same statute, and *exclusive* jurisdiction with respect to the remaining claims of intentional misrepresentation, unjust enrichment and tortious interference.

The general rule that an appeal may only be taken from a "final judgment" does not apply to appeals to the Superior Court from probate court rulings, because the statutory right to an appeal from probate is extended to "any person aggrieved by any order, denial or decree of a Probate Court in any matter," Conn. Gen. Stat. § 45a-186(a). *Satara v. Hammer*, 68 CLR 796 (Karazin, Edward R., J.T.R.). ■

# And for the Final Act: Thriving through Balance

By AMANDA G. SCHREIBER

I truly believe that balance enables productivity. Results oriented people, as lawyers tend to be, will best perform when given the opportunity to thrive. Thriving includes both personal and professional prosperity and success. This includes having a healthy, happy, and satisfying life—however you define it.

I have dedicated my column this year to exploring the plate-balancing act of the young lawyer. Many months ago, I saw a circus themed show in Hartford and likened my experience as a young lawyer to that of the performer known as the plate spinner. I admired the craft—his ability to miraculously spin plates on top of individual sticks, effortlessly flipping them into the air all while adding more and more plates. At the same time, I was jealous. The plate spinner seemed to know his routine and had clearly had time to practice. He was likely using inexpensive plates he could afford to break. And then there was the timing aspect, the careful harmony required to have everything happen at a precise time. I was in awe.

As chair of the Young Lawyers Section for the 2019-2020 bar year, I have had the opportunity to lead a group of extraordinary young lawyers. I am profoundly grateful for their support and dedication this year. If this is the high-quality, insightful work we can anticipate from this group, then I wholeheartedly believe the State of Connecticut will be in good legal hands for years to come. I have found, however, that even amongst this group of high-achieving individuals, my plate balancing concerns are not unique. Every day I talk to young lawyers who are juggling their job,

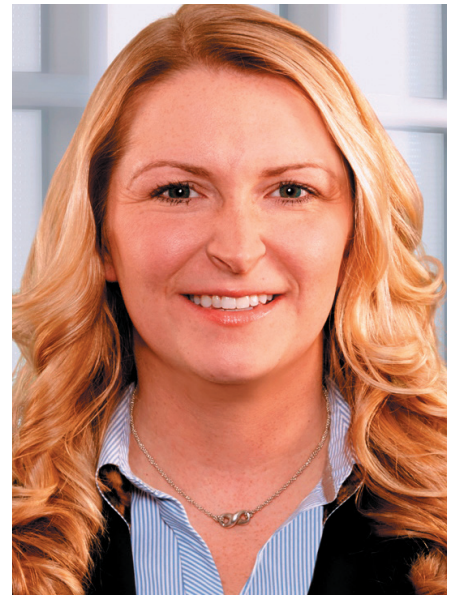
house, marriage, finances, kids, health, and well-being. So many spiraling, spinning plates that they must balance at once, with so much resting on each one.

In my first article I posed the question: “How do you balance it all?” To those young lawyers in the midst of metaphorical plate spinning, I hope that these articles have supported you in your struggles and reminded you that you’re not alone. To our senior colleagues, I hope these articles have helped to bring this generation’s perspective to the table with transparency and enlightenment. The focus of these articles has never been to highlight disparities but to find commonality in perceived differences. Balance is not something that comes easy to the type-A, dedicated individuals that lawyers of any age tend to be.

With that in mind, through my explorations this year, I offer the following suggestions to legal leaders, employers, and individuals to help them find and support balance that enables productivity.

First, embrace flexibility. Telecommuting options, alternative work schedules, and

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flextime are opportunities to allow all lawyers, not just young lawyers, to balance their daily lives in a meaningful but productive way. Recent requirements due to COVID-19 have forced many to explore these options out of necessity rather than choice. I encourage those that have found it to be a reasonable option to consider ways to continue these arrangements beyond the timeframe of the pandemic. By shifting focus away from traditional, billable-hour-driven, process-focused environments to efficiency and results, we can increase productivity and help our lawyers balance a few more plates. With some exception, generally where and when the work is done is far secondary to delivering optimal results for the client.

Second, promote awareness. There are serious repercussions to neglecting personal needs. Sadly, many lawyers have experienced great loss, regret, or adverse consequences due to this neglect. I encourage those individuals, to the extent they are comfortable, to share those stories with other lawyers. There is nothing shameful in admitting that your heart attack could have been avoided with daily physical



## Supreme Deliberations

Continued from page 39

was “compelled to conclude” that Burke was not entitled to a new trial. See *Dinda v. Sirois*, 166 Conn. 68, 75 (1974) (“When two or more separate and distinct defenses...are present in a case, an error in the charge as to one normally cannot upset” the judgment). Though Justice D’Auria seemed open to reconsidering this standard, he was constrained by Burke’s failure to argue that the Court should overrule its precedent, or to argue that this was not a “normal[ ]” case to which the standard set forth in *Dinda* should apply.

Justice D’Auria’s concurrence got us thinking: should the Court revisit *Dinda*? It makes sense that an appellant faces an uphill fight when asserting that a defect in the instruction on one special defense entitles her to a new trial, even though the jury found in favor of the appellee on a legally and factually distinct special defense. But recognizing a factually distinct special defense is not always easy. As explained by Justice D’Auria, if a reviewing court were permitted to consider evidence that the “assault had occurred farther from the house than some of the testimony indicated,” he “would have a much harder time concluding that there was no taint from the improper trespass charge.”

Then again, if *Dinda* is to be overruled—or at least modified—what should the new rule look like? We’ll leave the answer to that difficult question to you. ■

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exercise or that stress drove you to see a therapist to explore your mental well-being. Support others in ensuring that they make better choices. Don’t insist they live the same life, inclusive of mistakes, as you. Empower them to do better.

Last, to my struggling young lawyers and to my senior colleagues I give the same message: lead by example. The legal culture in our state starts at the top and spreads by example. Prioritize your family time. Illustrate that you and your significant other have found a groove that works for you. Talk about your life and the most cherished parts of it. Your example will be a roadmap for generations to come. Don’t squander the opportunity to make that road smoother. Smoother doesn’t mean easier, it’s simply a shift

away from unnecessary pressures and a focus on productivity. You’ll be surprised what most lawyers can achieve with more aspects of their life in balance.

I end this year amid great uncertainty as to the current state of our nation and state. If a global pandemic and social unrest following a horrific racial injustice has taught us anything, it is to support one another. Perhaps the answer to the balance we are all seeking depends not just on ourselves, but on the collective. Balance can only truly be achieved with support from colleagues, family, and friends—it’s the allowance we give to one another to thrive. May we accept and champion balance to achieve a thriving bar community. ■

## President's Message

Continued from page 5

to listen to your concerns and grievances, and to make you successful in your pursuits. I am not sure if the methods we have been utilizing are the most effective way to gather feedback from our members and allow for us to listen to the concerns of the legal community. I do know the CBA is eager to listen to your suggestions on how we can improve our efforts. We need to know what we are doing *right* but, more importantly, we need to know what we are doing *wrong*, and what you need from us. We want to listen to what you want and what you have to say, not just because our mission requires it, but also because we genuinely care about ensuring justice and preserving the rule of law as well as ensuring our members and affiliate bar associations are successful in their endeavors. To accomplish these goals, we need your support, your voice,

your thoughts, your ideas, and your grievances. Our armor is off, our guard is down, and the CBA is ready to listen. ■

*Thank you for allowing me the chance to serve this year as your president. Throughout this bar year, I have had the pleasure of speaking with and getting to know so many of you and your families. Thank you for contacting me to discuss issues, inspiring me to write articles on topics and launch initiatives. I enjoyed working, learning, and growing with all of you. The support I received from you, the amazing staff at the CBA, my fellow officers, past presidents, the leaders of various sections and committees, other bar associations, and professional organizations cannot be understated. For this, I will be eternally grateful.*

## Pro Bono

Continued from page 37

pro bono services, and supporting legal aid in these difficult and challenging times. It has truly been a pleasure to serve as chair of the Pro Bono Committee and working with and being inspired by our Committee members and attorney volunteers striving to narrow the access to justice gap. I look forward to continuing the important work of the Pro Bono Committee under Cecil's leadership. Stay well! ■

## NOTES

1. Frequently Asked Questions on the State of Connecticut's actions related to COVID-19 at p. 4. (<https://portal.ct.gov/-/media/Coronavirus/COVID-19-FAQs.pdf?la=en>)
2. Medical Associations, CT Department of Consumer Protection (<https://portal.ct.gov/DCP/Common-Elements/Consumer-Facts-and-Contacts/Medical-Associations>)
3. Hartford Agrees To Pay Out \$2.75 Million To Residents Improperly Displaced From Condemned Buildings, Matthew Ormseth, March 22, 2018. (<https://www.courant.com/news/connecticut/hc-news-hartford-housing-settlement-20180321-story.html>)
4. <https://ct.freelegalanswers.org>
5. [ctbar.org/SmallBusinessClinic](https://ctbar.org/SmallBusinessClinic)
6. <https://www.lawyersforgoodgovernment.org/covid-smallbusiness>
7. [ctbar.org/ProjectFeedCT](https://ctbar.org/ProjectFeedCT)
8. [Foodshare.org](https://www.foodshare.org)
9. [CTFoodBank.org](https://www.ctfoodbank.org)
10. <https://www.ctbar.org/home/coronavirus-response/resources/for-the-public>

## PDD

Continued from page 11

**Attorney** ordered by agreement to submit to three credit hours of continuing legal education in IOLTA account management and to cooperate with monthly audits by the Statewide Grievance Committee for a period of six months for violation of Rule 1.3, 1.15(e) and 8.4(4) of the Rules of Professional Conduct by failing to render a proper accounting regarding a tax lien when requested by the complainant and by failing to respond to the grievance complaint in violation of Practice Book § 2-32(a)(1). *Kaufman v. Walter A. Shalvoy, Jr.*, #18-0760 (10 pages).

**Reprimand** ordered by agreement for violation of Rule 8.1(2) of the Rules of Professional Conduct and Practice Book § 2-32(a)(1). *Hernandez v. Robert Louis Fiedler*, #19-0089 (8 pages).

**Attorney** ordered by agreement to submit to three credit hours of continuing legal education in law office management for violations of Rules 1.2(a), 1.2(c), 1.4(a)(2), 1.4(a)(3), 1.5(c), and 1.16(d) of the Rules of Professional Conduct. *Lowe v. Joseph E. Fournier*, #19-0143 (10 pages).

**Attorney** ordered by agreement to submit to three credit hours of continuing legal education in legal ethics and three credit hours in residential real property for violation of Rules 1.5(b), 1.7 and 1.16(d) of the Rules of Professional Conduct by representing the buyer and seller of the same real property in the same transaction without written consent of the complainant and by failing to provide the complainant or her counsel with a copy of her file within a reasonable time upon request. *Honeysette v. Dale H. King*, #19-0145 (9 pages).

**Reprimand** ordered by agreement for violation of Rule 8.4 of the Rules of Professional Conduct by failing to make payment under a promissory note, and attorney was ordered to make restitution of \$22,500 on or before thirty days after acceptance of agreement. *Brown v. Lawrence J. Greenberg*, #19-0230 (8 pages). ■

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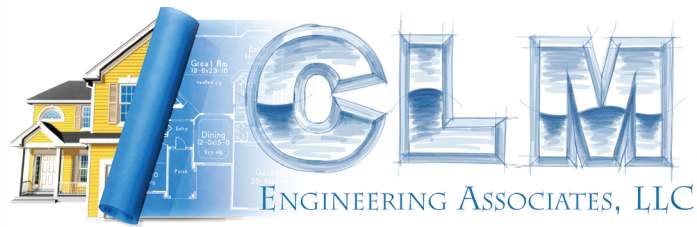
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