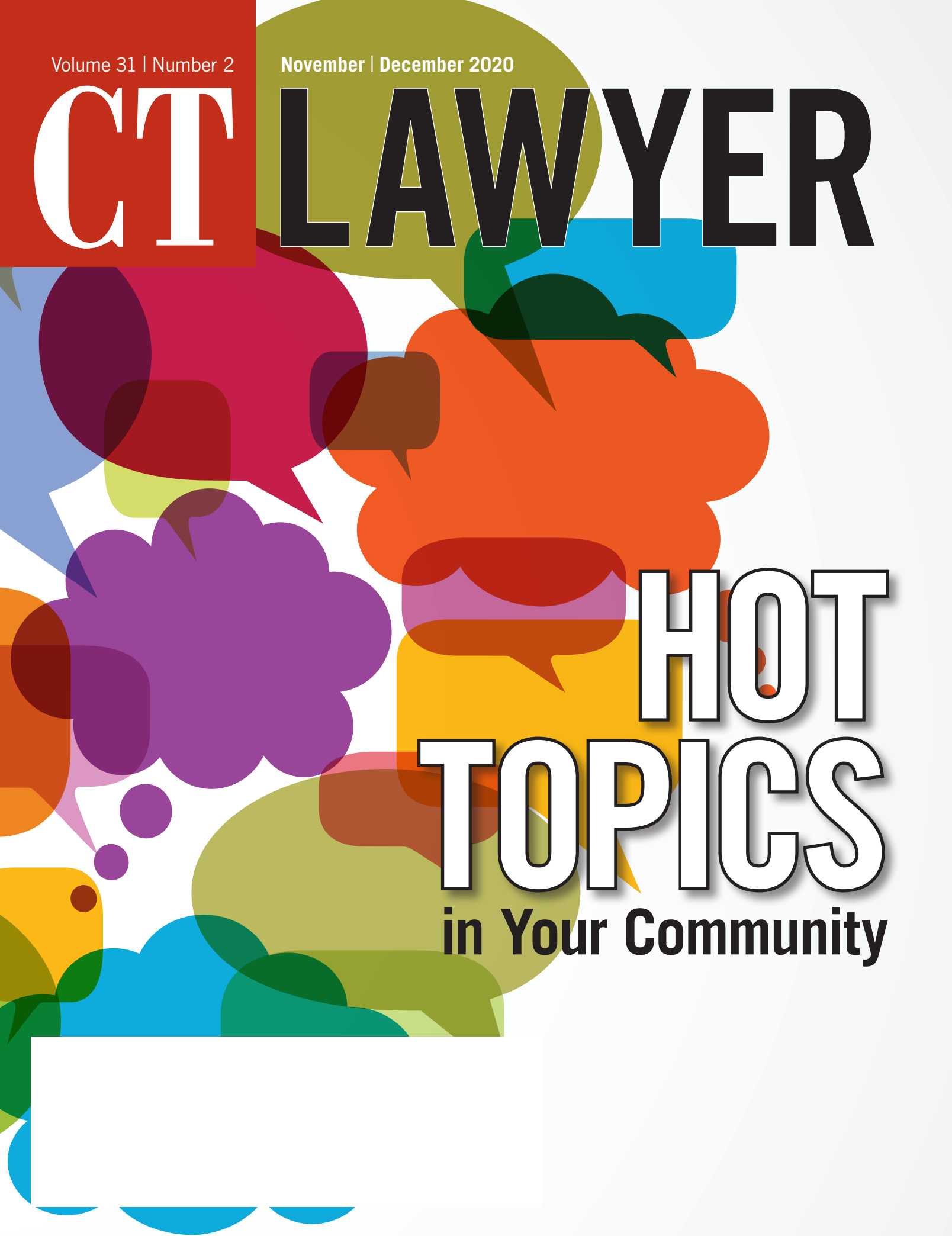
Volume 31 | Number 2 November | December 2020

CT LAWYER



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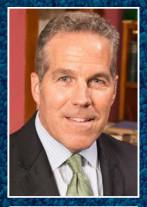
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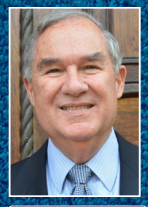
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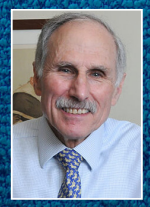
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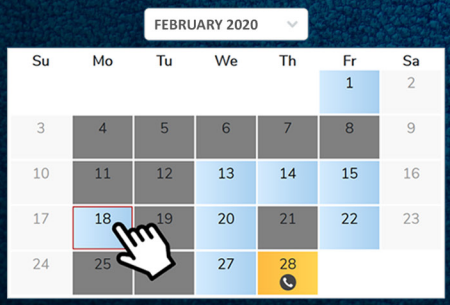

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CT LAWYER

Volume 31 | Number 2 | November/December 2020

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

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

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

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Announcing the New CBA Strategic Plan

By AMY LIN MEYERSON

Amy Lin Meyerson *is the 2020–2021 President of the Connecticut Bar Association. She is a sole practitioner in Weston, Connecticut, practicing business and general corporate law.*

I am excited to announce the launch of our new 2020-2024 Connecticut Bar Association Strategic Plan covering CBA FY2021 to FY2023. Created by the Strategic Planning Committee, with input from the CBA Board of Governors, this plan builds upon prior CBA Strategic Plans, sets the course for the CBA's future, and lays out five overarching goals and specific objectives that CBA leadership, members, and staff will work to accomplish over the next three fiscal years.

Our last strategic plan terminated on June 30, 2020. Much like other programs and activities, our strategic planning process was delayed due to the pandemic. In July, we engaged Nancy P. Lee,[1] a BoardSource Senior Governance Consultant and Certified Governance Trainer, to help guide our Strategic Planning Committee and to provide an unbiased, external perspective.

In August, Nancy led our strategic planning sessions over two days as we brainstormed about our mission, vision, values, goals, and potential future directions. We examined the key elements of what has led to our successes and our challenges in the past that help to inform our future direction.

A draft plan was prepared and reviewed in depth by the CBA Strategic Planning Committee, CBA staff, and the CBA Executive Committee, incorporating consensus and their collective knowledge, experience, and judgment. The members of the Strategic Planning Committee are Cecil J. Thomas and Daniel Horgan (co-chairs), Amy Lin Meyerson, Cindy M. Cieslak, Karen DeMeola, Emily Gianquinto, Moy N. Ogilvie, Jonathan Weiner, and Keith J. Soressi. A final version of the strategic plan was approved by the CBA Board of Governors on September 14, 2020.

> **"The CBA is the preeminent leader in the legal profession in Connecticut and beyond. Our members are connected and have achieved collective and individual success in a diverse, equitable, and inclusive profession in service to society."**
>
> — CBA Vision Statement

The new Strategic Plan amends and rephrases the CBA's Mission Statement:

Consistent with the purposes set forth in the CBA Constitution, we seek to foster a collaborative community that:

- *Creates opportunities for growth and development in the practice of law*
- *Advocates for Connecticut's attorneys and legal professionals*
- *Promotes community service and civics education and engagement*
- *Advances equitable access to justice, including the provision of pro bono legal services*
- *Protects democracy and upholds the rule of law*
- *Ensures diversity, equity, and inclusion within the Bar and the Bench*

The stated purposes of the CBA are in our CBA Constitution:

Article II Purpose

The purposes of this Association shall be to promote the public interest through the advancement of justice and the protection of liberty; to aid its Members in the development and maintenance of their respective practices; to facilitate the delivery of competent legal services to the public and

particularly to those in greatest need; to support or oppose legislation and regulations consistent with the interests of the public good and its Members; to supply the highest quality continuing legal education opportunities and works of legal scholarship; to promote diversity within the Bar and the Bench; to develop collegial interaction among the members of the Bar; to safeguard the dignity of the legal profession; to coordinate the activities of the several bar associations within Connecticut; and to advance the interests of its Members within the American Bar Association, other organizations with which the Association is affiliated, and society as a whole.[2]

The CBA values stated in the Plan are the association's guiding principles that clarify what we stand for and guide us in our daily work:

PEOPLE – We work together with the mutual respect and kindness that befits the dignity of our profession. We are committed to building and refining our professional skills to adapt to a dynamic environment.

RELIABILITY – We can be counted on every day. We continually improve our services and infrastructure to provide our members with the best service experience possible.

MEMBER FOCUS – We build strong member and community relationships. We treat members and other stakeholders with dignity and respect. We meet our members' needs while protecting their interests.

SERVICE – We play a vital part in improving the quality of life in our community by contributing our unique skills and abilities as legal professionals and officers of the Court.

The purpose of this three-year Strategic Plan is to guide the Connecticut Bar Association into the future. It provides a framework to focus and coordinate the efforts of leadership and staff as we work toward identified goals and assess our association's progress in furthering its mission. The CBA's performance plans, annual business plans, and budgets for FY 2021 through 2023 will be informed by the priorities, goals, and actions set forth in this plan.

Guided by the CBA Strategic Plan, our efforts will focus on five **Goals**:

1. **Organizational Culture**
2. **Governance and Leadership**
3. **Maintaining and Increasing Membership**
4. **Marketing and Communicating Value**
5. **Access to Justice and Pro Bono**

We are now in the process of implementing the plan with the support of CBA staff while continuing to provide our award-winning professional development and networking opportunities that are crucial to the exchange of ideas and information to equip you with needed knowledge and resources. One area of focus under governance and leadership is to increase inclusion of mid-level lawyers in the substantive work of our sections and committees and provide more opportunities to young lawyers for leadership, including working closely with YLS Chair Cindy Cieslak and the CBA Young Lawyers Section; and with our Presidential Fellows and their newest members: Jeffrey D. Bausch, Jr., Updike Kelly & Spellacy PC; Jenna T. Cutler, Cohen and Wolf PC; Samim Jabarkhail, Nuzzo & Roberts LLC; and Paige M. Vaillancourt, Rescia Law PC.

Next steps will involve identifying the actions important to accomplish each goal, responsible parties for those actions, necessary resources, timeframes, and evaluative metrics. Progress will be reported to the CBA Board of Governors regularly and noted on an implementation matrix. CBA staff will assist with conducting periodic reviews by those involved with the implementation of the plan so appropriate adjustments can be made in order to maintain momentum of the plan and maximize the effectiveness of efforts to accomplish our actions, goals, and priorities.

While the plan reflects the committee's current thinking and represents its planning process at a given point in time, the Plan is not an end in itself. Our Plan is goal-oriented, not process-oriented. It will guide our leadership and staff in decision-making and help ensure that the CBA's activities and programs are aligned with our mission. It is meant to be a functional tool that can evolve with changing circumstances as new information or unexpected challenges are encountered, even if it means modifying or jettisoning some steps in the process.

The information we learned during the planning process is just as useful in allowing us to change course and make other adjustments as needed—whether it's because of a global pandemic or a weeklong power outage due to a tropical storm.

To move the Plan forward, we will continue to need your help. We will need talented, committed people from diverse backgrounds and require deep partnerships with others who share our vision of a strong and effective bar association, a healthier legal profession, and a more just and equitable world. Please let us know if you can contribute your knowledge, passion, and creativity in helping us realize any one or more of our goals.

Thank you for your continued dedication and collaboration as we further our vision of connecting our members and achieving collective and individual success in a diverse, equitable, and inclusive profession in service to society.

You may view the CBA Strategic Plan at ctbar.org/StrategicPlan.

We welcome your questions, comments, input, and any assistance you can provide. Please e-mail us at communications@ctbar.org. Wishing you and your family a healthy and happy holiday season! Stay safe and be well. ■

Continued on page 40 →

Upcoming Education Calendar

Register at ctbar.org/CLE

NOVEMBER

5 Recognizing and Avoiding Conflicts*

6 Recent Issues in Consumer Bankruptcy Law

9 FTINE 2020 Series

10 FTINE 2020 Series

10 Succession Planning Series: Nuts and Bolts of Winding Down/Up a Practice*

12 eDiscovery 101: Collection to Trial Presentation

12 FTINE 2020 Series

12 Dividing Retirement Assets & Stock & Other Executive Compensation in Divorce

12 Motley Speaker Series: Structural Racism and Financial Services*

13 Workers' Compensation Medical Webinar

13 FTINE 2020 Series

16 Free Speech or Hate Speech? A Conversation Regarding *State v. Liebenguth**

17 Female Managing Partners: A Different Perspective on Law Firm Life*

18 Social Security Rulings Update

**Ethics credit available*

DECEMBER

1 Succession Planning Series: Mergers and Sales*

2 Bridge the Gap Series: Depositions 101

3 Intermediate VA Benefits Training

3 Motley Speaker Series*

7 Bridge the Gap Series: Psychology of the Law

8 Ethical Considerations in Residential Real Estate Closings*

15 Bridge the Gap Series: Family Law

16 Motley Speaker Series: Structural Racism in Employment*

CBA Members Volunteer at Stand Down

Despite the ongoing COVID-19 pandemic, CBA members were still able to continue the nearly 25-year tradition of providing pro bono legal services to veterans at the Connecticut Department of Veterans Affairs' annual Stand Down event. On Friday, September 25, Attorneys Richard D. Arconti, Dennis M. Carnelli, Carrie M. Coulombe, Jason M. Fragoso, Daniel J. Horgan, Timothy Lenes, Frank Manfredi, and Winona W. Zimberlin represented the CBA as one of the few service organizations able to provide in-person assistance to Stand Down attendees in Bridgeport, Danbury, Norwich, and Rocky Hill.

Stand Down was established after the Vietnam War and provides veterans with "one-stop" access to a range of programs and services offered by state and federal agencies, Veterans organizations, and community-based non-profits. This year's Stand Down event included a virtual component on September 24, in which community organizations explained how to access available services. On September 25, the new four-location format created a social distancing environment for veterans to safely receive in-person services.

Above: Jason M. Fragoso and Richard D. Arconti volunteering at Stand Down in Danbury.

Right: Winona W. Zimberlin and Carrie M. Coulombe volunteer in Rocky Hill at this year's Stand Down.

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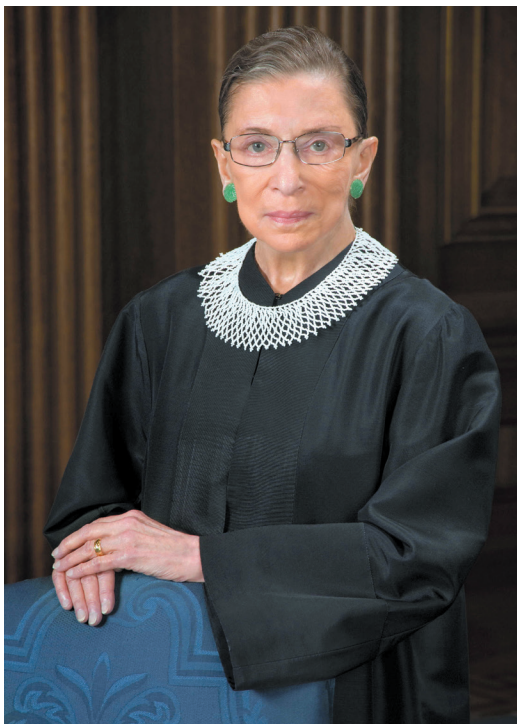
IN MEMORIAM

The Hon. Gerald M. Fox, Jr. passed away at the age of 76 on July 30. He was a graduate of St. Michael's College in Vermont and the University of Connecticut School of Law. For many years, he was engaged in the private practice of law as a partner at Abate & Fox in Stamford. For the past 25 years, he had continued his law practice as a partner at Fox & Fox LLP with his son, Gerald. From 1990 until 2014, Judge Fox served as probate judge for the District of Stamford. He was a frequent lecturer to the Fairfield County Bar Association and the Connecticut Bar Association regarding real estate and probate law topics, and recently had reached the milestone of celebrating 50 years of admission to the practice of law in Connecticut.

Lawrence "Larry" Samuel Brick passed away at the age of 74 on June 17. Attorney Brick was a graduate of Marietta College and Cleveland-Marshall College of Law. He was an attorney for nearly 50 years, 32 of which he had his own practice specializing in workers' compensation. Described as fair, brave and willing to compromise, he was well respected within the legal community and beyond. As a community leader, he was an active member and contributor to a number of organizations, including Jewish Federation, West Hartford Democratic Town Committee, and Jewish Family Services, for which he served as a president.

CBA Mourns the Loss of US Supreme Court Justice Ruth Bader Ginsburg



On Friday, September 19, the world lost the gender equality and women's rights champion, US Supreme Court Justice Ruth Bader Ginsburg. She received a BA from Cornell, where she was the highest-ranking female in her graduating class, and went on to graduate from Columbia Law School, where she was tied for first in her class. After law school, Justice Ginsburg served as a clerk for the Honorable Edmund L. Palmieri, United States District Court for the Southern District of New York. She went on to teach at Rutgers Law School and Columbia Law School, where she became its first female tenured professor. In 1972, she co-founded the Women's Rights Project at the ACLU and led the project until her appointment as a judge of the United States Court of Appeals for the District of Columbia Circuit in 1980. She was nominated as an associate justice of the Supreme Court by President Clinton and took her seat on August 10, 1993.

As the nation remembers her life and her numerous accomplishments, the Connecticut Bar Association most recently recalls the time she took time out of her day to attend the CBA Young Lawyers Section sponsored swearing in of 33 CBA members to the Bar of the Supreme Court of the United States in May 2018. The group was honored with a private visit from Justice Ginsburg in which she took a photo with the attorneys and answered questions.

Other CBA members might recall when she was a visiting scholar lecturer at UConn School of Law in March 2004. Justice Ginsburg spoke about behind-the-scenes customs of the US Supreme Court and current issues of the times, including the Court's recusal policy and the reliance on foreign law in its own jurisprudence.

We deeply feel the great loss of Justice Ginsburg in our legal community and send our condolences to her family. It is an amazing part of her legacy that she touched so many lives personally here in Connecticut and throughout the world.

The CBA Celebrates Constitution Day

On September 29, the CBA held "Celebrate Constitution Day with the CBA: *Bush v. Gore* at Twenty: Lessons for the 2020 Election" in observance of this year's Constitution Day. Program attendees, which included CBA members as well as teachers and students throughout the state, learned about the disputed 2000 presidential election, the United States Supreme Court's resulting decision in *Bush v. Gore*, the roles of the federal and state courts in considering election disputes, and how they are likely to inform court challenges that may arise during the 2020 presidential election.

"Starting with the commemoration of the centennial of the 19th Amendment at our annual Law Day ceremony in May, much of the CBA's civics education programming this past year has focused on the exercise of our citizens' most fundamental right and responsibility: voting," stated Civics Education Committee Chair Jonathan Weiner.

The program was led by Civics Education Committee Chair Jonathan Weiner with a discussion from Secretary of State Denise W. Merrill and Douglas M. Spencer, professor of law and public policy at UConn School of Law. The program was followed by a robust question and answer session from the audience.

PEERS AND CHEERS

Attorney Announcements

RoseKallor LLP is pleased to announce that Operation Fuel's Board of Directors has elected **Rauchell Beckford-Anderson** to serve on the organization's governing body. Attorney Beckford-Anderson is an associate at the firm and focuses her practice on all aspects of employment law. She defends public and private employers against claims of discrimination, breach of contract, free speech retaliation, whistleblower retaliation, and other civil rights violations.

The law firm of Neubert Pepe & Monteith PC is pleased to announce that **Sean R. Caruthers** has been named a partner with the firm. Attorney Caruthers's practice is focused in the areas of insurance defense and coverage disputes, premises, products and professional liability as well as commercial, construction, employment, and municipal litigation.

James Horwitz, managing attorney at Koskoff Koskoff & Bieder, has been named to the Board of Directors of the Brain Injury Alliance of Connecticut (BIAC). BIAC provides resources and support to brain injury survivors, their families, and caregivers while educating people throughout Connecticut about brain injury and prevention.

Fitzgerald Attorneys at Law PC is pleased to announce that **Andrea Momnie O'Connor** joined the firm's Connecticut office. Attorney O'Connor is among the region's foremost legal experts in the areas of business financing, restructuring, bankruptcy, asset protection, and commercial matters.

McCarter & English is pleased to announce the addition **Rolan Joni Young** and **Christine Owens Morgan** to its Hartford office. Attorney Young brings her leadership in the affordable housing, economic development, community development, and community-based healthcare development arenas to the firm where she joins as a partner in the firm's Real Estate Practice Group. Attorney Morgan has extensive experience representing affordable housing developers in numerous real estate transactions, including assisting them with acquisitions and related financings and joined the firm as special counsel.

Firm/Organization Announcements

The partners of **Carmody Torrance Sandak & Hennessey LLP** have established the Anthony M. Fitzgerald Fund for Excellence to honor Tony Fitzgerald on the occasion of his retirement from the practice of law in 2018. Attorney Fitzgerald was a long-time supporter of the Connecticut Bar Foundation (CBF) and was a Charter James W. Cooper Fellow. Carmody lawyers and staff, friends, and others made the initial contributions to the Fund and proceeds were donated to the CBF to establish The Anthony M. Fitzgerald Award for Excellence. The award recognizes excellence in advocacy, a hallmark of Attorney Fitzgerald's career. The CBF will present the award annually.

The law firm of **Conlon & McGlynn LLC** has changed its name to Conlon McGlynn & McCann as of August 1, 2020. It is a boutique matrimonial and family law firm that specializes in complex and high net-worth cases. The firm is pleased to welcome Lauren McCann, who has exclusively practiced family law her entire career.

Murtha Cullina LLP is pleased to announce that Andy I. Corea has been elected managing partner of the firm, effective January 1, 2021. Attorney Corea currently serves as chair of the firm's Business and Finance Department. He will succeed Jennifer Morgan DelMonico, who has served as Managing Partner of the firm since 2015 and will resume her full-time practice as a trial lawyer for corporate clients in product liability and commercial litigation disputes. ■

PEERS and CHEERS SUBMISSIONS
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Fees for Referral to Attorney in Another Jurisdiction

Photo credit: Christy Thompson/123rf.com

The inquiring attorney is a Connecticut attorney who has relationships with many foreign companies. These companies need representation in the United States for a whole range of legal services. The attorney would like to know if, as a Connecticut attorney, he may collect a referral fee when he refers these clients to attorneys who practice law in other jurisdictions. Specifically, he asks the following:

1. May a Connecticut lawyer collect a pure referral fee from an out-of-state lawyer who practices in a jurisdiction that has adopted a Rule of Professional Conduct substantially similar to our Rule 1.5(e)? The short answer is yes: under Rule 1.5(e) a Connecticut lawyer may collect a referral fee under those circumstances.

2. May a Connecticut lawyer collect a pure referral fee from a client directly if the attorney to whom the Connecticut lawyer refers the client's work practices in a jurisdiction that would prohibit such fee sharing? The short answer to this question is that the lawyer may enter into a fee agreement with a client for making a referral, but such an arrangement is governed by Rule 1.5(a) and (b), not Rule 1.5(e).

In responding to these questions, we presume that the Connecticut attorney has advised the client that a referral to another attorney or firm is in the client's best interest and the client has agreed.

"Rule 1.5 of the Rules of Professional Conduct generally governs fees charged to clients. Although the Rule does not define 'fee,' it is clear that the Rule uses the term, as it is commonly used, to refer to the amount charged to a client for legal services performed for that client." Informal Opinion 07-04.

Rule 1.5(e) governs fee sharing between attorneys, and requires, *inter alia*, that the foreign entity or individual in these

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

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

scenarios be a "client" of both of the law firms involved. It provides as follows:

> (e) A division of fee between lawyers who are not in the same firm may be made only if:
>
> (1) The client is advised in writing of the compensation sharing agreement and of the participation of all the lawyers involved, and does not object; and
>
> (2) The total fee is reasonable.

The Commentary to Rule 1.5(e) explains that:

> a division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well and most often is used when the fee is contingent, and the division is between a referring lawyer and a trial specialist.

Connecticut's Rule 1.5 does not require that the Connecticut attorney participate in the representation in order to share a fee. Compliance with Rule 1.5(e) requires only that the participants sharing the fee be lawyers and that the fee sharing agreement meet the other requirements of Rule 1.5(e).

> The wording of Rule 1.5(e) as adopted in Connecticut omits the requirement of the ABA Model Rule 1.5(e) that a division of fees must be made in proportion to the services performed by each lawyer or that each lawyer must assume joint responsibility for the representation. Thus, a lawyer with no other attorney-client relationship with a person may refer such person to another lawyer and receive a referral fee (upon compliance with the other requirements of the rule). As adopted in Connecticut, Rule 1.5(e) provides an incentive for a lawyer who is consulted by a prospective client with a matter in an unfamiliar area of law to refer the matter to a lawyer better able to handle the matter. Clients benefit from such a referral because the case is handled by a lawyer with greater knowledge, skill, and experience in the area of law pertinent to the client's needs. The referring lawyer earns a fee without accepting a case in an area of law with which the referring lawyer is less familiar.

Informal Opinion 16-04.

"…we believe that referral fees are permitted… because the referring lawyer has a lawyer-client relationship and because the referring lawyer owes the client the duties prescribed by the Rules of Professional Conduct."

We have opined previously that:

> [e]ven though a referring attorney is required neither to provide services in nor to assume joint responsibility for the representation in the referred case, …Rule 1.5(e) by necessary implication requires that each lawyer receiving a fee from the representation of a client establish a lawyer-client relationship with the client and, as an attorney for the client, be bound by the Rules of Professional Conduct, even if the scope of the lawyer-client relationship is the referral itself…. We do not believe [a lawyer may receive a referral fee] simply because lawyers possess a license; rather we believe that referral fees are permitted…because the referring lawyer has a lawyer-client relationship and because the referring lawyer owes the client the duties prescribed by the Rules of Professional Conduct.

Informal Opinion 13-04.[1]

The Committee also has approved fee splitting between Connecticut attorneys and out-of-state attorneys. *See* e.g. Informal Opinion 91-7 and Informal Opinion 92-09. The Rule does not require that the counsel to whom the case is referred be a Connecticut-admitted attorney. It requires only that the referring attorney reasonably believe that the new counsel is competent[2]; that the attorney advise the client in writing of the compensation sharing agreement and of the participation of the new counsel and the client does not object; and that the total fee to be paid by the client be reasonable.[3] If the fee-sharing agreement meets all the requirements of Rule 1.5, then an attorney may enter into a fee sharing arrangement with another attorney or firm, even if that firm is outside the Connecticut jurisdiction.

The second question assumes that the attorney to whom the matter is referred cannot, under the rules of the other jurisdiction, enter into a fee-sharing arrangement with the referring attorney, and therefore cannot make payment to the referring attorney from fees received in the client matter. Not to be dissuaded, the inquiring attorney asks if he may ask the client to pay a referral fee.

Because this arrangement would not involve a "division of [a single] fee between lawyers who are not in the same firm," it would not constitute fee sharing, and therefore would not be governed by Rule 1.5(e). Rather, the Connecticut lawyer would bill the client directly, and separately, for the legal services provided to the client in making the referral (identifying the client's legal needs, assessing the qualifications of lawyers in the subject

jurisdiction, and referring the client to a lawyer competent to provide the legal services the client requires), just as the lawyer accepting the referral and handling the client's matter would bill the client directly, and separately, for the legal services that lawyer provided to the client.

The inquiring attorney and the client are free to negotiate an appropriate contract for engagement for a representation where the scope of the representation is limited to assessing the client's legal needs, identifying a competent lawyer in the subject jurisdiction, and making the referral, provided that the fee charged by the Connecticut lawyer for the legal services provided to the client is reasonable as required by Rule 1.5(a), and the written engagement agreement complies with Rule 1.5(b) in identifying the scope of the matter and the basis of the fee.

If these requirements are met, the lawyer may charge the client directly for providing a referral. ■

NOTES

1. *See also* Informal Opinion 01-03 ("The committee believes that an attorney who uses his or her legal expertise to gather relevant information about a case, to evaluate both liability and damages, and, if appropriate, to attempt to match a case with an appropriate legal specialist is rendering legal services, whether those services are advertised under the heading of "Attorney Referral Services" or under "Attorneys," and whether those services are performed by a law firm or by lawyers employed by a business entity which calls itself something other than a law firm.).
2. Per the Rule 1.5(e) Commentary, Connecticut counsel "should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter."
3. Rule 1.5(a) sets out a non-exhaustive list of "factors to be considered in determining the reasonableness of a fee," as follows:

   (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

   (2) The likelihood, if made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

   (3) The fee customarily charged in the locality for similar legal services;

   (4) The amount involved and the results obtained;

   (5) The time limitations imposed by the client or by the circumstances;

   (6) The nature and length of the professional relationship with the client;

   (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

   (8) Whether the fee is fixed or contingent

Professional Discipline Digest

VOLUME 29 NUMBER 3 | By MARK DUBOIS

Presentment ordered for violation of Rules 1.5(a) and 1.15(f) where, in a workers' compensation matter, the attorney charged an improper fee, failed to preserve the fee pending a resolution of the dispute, and engaged in conduct prejudicial to the administration of justice. Of note is that this case involved two separate civil lawsuits and appeals and the Reviewing Committee had to tease out which issues had been determined by the courts. SGC ordered an additional violation of Rule 8.4(4) to be considered on presentment. *Yuille v. Laurence Parnoff*, #18-0229 (15 pages).

Reprimand issued by agreement for violation of Rule 3.3(b) where attorney failed to correct false testimony of his wife whom he represented in a grievance proceeding. *Fairfield Panel v. Jonathan C. Newman*, #18-0675 (9 pages).

Presentment ordered for violations of Rules 1.3, 1.4(a)(3) and (4), 8.1(2), and 8.4(3) where attorney failed to file pleading leading to the dismissal of the case and misrepresented to the client the status of the case. The attorney failed to answer the grievance. *Boczar v. Paul M. Cramer*, #19-0108 (8 pages).

Presentment ordered for violation of Rules 1.3, 1.5(a) and 8.4(4) and Practice Book § 2-32(a)(1) where attorney took a fee to review prenuptial agreement and never responded to client's inquiries about the matter, nor respond to the grievance. Of note is that during the hearing, disciplinary counsel offered docket sheets of various civil cases of the respondent, which appeared to have been dismissed for inaction. The Reviewing Committee ordered disciplinary counsel to add charges to the presentment for lack of diligence and improper fees related to those matters. *Garcia v. Jose L. Altamirano*, #19-0141 (7 pages).

Presentment ordered by agreement for consolidation purposes in matter involving violation of Rules 8.1(2) and Practice Book § 2-32(a)(1). *Carroll v. Stephanie E. Czap*, #19-0173 (8 pages).

CLE ordered by agreement for violation of Rule 1.4(a)(2). *Westbrook v. Brian E. Kaligian*, #19-0209 (12 pages).

Presentment ordered for violation of Rules 1.3, 1.4(a)(2), (3) and (4), 1.5(a) and (b), and 1.15(d), 1.16(d), 8.1(2), 8.4(3) and (4), and Practice Book § 2-32(a)(1) in matter where attorney took fee and failed to act on employment case, failed to communicate with client, and failed to answer the grievance. Attorney also failed to keep his attorney registration current. SGC ordered an additional violation of Practice Book § 2-27(d) to be considered on presentment. *Teti v. David V. Chomik*, #19-0284 (9 pages).

CLE ordered by agreement for violation of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.5(a),1.15(b) and (j), 8.1 (2), and 8.4 and Practice Book § 2-32(a). *Newman v. Steven H. Surdut*, #19-0017 (10 pages).

Presentment ordered by agreement for purpose of consolidation for violation of Rules 1.1, 1.15, 8.1(2), and 8.4(4) and Practice Book § 2-32(a)(1). *Ahmad v. Keisha S. Gattison*, #19-0039 (8 pages).

Presentment ordered for violation of Rules 1.1, 1.2(a), 1.3, 1.4(a)(1), (2), (3) and (4),1.4(b), 1.5(a), 1.6(e), 1.15(b) and (e), 8.1(2), 8.4(1) and (4), and Practice Book § 2-32, where attorney was hired to assist with a Title XIX matter and with estate planning, failed to record a power of attorney with a deed, and failed to follow through on the matter and communicate with the client. When the client could not contact respondent, she found that his office had been abandoned and his files thrown in the trash by the landlord. A friend of the complainant retrieved her file from the trash. SGC ordered an additional violation of Practice Book § 2-27(d) to be considered on presentment. *Vik v. Chris Gauthier*, #19-0202 (8 pages).

Presentment ordered for violations of Rules 1.3, 1.4(a) and 8.4(4) as well as Practice Book § 2-32(a)(1) where attorney failed to appear for two pretrials leading to the nonsuit of his client's case, had a record of other cases, which were similarly suffering from inaction, and failed to answer the grievance complaint. Of note is that investigators from both Bar Counsel

Continued on page 40 →

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

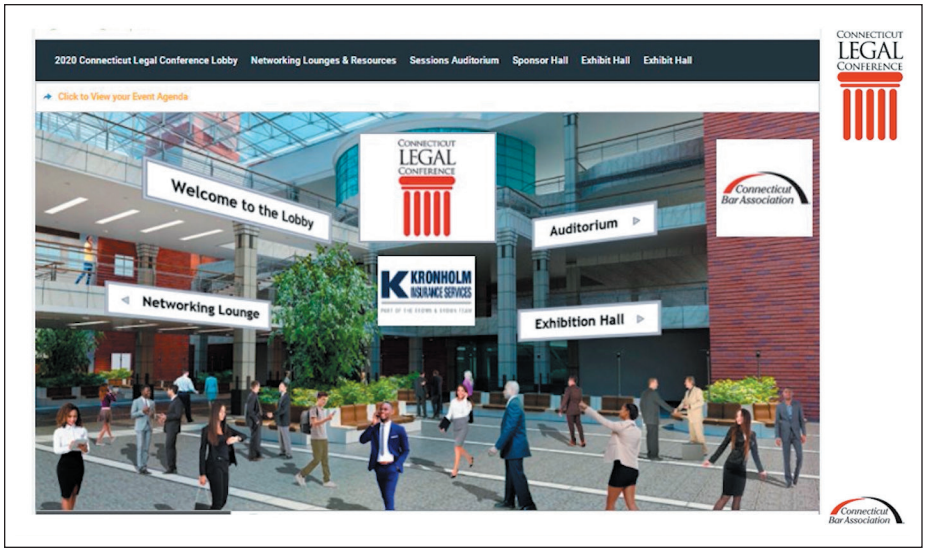
Presentments to the superior court are de novo proceedings, which may result in dismissal of the presentment by the court or the imposition of discipline, including reprimand, suspension for a period of time, disbarment, or such other discipline the court deems appropriate.

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

CBA Hosts First Virtual Connecticut Legal Conference

By CORRINE KING

MORE THAN 450 ATTORNEYS, judges, paralegals, and other legal professionals from across the state and country attended the first virtual Connecticut Legal Conference on September 14, 15, and 16. Originally scheduled for June at the Connecticut Convention Center, the conference was moved online as a result of the COVID-19 pandemic and included 45 sessions, three opening plenaries, and opportunities to network with other registrants in the networking lounge and meet with exhibitors in the exhibition hall.



The conference began on Monday with the UConn School of Law Alumni Breakfast, where alumni met Dean Eboni Nelson, who started her new role as dean on July 31. After the breakfast, President Amy Lin Meyerson greeted the conference attendees and introduced the day's opening plenary speakers, Connecticut Supreme Court Chief Justice Richard A. Robinson and American Bar Association President (ABA) Patricia Lee Refo, who both shared inspiring remarks about the future of the legal profession.

"The law is the fabric that holds this society together and we as lawyers are the tailors of that cloth, with the ethical, moral, and legal responsibility to mend any tears that may occur," said Chief Justice Robinson. "Lawyers are not merely players sitting on the bench. Not only are we necessary players, we are leaders. Every one of us at this virtual event has the ability to lead and, in fact, must lead to get us through these crises."

Each day after the opening plenaries, conference attendees broke out into more than a dozen conference sessions.

On Monday afternoon, during the "AAA Roadside Assistance for the Legal Profession: A-dvances in Technology, A-rtificial Intelligence, and A-lternative Fee Arrangements session, the 2020 COVID-19 Pandemic and State of the Legal Profession Task Forces discussed how they have been working to explore, implement, and promote certain advances in technology, as well as other changes in the way we practice law, to ensure the sustainability of the practice of law and shrink the access to justice gap.

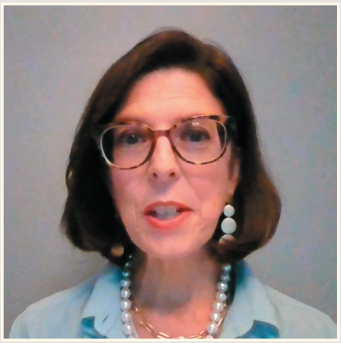
The Standing Committee on Professional Ethics presented their "Ethics: 2019—The Year in Review" seminar, which looked at the most recent opinions from the committee, the Statewide Grievance Committee, and the courts, as well as a review of any proposed rules changes.

During Tuesday's opening plenary, Chief Judge Stefan R. Underhill from the United States District Court District of Connecticut discussed the changes in federal court as a result of the pandemic and Attorney General William Tong discussed the racial tensions facing our nation and the importance of diversity, equity, and inclusion efforts.

During the "Connecticut's Eviction Crisis and the Right to Counsel Movement" session on Tuesday morning, attendees learned about the eviction crisis in Connecticut, the national right-to-counsel movement, and lessons from nearby jurisdictions that have enacted right to counsel or increased access to justice for low-income tenants facing eviction.

On Wednesday morning, the final opening plenary speakers, Lieutenant Governor Susan Bysiewicz and Probate Court Administrator Beverly K. Streit-Kefalas, thanked attorneys for their

Chief Justice Richard A. Robinson



Probate Court Administrator Beverly K. Streit-Kefalas

ABA President Patricia Lee Refo

Attorney General William Tong

Chief Judge Stefan R. Underhill

Lieutenant Governor Susan Bysiewicz

flexibility and teamwork during the pandemic.

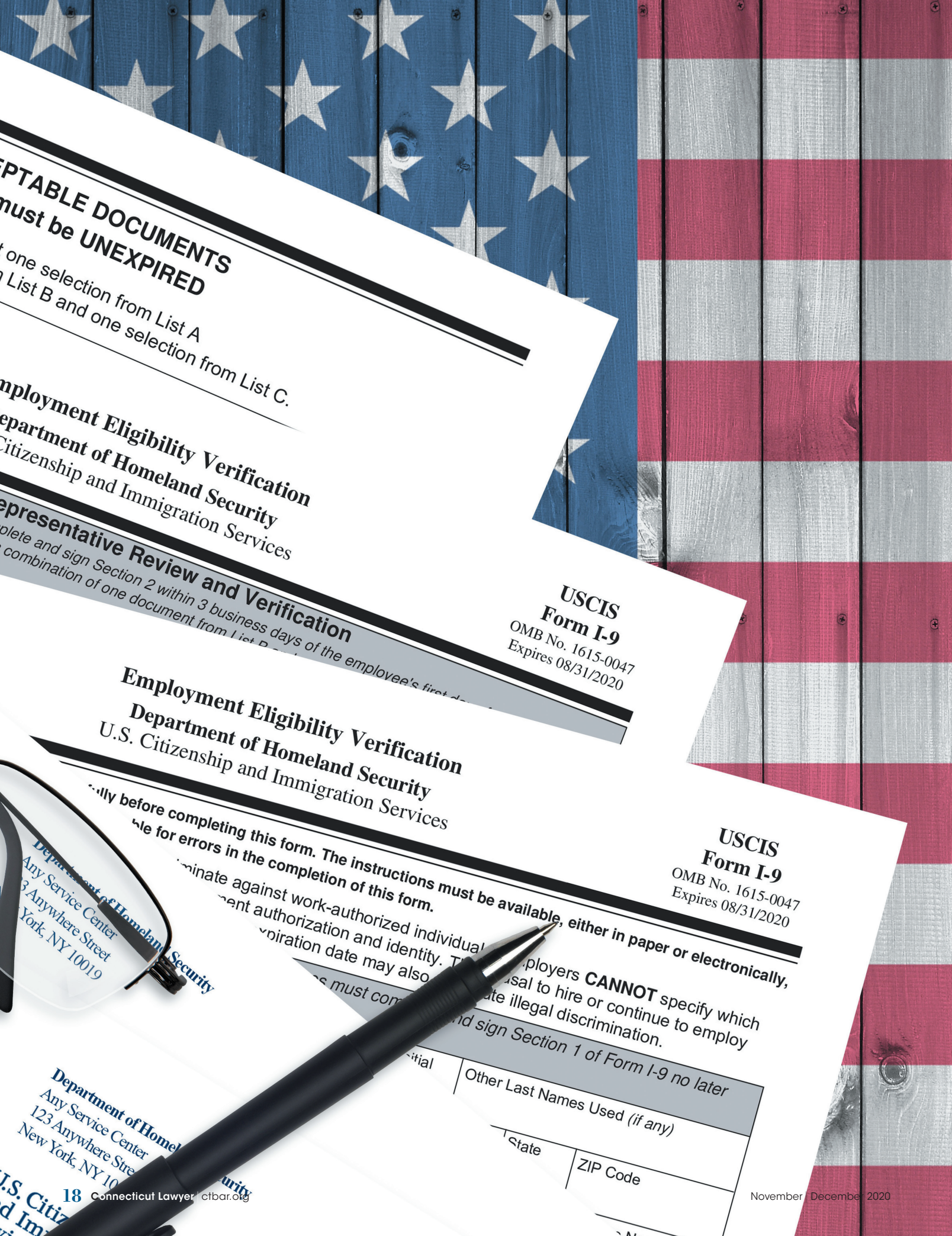
Our featured speakers from SAB Negotiation Group presented "Effective Negotiating: Dynamic Negotiation Training" on Monday and an encore presentation on Wednesday afternoon. Attendees learned key negotiation tips, including how to develop an effective negotiation strategy and maximize persuasiveness, adapt their negotiation style for different situations, deal with difficult negotiators and improve and build relationships; and effectively negotiate terms and conditions.

The "Safe Harbors and Calm Seas" session was presented by the Insurance Programs for the Bar Committee on both Tuesday and Wednesday afternoon. The session provided valuable instruction, risk control, and recommendations to help lawyers safely navigate today's complex legal environment and assist them in minimizing professional liability risk.

The CBA thanks all those that helped make the Connecticut Legal Conference a great success—the presenters, moderators, attendees, exhibitors, and the sponsors, particularly Platinum Sponsor Kronholm Insurance Services and Gold Sponsors CATIC and Liberty Bank.

Watch the opening plenary speakers speeches at ctbar.org/CLC2020-Plenary. ■

Corrine King *is the marketing lead at the Connecticut Bar Association.*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THE INVISIBLE WALL: Barriers to Lawful Employment for Immigrants

By ERIN O'NEIL-BAKER AND YAZMIN RODRIGUEZ

ACCORDING TO LIN MANUEL-MIRANDA: "IMMIGRANTS… get the job done." However, it is not the lack of desire to work that prevents many immigrants from being part of the workforce. Rather, the biggest challenge is the complex patchwork in the current immigration system restricting many classes of immigrants in the US from being able to obtain lawful employment. The Immigration and Nationality Act is clear: employment in the US is prohibited for any foreign national who has not been expressly authorized to work in this country.

Foreign nationals may enter the United States through a number of visa programs—some are permanent and others are temporary. But most visa programs do not automatically provide work authorization. To work legally in the US, an individual must generally obtain a work permit. This leaves a huge gap for those who are in the United States out of status (they entered the US legally but their authorized period of stay expired) or who are undocumented. Regardless of the underlying reasons for entering the United States, a key goal of every immigration lawyer is always to navigate the very complex set of rules and regulations within the immigration system and piece together viable legal options, if any, that may be available for immigrants to obtain work authorization while residing in the United States. Thus begins the hunt for the Employment Authorization Document (EAD), a work authorization card.

The ability to work in the US is critical for immigrants, who usually need reliable income to get by and often have family members to support, either here or abroad. Employers across the nation are required to verify that all employees are allowed to work in the United States. If an individual is not a citizen or a lawful permanent resident, they must prove that they can work in the US by presenting an EAD, which comes in the form of an identification card. This card, issued by the United States Citizenship and Immigration Services (USCIS), proves one's ability to be legally employed in the United States.

Some immigrants are eligible for permanent residency, which allows them to work lawfully without an additional work authorization card. For other immigrants, permanent residency is not an option due to the complex and narrow restrictions on eligibility for permanent residency. Despite the many work authorization options available on paper, it is very difficult—if not impossible—for an out-of-status or undocumented immigrant to secure authorization.

Apart from those who have a pending application for permanent residency, there are over 53 different categories that would make a person eligible for an employment authorization card. These include refugees and certain asylum-seekers and their qualifying family members; foreign students (with numerous restrictions on the scope of employment); individuals on a diplomatic mission on behalf of international organizations like NATO; or those who have been granted Temporary Protected Status (TPS) based on a natural disaster or other catastrophe. The specific basis for every EAD is noted on the face of the document through a particular code. Fifty-three options sounds generous and varied but the categories are narrow and it is difficult to meet the criteria. Just because an individual falls into one of these categories does not automatically make them eligible for an EAD card.

In this article, we will introduce several of our immigration clients who have managed to obtain, against all odds, work authorization. Through these real-life stories, we hope to illustrate what it's actually like to navigate this complex web of laws surrounding employment authorization in the US. The examples below are all true stories, but we have changed their names to protect their identities. You will meet Flor, Carmen, Rosario, Guadalupe, Marco, and Luis, who have surmounted this "invisible wall" to receive the elusive EAD.

✪ Asylum

Flor fled her native country of El Salvador after suffering constant harassment and a violent attack at the hands of a powerful gang known as the Mara Salvatrucha, or MS-13. She was held hostage in her own home, tied to a bed pole, and was repeatedly beaten and violently raped for three consecutive days. Flor's husband had been murdered a year prior to her attack by the same gang

Photo credit: Mykhailo Polenok/123rf.com

"…unless an immigrant requests an expedited asylum hearing, the clock stops once an immigration judge sets a date of a final hearing on the merits of the asylum case, even if that final hearing is years in the future."

members who were looking to settle a debt. Following this brutal attack, Flor had no other choice but to leave her two-year-old child in the care of her mother and flee to the United States seeking protection. Upon crossing the US border with Mexico, Flor was apprehended by US Customs and Border Protection (CBP) officers and essentially interrogated regarding her reasons for attempting to enter the United States without advance permission. She was released on a $10,000 bond and subjected to periodic check-ins with an Immigration and Customs Enforcement (ICE) officer until she had an opportunity to plead her case before an immigration judge. Despite the insurmountable untreated trauma Flor was enduring, she came to my office asking for ways in which she could stay in the United States and work in order to be able to provide for her mother and two-year-old child in El Salvador.

Even though the circumstances surrounding Flor's abrupt departure from her home country would allow her to apply for asylum in the United States, getting to that point in our discussion was incredibly challenging. Flor's main focus was not to relive her trauma by talking to me about her horrible experience back home, but rather, Flor's main objective was to be able to find meaningful employment without violating any of her terms of release.

Asylum is a form of immigration relief available to a subset of individuals who are facing persecution in their home countries because of a "protected ground." The ability to obtain an EAD through asylum is not that simple. In order to request asylum in the United States, an immigrant must file an application known as an I-589 form. The application is a rather lengthy questionnaire that is (arguably) designed to elicit information regarding the person's fear of returning to their home country. The filing of the application triggers what is known in the immigration world as an "asylum clock." The clock is an internal tracking system used by both USCIS and the courts to calculate the number of days an application for asylum is pending before an immigrant can file an application for an EAD.

There are two general paths to submit an application for asylum—the first path is known as an affirmative application for relief, which means that the person is not in removal proceedings and may file their application with USCIS directly. The second path is known as a defensive application for asylum, which means that the person is in removal proceedings and has no other recourse but to file their application for relief with the immigration court within that person's jurisdiction. But filing an application for asylum does not in and of itself entitle an immigrant to work legally in the United States. In order to qualify for a work permit under the asylum category, an immigrant must take various steps prior to submitting an actual application for permission to work legally.

First and foremost, the form I-589 must be filed within one year of the immigrant entering the United States. Pursuant to recent changes within the federal regulations, unless a USCIS officer or an immigration judge makes a determination that special extenuating circumstances existed for not filing an application within the one-year deadline, the immigrant will be permanently excluded from obtaining an EAD card while the asylum application is pending. Once an application is filed with either USCIS or the court, the immigrant must wait at least 365 calendar days before submitting an application for an EAD.

Simple enough? Well, it is not. Remember that asylum clock we mentioned earlier? The number of days accrued based on that particular electronic tracking system really depends on technical, administrative details that have nothing to do with the substance of the asylum claim. Any "delays" presumably caused by the applicant—such as the need to find an interpreter in their native language, requesting time to find (and pay for) a lawyer to represent them, or government backlogs in pending applications for collateral relief—can "stop the clock," effectively cutting off the applicant's eligibility for work authorization. For example, unless an immigrant requests an expedited asylum hearing, the clock stops once an immigration judge sets a date of a final hearing on the merits of the asylum case, even if that final hearing is years in the future.

In Flor's case, even though her immigration case was pending for more than two years before the court and she had filed her asylum application within the first year of entering the United States, the internal asylum clock made it impossible for her to obtain an EAD card. Luckily for Flor, we were able to win her asylum case. Upon a successful grant of asylum—which, even for clients fleeing severe persecution, is incredibly difficult to obtain—Flor was finally able to work lawfully in the United States, over three years after arriving in this country.

U-Visa

Carmen entered the United States ten years ago. She fled her home country of Guatemala after being subjected to years of domestic and sexual violence at the hands of the father of her three

children. Carmen was repeatedly beaten and forced to have sex with her partner against her will. Even though she reported the several instances of violence to local authorities in Guatemala, her partner was never held accountable or apprehended for his crimes. Carmen entered the United States undetected and was, therefore, unaware that she had the right to file an asylum application with USCIS based on the severe instances of violence she had suffered in her native country.

Two years after her arrival to the US, Carmen fell in love. Carlos, who was also from Guatemala, courted Carmen for several months before asking her to move in with him and share a home together. Several months into their relationship, Carlos became increasingly violent. He would come home highly intoxicated and beat Carmen for no reason at all. Carmen was scared to report the abuse to local authorities in the United States because of her unlawful status in the country and her fear of imminent deportation. In 2015, Carlos' abuse escalated to the point of attempting to strangle Carmen in her sleep. Carmen's older child called the police asking for help. Carmen put her fear aside and cooperated with local law enforcement with the investigation and prosecution of Carlos' crimes. Carmen's cooperation set the stage for her to be able to apply for a specific form of relief known as a U-visa.

The U-visa allows victims of certain violent crimes (including domestic violence, sexual assault, trafficking, and other crimes), who have suffered substantial mental or physical abuse, to be able to obtain lawful status in the United States so long as they are helpful in the investigation and prosecution of criminal activity. The overarching purpose of the U-visa provisions is to enable victims of crime to cooperate with law enforcement without fearing deportation from the country.

Once a U-visa is approved, victims of qualifying crimes can reside lawfully in the United States for a period of four years with the option to apply for lawful permanent residence status after holding that U-visa status for at least three years. The process of applying for a U-visa can be quite challenging. Every application for a U-visa requires a certification from a law enforcement agency or any other entity with enforcement powers, confirming not only that the person was in fact a victim of a crime recognized by federal regulations, but also that the victim was helpful in the investigation and prosecution of said crime. For victims of domestic violence, meeting the "helpfulness" criteria can be challenging as victims of domestic and sexual violence are often pressured by their own abusers to abandon their claims. Additionally, the time it takes for a certification to be issued depends on that particular certifying agency and their own internal processing timeliness.

Theoretically speaking, an applicant for a U-visa is eligible to obtain an EAD once USCIS makes a positive determination on the person's application and is placed on a waitlist. However, such determination, known as "deferred action," can take up to four years or longer. In Carmen's case, even though she met all of the required criteria for a U-visa as a victim of domestic violence, she did not receive any determination on her U visa application until 2019, four years after her initial filing with USCIS. Then and only then was she able to obtain an EAD based on her application.

T-Visa

Rosario fled her home country of Ecuador after suffering severe emotional and sexual violence at the hands of her boyfriend, a known drug lord in Colombia. Unfortunately, Rosario's journey to the United States became the most traumatizing experience she'd ever endured in her life. While traveling from Ecuador to the US, Rosario became the victim of human trafficking. The man who offered to help her cross the border kidnapped Rosario and forced her to perform sexual acts against her will for more than two months until her apprehension by US immigration officials near Hidalgo, TX. During the course of those two months, Rosario was held captive in different hotels and brutally raped by several men. The trauma was so severe that it took Rosario two years after hiring our firm to be able to talk about her experiences while crossing the border. Rosario felt so incredibly ashamed of what she had endured, that she could not bring herself to tell her story to the border patrol officers at the time of her apprehension.

But not being able to share the details of her horrific journey to border patrol officers made it a lot more difficult for Rosario to be able to file an application with USCIS as a victim of severe human trafficking. Congress has defined "severe form of trafficking" as one of either two different acts: sex trafficking or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Sex trafficking is defined by 8 C.F.R. § 214.11(a) as a commercial sex act that is induced by force, fraud, or coercion… commercial sex act means any sex act on account of which anything of value is given to or received by any person.

The T-visa is a form of humanitarian relief that allows victims of trafficking like Rosario to live and work lawfully in the United States for a period of four years. Unfortunately, the process to obtain a T-visa is lengthy and nearly impossible for certain victims to obtain, no matter how horrific their stories are. Generally speaking, a victim of human trafficking is required to report the crime to a law enforcement agency and be willing to cooperate in the investigation and prosecution of the crime. But for certain victims, that is an impossible criterion to meet when the trauma itself is so severe. That leaves the victim with the added hurdle of having to demonstrate and convince a USCIS officer that the trauma is so severe that it would have been nearly impossible for that person to report and participate in the investigation of the crime. Many years after her arrival, we were finally able to report these horrific crimes, prepare all required evidence, and submit Rosario's T-visa application. One year later, and three years after her arrival, Rosario finally became eligible for an EAD based on her T-visa application.

DACA

The Jorgenson auditorium was energized and anxious for the high school graduation ceremony to finish. The E. O. Smith High School class of 2019 had thrown their caps several times and cheered and whooped as their friends and classmates crossed the stage. It was time to leave, but there were still the final speeches to go, much to the audience's disappointment. It was hot for June and the ceremony had already lasted several hours, and when Guadalupe, the vice president of the class, approached the podium, there was a palpable withering from the audience. But then Guadalupe began speaking in Spanish to two of the thousand attendees, her parents, and the atmosphere changed. She spoke for several minutes and then, while the crowd of mostly English-speaking people remained hushed, she translated her speech to English and explained how as a DACA recipient she was grateful for her school, her teachers, and her parents and hoped to demonstrate how hard work and a strong family could achieve great success. She promised that she would not let her parents down.

Guadalupe attends a community college in New York City, and lives with a family friend while she works toward her goal of attending John Jay College of Criminal Justice. Guadalupe entered the US with her family as a toddler and is eligible for Deferred Action of Childhood Arrivals (DACA). Deferred Action is one of the enumerated categories that allows for the issuance of an EAD. This blanket eligibility for deferred action was extended to DACA recipients with its inception in 2012. To afford her tuition, Guadalupe works part-time with her DACA based EAD and it is a critical part of obtaining her dreams of education. Without DACA and this ability to work lawfully, Guadalupe's dreams and goals would be much harder if not impossible to accomplish.

Order of Supervision

Marco is a 48-year-old Ecuadorian husband and father of three children who has been in the US for almost 25 years. For four long months in 2017, Marco was forced to live confined in a church, seeking sanctuary as his only alternative to being deported. During his decades living undocumted in the US, several of his family members have been murdered in Ecuador, and although he has been undocumented, it is not an option for him to go back. He sought permanent residency during immigration court removal proceedings, but was ordered removed by the immigration judge despite his US Citizen child and numerous years in the US in 2009. As he appealed his case up to the Second Circuit Court of Appeals, he was able to stay in the US and Immigration and Customs Enforcement granted annual "stays of removal." This all changed in the summer of 2017, when he was given 45 days by ICE to buy a plane ticket and leave his family and return to Ecuador.

He knew his life would be in danger if he left and sought sanctuary for four months in a New Haven church so he could pursue his claim for asylum with the Second Circuit Court of Appeals. The day before Thanksgiving 2017, after four months relegated to the walls of the church, ICE allowed him to go home to his family, where he has been ever since. He is also eligible for an EAD, because he is under the Order of Supervision by ICE, which is one of the enumerated categories. This allows Marco to support his wife and children legally with an EAD and pursue his claim of asylum through his pending appeal.

EAD Ineligibility

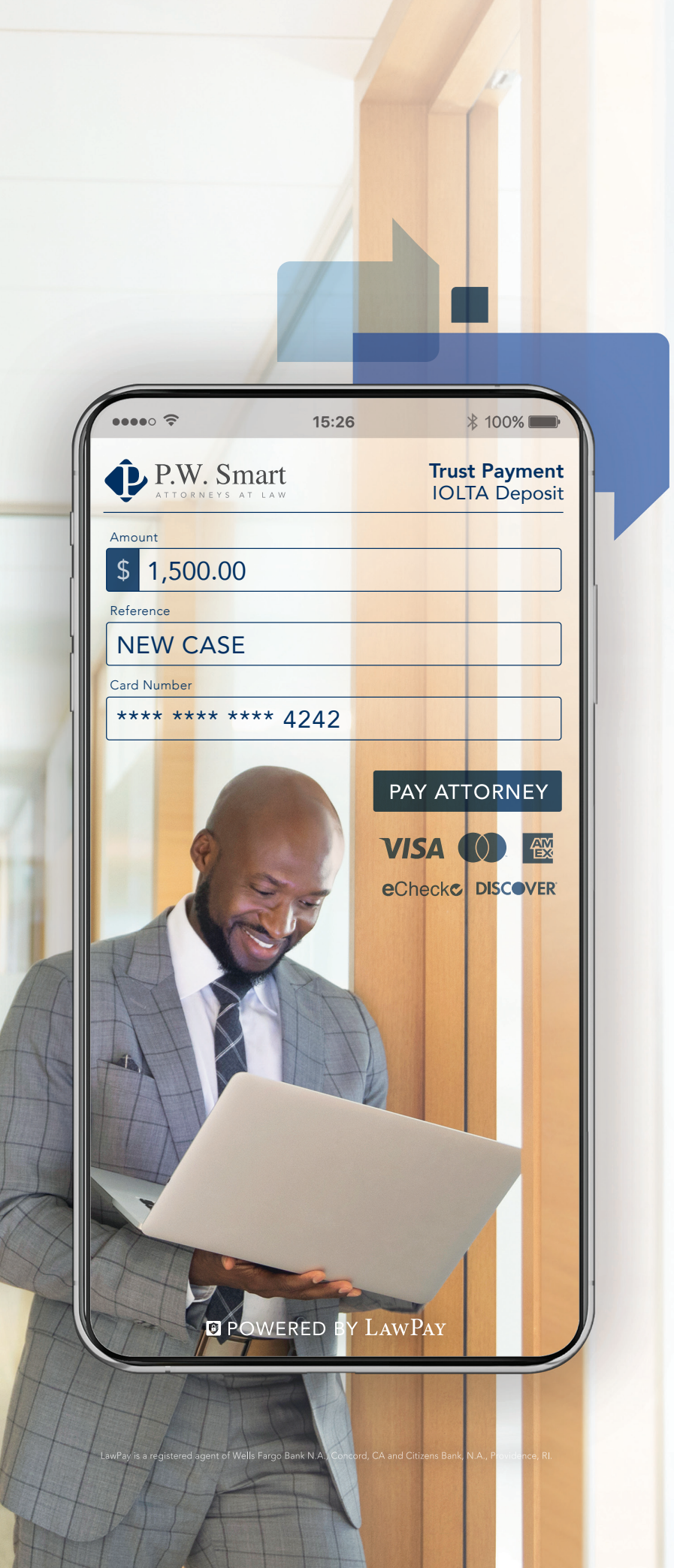
"I have until October, and then I lose my job." It was Luis, and he, in his most polite and courteous manner, tried to impress upon me the looming threat to him and his family. Luis has worked as a septic service truck driver for 15 years servicing the Fairfield and Litchfield counties. To do his job, he must have a CT Commercial Driver's License (CDL). Throughout the last decade he has filed for and been granted a work authorization card based upon being under an "Order of Supervision" by ICE. For the past three decades, Luis had been under a removal order, which required him to check-in with ICE regularly, every year, to make sure that he was in compliance with the terms of his release from immigration custody. He fastidiously complied with the requirements of his release and with proof of such compliance, and he was able to apply for a work authorization card.

When he reapplied for his EAD, it was denied. Soon thereafter, his CT CDL expired. Now Luis cannot renew his license, and his job is in jeopardy. He has been given notice by his employer that he cannot employ Luis because Luis can no longer operate the truck without a CDL. Luis's wife and four US Citizen children now face a future of no income.

Conclusion

Authorized employment is possible under the INA for people who immigrate to the US, but it is not accessible to many undocumented individuals. The path to an approved EAD requires meeting strict eligibility requirements. For many families, obtaining an EAD is a critical component for surviving in the US. Marco is required to submit his request every year and hope that DHS will use its discretion to approve it. Carmen waited years for her authorization, and Luis is losing that option. Flor had to meet the strict deadlines and waiting periods to earn her card and Guadalupe, as a 19 year old, has to cross her fingers each year in hopes that DACA will not be revoked so she can still renew her authorization. It is a delicate and anxiety-fraught dance just to be able to get up every morning and earn a living to support one's family. As immigration attorneys, it is a great challenge to help our immigrant clients overcome the odds and obtain work authorization in the United States; when it works, the reward is great. ■

Erin O'Neil-Baker *and* ***Yazmin Rodriguez*** *are co-chairs of the CBA Immigration Law Committee. Attorney O-Neil Baker has been practicing law for more than 20 years and her practice is focused on immigration Law. She is the current secretary of the CBA and owns her firm, which is located in Hartford. Attorney Yazmin Rodriguez is the owner of Esperanza Attorneys At Law, a small low-bono immigration firm that represents immigrants in removal proceedings and in a variety of complex immigration matters.*



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The Importance of Self-Care and Workplace Culture in 2020

By TRACI CIPRIANO

THE YEAR 2020 WILL GO DOWN IN HISTORY AS A PERIOD OF GREAT UNcertainty and societal upheaval, with the pandemic and its health and economic consequences, as well as increasing racial tensions and extreme political divisiveness, propelling us toward change. While we cannot know what the future holds, we can be confident that our lives have changed. And rather than the usual nearly imperceptible erosion or evolution rate of change, these last six months have brought cataclysmic and collective alterations, some permanent. What we all need are familiar and reliable anchors to promote stability. Self-care is one of those anchors—often overlooked and ignored in the chaos of responsibility and pressure. Investment in self-care is necessary, even as we deal with forced alterations to our lives, work schedules, and work locations.

When we are busy or feeling overwhelmed, self-care tends to be the first thing to slide: it may even feel selfish or exploitive to focus on the self amidst family, work, and societal pressures. Even when we recognize its importance, we let it slide. Why is this?—Because our self-care is the one thing over which we have complete control. So, let's exercise that control to enhance health—and in so doing reap the benefits in resiliency, mental strength and endurance, and happiness and fulfillment.

Well-being, however, goes beyond self-care strategies. How we do our work, including time management and boundary-setting, and evaluate our own performance, are also essential in protecting our mental and emotional resources.

I have found lawyers in particular are prone to devaluing well-being and self-care. The competitive nature fundamental to the profession leads to a laser-focus on prevailing at all costs, including costs measured in terms of mental and physical health, happiness, and social connectedness.

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TAKE TIME FOR YOURSELF


BE KIND


DO A DIGITAL DETOX


PRACTICE MINDFULNESS

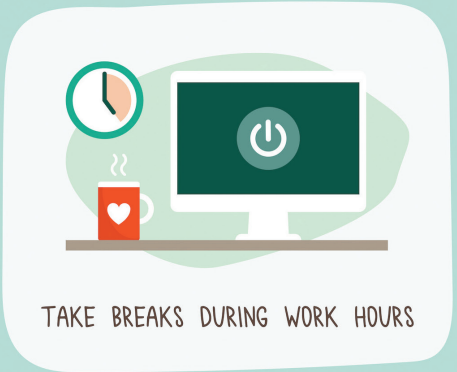

PLAN A HEALTHY DIET


BE SOCIAL


GET ENOUGH SLEEP


BE IN NATURE


EXERCISE REGULARLY


TAKE BREAKS DURING WORK HOURS

Taking Care of Your Mental and Physical Health

Self-care can take many forms. The key is figuring what is most rejuvenating and restorative for you—consider an outdoor activity, a physical activity challenge (such as a road race or triathlon), or a creative pursuit, to name a few. Be sure to make time for cultivating personal relationships, which provide outlets for fun, relaxation, and feeling connected. Taking a self-care day on a weekday and relinquishing work responsibilities (think quarterly!), can feel like a luxurious indulgence.

The Mental Health Continuum

When we think of mental health and well-being, everyone falls on a continuum, from a mental health diagnosis to transient fluctuations in mood, anxiety, and stress. We know that most diagnosed mental health issues, if caught early, can be effectively managed with medications, psychotherapy, or some combination of the two. But during times when external stressors are high, symptoms can be more difficult to manage.

In addition—instead of focusing on ***"When will it end?"***—shift your thinking to ***"What do I have control over right now?"***

CDC and Kaiser Family Foundation data reveal greater incidence of depression, anxiety, suicidal thoughts, substance use, and domestic violence since March of this year, including both new symptoms and the exacerbation of underlying mental health and substance use disorders. Significantly, these mental health impacts are projected to be long-term, lasting for years to come.

Even if you do not have a mental health diagnosis, life events and circumstances can impact your overall mental health and well-being. Regardless of where you fall on the continuum, it is important to be attuned to how you feel when faced with stressors in your life, so you can manage your mood and anxiety and prevent longer-term consequences.

Finding Your Escape to the Present Moment

The uncertainty, new pressures, and volatility of 2020 have created some degree of stress and worry for all. Stress and worry, left unchecked, can lead to an overall inability to focus, or an endless cycle of negative thoughts and worries, as well as fatigue, physical symptoms or illness, depression, and burnout.

Meditation, with its many research-supported benefits related to improving stress and mood, has gone mainstream as an important self-care strategy. One of the benefits of meditation is getting out of your head and into the present moment, which is particularly effective for dealing with uncertainty and breaking the cycle of worry. Finding success with meditation without training, however, can be difficult. Eight-week Mindfulness-Based Stress Reduction (MBSR) courses are an effective, evidence-based way to learn to manage stress and uncertainty through meditation and yoga. Currently, many of these courses are being offered virtually from university medical centers.

Yet, similar to other self-care strategies, meditation is not one-size-fits-all. You might try different types of meditation, or different instructors, to see what feels most comfortable.

Meditation may simply not be for you. Look for other activities that have the same "escape" effect on you, such as working on a puzzle or household project; taking a walk, jog or hike; getting together (safely) with friends; pleasure-reading; or engaging in a creative pursuit such as drawing or painting, playing an instrument, gardening, cooking, or photography. There are many possibilities; the key is finding what most engages your attention and thus allows you to let go of any pressing thoughts and worries.

Shift Your Thinking

Along the same perfectionist lines that lead lawyers to strive to prevail at all costs, research has shown how we approach mistakes and our performance also has an impact on our well-being. Instead of focusing on the negative, it is important to be able to frame mistakes more positively as a learning opportunity and strategize for the future.

In addition—instead of focusing on "*When will it end?*"—shift your thinking to "*What do I have control over right now?*" You can focus your attention on four broad areas: 1) *Taking Care of Your Physical Health*, by practicing social distancing, handwashing, wearing masks, getting daily exercise, getting adequate sleep, limiting alcohol consumption, and maintaining a nutritious, balanced diet; 2) *Taking Care of Your Mental Health*, with daily self-checks, adequate sleep, daily exercise, meditation, socializing, psychotherapy, hobbies, and limiting alcohol consumption and doom-scrolling; 3) *Taking Care of Your Financial Health* through planning and budgeting; and 4) *Modifying Your Work Schedule*, Location, and Content based on limitations, needs, resources, and opportunities.

Practicing gratitude has also been shown to improve mood by shifting your thinking from the negative to the positive. Recent research suggests it is not necessarily the positive thoughts that benefit mood, but rather the intervening and stopping the negative thought cycle. You can practice gratitude through writing one item in a journal daily, or journaling three items once or twice a week.

Establishing a Well-being Routine

In the end, we cannot overlook the basics: no one-shot (or occasional) self-care day, or even regular meditation, will correct the impact of inadequate sleep; an unhealthy diet; workaholism excessive caffeine, alcohol, or illegal substances.

There is no self-care quick fix. Self-care is not a temporary remedy, applied solely during times of stress. While most needed during challenging times, self-care strategies as routines build resiliency and ground us against the unexpected turn of events and sudden demands and downturns. Self-care builds a foundation for stability, endurance, and perseverance.

Just as you practiced oral arguments and trial strategy in law school before setting foot in court, or practiced a sport before jumping into a game or meet, self-care strategies need to be practiced so that they become an automatic process, like driving home from work each day or brushing your teeth.

Each of the many facets of self-care is just one important piece of your well-being routine. I deliberately use the word "routine" here to remind you that self-care activities need to be incorporated into your daily life, so that they become automatic, without thought. If this sounds overwhelming, focus on one aspect of self-care at a time, ideally with the overarching goal of change across many aspects of your lifestyle.

The Role of Workplace Culture

Legal employers can also do a lot more to improve workplace culture. In order for real change to occur in the legal profession, we need a shift in culture. A part of that shift involves promoting the ability to recognize the signs of emotional distress in our colleagues and knowing how to reach out to offer support and assistance in getting the help they need. Often, it is not clear to people or their colleagues that help is needed until work performance becomes impaired. The discussion of emotions in the legal profession has traditionally been considered taboo, so knowing how to reach out is often a barrier, even when signs of distress are recognized.

The other part of that workplace culture shift involves leadership and workplace policies. The important role of leadership in self-care messaging, promotion, and role-modeling cannot be understated. In addition, while slow to become adapted in the legal profession, flexible work schedules and remote workdays are common in other industries, where it is recognized how supporting employees in this way can reduce stress and can lead to improved productivity and better employee retention. Such flexibility is especially important during the current pandemic, as remote work options are vital in reducing both COVID-19 risk and employee stress related to that risk, and work schedule flexibility is crucial in alleviating pressures on parents resulting from modified school schedules. Importantly, flexible work schedules and remote work options can help employees engage in self-care activities, including exercise and meditation.

In addition, workplace policies about internal communications can be implemented, based on law firm well-being officer or committee-established definitions of "emergencies" and "time-urgent" matters.

Finally, cultivating strong working relationships at the office also goes a long way in reducing stress and improving workplace culture. Colleagues and staff are more likely to pitch in, help out, and go the extra distance when you keep the lines of communication open, are respectful, and take the time to establish a relationship before a crisis arises.

It is during times of heightened stressors, heightened uncertainty, and chaos that self-care and workplace culture take on paramount importance. In the absence of self-care and healthy work environments, we risk burnout and not having the mental, emotional, or physical resources to do our work or take care of others, both in our work and home lives. ■

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CONNECTICUT FINES FOR PERSONAL HEALTH AND SAFETY VIOLATIONS

By ELIZABETH C. YEN

Section 2 of Governor Lamont's Executive Order No. 9B authorizes the imposition of certain fines on individuals who do not observe pandemic face covering requirements or social gathering size restrictions in effect during the public health emergency, by amending (adding to) the list of violations that appears in Conn. Gen. Stat. Section 51-164n(b). Fines range from $100 for not wearing a mask or cloth face-covering under circumstances where appropriate social distancing cannot be maintained, to $500 for organizing, hosting, or sponsoring a gathering that violates pandemic gathering size restrictions. Pursuant to Section 51-164n(e), failure to follow the face covering requirements and social gathering size restrictions described in Section 2 of Executive Order No. 9B is not treated as an offense for purposes of Connecticut's penal code. The governor thus chose not to rely on Section 19a-131a(d), which allows an individual who violates the governor's public health emergency order to be fined up to $1,000 and/or imprisoned for up to one year, although the Executive Order does not waive or suspend any penalties or remedies available under Section 19a-131a or other applicable law. Pursuant to Section 51-164n(c), a person may voluntarily choose to pay the fine without any admission of having engaged in conduct justifying the fine, in which case the person is deemed to have entered a plea of nolo contendere and such a plea and payment of such a fine is inadmissible in any civil or criminal proceeding to establish the conduct of such person. Section 51-164n(g) also allows a person to plead not guilty and then subsequently reach an agreement with the prosecutorial officer concerning the amount of the fine to be paid, without appearing before a judicial authority. Such an agreement is also treated as a plea of nolo con-

■ The views expressed herein are personal and not necessarily those of any employer, client, constituent, or affiliate of the author.

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tendere, and is inadmissible in any civil or criminal proceeding to establish the conduct of such person.

Municipalities and institutions of higher education have discretion to levy the fines described in Section 2 of Executive Order No. 9B. Conn. Gen. Stat. Section 7-148(c)(7)(H)(xi) gives municipalities authority to take "necessary or desirable" steps "to secure and promote the public health." Some mayors have announced that they do not expect municipal officials to issue fines to their towns' residents pursuant to Executive Order No. 9B.

The somewhat controversial issue of fines that may be levied on individuals during the present public health emergency could be put into better context when compared to other statutory fines that may be imposed on an individual for unnecessarily endangering the individual's own health or the health and safety of others. For example, Conn. Gen. Stat. Section 14-100a generally requires operators and front seat passengers of motor vehicles to wear the seat safety belts that were originally installed in the vehicles (meeting federal safety requirements) while the vehicles are operated on public roads and highways. Violation of this seat safety belt statute is an infraction, and fines range between $50 and $75 depending on the age of the driver or front seat passenger. (*See* Section 14-100a(c)(4).) However, failure to wear a seat safety belt may not be considered contributory negligence and is not admissible in any civil action. (Section 14-100a(c)(3).) In addition, no points may be assessed against the operator's license of any person convicted of failing to wear a seat safety belt. (Section 14-100a(c)(4).)

Similarly, operators and passengers of motorcycles must wear protective headgear if they are under the age of 18. (Conn. Gen. Stat. Section 14-289g.) Violation is a motor vehicle infraction and subject to a fine of at least $90. Pursuant to Section 51-164n(c), a person charged with an infraction may choose to pay the fine without contesting whether the person did in fact commit the alleged infraction, in which case the payment of the fine is inadmissible in any civil or criminal proceeding to establish the conduct of such person, and no points may be assessed by the Department of Motor Vehicles (DMV) against the operator's license of such person for such an uncontested infraction.

Section 14-286d(c) allows law enforcement officers to issue verbal warnings to parents and guardians of children 15 years of age or younger operating a bicycle, electric bicycle, nonmotorized scooter, skateboard, or electric foot scooter, or wearing roller skates or in-line skates on a public road, highway, or at a park without proper protective headgear, as required by Section 14-286d(b). However, Section 14-286d(b) provides that a failure to comply with the protective headgear requirement "shall not be a violation or an offense," and "shall not be considered to be contributory negligence on the part of the parent or the child." In addition, no such failure is admissible in any civil action. (In contrast, a business that rents bicycles, electric bicycles, or electric foot scooters, and that fails to provide required protective headgear to a person under 16 years of age who will be operating the bicycle or scooter and who does not already have such headgear in his or her possession, commits an infraction. *See* Section 14-286d(d).)

Section 21a-431 requires persons under 18 years of age to wear protective headgear in order to enter a commercial, nonprofit, or municipally operated baseball batting cage for the purpose of hitting from an automated pitching machine. However, failure to comply with the statute "shall not be a violation, offense or statutory cause of action."

Seat belt and protective headgear requirements are primarily focused on the health and safety of the individual required to wear the seat belt or headgear. However, the general public benefits from seat belt and protective headgear requirements in several respects, including (for example) reductions in taxpayer- and insurance-subsidized health care costs associated with certain preventable accidents, and improved allocation of limited emergency health care resources to less readily preventable medical traumas.[1] Seat belt and protective headgear requirements may also increase the likelihood that an operator or passenger of a motor vehicle or motorcycle could continue to operate the vehicle or take other appropriate action after certain accidents.

Higher penalties apply to motor vehicle operators who violate the hands-free telecommunications device provisions of Section 14-296aa. Driving a motor vehicle while using a hand-held telephone or similar communications device clearly jeopardizes the health and safety of not just the driver and any passengers in the vehicle, but also third parties in the path of the motor vehicle. Section 14-296aa(h) provides for fines ranging from $150 for a first violation to $500 for a third or subsequent violation. The violation appears in the operator's official motor vehicle driver history record that is available to motor vehicle insurers. (Section 14-296aa(k).) One point is assessable against the operator's license even if the operator chooses to pay the fine without contesting the allegations giving rise to the fine. (*See* Conn. Gen. Stat. Section 14-137a and Conn. Regs. Section 14-137a-5.) The fine for a second violation of the hands-free telecommunications device requirements in Section 14-296aa ($300) is slightly more than the $250 fine that may be imposed on an individual who attends a gathering that violates pandemic gathering size restrictions. The $500 fine for a third or subsequent violation equals the fine that may be imposed on a person who organizes, hosts or sponsors such an oversized gathering.

Willful or negligent obstruction of an ambulance or emergency medical service vehicle (for example, by not moving to the right and stopping, or by obstructing an intersection) may result in a maximum $250 fine. (*See* Section 14-283(h).) This is comparable to the $250 fine in Executive Order 9B for attending a gathering that violates pandemic gathering size restrictions. The statutory duty to give emergency vehicles clear passage and right of way applies if the vehicles are responding to an emergency call or fire, or taking pa-

tients to a hospital, or (in the case of vehicles used by police) in pursuit of fleeing law violators. Section 14-283(h) is included in the list of violations that appears in Conn. Gen. Stat. Section 51-164n(b). The motor vehicle operator therefore may choose to pay the fine without contesting the allegations giving rise to the fine, in which case the fact that the operator paid a fine relating to an alleged violation of Section 14-283(h) is inadmissible in any civil or criminal proceeding to establish the conduct of the operator, and no points may be assessed by the DMV against the operator's license for such an uncontested violation.

Driving a motor vehicle without a valid operator's license is subject to a range of fines and penalties, depending on such things as the number of previous violations, and whether the operator's license was previously refused, suspended, or revoked. (*See*, *e.g.*, Conn. Gen. Stat. Sections 14-36 and 14-215.) If a person has not yet applied for (and therefore has not yet been refused) an operator's license and drives without any license, fines range from a low of $75 for a first offense to potentially $500 for a subsequent offense (with the possibility of a term of imprisonment).

Consistent with the state's heightened responsibilities for the welfare of young children and infants, Connecticut imposes stiffer penalties for certain violations of motor vehicle child restraint system requirements. For example, violating provisions in Section 14-100a(d) concerning use of appropriate child restraint systems in motor vehicles may be subject to a fine of not more than $199 for a second violation (the first violation is an infraction and potentially subject to a fine between $50 and $90 if there is a guilty plea or verdict at trial, pursuant to Section 51-164n(h)). For a third or subsequent violation of the child restraint requirements of Section 14-100a(d), the violation is a class A misdemeanor subject to imprisonment of up to one year and/or a fine of up to $2,000. (*See* Conn. Gen. Stat. Sections 53a-26(d) and 53a-42.) Persons who have committed a first or second violation may also be required to attend a DMV-approved child car seat safety course (and failure to successfully complete such a course may result in suspension of the operator's license for not more than two months). (*See* Section 14-100a(d)(5).) Section 14-100a(d)(2) provides that the failure to use a child restraint system in a passenger motor vehicle may not be considered contributory negligence and is not admissible evidence in any civil action.

Failure to stop a motor vehicle at least 10 feet away from a school bus displaying flashing red signal lights, or turning a motor vehicle onto a road at an intersection towards a school bus that is receiving or discharging passengers, is subject to a $450 fine for the first offense. (*See* Section 14-279.) For a second or subsequent offense, the motor vehicle operator may be fined a minimum of $500 and a maximum of $1,000, and/or imprisoned for up to 30 days.[2] As is the case with obstruction of an ambulance or emergency medical service vehicle, a motor vehicle operator who is assessed a fine pursuant to Section 14-279 may choose to pay the fine without contesting the allegations giving rise to the fine, in which case the fact that the operator paid a fine in connection with an alleged failure to stop or maintain a requisite distance from a school bus is inadmissible in any civil or criminal proceeding to establish the conduct of the operator, and no points may be assessed by the DMV against the operator's license for such an uncontested violation.

Continued on page 40 →

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Step One:
Diversity, Equity, and Inclusion Defined

By CECIL J. THOMAS AND KAREN DEMEOLA

Photo credit: edhar/iStock/GettyImage Plus

As we embark on our Diversity, Equity, and Inclusion (DE&I) journey it is important to recognize that we are not all at the same starting point. What we learn as children is imprinted deep within our unconscious mind. As language developed, we became adept at communicating what we wanted or at the very least what we needed. Language allows us to navigate systems, articulate identity, argue our position, and zealously advocate for our clients. But if the words and concepts we use are not understood by those with whom we are engaging, things have the potential to stall. Our last column explored why the legal profession should maintain a constant commitment to diversity, equity, and inclusion. This column seeks to define those concepts.

The legal profession has long been on a journey to promote greater diversity, equity, and inclusion. From a starting point of non-discrimination and equal opportunity, the profession gradually moved to discussions of "diversity," then "diversity and inclusion," then "diversity, equity, and inclusion." What do these terms mean? What are we trying to achieve?

Diversity

The simple definition of diversity is variety or a range of difference. Each of us brings diversity to the spaces we occupy. The range of difference in people includes immutable characteristics as well as shifting identities like social group, socioeconomic status, and geographic location. Our personality, learning style, familial situation, expression, political beliefs, and even birth order, are also included in a broad definition of diversity. Our conversation about DE&I is not about the broad definition of diversity. This conversation is about communities that have been systemically and specifically marginalized and excluded within our profession. When we talk about diversity, our focus is on Black, Indigenous, People of Color (BIPOC), members of the LGBTQ+ community, people with disabilities, and women.

The legal profession is one of the least diverse professions in the country. The data from the American Bar Association (ABA),[1] Law School Admission Council (LSAC), [2] the National Association of Law Placement (NALP),[3] and the Connecticut Bar Association (CBA), all confirm this. The legal profession remains homogenous in terms of race (83 percent white) and gender (64 percent male) despite our efforts to diversify.[4] Whether embracing diversity because it is the right thing to do, it impacts the bottom line, or clients are demanding diversity, many firms and organizations have created diversity plans, have expanded their talent pool, and are engaged in DE&I training. Nationally, in 2019, the intentional actions resulted in a diverse summer associate demographic (53 percent female and 35 percent associates of color).[5] Declaring victory, however, is premature since diversity is only part of the equation.

Typically, any increase in diversity numbers, no matter how marginal, is celebrated. Focusing on numbers alone fails to appreciate the intentional work that must be done to change culture, perceptions, and bias in the workplace. This is the failing of an approach that only evaluates diversity. Depending on how the lens is focused,

an organization may be viewed as diverse because of the overall representation of diverse individuals. If, however, historically-marginalized groups are largely unrepresented within your organization's power structures, within those roles that are best compensated, most prominent, and hold the greatest influence, that organization cannot be said to be truly diverse, equitable, or inclusive.

Inclusion

Diversity and inclusion must be tackled together, and inclusion is often much harder to accomplish. Inclusion is valuing the contributions of all members of the team, including diverse members of your organization who may not fit with the dominant identity or culture. As Verna Myers, culture expert and VP for Inclusion Strategy at Netflix, explains, "Diversity is being invited to the party, inclusion is being asked to dance."[6] Some commentators have added that equity means to be involved in the decision to hold the party, what music to play or food to serve, or whether there will be dancing at all.

Ensuring that your firm traditions are inclusive of all members of your firm, that bias does not play a role in mentorship, sponsorship, or allocation of assignments, are a few examples of how your organization may include diverse members. Negative assumptions about skills, engagement in social activities, and connections to clients and wealth contribute to negative work cultures, and serve to marginalize diverse attorneys. And performative inclusion to meet client demands result in tokenism and further marginalize attorneys. Instead, organizations should ensure equitable opportunities for all attorneys.

Equity

Equity is the proportional representation of opportunity regardless of identity. Organizationally, this requires constantly and consistently identifying and eliminating the formal and informal barriers to equal opportunity and participation by all. Intersecting with inclusion, equity requires organizations to focus on people, systems, policies, culture, and process. It requires organizations to evaluate the impact of bias in those elements, and enact change to meaningfully guarantee fair treatment, access, opportunity, and advancement to all. Equity work is necessary to ensure transparency, opens up opportunity within the organization, serves as a control for individual or collective bias, evaluates the individual experience of the organization, and allows for assessments to track progress and performance.

Understanding the language of DE&I is an important first step. The rest of the journey will take time and intentionality. We are here with and for you. ■

NOTES

1. www.americanbar.org/groups/diversity/DiversityCommission
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3. www.nalp.org/uploads/2019_DiversityReport.pdf
4. National Association of Law Placement (NALP) 2019 Report on Diversity in U.S. Law Firms. www.nalp.org/uploads/2019_DiversityReport.pdf.
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6. Myers, Verna, *Diversity Doesn't Stick without Inclusion*. www.vernamyers.com/2017/02/04/diversity-doesnt-stick-without-inclusion/ (February 4, 2007).


Cecil J. Thomas


Karen DeMeola

Cecil J. Thomas *is president-elect of the CBA and an attorney at Greater Hartford Legal Aid.* ***Karen DeMeola*** *is a past president of the CBA and the assistant dean for finance, administration, and enrollment for the UConn School of Law. Attorney Thomas is the co-chair of the CBA's Diversity and Inclusion Committee, having previously served as co-chair of the Committee from 2015 through 2018, including with Attorney DeMeola in 2017. Attorneys Thomas and DeMeola have been instrumental in the development of many of the CBA's diversity and inclusion initiatives, and regularly speak and teach on diversity, equity, and inclusion in the legal profession.*

Image credit: Steve Laschever

In Memoriam: David A. Pels

The CBA Pro Bono Committee Says Goodbye to Its Longest-Serving Member

By CECIL J. THOMAS

It is hard to say farewell, especially in these difficult and uncertain times, when our traditional forms of gathering, of saying goodbye to those who have left us, are so changed. And yet, the essence of farewell remains the same. We keep those we have lost alive in our memories, in purposeful tributes, in the (virtual) gathering of community, in the spoken and written word, in the actions we take in furtherance of lessons taught, and examples set. On behalf of the CBA Pro Bono Committee, I share a few words of remembrance and gratitude in honor of our longest-serving member, Attorney David A. Pels.

David A. Pels, who spent his 45-year career representing tenants facing eviction at various Connecticut legal aid programs, passed away this July. David was the model legal aid lawyer—tenacious and creative in his work, deeply committed to his clients, willing to raise and pursue issues to whatever end was necessary to obtain justice. During his long and inspiring career, David represented tens of thousands of tenants facing eviction, as one of a small handful of legal aid attorneys that constitute the only eviction defense bar in Connecticut. He helped define landlord-tenant law, starting in the earliest days of Connecticut's Housing Courts, and obtained countless precedent-setting victories for low-income tenants over his many decades of work.

David was also the longest-serving member of the CBA Pro Bono Committee. The Pro Bono Committee, in its current form, was established in 1989. He became a member at its formation that year, and remained an active member for 31 years. David regularly conducted eviction defense trainings through the CBA's Pro Bono Committee and other groups, to provide support to attorneys in private practice who had agreed to provide pro bono legal representation. Despite his retirement in July of 2019, and his struggles with a serious illness, David volunteered for the CBA's Annual Pro Bono Legal Clinics in October of 2019, attended committee meetings throughout the year, and was appointed by the CBA to the Board of Directors of Statewide Legal Services in May of 2020. David was invested in committee efforts to expand access to justice to low-income tenants facing eviction in Connecticut, and was planning to volunteer his time in furtherance of those efforts.

David was not one to seek the limelight, and I can almost see and hear his likely reaction to this tribute: an eyebrow raised in skepticism, his signature scoff showing that he placed little stock in pomp and circumstance. David, of course, received many honors for his exemplary career—from the Public Housing Residents Network in 2015, the CBA Charles J. Parker Legal Services Award in 2016, and posthumously, the Connecticut Bar Foundation Legal Services Leadership Award in 2020. On behalf of the CBA Pro Bono Committee, it is my honor to be able to share this remembrance of one of our most dedicated and respected members.

I had the privilege and honor of working closely with David. He was a zealous advocate, deeply beloved by his clients, and feared by his opponents. His uncompromising commitment to his clients, and his encyclopedic knowledge of the law, were awe-inspiring. He was a great teacher and moot participant, especially if you enjoyed his penchant for the Socratic method, and his love of blistering questioning. David took the hard cases, and represented tenants who had difficult issues, because he understood the complexities of poverty, and never sought to judge anyone for the manner in which they navigated those difficulties.

David and I were different in many ways, but our differences never seemed material to our work together. He never failed to treat me as an equal, to show me that he respected my perspectives and opinion, and that he trusted my judgment as a colleague. As a young, first-generation lawyer seeking to find my way in this pro-

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Georges v. OB-GYN Services, P.C.: Another Lesson in Filing Early and Often

By CHARLES D. RAY and MATTHEW A WEINER

It's every lawyer's nightmare: you miss a deadline and, by doing so, potentially cost your client millions of dollars. The nightmare came true in *Georges v. OB-GYN Services, P.C.*, ___ Conn. ___ (2020).

Georges was a medical malpractice action that arose from mistakes made during the delivery of Jenniyah Georges. Georges' mother sued the defendants seeking compensation for her daughter's "severe, permanent" injuries. Before trial, the plaintiff filed an offer of compromise to settle her medical malpractice claim against the defendants for $2 million, which the defendants did not accept. After a trial, a jury returned a verdict in favor of the plaintiff in the amount of $4.2 million. The trial court accepted the jury's verdict on October 28, 2016.

On November 8, 2016, the plaintiff filed a motion seeking offer of compromise interest pursuant to General Statutes § 52-192(c) and Practice Book § 17-18, and postjudgment interest pursuant to General Statutes § 37-3b. On December 12, 2016, the trial court issued a written memorandum of decision awarding the plaintiff both offer of compromise and postjudgment interest. The court further ruled that the end date for calculating the offer of compromise interest was October 28, 2016—the date that the court accepted the jury's verdict. The beginning date for postjudgment interest was November 17, 2016, which was 20 days from the date of judgment.

Four days after the trial court ruled on the plaintiff's interest motion—but 49 days after it accepted the jury's verdict—the defendant appealed to the appellate court, challenging both the jury's verdict and the trial court's interest rulings. The plaintiff moved to dismiss the appeal as untimely because the defendants had filed it more than 20 days after judgment entered. *See* Practice Book § 63-1(a). The defendants objected on two bases. First, they claimed that their appeal was timely because they had filed it within twenty days of the trial court's ruling that awarded offer of compromise and postjudgment interest. Second, they argued that, even if the portion of the appeal challenging the jury's verdict was untimely, the appellate court, pursuant to Practice Book §§ 60-2(5) and 60-3, should suspend the rules of practice and permit the late appeal. In support of this second argument, the defendants contended that there was good cause to permit the late appeal because a "significant amount of confusion" existed concerning the date the trial court had rendered judgment. The defendants cited the fact that, on November 28, 2016, an erroneous entry appeared on the electronic docket, stating "judgment on verdict for plaintiff."

The appellate court granted the plaintiff's motion to dismiss the portion of the defendants' appeal that related to the jury's verdict and denied, without any opinion, the defendants' request to file a late appeal. It rejected the rest of the defendants' appeal in a per curiam decision. *Georges v. OB-GYN Services*, P.C. 182 Conn. App. 901 (2018).

Before the Supreme Court, the defendants asserted that the appellate court had improperly refused to consider the portion of the appeal that related to the jury's verdict for two reasons. First, they reiterated their argument that they had timely filed the appeal. Second, they argued that the appellate court had abused

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its discretion by refusing to suspend the rules to permit a late appeal. The Supreme Court unanimously rejected the defendants' first argument, but split on whether the appellate court improperly refused to suspend the rules.

In an opinion authored by Justice Mullins and joined by Justices McDonald, Kahn, and Ecker, the court first explained why the twenty day appeal period began to run on October 28, 2016—the date that the trial court accepted the jury's verdict—rather than on the date that the trial court granted the plaintiff's request for offer of compromise and postjudgment interest. Regarding the defendants' claim that the judgment was not final until after the trial court ruled on the plaintiff's request for offer of compromise interest, the court noted that "an unresolved claim for relief can delay the finality of a judgment on the merits," but that is an exception to the "usual rule." The exception only applies when a party "seeks[s] compensation for the alleged[ly] wrongful conduct of the defendants, which depend[s] upon an assessment of the underlying merits of the transaction between the parties." However, "when the postverdict relief is not designed to compensate the plaintiffs for the underlying wrongdoing and does not require the trial court to examine the merits of the underlying case, it is collateral to the judgment and does not affect its finality for the purposes of appeal."

Here, the plaintiff's request for offer of compromise interest sought compensation for the defendants' rejection of the offer to settle. It did not relate to the conduct that gave rise to the plaintiff's suit and did not require the trial court to examine the merits of the underlying action. Indeed, pursuant to § 52-192a(c), the trial court had no discretion to decide whether to award interest, or how much to award. Therefore, the trial court's "determination of the amount of offer of compromise interest to be awarded [was] not an essential prerequisite to an appealable final judgment on the merits."

The court also rejected the defendants' assertion that, pursuant to Practice Book § 63-1(c)(1), the plaintiff's motion for offer of compromise interest and postjudgment interest created a new 20-day period. Practice Book § 63-1(c)(1) provides that a new appeal period may begin if a party files a motion "that, if granted, would render the judgment, decision or acceptance of the verdict ineffective…." Because neither request for interest sought a change to the underlying judgment and, in fact, merely sought the trial court's exercise of a "ministerial" function, the defendants' reliance on that provision was misplaced.

After disposing of the defendants' claim that the appeal period ran from the date on which the trial court issued its interest ruling rather than from when the trial court accepted the jury's verdict, the court turned to the more difficult question: whether the appellate court had abused its discretion by not suspending the rules to permit a late appeal. In rejecting the defendants' arguments, the majority emphasized that the appellate court has "broad authority to manage its docket" and the deferential standard of review that the Supreme Court must apply. It also rejected the defendants' contention that legitimate confusion surrounding the date that the trial court rendered judgment justified their delay in filing the appeal. Observing that the twenty day appeal period had expired before the erroneous docket entry appeared, that Practice Book § 17-2 provides that "the date of judgment shall be the date the verdict was accepted," that Practice Book § 63-1(b) expressly provides that "[i]n civil jury cases[ ] the appeal period shall begin when the verdict is accepted," and that the Supreme Court previously had explained, in dictum, that undetermined offer of compromise interest does not affect the finality of a judgment, the majority determined that the defendants' confusion was their own fault. *See Earlington v. Anastasi*, 293 Conn. 194, 196-97 n.3 (2009). Therefore, the appellate court did not act unreasonably in denying the defendants' request to suspend the rules.

Justice D'Auria, joined by Justice Palmer, took a different view in a concurring and dissenting opinion. They concluded that the defendants had established good cause for their failure to timely file their appeal and, accordingly, that the appellate court had abused its discretion by refusing to accept it.

Justice D'Auria began by suggesting that, though the Supreme Court must review the appellate court's decision not to hear a late appeal for an abuse of discretion, the Supreme Court should afford less deference to such a decision than when it applies the abuse of discretion standard to certain trial court rulings. In support, Justice D'Auria explained that, unlike a discretionary trial court ruling, the Supreme Court's review of the appellate court's ruling "does not involve an exercise of discretion entirely unique to the appellate court" in that the Supreme Court, like the appellate court, also rules on motions to dismiss appeals and motions for permission to file late appeals. In addition, rarely, in this context, does the record contain an explanation for the appellate court's exercise of its discretion. As occurred in *Georges*, the appellate court usually dismisses appeals through a summary order that does not list or explain what "factors it considered, how close it found the question or whether it would have permitted a late appeal if

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

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Highlights | Recent Superior Court Decisions

The 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, PO Box 575, Guilford, CT 06437.

Civil Procedure

Millbank Manufacturing Co. v. Durkin, 68 CLR 894 (Karazin, Edward R., J.T.R.), holds that a court's jurisdiction over a Bill of Discovery is not dependent on the existence of subject matter jurisdiction over the possible suit for which the pre-suit discovery is being sought. The matter involves a Bill of Discovery for information concerning a possible products liability action. The opinion holds that the defendant's argument that the federal Consumer Product Safety Act preempts state jurisdiction has no relevance to the merits of a Bill of Discovery.

A personal injury cause of action may not be attacked through the use of an order of execution pursuant to Conn. Gen. Stat. § 52-356b (authorizing an order of execution in favor of a judgment creditor against personal property in which the judgment debtor has an interest), because the term "property" for purposes of applying the execution statutes includes only causes "which could be assigned or transferred," Conn. Gen. Stat. § 52-350a(16), whereas under Connecticut common law *personal injury* causes are not assignable. *Chicago Title Insurance Co. v. Maynard*, 69 CLR 397 (Cosgrove, Emmet L., J.T.R.).

Tapia v. Gap, Inc., 69 CLR 359 (D'Andrea, Robert A., J.), holds that photos of an accident scene taken by an attorney representing one of the parties are not protected under the attorney work product privilege.

Contracts

Bencivengo v. A Better Way Wholesale Autos, Inc., 69 CLR 357 (Richards, Sybil V., J.), holds that the Used Car Warranty Act's requirement that used car dealers disclose whether a vehicle has been declared a "constructive total loss" does not impose a continuing duty that would toll a limitations period.

Although a single mechanic's lien may be filed to secure [two] sequential contracts involving the same parties and the same real property, even if a lien was not filed within the required 90-day period with respect to the first of the two contracts, separate liens [must be filed to] secure work performed by a general contractor and a subcontractor even though both contracts were performed with respect to the same project and the same parcel. *Yale Electric East, LLC v. Semac Electric Co.*, 69 CLR 463 (Hernandez, Alex V., J.).

Corporations and Other Business Organizations

Individuals cannot simultaneously hold interests in a corporation as shareholders and as partners, but they can simultaneously be partners in a partnership that holds interests in a corporation. *Chugh v. Kalra*, 69 CLR 363 (Schuman, Carl J., J.). The opinion holds one partner of such a partnership may sue the other for breach of an oral partnership and breach of the fiduciary duty between partners with respect to claims arising out of the management of the partnership's interest in a corporation. The defendants argued that their individual purchases of the corporate shares automatically dissolved the partnership, thereby eliminating a right to recover for breach of fiduciary duty or breach of the partnership agreement.

Family Law

Zealand v. Balber, 69 CLR 323 (Kavanewsky, John F., J.), holds that the presumption that an engagement ring is a conditional gift to be returned if no marriage occurs is defeated by a long-term period of living together in an intimate relationship without a marriage.

A person infected with a contagious venereal disease has a duty to warn a partner of the condition prior to engaging in sexual relations. *Mancini v. Bisho*p, 69 CLR 479 (Shortall, Joseph M., J.T.R.). The opinion holds that evidence that the defendant was involved in a two-year monogamous relationship with the plaintiff without advising of the condition is sufficient to establish claims of negligence, infliction of emotional distress and fraudulent nondisclosure for damages incurred after acquiring the disease.

A court's authority in a dissolution action to appoint counsel for a child is subject to two limitations: an appointment must be "in the best interests of the child," Conn. Gen. Stat. § 54b-54(a), and may be made only when the court finds that "the custody, care, education, visitation or support of a minor child is in actual controversy," Conn. Gen. Stat. § 54b-54(b). The opinion denies a motion for appointment of counsel for two children primarily because (a) it is not clear that representation would be helpful, (b) evidence from an involved guardian ad litem is available, (c) an attorney's role is directed more towards

presenting a child's wishes rather than the child's best interests, and (d) appointment of counsel would be costly. *Mathog v. Yontef-Mathog*, 69 CLR 407 (Nguyen-O'Dowd, Tammy, J.).

Health Law

Western Connecticut Health Network v. Ainger, 69 CLR 341 (D'Andrea, Robert A., J.), holds that a patient whose health insurance was unexpectedly canceled retroactively to a period before substantial hospital costs were incurred may be required to personally compensate the hospital at its full "pricemaster" rates, i.e., at the rates each hospital must file with the Health Systems Planning Unit of the Department of Health's Office of Health Strategy from which insurer discounts are negotiated, Conn. Gen. Stat. § 19a-681. The opinion seems to reason that a hospital has no discretion to accept a lesser rate.

Insurance Law

Chuckta v. Travelers Home & Marine Insurance Co., 69 CLR 350 (Taylor, Mark H., J.), holds that the statute limiting uninsured motorist coverage for a claimant injured while occupying an owned vehicle to policies that cover the occupied vehicle bars coverage under any other policy regardless of whether the claimant is a named or unnamed insured under another policy. The claimant unsuccessfully sought additional coverage under a UIM policy covering another vehicle also owned by the insured and of which the claimant is a named insured.

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

Landlord and Tenant
State and Local Government Law

The statutory requirement that a notice of violation of a blight ordinance include a description of the claimed conditions is not satisfied by a statement that "the property is not being adequately maintained." Rather, the notice must include a description of the specific conditions deemed to be in violation of the ordinance. *Stamford v. Yanicky*, 69 CLR 440 (Genuario, Robert L., J.).

Tax Law

A taxpayer's failure to attend a board of assessment appeals hearing on an assessment appeal does not defeat subject matter jurisdiction for a court appeal from the board's denial decision. *Tomas v. Wilton*, 69 CLR 471 (Karazin, Edward R., J.T.R.). The taxpayer claims that it did not receive the notice of hearing mailed by the appeal board and therefore was unable to attend. The Board now argues that the appeal to court is barred because the taxpayer failed to exhaust the appeal remedy. The opinion concludes that the court is bound by a 1904 Supreme Court holding that a taxpayer's failure to appear before a board of appeals does not deprive a court of subject matter jurisdiction over a subsequent appeal to court, regardless of a taxpayer's failure to exhaust administrative remedies.

Zoning

A zoning commission has standing pursuant to Conn. Gen. Stat. § 8-8 to appeal from zoning board of appeals decisions granting variances or ruling on zoning enforcement matters. The defendants unsuccessfully argued that a zoning commission has standing to appeal only decisions that involve its own rulings. *Plainfield PZC v. Plainfield ZBA*, 69 CLR 405 (Berger, Marshall K., J.T.R.). The opinion is also useful for its holding that the proper procedural vehicle to challenge the standing of only one of several plaintiffs named in a complaint is a motion to strike for misjoinder pursuant to Practice book § 11-3, not a motion to dismiss the complaint.

Tillman v. Shelton PZC, 69 CLR 409 (Domnarski, Edward S., J.), holds that the requirement that a Planned Development District "*shall be uniform* for each class or kind of buildings, structures or use of land *throughout each district*," Conn. Gen. Stat. § 8-2, is not defeated by the fact that a proposed PDD is divided into sub-areas subject to differing combinations of zoning restrictions. The opinion seems to reason that a PDD with a variety of sub-areas subject to a general set of standard restrictions, any of which may be imposed on individual sub-portions of the PPD, is "uniform" at the moment the PPD is created because *all* of the sub-districts are simultaneously subject to a uniform collection of restrictions, even though each sub-area may be subject to different subset of the *collection*. ■

Young Lawyers in the Connecticut Workplace

By CINDY M. CIESLAK

Cindy M. Cieslak *is the chair of the CBA Young Lawyers Section for the 2020-2021 bar year. She is a partner at Rose Kallor LLP in Hartford, where she focuses her practice on labor & employment litigation as well as independent workplace investigations. She graduated summa cum laude from Penn State University in 2009 and received her JD from UConn School of Law in 2012.*

In my second column, I am delighted to continue the discussion from my last article regarding the challenges and issues a young lawyer faces during a pandemic.

This past summer, I had the privilege to participate in a working group of Connecticut Bar Association members concerning a proposed amendment to Rule 8.4 of the Connecticut Rules of Professional Conduct which would prohibit discrimination and harassment in the practice of law. By the time this article is published, we might know whether the proposed amendment was adopted in Connecticut. Regardless of the outcome, my participation in the working group highlighted an unexpected area of Connecticut employment law where opinions among Connecticut employment lawyers diverge.

During the drafting process related to the proposed rule amendment, the working group concluded that the proposed commentary should include that the substantive law of Connecticut's antidiscrimination and antiharassment statutes and case law should guide application of the proposed amended rule, where applicable. During this discussion, I raised some concern that the rule might not protect against discrimination and harassment faced by younger lawyers. The legal profession is somewhat unique as compared to some other professions as it relates to age of employees. I have witnessed opposing counsel, clients, and judges express a desire or preference to work with an older lawyer, and quite frankly, the preference is not always attributable to a younger attorney's experience or lack thereof. Yet, the federal law prohibiting age discrimination, the Age Discrimination in Employment Act (ADEA), only provides protection for employees who are at least 40 years of age.[1]

In response to my concern about whether the proposed amended rule prohibiting harassment and discrimination in the practice of law would protect younger lawyers, a highly regarded fellow employment lawyer, whom I also greatly respect, suggested that Connecticut's anti-discrimination law protects workers under 40 years old, because the Connecticut Fair Employment Practices Act (CFEPA) prohibits an employer from refusing to hire, to discharge from employment, or to otherwise discriminate against an individual in compensation or in terms, conditions, or privileges of employment because of the individual's age.[2] Indeed, the state statute does not have the same type of age "floor"—40 years of age—as its federal counterpart. However, I had recently researched this issue in connection with a case I was litigating, and through my research, I did not locate a single controlling authority from the Connecticut Appellate Court or the Connecticut Supreme Court that held that the CFEPA protects employees under age 40. In fact, I have argued in good faith that the CFEPA follows federal law and only protects employees over 40 years old.

In connection with research for this article, I conducted a poll, albeit a very unscientific poll, and asked some of my fellow employment lawyers whether they believe the CFEPA protects employees of all ages, including employees under 40 years old. Opinions were split—some of my colleagues agreed with me that Connecticut law follows federal law, while others believed that Connecticut law departed from federal law because the express language of the statute did not provide an age "floor." However, we all seemed to agree that the law on this issue could be further developed. The Connecticut Commission on Human Rights and Opportunities (CHRO), which is the administrative agency that hears employment discrimination claims in the first instance in our state, takes the position that the CFEPA does not have an age minimum.[3] However, both the Connecticut Superior Court[4] and the United States

District Court for the District of Connecticut[5] have ruled that the CFEPA should be interpreted consistent with its federal counterpart. Yet, some other states with antidiscrimination statutes which do not identify an age limit have found so-called "reverse age discrimination claims" (i.e. lawsuits by younger employees claiming discrimination because an older employee was preferred solely due to age) to be cognizable claims.[6]

When speaking on employment law topics, I am often asked which types of employment-related lawsuits I anticipate given current circumstances and societal trends. When I have been asked this question throughout the pandemic, I have quickly responded that we might expect a rise in age discrimination claims, disability discrimination claims, and family and medical leave claims given that legitimate COVID-related employment decisions may nevertheless disproportionately impact older workers, some of whom are at a higher risk given underlying medical conditions, or workers with family members with underlying medical conditions. However, as I expressed in my previous article, the pandemic presents challenges to attorneys of all ages, including younger lawyers. Indeed, younger lawyers are not immune from harassment and discrimination simply by virtue of not yet having attained age 40. Therefore, the pressures of the pandemic and the historic social justice movement of this year may very well also impact the types of age discrimination complaints that may be asserted, and our state's high courts might have an opportunity to provide a more definitive answer regarding whether the CFEPA protects employees under 40 years old sooner rather than later. ■

NOTES

1. 29 U.S.C. § 631.
2. Conn. Gen. Stat. § 46a-60(b)(1).
3. *CHRO, ex rel. Stephen Warner v. NERAC, Inc.*, CHRO No. 0840031 (Ruling on Respondent's Motion to Dismiss, August 2, 2012).
4. *Theriault v. Renbrook Sch.*, No. CV 17-6076937-S, 2019 Conn. Super. LEXIS 199, at *19 (Feb. 14, 2019) ("An age discrimination plaintiff over forty years old is in the protected class."); *Donegan v. Town of Middlebury*, No. CV156026920S, 2018 Conn. Super. LEXIS 516, at *12 n.3 (Conn. Super. Ct. Mar. 9, 2018) ("CFEPA does not contain a specific age that identifies which individuals belong to the protected class. Nonetheless, courts have turned to the same age used by the ADEA, to wit, forty."); *Benedetto v. Dietze & Assocs., LLC*, No. UWYCV126015898S, 2014 Conn. Super. LEXIS 810, at *9 (Apr. 10, 2014) ("The record shows that the person who replaced Ann Marie Benedetto was forty-seven years old, and, therefore was herself in the protected class.").
5. *Soules v. Connecticut*, No. 3:14-CV-1045 (VLB), 2015 U.S. Dist. LEXIS 131985, at *26 (D. Conn. Sep. 30, 2015); *Smith v. Connecticut Packaging Materials*, No. 3:13-cv-00550 (JAM), 2015 U.S. Dist. LEXIS 5265, at *6 n.4 (D. Conn. Jan. 16, 2015); *Guglietta v. Meredith Corp.*, 301 F.Supp.2d 209, 212-13 (D. Conn. 2004); *Rogers v. First Union National Bank*, 259 F. Supp. 2d 200, 209 (D. Conn. 2003) ("As to the specific age the Connecticut Supreme Court would select, it appears that the Supreme Court would use the same age floor used in ADEA-age 40.").
6. Tracey A. Cullen, *Reverse Age Discrimination Suits and the Age Discrimination in Employment Act*, 18 J. Civ. Rts. & Econ. Dev. 271, 304-08 (2003).

Pro Bono

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fession, that camaraderie and bond was always deeply meaningful to me. I've devoted a fair amount of time in efforts to understand and address our profession's diversity, equity, and inclusion challenges. When I think of moments of meaningful inclusion, in my own professional life, my work with David comes to mind immediately. I was proud to work alongside him, to share in so many hard-fought battles and challenges, and to face some of my own with his advice and guidance.

Although we e-mailed frequently afterwards, the last time I saw David was during a virtual Pro Bono Committee meeting at the end of the 2019-2020 bar year. As I begin my service as chair of the Pro Bono Committee, I miss David's presence and wisdom. I miss his e-mails inquiring about projects, or offering (sometimes unsolicited) advice on new initiatives. I miss his dry sense of humor and the opportunity to occasionally tease him (while privately maintaining a healthy sense of terror while doing so). I feel a deep sense of sadness that we will never share another one of his tightly-timed working lunches, and laugh when I think of my early efforts to expand his repertoire of lunch venues. I miss the ability to ask for his insight and perspectives on tough legal questions, especially as we face an unprecedented impending eviction crisis.

The Connecticut Bar Association, and particularly its Pro Bono Committee, will always be indebted to David Pels for his service and example. If you are interested in helping to further his legacy, here are a few ways that you can do so:

Volunteer through CBA Pro Bono Connect: As Connecticut faces an oncoming eviction crisis, tenants, who are self-represented in over 90 percent of evictions, will need your help. Volunteer at ctbar.org/probonoconnect and select "Housing: Eviction Defense." Take the Pro Bono Pledge, agreeing to take one eviction case in the coming year, and you'll receive immediate access to on-demand training materials, which include an eviction defense training manual that Attorney Pels helped to prepare.

Donate to the David A. Pels Homelessness Prevention Fund at the Connecticut Bar Foundation: The David A. Pels Homelessness Prevention Fund was established at the Connecticut Bar Foundation in 2019, upon David's retirement. The fund provides small financial grants to tenants facing the threat of eviction or housing subsidy termination, to allow them to remain in their housing. Visit ctbarfdn.org/donate to participate.

Thank you for allowing me to share these few words to honor the memory of my friend, mentor, and role model, Attorney David A. Pels. He will be sorely missed, but never forgotten. ■

President's Message

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NOTES

1. boardsource.org/nancy-lee
2. The Constitution of the Connecticut Bar Association, Inc. was last amended by the CBA House of Delegatess on January 13, 2014 and may be viewed on the CBA website at www.ctbar.org/docs/default-source/leadership-resources/2019-2020/04-2019-cba-constitution-bylaws-and-procedures_10-15-18.pdf

STATEMENT OF OWNERSHIP, MANAGEMENT, AND CIRCULATION

1. Publication Title: CT Lawyer. 2. Publication Number: 1057-2384 3. Filing Date: 10/1/20 4. Issue Frequency: 6 Times/Year. 5. No. of Issues Published Annually: 6 6. Annual Subscription Price: N/A 7. Complete Mailing Address of Known Office of Publication: 30 Bank St, New Britain, CT 06051-2219 Contact Person: Alysha Adamo, Telephone: (860)612-2008 8. Complete Mailing Address of Headquarters or General Business Office of Publisher: 30 Bank St, New Britain, CT 06051-2219 9. Publisher: Connecticut Bar Association, 30 Bank St, New Britain, CT 06051-2219 Editor: Alysha Adamo, 30 Bank St, New Britain, CT 06051-2219 Managing Editor: Alysha Adamo, 30 Bank St, New Britain, CT 06051-2219 10. Owner: Connecticut Bar Association, 30 Bank St, New Britain, CT 06051-2219 11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages or Other Securities: None. 12. Tax Status: Has Not Changed During Preceding 12 Months 13. Publication Title: CT Lawyer 14. Issue Date for Circulation Data Below: November/December 2020 Issue 15. Extent and Nature of Circulation (Average No. Copies Each Issue During Preceding 12 Months/No. Copies of Single Issue Published Nearest to Filing Date): a. Total Number of Copies (Net press run) b. Paid Circulation (By Mail and Outside the Mail) (1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541: (6,299/ 5,920) (2) Mailed In-County Paid Subscriptions Stated on PS Form 3541: (2,318/ 2,217) (3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS: (0/0) (4) Paid Distribution by Other Classes of Mail Through the USPS: (0/0) c. Total Paid Distribution: (8,617 /8,137) d. Free or Nominal Rate Distribution (1) Free or Nominal Rate Outside-County Copies included on PS Form 3541: (0/0) (2) Free or Nominal Rate In-County Copies Included on PS Form 3541: (0/0) (3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS: (40/40) (4) Free or Nominal Rate Distribution Outside the Mail: (25/25) e. Total Free or Nominal Rate Distribution: (65/65) f. Total Distribution: (8,682/8,202) g. Copies not Distributed: (300/300) h. Total: (8,982/8,502) i. Percent Paid: (99%/99%) 16. Electronic Copy Circulation (Average No. Copies Each Issue During Preceding 12 Months/No. Copies of Single Issue Published Nearest to Filing Date) a. Paid Electronic Copies: (0/0) b. Total Paid Print Copies + Paid Electronic Copies: (8,617/8,137) c. Total Print Distribution + Paid Electronic Copies: (8,682/8,202) d. Percent Paid: (99%/99%) I certify that 50% of all my distributed copies (electronic and print) are paid above a nominal price. 17. Publication of Statement of Ownership: Nov/Dec 2020 18. I certify that all information furnished on this form is true and complete: Alysha Adamo, 10/1/20

Connecticut Fines

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The general level of inconvenience and potential for fines relating to pandemic face covering requirements and social gathering size restrictions during the current public health emergency appear to be on par with pre-existing statutory safety, health, and public welfare requirements affecting operators and passengers of motor vehicles, that are intended to protect not just the operators and passengers themselves but also the general public's health, safety, and welfare. ■

NOTES

1. State enforcement of adherence to federal motor vehicle safety requirements is distinguishable from state regulation of motorcyclists' protective headgear. (Protective headgear requirements have been challenged in several jurisdictions on constitutional grounds (including discriminatory selective enforcement grounds, and arguments that a state's police power does not extend to helmet requirements that only protect the individual motorcyclist's life and health, not the general public's health, safety and welfare).) Protective headgear requirements that apply only to minors and that allow use of headgear meeting federal safety standards (without imposing additional, more restrictive state requirements) have been easier to defend against constitutional challenge.

2. Conn. Gen. Stat. Section 14-300f(b) includes the same penalties for failing to stop a motor vehicle at the direction of a school crossing guard.

PDD

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and Disciplinary Counsel offices were unable to find the respondent. *Ansonia Panel v. Jose L. Altamirano*, #19-0337 (7 pages).

Presentment ordered for violations of Rules 1.3, 1.4(a)(2),(3) and (4), 1.5(a) and (b), 1.15(d), 8.1(2), 8.4(3), 8.4(4) and Practice Book § 2-32(a)(1) in regards to a divorce case where respondent, while under suspension, took a fee to file a divorce and failed to do so. Respondent had a significant history of discipline which, combined with not answering the present case, led to the presentment order. SGC ordered an additional violation of Rule 5.5(b)(2) to be considered on presentment. *Monahan v. David V. Chomick*, #19-0450 (9 pages). ■

Supreme Deliberations

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any factors were different…." For Justice D'Auria, this "absence of any explanation for the ruling…makes entirely deferential review problematic."

Turning then to the merits, Justice D'Auria concluded that the appellate court should have granted the defendants' request to file a late appeal for three principal reasons. First, citing the plaintiff's "arguably unnecessary" motion for offer of compromise interest and the absence of any reviewing court ruling "definitely determin[ing]" whether, following a 1997 amendment to § 37-3b, the trial court retains some discretion over the amount of postjudgment interest it can award, Justice D'Auria concluded that "the events that transpired after the jury's verdict were…susceptible to reasonable confusion sufficient to constitute 'good cause' and to justify the defendants' late appeal." Second, the plaintiff was not prejudiced by the delay. Third, the appellate court's ruling caused a "complete forfeiture" of a statutory right that was "wildly out of proportion to any procedural violation in the case."

We certainly sympathize with the defendants. After all, the plaintiff was not substantially prejudiced by the late filing and it's not like the dismissal lightened the appellate court's docket much, given that it still had to resolve the defendants' appeal challenging the trial court's award of interest. On the other hand, the defendants should have known that the appellate clock began running when the trial court accepted the jury's verdict. And it's hard to conclude that the appellate court's decision was arbitrary, when there was really no sound basis for the defendants to believe that they had timely filed their appeal.

But in any event, the lesson of *Georges* has been around at least as long as we've been practicing appellate law: when in doubt, immediately file the appeal—or at least file a motion for an extension of time! ■

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