Volume 31 | Number 6

July | August 2021

CT LAWYER

Alternative Dispute Resolution

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

CNA

KRONHOLM INSURANCE SERVICES

Connecticut Bar Association

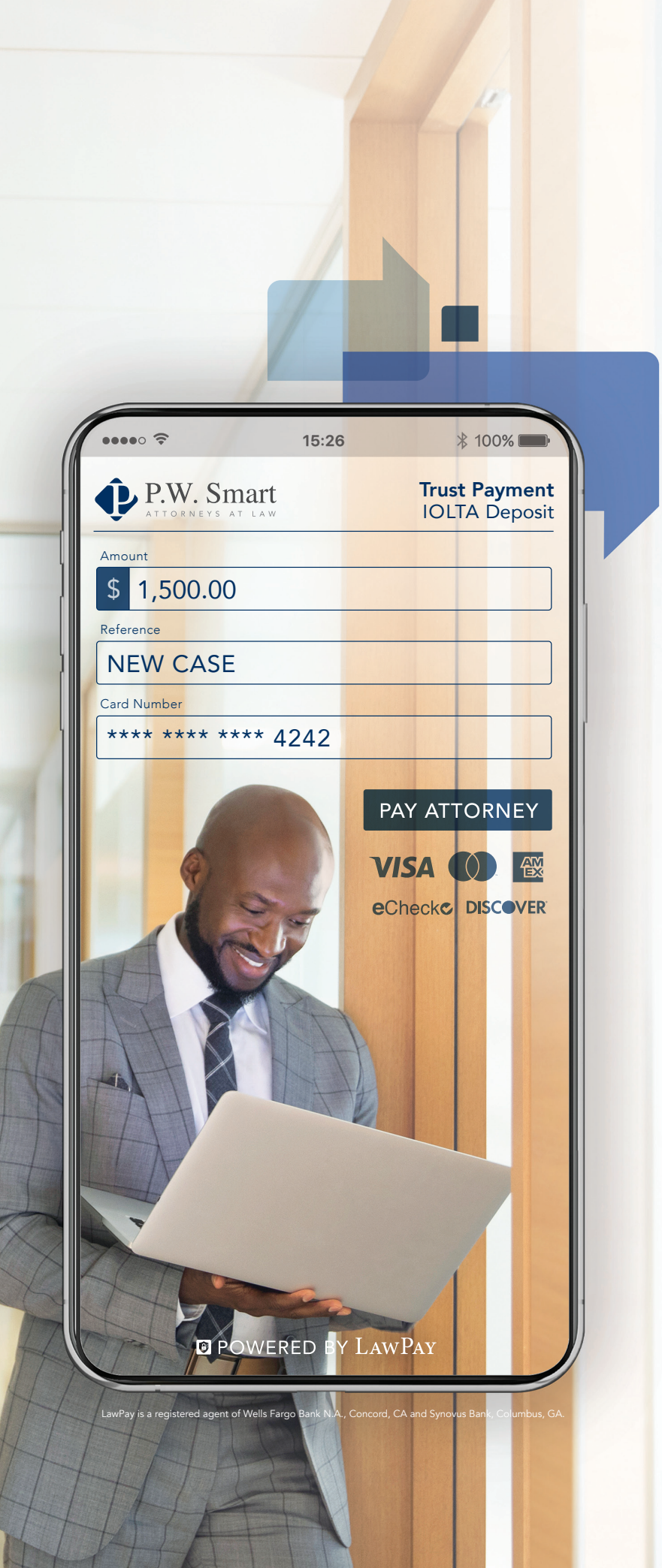
As part of an insurance organization with over $55 billion in assets and an "A" rating from A.M. Best, we have the financial strength you can count on. If a claim is made against you, our Lawyers' Professional Liability Insurance Program will provide you with superior claim handling by experienced attorneys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

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

Renew Your Membership Today

Connecticut Bar Association

Visit ctbar.org/renew
Call (844)469-2221
Email msc@ctbar.org



LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA and Synovus Bank, Columbus, GA.

LawPay®

AN AFFINIPAY SOLUTION

POWERING PAYMENTS FOR THE LEGAL INDUSTRY

The easiest way to accept credit, debit, and eCheck payments

The ability to accept payments online has become vital for all firms. When you need to get it right, trust LawPay's proven solution.

As the industry standard in legal payments, LawPay is the only payment solution vetted and approved by all 50 state bar associations, 60+ local and specialty bars, the ABA, and the ALA.

Developed specifically for the legal industry to ensure trust account compliance and deliver the most secure, PCI-compliant technology, LawPay is proud to be the preferred, long-term payment partner for more than 50,000 law firms.

Connecticut Bar Association

ACCEPT MORE PAYMENTS WITH LAWPAY

877-737-1297 | lawpay.com/ctbar

CT LAWYER

Volume 31 | Number 6 | July/August 2021

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

FEATURES

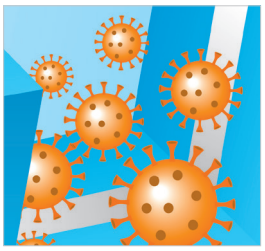
12 The Second Virtual Connecticut Legal Conference Addresses Issues Facing Our Nation and the Legal Profession
By Corrine King

16 Meet the New 2021-2022 CBA Officers

17 Call for 2022 Awards Nominations

18 RUAA Comes to the Rescue
By Houston Putnam Lowry Roy L. De Barbieri

22 ADR in the Age of Cybersecurity
By Steven A. Certilman and Eric W. Wiechmann



COLUMNS

4 PRESIDENT'S MESSAGE
A Year of Service and Successful Connection
By Amy Lin Meyerson

30 DIVERSITY, EQUITY, AND INCLUSION
Diversity, Equity, and Inclusion in the Pipeline to the Legal Profession
By Cecil J. Thomas and Karen DeMeola

32 TIME TO GO PRO BONO
Advancing Access to Justice in Unprecedented Times
By Cecil J. Thomas

34 SUPREME DELIBERATIONS
The Legal Fallout of Coeducating a Fraternity
By Charles D. Ray and Matthew A. Weiner

38 YOUNG LAWYERS
Lessons Learned While Leading the YLS During a Pandemic
By Cindy M. Cieslak

DEPARTMENTS

6 News & Events

36 Court Decisions

Cover Image Credit: KrulUA/iStock Getty Image

A Year of Service and Successful Connection

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, general corporate, and nonprofit law..*

I am honored to have served as the first Asian American and 97th president of the Connecticut Bar Association. We have accomplished much together towards advancing our mission of promoting justice and strengthening our profession. It has certainly been a year of unprecedented challenges—the COVID-19 pandemic, great social unrest sparked by the death of George Floyd, threats to our democracy at the US Capitol, and overt hate crimes against Asian Americans, to name a few. The CBA met these challenges through perseverance and innovation. With your safety, health, and overall wellbeing in mind, we adapted, shaped a better legal landscape, and made great strides to serve our members and the community.

The 2020-2021 Bar Year

This year's theme was **Connect to Succeed** with the Connecticut Bar Association as we **C**hampioned our Communities, **B**roadened Our Networks, and **A**dvanced Justice together. Thank you for the opportunity to lead the association that is the voice of the Connecticut legal profession, both within the organized bar and with the public. CBA members embraced technology, re-examined the status quo, and collaborated to find creative solutions, despite the year-long lockdown. Today, we are stronger, more connected, and more inclusive than ever.

National Response

We were one of the first bar associations to speak out against troubling current events, to demonstrate the CBA's unwavering commitment to protecting the rule of law, democracy, and our justice system. On January 6, 2021, the CBA issued a statement condemning the storming of the US Capitol and the attempts to disrupt democracy. After the Atlanta spa shootings, on March 18, 2021, we denounced acts of violence and against Asian Americans and called for solidarity to support the victims and prevent future incidents. In order to ensure our right to vote in federal and state elections, our members volunteered at polling places across Connecticut in November 2020.

New Rules

The CBA also pursued a very active legislative agenda advocating for several rule changes, including three Practice Book Rule amendments that were approved at the 2021 Annual Meeting of the Judges of the Connecticut Superior Court and will go into effect on January 1, 2022:

1) Rule 8.4 (Misconduct) of the Connecticut Rules of Professional Conduct adding a provision to the Rule making it professional misconduct for an attorney to engage in discrimination or harassment in the practice of law;

2) Rule 5.5 permitting non-practicing or retired out-of-state licensed attorneys to engage in supervised pro bono services through a legal aid organization, law school, or bar association program; and

3) Rule 1.8(e) allowing a lawyer representing a client pro bono to provide modest gifts to the client to pay for basic living expenses.

Judicial Update

Our judges are the backbone of an independent, fair, effective, and efficient judicial system. It was therefore our privilege to testify before the Connecticut Judicial Compensation Commission in support of fair and appropriate judicial compensation to enable the state to attract and retain qualified, experienced, and diverse lawyers, from every segment of the legal profession, to a career in judicial service.

Pro Bono Works

The *CBA Gives* campaign, newly launched, encourages members to donate time or money to legal and social service programs that align with our mission of advancing the legal profession and principles of law and justice or meet the needs

The Connecticut Bar Association 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

of Connecticut's most vulnerable residents. The programs include Project Feed Connecticut, The DeMeola Fund, CBA Pro Bono Connect, CBA Lawyers in Libraries, CBA Virtual Pro Bono Legal Clinics, and CT Free Legal Answers.

Professional Development Events

We have a proud reputation for providing high-quality professional development and networking opportunities crucial to equip CBA members with the ideas, information, and resources to serve their clients while staying connected, resilient, and motivated. Using virtual platforms, our speakers offered valuable and relevant content in over 280 continuing legal education programs (CLEs), including the 2020 and 2021 Connecticut Legal Conferences and Celebrate with the Stars; Constance Baker Motley Speaker Series on Racial Inequality; Bankruptcy Series; Federal Tax Institute of New England; Young Lawyers Series; and CLEs presented during meetings of our 70+ sections, committees, and task forces. As a result, the CBA was voted the #1 CLE Provider and #1 CLE Provider—Online by *Connecticut Law Tribune* readers for the fourth straight year!

To better serve our members, we enhanced member benefits in these innovative forums:

(1) The CBA In-House Counsel Committee provides cost-effective, high-quality, relevant content and resources for general counsel and other in-house attorneys;

(2) The CBA Solo and Small Firm Resource Center focuses on starting a practice, growing a practice, and leaving a practice; and

(3) The new Experienced Lawyers Committee leverages skill sets, accumulated knowledge, and judgment of experienced lawyers to promote the public interest and the legal profession.

Future of the Legal Profession

To create a sustainable pipeline of students from high school to college, law school to law practice, CBA offers budding lawyers programs like Pathways to Legal Careers, CBA Future of the Legal Profession Scholars, L.A.W. Camp, and Civics First Mock Trial competitions. Additionally, we joined the Connecticut Judicial Branch to congratulate candidates who passed the CT bar exams administered in February and October 2020 and to welcome new attorneys admitted to practice law here.

Lawyer Well-Being

For over a year, we have experienced life as shut-ins, still not knowing exactly when we will be able to move about freely without having to consider COVID-19 safety protocols. Let's take our time to ease back in as we establish new routines in the "new normal." Our Lawyer Well-Being Committee has cared for our emotional and mental health, sharing insights and tips in CLE programs, "Be Well" in *The CBA Docket*, articles in the *CT Lawyer*, Well-Being Challenges, and the Well-Being Pledge campaign. We are excited to reopen the CBA offices and bring back in-person events at outside venues. The CBA staff and leadership team stand ready to assist you. Please do not hesitate to reach out.

Final Thoughts

We are truly fortunate to have so many good and special people in our CBA membership, as sponsors, and throughout our legal community, who are dedicated and committed to the Association's causes and the vitality and health of the legal profession and our communities.

Many thanks to CBA leadership on our Executive Committee; Board of Governors; House of Delegates; and Sections, Committees, and Task Forces; members and other volunteers; our partnering entities; and our phenomenal CBA staff.

I would like to express my deep gratitude to members of our CBA family who have contributed to our success for their guidance and friendship, including my fellow officers on the presidential track: President-elect Cecil J. Thomas, Vice President Daniel J. Horgan, and Treasurer and Incoming Vice President Maggie Castinado.

The love, support, patience, and accommodation of my husband, Brandon, and my children, Garrett and Ashley, have made it possible for me to successfully complete my year as CBA president. I am so very thankful for each of you every day. Best wishes to Cecil J. Thomas, our incoming CBA president, who will do a fantastic job leading our association. I look forward to continuing to support the CBA as the Immediate Past President, and in my new roles as a member of the ABA Board of Governors (beginning in August) and co-chair of Governor Lamont's Connecticut Hate Crimes Advisory Council.

Stay safe and be well. ■

Seven CBA Members Appointed to the Connecticut Superior Court Bench

Nearly half of the 15 new Connecticut Superior Court judges, nominated by Governor Ned Lamont, are current CBA members. Past President Ndidi N. Moses joins CBA members Linda Allard, John A. Cirello, Gladys Idelis Nieves, Edward O'Hanlan, Carletha S. Texidor, and Carla Nascimento Zahner in this honor.

Linda Allard was a staff attorney at Greater Hartford Legal Aid and practiced in the area of family law, representing domestic violence victims. She is a member of the CBA's Family Law Section.

John A. Cirello was a founding partner of Cirello & Vessicchio LLC and practiced in the areas of criminal defense, civil litigation, business law, housing law, and probate matters. He is a member of the CBA's Labor & Employment Law and Litigation Sections.

Ndidi N. Moses was an assistant United States attorney for the District of Connecticut and the office's civil rights coordinator. She was a past president of the CBA and currently serves on many of its committees and task forces, including the Cyber Security and Technology Committee, Policing Task Force, and State of the Legal Profession Task Force.

Gladys Idelis Nieves was a family support magistrate at the Connecticut Judicial Branch and previously represented parents and children involved in child abuse and neglect proceedings as a sole practitioner.

Image credit: ftwitty/E+

Edward V. O'Hanlan was a partner at Robinson+Cole and practiced in the areas of land use zoning and litigation. He is a member of the CBA's Litigation, Planning & Zoning, Real Property, and Veterans and Military Affairs Sections.

Carletha S. Texidor was an assistant attorney general in the Employment Rights Department of the Connecticut Attorney General's Office.

Carla Nascimento Zahner was a partner at Louden Katz and McGrath LLC and practiced in the area of family law. She is a member of the CBA's Family Law Section.

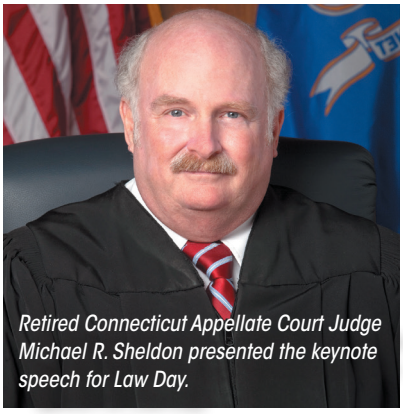
Governor Lamont also nominated Robert W. Clark to the Connecticut Appellate Court and Attorneys William F. Clark, Michael J. Gustafson, H. Gordan Hall, Kimberly P. Massicotte, Maximino Medina, Jr., Angelica N. Papastavros, Chris A. Pelosi, and Jessica Torres Shlatz to the superior court bench. These nominations, made on February 17, are the first made in three years, and Governor Lamont's first, to fill the bench's 50 vacancies. The legislature approved the governor's superior court nominations on April 26 and the appellate court nomination on March 23.

GET THE NEWS and JOIN THE CONVERSATION
www.ctbar.org

CBA Celebrates Law Day 2021

The CBA Civics Education Committee, together with the Greater Danbury, Hartford County, Litchfield County, New Haven County, and Windham County Bar Associations held its annual Law Day celebration virtually over Zoom on May 7, with more than 65 attendees. Law Day is a national celebration held annually to focus on the role of law in our society and to help encourage a deeper understanding of the legal profession. This year's Law Day theme was "Advancing the Rule of Law, Now."

Committee Chair Jonathan Weiner hosted the hour-long event, providing an introduction and welcome to those attending. Students Julianna Farquharson, Claire Flynn, and Grace Piccioli from Sedgewick Middle School in West Hartford as well as Anna Hansard and Amalia Morizio from North Haven Middle School presented inspirational readings on the importance of law quoted from prominent figures, including Abraham Lincoln, Martin Luther King, Jr., Aristotle, and Chief Justice John Roberts. CBA President Amy Lin Meyerson spoke about the history and importance of Law Day celebrations. The event's keynote speaker, retired Connecticut Appellate Court Judge Michael R. Sheldon, presented a speech focused on the defining elements of the United States' legal system, his own experience introducing Russian authorities to US legal concepts after the fall of the Soviet Union, and the national challenges that face the United States' judiciary system today.



Retired Connecticut Appellate Court Judge Michael R. Sheldon presented the keynote speech for Law Day.

To conclude the event, the 2021 Liberty Bell Awards were presented by the local bar associations to individuals who demonstrate civic responsibility and promote understanding of the rule of law in the community. Hartford County Bar (HCBA) President-Elect Jennifer E. Wheelock presented the HBCA's Liberty Bell Award to UConn School of Law's Assistant Dean for Finance, Administration, and Enrollment Karen DeMeola for teaching diversity and inclusion in the legal profession and critical identity theory. Litchfield District Superior Court Senior Judge Paul Matasavage presented a Litchfield County Bar Association (LCBA) Liberty Bell Award to court interpreter, Margarita Charleton. LCBA President Ryan M. Henry presented a second Liberty Bell Award to Litchfield District Superior Court Judge Trial Referee John W. Pickard. Thank you to everyone involved who helped to celebrate Law Day 2021.

YLS HOSTS VIRTUAL LEGISLATIVE BREAKFAST

The CBA Young Lawyers Section (YLS) held its annual legislative breakfast virtually over Zoom on April 22. Section members met with State Representative Matthew Blumenthal, who was the guest speaker for the event.

Representative Matthew Blumenthal is a practicing attorney, a member of the YLS, and currently serving his first term as state representative for Connecticut's 147th district and as house vice chair of the Judiciary Committee. He spoke about his personal experience joining the law firm Koskoff Koskoff & Bieder PC and being elected to the state legislature. While he admitted that there are significant challenges in balancing the responsibilities that he has to his firm and to his constituents as an elected official, Representative Blumenthal asserted that having experience in the legal field is crucial to developing effective and practical bills in his role on the Judiciary Committee. He expressed cautious optimism for current bills being sent to the legislature involving issues of criminal justice reform, prison reform, and cannabis legalization.

Representative Matthew Blumenthal

Representative Blumenthal encouraged all members of the YLS in attendance to pursue political engagement within their communities as they continue their legal careers.

Upcoming Education Calendar

OCTOBER

14 4th Annual Connecticut Bankruptcy Conference*

20 The Diversity, Equity, & Inclusion Summit: The Collaborative Blueprint*

28 Federal Tax Institute of New England

NOVEMBER

5 More Effective Writing Makes More Effective Lawyers

16 Joint Meeting: Probate Court and CBA

19 Practice, Procedure, and Protocol in the Connecticut Courts

**Ethics credit available*

IN MEMORIAM

The Honorable Jonathan J. Kaplan passed away on April 23 at age 75. He graduated from Bryant College and UConn Law School with honors. Judge Kaplan started practicing law in 1971 at the Law Offices of Edwin M. Lavitt and later became a partner in the firm Lavitt Hutchinson and Kaplan. In 1985, he was appointed to the Connecticut Superior Court bench by then Governor William O'Neill, where he served until his retirement. He served as administrative judge of the Tolland Judicial District for 10 years. Judge Kaplan was president of the Tolland Bar Association and an Advisory Board member to the Lawyers Concerned for Lawyers Association of Tolland County.

Kevin E. Booth passed away on February 27 at age 78. Attorney Booth is a graduate of the College of the Holy Cross, and went on the Columbus School of Law at Catholic University of America in Washington, DC. He later did postdoctoral work in tax law at the University of Missouri in Kansas City. Following law school, Attorney Booth entered the US Air Force as a judge advocate; he was a certified military judge attaining the rank of captain at the time of his discharge. The next part of his career brought him to the law firm of Conway Londregan Leuba & McNamara and he later went on to open the Law Office of Booth and Mattern in Niantic.

Mary Veronica DiCrescenzo passed away on February 24 at age 65. She received her bachelor's degree from Marymount College (Summa Cum Laude) an her JD from Georgetown Law School. After graduating low school, she was offered a position with the National Association of Home Builders in Washington, DC, where she spent 25 years as a land use and regulatory attorney. Throughout her career, she was a dedicated legal advocate and friend and mentor to her peers. At retirement, Attorney DiCrescenzo held the title of senior vice president.

Edwin L. Doernberger passed away on May 21. He joined Saxe Doernberger & Vita PC, a national law firm specializing in representing insurance policy holders in coverage disputes, in 2001 and served as its Managing Partner until 2016. He remained on its Executive Committee and was actively involved in firm administration to the very end. During his tenure at the firm, he served as a dedicated guide and mentor to young attorneys.

Edward Barrie "Ted" Potter passed away on April 2 at age 62. He is a graduate of Rensselaer Polytechnic Institute and Columbia Law School, and practiced in New York City, New Haven, and Hartford before he eventually started his own law practice, Kitchings & Potter, which focused on estate and tax planning, wills and trusts, charitable gifts, probate law, and estate administration. The firm recently merged with Shipman & Goodwin LLP.

William R. Davis passed away on February 9 at age 90. He is a graduate of Providence College and the UConn School of Law. Attorney Davis served on the adjunct faculty for over 20 years at the UConn School of Law, where they honored him by naming its Moot Courtroom "The William R. Davis Courtroom." He joined Leon RisCassi in 1955 to create the firm of RisCassi & Davis PC. Throughout his career, he taught young lawyers what it meant to be a trial lawyer, and served as a mentor through his courtroom skills, professionalism, collegiality, and civility. Attorney Davis was the 2004 recipient of the Connecticut Bar Association's Edward F. Hennessey Professionalism Award.

CBA Hosts Virtual Pro Bono Clinics

The CBA Pro Bono Committee, Statewide Legal Services of CT, and Connecticut Veterans Legal Center held a series of Pro Bono Clinics virtually on April 27 through 29, where 35 attorney volunteers met with a total of 50 clients over Zoom meetings.

Prior to the clinic, 30 volunteer law students completed client intake forms and asked follow-up questions to help the attorneys prepare for the meetings. On the days of the clinic, the volunteer attorneys provided free legal guidance to the clients in the areas of family law, landlord/tenant law, immigration law, tax law, consumer law, bankruptcy, employee rights/unemployment, and pardons. Four law students were able to sit in on the meetings to learn more about the process of providing pro bono services.

"Connecticut's access to justice gap continues to grow, particularly aggravated by the impacts of the COVID-19 pandemic. The enthusiastic participation of our attorney and law student volunteers during our Virtual Spring Pro Bono Clinics represents the Connecticut Bar Association at its best," said CBA President-elect and Pro Bono Committee Chair Cecil J. Thomas. "Our volunteers worked together, supported by the CBA's dedicated staff, to provide much-needed legal advice and reassurance to clinic participants facing the uncertainty and stress of serious legal issues."

Additional virtual legal clinics are planned for late October 2021. Other opportunities for participating in pro bono work through the CBA include CBA Pro Bono Connect, CT Free Legal Answers, and Lawyers in the Libraries. Learn more at ctbar.org/probono.

THREE CBA ATTORNEYS RECOGNIZED WITH 2021 CLABBY AWARDS

Attorneys Richard M. Coan, Taruna Garg, and Suzanne B. Sutton received CLABBY awards from the Connecticut Bar Association Commercial Law and Bankruptcy Section on May 5. The CLABBY awards, established in 2016, are presented by the section each year to honor the professional achievements of section members.

Richard M. Coan received the 2021 Career Achievement Award for his professionalism and exemplary practice of commercial and bankruptcy law for more than 35 years. He is a partner and founding member of Coan Lewendon Gulliver and Miltenberger LLC in New Haven.

Taruna Garg received the 2021 Rising Star Award for her consistent and meaningful participation in section activities and meetings, and implementation of section initiatives. She is a partner at Murtha Cullina LLP in Stamford.

Suzanne B. Sutton received the 2021 Service to the Profession Award for her section leadership, development of educational programs, and delivery of pro bono services. She is an adjunct legal ethics professor at the University of Hartford and is of counsel at Cohen and Wolf PC in Bridgeport.

Richard M. Coan

Taruna Garg

Suzanne B. Sutton

The CBA Hosts Lawyer Well-Being Week 2021

YLS members gathered for a group hike at Sleeping Giant State Park.

During the week of May 3, the CBA Lawyer Well-Being Committee hosted a series of free events for CBA members to celebrate Lawyer Well-Being Week. Prior to the official start of the week's events, a preliminary hike at Sleeping Giant State Park was hosted by the CBA Young Lawyers Section (YLS) on May 1. Seven members of the YLS gathered on that Saturday morning to hike the park's Hezekiah Knob and Chestnut Grove Trail, enjoying some exercise and views of nature.

On Monday, May 3, the first of five weekday presentations were held. Lawyer Well-Being Committee Co-Chair Dr. Traci Cipriano spoke about the multidimensional aspects of well-being and their significance regarding physical and psychological health and healthy work environments. YLS Chair Cindy M. Cieslak addressed the emotional and relational risks of working in the field of law as well as the importance of self-care in maintaining a practice and the ability to provide competent legal representation.

On Tuesday, yoga instructor Siena Loprinzi led participants through an hour-long introductory yoga class. For Wednesday's presentation, registered dietitian and New York University professor, Sara Soyeju, spoke about the impact that mindset has on the nutritional choices we make and provided guidance on how to initiate healthy behavioral changes towards better nutrition and self-care. Thursday's event was hosted by psychotherapist and mindfulness teacher, Anne Dutton, who led participants through an experiential mindfulness practice, which was followed by an explanation of Mindfulness-Based Stress Reduction (MBSR) and its benefits.

Lawyer Well-Being Week concluded on Friday, May 7 with a presentation on why mindset matters, hosted by Lawyer Well-Being Committee Co-Chair Tanyee Cheung and Attorney Sara K. Bonaiuto. They discussed the scientific evidence supporting the concept that shifting one's mindset can lead to a healthier lifestyle and how to avoid thinking traps that can sabotage mental health and productivity.

The CBA Lawyer Well-Being Committee developed the 2021 Connecticut Bar Association Well-Being Pledge to highlight and promote important aspects of lawyer well-being and healthy work environments. The pledge asks for a firm or organization commitment to well-being initiatives and provides space for writing out three objectives for enhanced well-being. The intention is to have the Pledge Commitment completed on an annual basis (April to April cycle), accompanied by an evaluation of progress toward goals in each subsequent year. To learn more about the CBA Lawyer Well-Being Pledge and other resources, visit ctbar.org/LawyerWellBeingResources.

PEERS AND CHEERS

Attorney News

The Lawyers Collaborative for Diversity (LCD) presented the 2021 Edwin Archer Randolph Diversity Award to **Chief Justice Richard A. Robinson**, Connecticut Supreme Court, and **Cecil J. Thomas**, Greater Hartford Legal Aid, Inc. This award is named for Edwin Archer Randolph, who was the first lawyer of color admitted to the Connecticut Bar in 1880; in tribute to his legacy, this award honors an individual who promotes inclusion and advancement of lawyers of color and other professionals. LCD's 2021 Carolyn Golden Hebsgaard Award was presented to **Cherie Phoenix-Sharpe**, Office of the Lieutenant Governor, and **Dan A. Brody**, Robinson & Cole LLP. This award is named in honor of the founding executive director of LCD, who spearheaded initiatives designed to identify, recruit, advance, and retain young attorneys of color in the Connecticut legal profession.

Kahan Kerensky Capossela LLP has hired **Anne E. Blanchard** as an associate. Attorney Blanchard's practice will be focused on commercial and residential real estate transactions and advising businesses on a variety of matters.

Day Pitney LLP is pleased to announce **Michael Schoeneberge**r, an associate in the firm's Stamford office, as a recipient of the firm's 2021 Coleman Awards, which recognize recipients for their dedication to pro bono service.

Robinson+Cole has elected **Rhonda J. Tobin** as its next managing partner. She will be the first woman to lead the firm. Attorney Tobin is a trial lawyer who has spent her entire 30-year law career at Robinson+Cole; her practice focuses on the litigation, arbitration, and mediation of complex disputes involving insurance and reinsurance coverage.

Murtha Cullina LLP is pleased to announce **Nicholas W. Vitti, Jr.** as a partner in the firm's Business and Finance Department and Real Estate Practice Group. Attorney Vitti's practice includes commercial real estate transactions, real estate development, land use and zoning, and real estate tax appeals and valuation.

Firm News

Baillie & Hershman PC Law Offices is pleased to announce that Tamara L. Peterson has joined the firm, based in the Fairfield office; her practice will focus on residential real estate law. Additionally, Christina M. Lopes has a new role within the firm. Based out of the Cheshire office, her practice will focus on real estate law and estate planning.

Cummings & Lockwood LLC is pleased to announce new associates to its Private Clients Group, including Elizabeth Falkoff, who is based in the Stamford office and has eight years of trusts and estates legal experience, and Steven J. Georgiades, who is based in the Greenwich office and has eight years of experience in trusts and estates law.

The law firm **Czepiga Daly Pope & Perri** is pleased to announce that **Paul J. Knierim** has been selected by the Connecticut Probate Assembly as the 2021 recipient of the Daniel F. Caruso Public Service Award, which is given in recognition of exceptional leadership and support of the mission of the probate courts.

Attorneys Debra C. Ruel, James M. Ruel, and Robert J. T. Britt are pleased to announce that **Attorney Meghan M. (Sweeney) Burns** has been named a partner. Effective April 1, 2021, the matrimonial and criminal defense firm will be known as Ruel Ruel Burns & Britt, LLC. ■

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

THE SECOND VIRTUAL CONNECTICUT LEGAL CONFERENCE

Addresses Issues Facing Our Nation and the Legal Profession

BY CORRINE KING

More than 750 attendees participated in the second virtual Connecticut Legal Conference (CLC) on June 15, 16, and 17. Attendees were able to receive 13.75 CT CLE credits and learn from six national plenary speakers and over 100 local leaders in the law, who discussed current issues facing our nation and legal community. Topics addressed at this year's CLC included racial inequality; the eviction epidemic; access to justice; democracy and the law; and diversity, equity, and inclusion.

Before the conference officially opened, seven vendors held demonstrations of their products and services during the pre-conference demo day to help attorneys enhance their practice of law. The vendors ranged from law practice management software companies to services that can benefit certain practice areas, such as real estate and family law.

CBA President Amy Lin Meyerson

Tuesday, June 15

CBA President Amy Lin Meyerson welcomed attendees and highlighted the upcoming plenary sessions as well as available concurrent sessions in response to the COVID-19 pandemic: "So You Want to Be a (Microsoft) Team Player?—Best Practices for Conducting Virtual Trials and Hearings" presented by the Family Law Section and "21st Century Litigator: How to Take Depositions, Use Them at Trial, & Get Evidence Admitted in the Age of Remote Depositions & Trials" presented by the Litigation Section. Annual reviews of case law, sessions on law practice management, updates in practice areas, and current issues were also presented by various CBA sections.

Senator Richard Blumenthal welcomed attendees and stressed

the importance of the work of the legal community, especially in regard to the rule of law.

Asha Rangappa

Asha Rangappa, a senior lecturer at the Yale University's Jackson Institute for Global Affairs, addressed democracy and the law with her discussion of the bar association's role in protecting the threat to democracy due to disinformation during the morning plenary.

Later that morning, the CBA Annual Meeting was held during the lunchtime plenary. Chief Justice Richard A. Robinson opened the meeting by discussing the current events of the Judicial Branch. President Amy Lin Meyerson delivered her farewell address before the 2021-2022 officers were installed: Cecil J. Thomas (president), Daniel J. Horgan (president-elect), Margaret I. Castinado (vice president), Sharad A. Samy (secretary), David M. Moore (treasurer), Cindy M. Cieslak (assistant secretary-treasurer), and Amy Lin Meyerson (immediate past president). Incoming CBA President Cecil J. Thomas then presented his vision for the 2021-2022 bar year (see page 14 to read his speech).

Richard Rothstein

The evening plenary explored the topic of racial inequality in our state and nation at the summative event of the first year of the Constance Baker Motley Speaker Series on Racial Inequality. Chief Justice Richard A. Robinson discussed racial segregation with Richard Rothstein, the author of *The Color of Law: A Forgotten History of How Our Government Segregated America*. After, a panel, featuring Connecticut leaders in police accountability, housing desegregation, and political access, highlighted what has been done in the past year and how we will continue to address racial inequality in Connecticut.

Wednesday, June 16

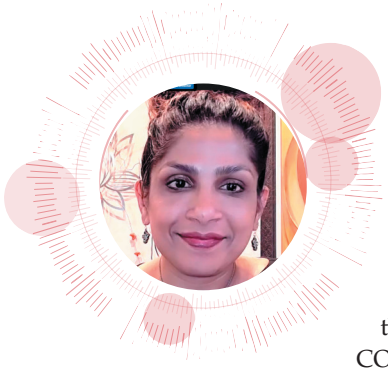
Lieutenant Governor Susan Bysiewicz and Attorney General William Tong provided remarks before beginning the day's programming.

Rebecca L. Sandefur

During the Wednesday morning plenary, Rebecca L. Sandefur, a faculty fellow at the American Bar Foundation and founder of the Access to Justice Research Initiative, discussed how jurisdictions around the country are permitting nonlawyers to own or profit from the sale of legal services and permitting nonlawyer humans and computer programs to practice law to expand access to justice. Following her presentation, in an afternoon concurrent session, CBA President-elect Cecil J. Thomas, Lorraine Carcova, Jennifer Quaye-Hudson, Alexis H. Smith, Natalie S. Wagner, and Ryan Wilson assessed and addressed Connecticut's access to justice gap in the wake of the COVID-19 pandemic and discussed ways to best advance the promise of equal justice for all.

Matthew Desmond

Pulitzer Prize-winning author of *Evicted: Poverty and Profit in the American City*, founder and principal investigator of Princeton's Eviction Lab, and CLC Keynote Plenary Speaker Matthew Desmond examined the eviction epidemic during the lunchtime plenary.



Dr. Arin N. Reeves

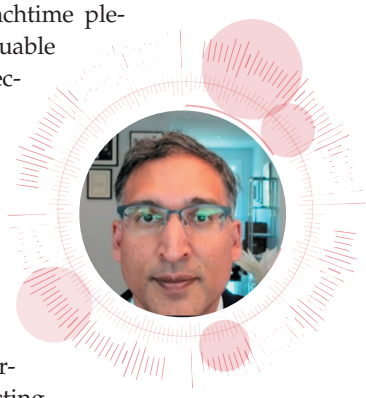
Dr. Arin N. Reeves, an inclusion and leadership strategies business advisor, explored how inclusion needs to continue to play a role during these challenging times and incorporate new research that reflects the new realities of the workplace during and post COVID-19 during the day's evening plenary.

Thursday, June 17

The final day of the conference opened with remarks from Chief United States District Judge for the District of Connecticut, Stefan R. Underhill and Probate Court Administrator Judge Beverly Streit-Kefalas, who discussed the court's response to the pandemic over the past year.

The CBA's Lawyer Well-Being Committee's morning plenary addressed how law firms can shift toward a culture of well-being. The panelists described the issues that led the participating firms to prioritize well-being, any roadblocks and barriers that needed to be addressed, how those challenges were addressed, and subsequent positive impacts of well-being prioritization.

An encore presentation of the 2020 CLC session "Safe Harbors and Calm Seas" was presented by the Insurance Programs for the Bar Committee during the lunchtime plenary. The plenary 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.



Neal Katyal

During the conference's closing plenary on Thursday evening, Neal Katyal, the former Obama administration acting solicitor general of the United States, continued the conversation of democracy and the law and shared his insights into the decisions of the Supreme Court, what we could expect this term, their importance for the country, and the Court's sometimes tragic role in protecting our civil liberties.

The CBA thanks all those that helped make the CLC a success—the presenters, moderators, attendees, vendors, and the sponsors, particularly Platinum Headline Sponsor Kronholm Insurance Services and Plenary Sponsors CATIC, LEAP, Liberty Bank, and MONESQ. ■

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

The following is a reprint of Incoming President Cecil J. Thomas' 2021 CBA Annual Meeting speech.

Together for Justice, Together for Equity, Together in Service

Thank you, Karen [DeMeola], for that kind introduction. I am here, in this new role, because of so many doors that you have opened for me, and encouraged me to step through, beginning with my admission to the University of Connecticut School of Law so many years ago. You have personified inclusive leadership for me and for so many others, creating rich environments for us to grow and develop, and I am lucky to call you a mentor, a role model, and my friend.

Chief Justice Robinson, thank you for your words of wisdom. I am honored to be sharing this virtual platform with you today. Thank you for your profound leadership of the Connecticut Judicial Branch during this tumultuous year, as we have wrestled with so much change, so much unrest, and yet witnessed so many advances in the pursuit of justice. There are many challenges and much work ahead, but I look forward to continuing the strong partnership that has existed between the bench and the bar in Connecticut as we face the "new normal" together.

I have, over the last year, increasingly felt the immense weight and responsibility of this moment, and of the year ahead, and so look with great admiration and respect at those who have served in this role before me. I join the particular ranks of "pandemic bar presidents," though at a time when we collectively hope to emerge from the worst of the COVID-19 pandemic, and begin to dream a brighter future together. I have had the honor and privilege of serving under the leadership of President Amy Lin Meyerson this past year. She has led the CBA with wisdom and care, guiding us in her typical calm, collected, and efficient manner, through many unexpected challenges and tremendous shifts. Thanks to her leadership, the CBA is in sound fiscal and organizational health, and is poised to continue its track record of excellence in the years ahead. I must also thank former CBA president, Judge Ndidi Moses, who led the CBA in a highly impactful way at the start of the COVID-19 pandemic, and launched several timely and vital measures, such as the CBA Policing Task Force, that have continued well beyond her term as president. Presidents Meyerson and Moses did not have the CBA presidential terms that they expected, but they have answered the call to remarkable service without hesitation. I have learned so much from both of them, and we owe them a debt of gratitude for their service in these unprecedented times.

The theme I have selected for this year is "Together for Justice, Together for Equity, Together in Service." With this theme, I seek to emphasize our greatest strength as a profession—our mutuality and sense of community. As I deliver these remarks, virtually, it is impossible not to feel the hope that rises all around us. COVID-19 infection and mortality rates are dropping


Incoming 2021-2022 President Cecil J. Thomas

in Connecticut, as vaccination rates increase. This virtual conference, featuring over 30 concurrent high-quality CLE sessions and globally-renowned speakers addressing the most pressing issues of our time, has drawn almost 800 registered participants. We have embraced this new technology that has made the world smaller, helped us to stay connected, and challenged us to change, sometimes overnight, to new methods of practicing law, serving our clients, and advancing justice. Amidst all of this, we have also gained a newfound appreciation for the communities that sustain us. The opportunity to reconnect with those communities lifts our spirits, and reminds us of why organizations like the Connecticut Bar Association are so important to us, to our democracy, and to the rule of law.

While we celebrate, and reconnect, we must not forget the tremendous challenges facing those most vulnerable in Connecticut. Connecticut residents have struggled significantly to meet their most basic human needs, facing high levels of food and economic insecurity, throughout this pandemic. Tens of thousands of Connecticut renter households are struggling to meet rental obligations, just as state and federal eviction moratoriums are set to expire at the end of this month [June 30, 2021]. Serious mortgage delinquencies are also on the rise in this state. The COVID-19 pandemic has brought about a shadow pandemic of domestic violence, with calls to domestic violence helplines and law enforcement rising across the country. We have long wrestled with an access to justice gap, and the legal challenges facing indigent Connecticut residents as a result of the COVID-19 pandemic are serious and overwhelming. Currently, just seven percent of tenants facing eviction are represented by counsel, compared to 80 percent of landlords. The vast majority of family cases have at least one unrepresented party. Consumers are overwhelmingly unrepresented in debt collection matters, often facing sophisticated commercial parties represented by able counsel. There are pressing unmet civil legal needs in immigration, education, and employment law, for veterans and for individuals with disabilities, for so many who face overwhelming legal problems without the assistance of counsel. Increasingly, we have come to understand that these legal challenges disproportionately affect communities of color, families with children, and others who are often most vulnerable and most at risk. These are the challenges of our times, challenges that the legal profession is called answer. And so, to paraphrase the words of Hillel the Elder, we must ask ourselves, "If not now, then when? If not us, then who?"

I am reassured by many recent positive developments. The 2021 legislative session has witnessed powerful advances for access to justice for tenants facing eviction and individuals seeking relief from domestic violence in the courts, with a new statewide right to counsel program for tenants facing eviction, and an expanded access to legal counsel program for those filing applications for domestic violence restraining orders. Both of these efforts, which were supported by the Connecticut Bar Association, represent our CBA constitutional commitment to pursue access to justice for those in greatest need, and build upon our organization's work, spanning many years, to advance civil right to counsel, and shrink the access to justice gap in Connecticut. The CBA has created and expanded many programs to engage in pro bono service- CBA Pro Bono Connect, Free Legal Answers, Virtual Legal Clinics, the Lawyers in Libraries programs- which I hope you will participate in to help advance access to justice.

I am deeply humbled by the honor and trust represented in this moment, and its significance. I am the son of immigrants, who came to this country, like so many others, in pursuit of a better life. That I am stepping into this role, a little over 40 years after their arrival, the first South Asian and Indian American to lead an organization that was first founded in 1875, is a testament to the promise of this country and this profession. I am mindful that I share this Annual Meeting presentation with others who are also firsts in so many regards: Chief Justice Richard Robinson, President Amy Lin Meyerson, Past Presidents Karen DeMeola and Ndidi Moses, incoming Vice President Maggie Castinado. If we plotted out the milestones represented here on a timeline of the Connecticut legal profession or the judiciary, we would see that this incredibly diverse representation is a very small part of that overall history, and still very recent and infrequent. This is a reflection of how far we have come, but also how far we have yet to go, to realize a truly diverse, equitable, and inclusive bench and bar in Connecticut.

Both of these issues—diversity, equity, and inclusion, and access to justice—have much broader and deeper implications for our profession. We are the protectors of justice, and guardians of the rule of law. We shape statutory, administrative, and common law, guide and broker many of the transactions that are the lifeblood of our economy and society, and we are essential to those navigating life's most stressful legal challenges. Our profession is and has been, for many years, significantly represented in every branch of government. These are positions of incredible public trust, and to hold that trust, we cannot be seen as a profession that is only accessible to the elite, and the wealthy, or as a profession that does not reflect the rich diversity of the society that we serve.

Continued on page 40 →

2021-2022 CBA Officers

The 2021-2022 CBA Officers were installed at the CBA Annual Meeting, which was held virtually on June 15. These officers will lead the CBA for the next bar year and took office on July 1.

President

Cecil J. Thomas will serve as the CBA's 98th president. Attorney Thomas is an attorney at Greater Hartford Legal Aid, where he has represented thousands of low-income clients, predominantly in housing matters, since 2006, and has obtained significant appellate and class action victories on behalf of low-income Connecticut residents.

President-elect

Daniel J. Horgan will serve as president-elect. Attorney Horgan is an experienced litigator with Horgan Law Office in New London, representing clients in various civil matters in both state and federal courts as well as the Mashantucket and Mohegan Tribal Courts.

Vice President

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

Secretary

Sharad A. Samy will serve as secretary. Attorney Samy is general counsel of the Commonfund for Nonprofit Organizations and is a solo practitioner at The Law Offices of Sharad A. Samy LLC in Darien. He has over 20 years of transactional and litigation experience, has served as general counsel of two prominent operating companies, as a partner of an international law firm, and as a military attorney in the U.S. Army Reserve.

Treasurer

David M. Moore will serve as treasurer. Attorney Moore is a solo practitioner at The Law Offices of David M. Moore, where he practices in the areas of personal injury, family and general litigation, dissolution and general mediation, and residential real estate closings.

Assistant Secretary-Treasurer

Cindy M. Cieslak will serve as assistant secretary-treasurer. Attorney Cieslak is a partner at in Hartford, where she focuses her practice on labor & employment litigation as well as independent workplace investigations.

Immediate Past President

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

Connecticut Bar Association

LEGAL PROFESSIONALS

Charles J. Parker Legal Services Award is presented to a CBA member who has a deep and abiding interest in and dedication to the delivery of legal services to the disadvantaged in Connecticut.

Citizen of the Law Award is presented to a CBA member who has made a significant contribution to a charitable or public service cause that does not involve professional legal skills.

Henry J. Naruk Judiciary Award is presented to members of the state and federal judiciary who have made substantial contributions to the administration of justice in Connecticut.

John Eldred Shields Distinguished Professional Service Award is presented to a CBA member who has performed outstanding service through or on behalf of the CBA, for the benefit of the legal community and the community at large.

Tapping Reeve Legal Educator Award is presented to a CBA member who is a faculty member or instructor at one of Connecticut's Law Schools or Western New England School of Law who has made a significant contribution to the cause of legal education in the state.

MEMBERS OF THE PUBLIC

Citizen for the Law Award is presented to a person who is not employed in the legal area but has made a significant contribution to the institutigon of justice and the law on a voluntary basis.

Distinguished Public Service Award is given to a Connecticut resident, or a person with a meaningful relationship to Connecticut, who has made a significant contribution to society and is distinguished in his or her profession.

For the complete awards criteria, **visit ctbar.org/awards.**

Nominations must be received by the end of the business day on August 31, 2021. Please send nominations via e-mail to awards@ctbar.org or via mail to: Attention: Awards Committee, 30 Bank St, New Britain, CT 06051.

Image credit: erhui1979/DigitalVision Vectors

RUAA *Comes to the Rescue*

BY HOUSTON PUTNAM LOWRY AND ROY L. DE BARBIERI

A funny thing happened the other day

at Connecticut Superior Court.[1] In the prosecution of a motion to vacate a commercial arbitration award, one counsel attempted to subpoena the arbitrator who ruled on the matter. Sounds strange? Can this really happen? What is the law here?

For many years, arbitrator immunity and arbitrator fitness to testify had been addressed by Connecticut case law but it was not codified. One of the substantial concerns of lawyers and arbitrators in Connecticut was that no clear statute provided for traditional immunity or exemption of arbitrators in their capacity of decision making and

adjudicating. One of the arguments before the Connecticut General Assembly in the nearly two-decade quest to have the Revised Uniform Arbitration Act (RUAA) adopted was that the RUAA statute provided substantial protection for arbitrators. Arbitral immunity was part of the "black letter" of the Uniform Act:

> An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this State acting in a judicial capacity.[2]

The claim was that the arbitrator was biased. Now, this was a hotly contested arbitration and parties presented their case with vigor. The arbitrator was required to assert a fair bit of authority to move the hearing along and to keep the proceedings under control. The matter presented before the superior court was a full-blown assault on the arbitrator's immunity to be deposed, and an attempt to pull back the veil on the arbitrator's decision-making process.

In evidence, in the case before the court, the "arbitrator pointed out in a conference call to all counsel that he was incompetent to testify as a matter of law, and also bound by ethical obligations to the parties to maintain the privacy and integrity of the proceedings by not disclosing to anyone matters learned in that decision making process." Counsel demanded the subpoena be honored and a motion to quash was filed by the arbitrator. Although counsel conferred in advance of the court hearing, it was not possible to resolve the matter amicably.

The first question is: what was the applicable law? The original arbitration agreement predated the RUAA's effective date in Connecticut.[3] On the day of the arbitration, the parties entered into a new written arbitration agreement which defined how the arbitration would proceed that day and which matters would be held for a possible future hearing. If an arbitration agreement was made after October 1, 2018, then Connecticut General Statutes § 52-407nn applies, which reads:

> **Immunity of arbitrator; competency to testify; attorney's fees and costs.**
>
> (a) ***An arbitrator*** or an arbitration organization acting in that capacity is ***immune from civil liability*** to the same extent ***as a judge*** of a court of this state acting in a judicial capacity.
>
> (b) The immunity afforded by this section supplements any immunity under other law.
>
> (c) The failure of an arbitrator to make a disclosure required by section 52-407ll does not cause any loss of immunity under this section.
>
> (d) In a judicial, administrative or similar proceeding, ***an arbitrator*** or representative of an arbitration organization ***is not competent to testify and may not be required to produce records as to any statement, conduct, decision or ruling occurring during the arbitration proceeding*** to the same extent as a judge of a court of this state acting in a judicial capacity.
>
> This subsection does not apply:
>
> 1) To the extent necessary to determine the claim of an arbitrator, arbitration organization or representative of the arbitration organization against a party to the arbitration proceeding; or
>
> 2) To a hearing on a motion to vacate an award under subdivision (1) or (2) of subsection (a) of section 52-407ww if the movant establishes *prima facie* that a ground for vacating the award exists.
>
> (e) If a person commences a civil action against an arbitrator, arbitration organization or representative of an arbitration organization arising from the services of the arbitrator, organization or representative or ***if a person seeks to compel an arbitrator*** or a representative of an arbitration organization ***to testify or produce records*** in violation of subsection (d) of this section, ***and the court decides that the arbitrator***, arbitration organization or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization ***is not competent to testify, the court shall award to the arbitrator***, organization or representative reasonable attorney's fees and other reasonable expenses of litigation. [emphasis added]

This means an arbitrator is not competent to testify, so he couldn't testify even if the arbitrator wanted to. Furthermore, the arbitrator is entitled to reasonable attorney's fees to quash a subpoena. (The statutory phrase is "shall" and not "may.")

While the issue of when the arbitration agreement was concluded was discussed, it was abandoned during oral argument and the parties agreed the RUAA was applicable.

The first point raised in defense of the arbitrator was the notion that "if an arbitrator can be subpoenaed and ordered to testify," is initially a question of a court's subject matter jurisdiction and procedural power to conduct a deposition in the context of a confirmation hearing. A court does not have the *power* to order *pendent lite* depositions in the context of an application to confirm (or vacate) an arbitral award, *National Grange Mutual Insurance v. Carloni,* CV-92-039599-S (September 3, 1992) and *City of Waterbury v. Waterbury Police Union, Local 1237*, 176 Conn. 401, 408 (1979). While depositions are allowed in civil actions,[4] an application to confirm an arbitration award is not a civil action. This means there is no statutory or Practice Book provision which authorizes a deposition to be taken. While this is case law, the RUAA did not overturn this aspect of Connecticut decisional law.

Image credit: erhui1979/DigitalVision Vectors

The second defense point was the arbitrator's *competence* under Connecticut General Statutes § 52-407nn. It is not merely that the arbitrator has a privilege not to testify.[5] He may not do so, even if he wanted to, because the arbitrator is *incompetent* (such as someone who is unable to take the oath, a very young child, or someone who does not understand what "truth" is). No action by the arbitrator can make himself competent. In fact, he is overwhelmed by a constant duty of fidelity to his oath of office not to divulge the facts and circumstances learned in a private arbitration.

The third point was that the testimony of the arbitrator is not relevant, *Eder Brothers, Inc. v. International Brothers of Teamsters, Local 1040*, 36 Conn. Supp. 223, 225 (1980). The parties had an option of a verbatim transcript of the arbitral proceedings and they did not avail themselves of that opportunity. Not having taken the opportunity to have a court reporter present at the arbitral hearing, it was waived.

A subpoena is also inappropriate under Practice Book §13-28(e) since the information sought is not reasonably calculated to lead to the discovery of admissible evidence and a protective order was warranted under Practice Book §13-5 because a deposition would be annoying, embarrassing, oppressive, and an undue burden. The arbitrator is just *not competent* to testify. The arbitrator just could not be deposed.

Lastly, the arbitrator's testimony and file are not relevant given the limited scope of the court's review of the arbitral award, *DeRose v. Jason Robert's, Inc.*, 191 Conn.App. 781, 799 (2019). If the material sought is not relevant, there is no reason to conduct the deposition or to request the arbitrator's file.

The party seeking to vacate the award claimed to have made a prima facie case that the arbitrator was biased because the arbitrator disposed of his hearing notes immediately upon issuing the award. Most arbitrators follow the same practice.

The court did not believe this amounted to a *prima facie* showing of bias. The court cited to and relied upon RUAA Section 14 comment 6, which provides:

> Section 14(e) is intended to promote arbitral immunity. By definition, ***almost all suits against arbitrators***, arbitration organizations, or representatives of an arbitration organization arising out of the good-faith discharge of arbitral powers ***are frivolous*** because of the breadth of their respective immunity. Spurious lawsuits against arbitrators, arbitration organizations, and representatives of an arbitration organization or involvement in collateral judicial or administrative proceedings deter individuals and entities from serving in such capacities and thereby harm the arbitration process because of the costs involved in defending even frivolous actions. Parties considering such litigation should be discouraged by the prospect of paying the litigation expenses of the arbitrator, arbitration organizations, or representatives of an arbitration organization. When they are not, the statute enables the arbitrators, arbitration organizations, or representatives of an arbitration organization to recover their litigation expenses and not to lose their fee and incur other expenses in the defense of a frivolous lawsuit. The terms "other reasonable expenses of litigation" are intended to include both actions at the trial-court level and on appeal. [emphasis added]

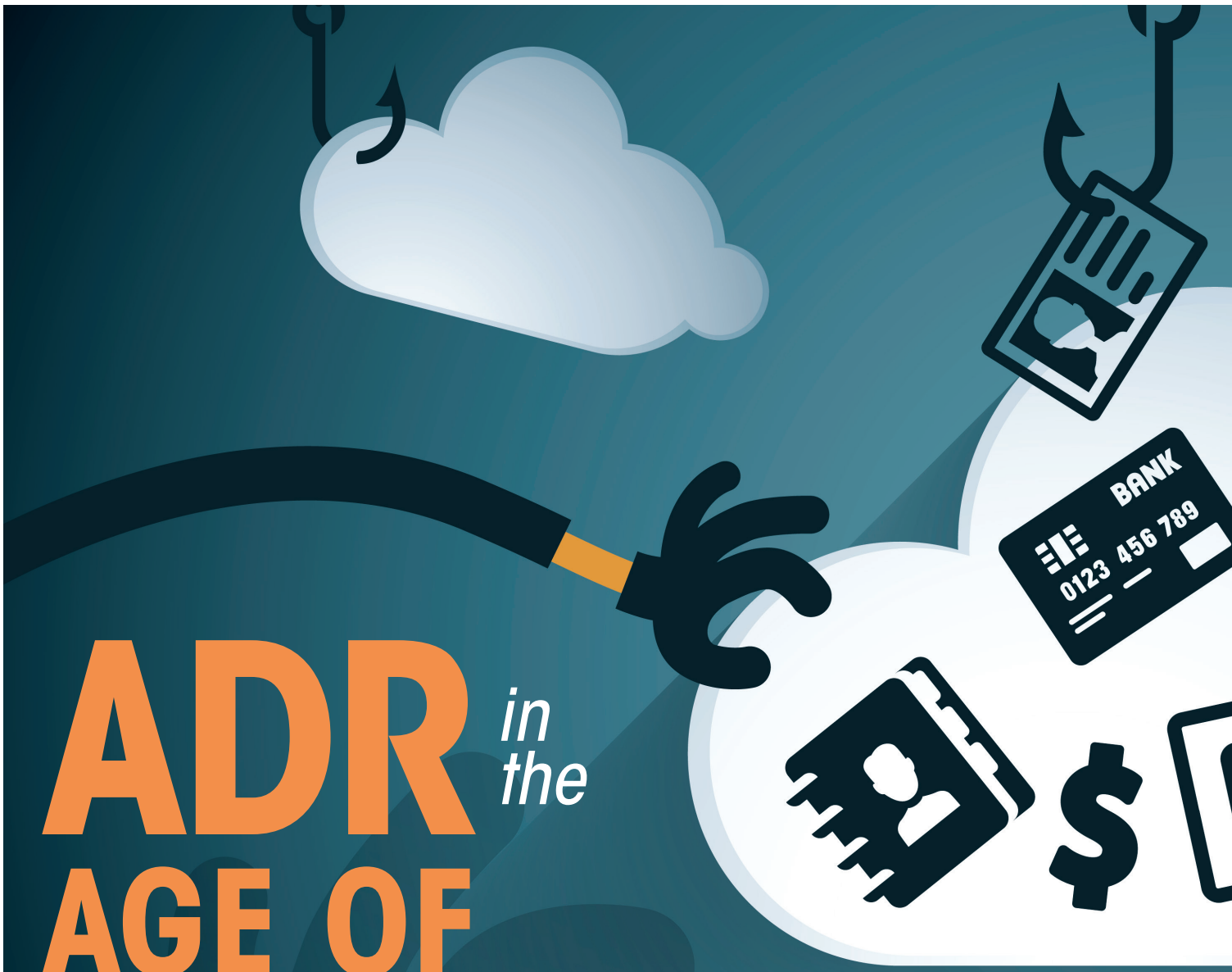
A word of caution. Attorney's fees of $4,000.00 were awarded to the arbitrator's counsel by the court. A query remains: Is the Claimant liable to the arbitrator for his time and extended fees to defend the matter? ■

Houston Putnam Lowry *is a member of Ford & Paulekas LLP and a fellow of the Chartered Institute of Arbitrators. He represented the arbitrator in this case.*

Roy L. De Barbieri *is a distinguished dispute resolution neutral and continues to perform his independent services as an arbitrator and mediator throughout Connecticut and across the country. He has distinguished himself as a fellow of the College of Commercial Arbitrators, where he also served as the chair of the Law Firm CLE Education Committee, and a director. He is a member of the CBA Dispute Resolution Section Executive Committee, and a past chair.*

NOTES

1. With apologies to Zero Mostel in the film of the virtually the same name, *A Funny Thing Happened on the Way to the Forum*; https://en.wikipedia.org/wiki/A_Funny_Thing_Happened_on_the_Way_to_the_Forum_(film)
2. Connecticut General Statutes §52-407nn.
3. Connecticut General Statutes §52-407aa, et seq, which applies to arbitration agreements executed after October 1, 2018.
4. Connecticut General Statutes §52-148a(a) and Practice Book §13-26.
5. While a privilege can be waived, competence cannot be waived.



ADR *in the* AGE OF CYBERSECURITY

BY STEVEN A. CERTILMAN AND ERIC W. WIECHMANN

Not too long ago, back when paper and pen ruled the world, just about all an arbitrator or mediator had to do to ensure the security of confidential case records was lock his office door and not leave his briefcase on the train. Not so anymore.

Image credit: Young ID/ Digital Vision Vectors

Information security is a global challenge, and as even the computer systems of some of our most vital national security agencies and corporations have been hacked, preventing data intrusion must be regarded as a herculean task. Many of us have used such mental tricks as believing that we are too small to be hacked, or that with so many more tempting targets out there our anonymity makes the risk infinitesimal. It goes without saying that hiding behind these self-deceptions falls short of a reasonable effort to maintain cybersecurity. Even the solo and small firm practitioners among us must face the reality that reasonable steps are required of all of us. The time to start is now.

Why do we care?

Before we review some of the many measures that may be adopted by alternative dispute resolution professionals as part of a cybersecurity strategy, a quick look at the professional reasons why we should care is warranted.

The community of ADR providers is a diverse lot. We have people in all forms of practice, from partners in the largest firms to solo practitioners and non-lawyers. In a sense, we are a cross-section of the computing world. While those practicing in large firms may have employees to address cybersecurity issues, doing so is far more challenging for solo and small firm practitioners. Nevertheless, we must resist the temptation to bury our heads. We are bound by the ethical duty to safeguard the confidences of the parties to our proceedings. This duty is independent of, and in addition to, the similar duty of those of us who are attorneys.

Life used to be much simpler for arbitrators as we contemplated our confidentiality obligations under the rules and ethical guidelines of the arbitral organizations and courts through which we serve. Fifteen years ago, when we reviewed Rules R-23 and R-25 of the Commercial Arbitration Rules of the American Arbitration Association (AAA)[1] or Article VI(B) of the ABA/AAA Code of Ethics for Arbitrators in Commercial Disputes,[2] we generally focused on a few clear and obvious duties: to refrain from discussing the identities of the parties, the subject matter of the dispute or the award rendered and to keep confidential, and not lose, the parties' documents. A little common sense and discretion seemed all that was required. The materials to be kept confidential were typically maintained and exchanged in a hard copy paper format. Even native electronically-stored information was typically produced for disclosure in paper format, and later through a CD-ROM or thumb drive. There was little if any focus on whether the document production might contain sensitive personal data.

Times have changed! With the ubiquity of email usage and the explosion of electronically stored data, electronic transmission of data and cloud-based data storage, the need for a new level of information security has become apparent. Examples of how easily this information can be unlawfully accessed by criminals; competitors; NGOs, such as Wiki-Leaks; and governments have come up with alarming regularity, causing a reassessment of business processes that are affecting the working environment of businesses, attorneys, government, and others. Businesses, which now budget significant amounts to the protection of their sensitive information, have come to expect a similar focus on vigilance by their attorneys. We, as arbitrators, must see ourselves as sharing the same responsibility for diligently protecting information entrusted to us for the resolution of disputes. To be sure, arbitrators today must take their confidentiality responsibilities to a whole new level. Administering bodies (AAA, JAMS, CPR, and the LCIA, to name just a few) have begun to impose specific cybersecurity duties on arbitrators,[3] and those arbitrators who are also attorneys must be equally focused on their obligations under the Rules of Professional Conduct of their state(s) of admission and the ABA and state codes of ethics.[4] Prominent membership organizations in the field have done so as well.[5] Moreover, depending on the nature of their practices, arbitrators may also need to become familiar with, and comply with, state, federal, and even international data protection laws such as HIPPA,[6] or the European Union General Data Protection Regulation (GDPR).[7] Many corporate and governmental parties impose their own data protection requirements as well.

The breach of confidential data or documents used in an arbitration or the unintentional release of such information can, in the absence of adequate precautions having been taken by the arbitrator, lead to serious professional consequences. With clients increasingly cautious about the dissemination of confidential data in their possession, a data breach caused by an arbitrator's failure to take reasonable precautions can form the basis of a grievance being filed against a lawyer-arbitrator, sanctions being imposed by the arbitral organization administering the proceeding, or loss of membership on an arbitration panel or in a professional membership organization. Even with the general immunity that arbitrators and mediators enjoy under the laws or court rules of many states[8] and the rules of many arbitral organizations,[9] a cybersecurity incident can lead to a lawsuit and can possibly be career threatening.

What follows are observations and suggestions designed to assist ADR professionals in avoiding, or at least minimizing, inadvertent or unauthorized disclosure of confidential party information. While few will adopt every suggestion, it is recommended that they all be considered in deciding whether you are taking reasonable steps to protect the sensitive material. In the interest of facilitating review and implementation, it is provided in outline format.

STORAGE OF DATA

- **Internal Hard Drive or a connected external hard drive**
  - These are the most insecure formats
  - Click on a link in the wrong email and you open a door for malware or unauthorized access
  - If your computer has been infiltrated, this data likely will be as well
  - Risk of ransomware, where you lose access to your data unless a ransom is paid
  - External hard drives have become very small and easy to use, but they can easily be lost if used portably
  - Is the drive encrypted? This is much better, but slows down the computer
  - Generally, external drives need a cable, which are easily forgotten
  - These drives are subject to crashing (mechanical malfunction)
- **Cloud-Based (e.g. Google Docs, iCloud, or Dropbox)**
  - The challenge is in finding the right balance between convenience and security
  - How does the data get there? Services may be either encrypted or unencrypted. If encrypted, who holds the key?
  - Look for services that have "end to end" encryption—

data is encrypted getting to their servers, encrypted while residing on their servers, and encrypted returning to your computer, where it is decrypted

- Many services tell you in their Terms of Service that they have the right to "mine" your data and use it for marketing or to sell to other marketers (Generally, e.g., iCloud, Google Docs, unless you pay for a corporate service)
- With the very popular Dropbox, they hold the encryption key rather than you, so documents can be made available by them without your involvement, e.g., under court order. While you could encrypt your own documents individually, this is rarely done
- There are other services such as Tresorit (tresorit.com), a modestly priced service, which is similar to Dropbox, except that it has end to end encryption and you, not they, hold the encryption key. This service is becoming increasingly popular for that reason. This is presently $20 per month for 1 Tb of storage. They also offer a secure way to send attachments, similar to Dropbox

• USB Drive

- This is probably your worst option. The military commonly disables USB drives in its computers. The risk outweighs the convenience
- These are so easy to lose. May carry viruses built in and invisible, especially freebies distributed at conferences, etc. for marketing purposes
- Easy to misplace or be used for a later purpose
- If you must use one for data storage, make sure it is encrypted

• Re-writable CD-ROM

- Very 1990s—almost not worth mentioning
- Most portable computing devices do not have CD drives any longer
- At a minimum, be sure to password protect

• Servers

- There are many kinds of illicit devices that are easily plugged into a server port and then will convey information to or enable access by a remote source
- Treat your server spaces as secure locations
- Keep cables and hardware neatly organized to more readily expose hardware spyware

COMMUNICATIONS

• Consider discussing confidentiality and security issues during your preliminary conference. It is an opportunity to bring a great deal of certainty to the security concern. There are various permutations of responsibility (See below)

• For you, with your client information

- Consider building into your first preliminary order a confidentiality and security agreement
- Check the arbitration clause to determine whether the parties have already agreed to provisions that will bind you
- See AAA Rule R-23(a)
  - The arbitrator may issue order "conditioning any exchange or production of confidential documents and information, and the admission of confidential evidence at the hearing, on appropriate orders to preserve such confidentiality"
- See ICDR Art. 37(2))
  - Confidential information disclosed during the arbitration by the parties or by witnesses shall not be divulged by an arbitrator or by the Administrator. Except as provided in Article 30, unless otherwise agreed by the parties or required by applicable law, the members of the arbitral tribunal and the administrator shall keep confidential all matters relating to the arbitration or the award.
  - Unless the parties agree otherwise, the tribunal may make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information
- If appropriate, consider including a clause such as the following, written by arbitrator Sherman Kahn:

  The parties are instructed to jointly consider methodologies to protect confidential and private data that may be exchanged in the arbitration and/or submitted to the Tribunal. Such methodologies should take into account the parties' need for information in the arbitration and whether such information must be provided to the Tribunal or exchanged among the parties in light of the sensitivity of the information and its relevance to the proceedings. The parties shall redact from information provided to the Tribunal any sensitive personal identifiers such as social security numbers (or other national identification numbers), dates of birth or financial account numbers, but may submit partially masked versions of such data if such masking is generally accepted for public use of such data (e.g., last four digits of credit card or social security numbers). The parties shall not submit to the Tribunal un-redacted documents containing personal identifying numbers, individual health information, or financial information unless there is a demonstrated need for the Tribunal to have such information due to the matters at issue in the arbitration.

- Agree when to use (or not use) unencrypted email. Encrypted email is readily available but some may find its use cumbersome.

- An alternative is to password protect individual documents as necessary
- Once you develop a preferred communication protocol, explain what it is and ask if there are any objections
- If applicable, you may need to use a HIPAA compliant process—be sure to have a plan
- Address when you will destroy the file and delete electronic records

• Between the parties (with each other's information)

- Consider addressing the partial or complete redaction of unnecessary personal confidential information such as Social Security numbers, dates of birth, financial account numbers, medical information, etc.
- If exchanging documents on a CD, consider a format in which the entire CD can be password protected and send the password separately
- To facilitate confirming all this in the order, you may wish to have "standing orders" for confidentiality (should include how witnesses, experts, and consultants will be bound by confidentiality and cybersecurity measures and how that will be enforced)

• As you referee issues related to discovery, and the hearing process, continue to have in mind the requirements of the governing rules, such as AAA Rule R-23(a) and ICDR Art. 37(2)

• General Communication Issues

- Avoid the use of public Wi-Fi. If you must use it, as most of us do, use a Virtual Private Network (VPN). Unsecured public Wi-Fi can be easily hacked and the hacker, who technologically positions himself between you and the web, can capture your every keystroke and distribute malware to your computing device, without you knowing it. If you plan to use a public Wi-Fi network (e.g., hotel, airport, mass transit, Starbucks), purchase a VPN service. With a VPN, your transmissions are encrypted and most hackers, who are looking for easily accessible information, will discard it.
- When browsing on the web, look at the address bar. If the URL (web address) does not begin with "https://" then it is not an SSL (secure) connection. Use extreme caution before entering authentication information, such as passwords, into unsecured sites. The login page of most websites will be an SSL page. Always use the "https://" option if given a choice
- Keep Wi-Fi and bluetooth off when not using them. Not only does this close the door to hackers, but it will also greatly extend your battery life
- Protect your passwords. Take care not to fall victim to social engineering. No one should ever be asking you for your password by email or over the phone. Inform your staff about the problem

USE OF EMAIL

• Security

- The security of your email account is very important. No one reads the terms of service, so how do we know what rights the email host (Gmail, Outlook, Mac Mail, AOL, etc.) reserves to itself and what level of security it provides? Research the security provided by the host and consider having your own email server (with a custom name domain) through a reputable provider.

• Reply-All Error

- We're all busy, hurriedly exchanging emails with case administrators, co-arbitrators, and others. We hit the send button and then it sinks in—you've just accidentally sent confidential information to the wrong party.
- The ABA's stance on the ethics applicable to a party's accidental receipt of privileged information has evolved over time. Today's rules ask attorneys simply to inform the sender that they've received the information.

• E-mail Scams

- Any time you receive an unexpected email from a website urging you to click a link or open a document, put the process into slow motion and consider whether the request makes sense. An email that purports to be from a site you use, and says so in the sender box, may be a forgery. There are two easy things you can do to ensure the email is legitimate. If you are using Microsoft Outlook, roll your cursor over the link, but do not click it. The email address or destination website of the link will appear on the lower left-hand corner of the Outlook window. If it is not the site you are expecting, hard delete (press shift + delete) the email. Also, you can double click on the sender's name to see the address from which it actually came. If it isn't the address you are expecting, hard delete as well.

CONCERNS THAT ARISE AT ISSUANCE OF THE AWARD

• What confidentiality issues come into play in the award writing process?

- What if the award contains confidential information that a party would not wish to have filed in court in a confirmation or vacate proceeding? Some courts refuse to seal even those awards as part of the enforcement process. Can the arbitrator modify it?
  - Not likely. *See* AAA Rule R-50 and ICDR Art. 33. Outside of permissible scope.
  - *See also* Section 11 of the Federal Arbitration Act (9 U.S.C. 11), under which the District Court is authorized as follows: "Where the award is **imperfect** in matter of form not affecting the merits of the controversy. The or-

der may modify and correct the award, so as to effect the intent thereof and promote justice between the parties." Can an argument be made to modify to protect privacy under this language?

- Collaterally, do we have a duty to draft the award to avoid exposing party confidential information? Probably, at least where we know we are doing so
- Underscores need to consider this issue when drafting the award
- Are there workarounds? (Show draft award to parties for review for confidential information)

POST-PROCEEDING CONCERNS

- **Continuing duty to parties**
- **Disposal of file**
  - Is the paper file treated any differently from the electronic records? In its form award transmittal letter, the AAA says:

> "Pursuant to the AAA's current policy, in the normal course of our administration, the AAA may maintain certain electronic case documents in our electronic records system. Such electronic documents may not constitute a complete case file. Other than certain types of electronic case documents that the AAA maintains indefinitely, electronic case documents will be destroyed 18 months after the date of this letter."

- **There is no hard and fast rule for how long to retain documents**
  - Certainly for the award modification period (*See* the FAA, 9 USC 9-11, state law [e.g. C.G.S. Section 52-407tt] and the related governing rules)
  - Probably even long enough for the possibility of a vacatur proceeding to play out. In Connecticut, that's generally 30 days for the vacatur period plus the duration of a pending proceeding. C.G.S. Section 52-407ww
- **Securely delete your data files**
  - A deleted file isn't really deleted. Initially it can be restored from the "Recycle Bin," but even after deletion from the Recycle Bin, deleted files can be undeleted (restored) using readily available software
  - Electronic files should be deleted using file shredder software, some of which is available free. These programs all overwrite the deleted files several times with selected patterns to ensure that they are not recoverable. A good example is Eraser, which can be found at https://eraser.heidi.ie/
- **Decommissioning of Equipment**
  - When it's time to upgrade your computers, your best choice is to remove and destroy the hard drives. If you plan to make them available for use by others, the hard drives should be wiped clean using file shredder software and then the operating system can be re-installed onto a clean hard drive
  - It comes as a surprise to many that printers often have data storage capacity (like hard drives) for use in the printing process. To ensure that the memory is not accessible after your printers are taken offline, be sure to do a factory reset before disposing of the units. You'll find how to do this in the printer's menu system

BEST PRACTICES SUMMARY AND KEY TAKEAWAYS

- **Take reasonable measures to avoid malware, including ransomware**
  - Maintain anti-virus/anti-malware software and regularly monitor it to ensure that the definitions are up to date and that it has not been disabled
  - Maintain constant backup using a service such as Carbonite. Backing up data hourly would seem to be an appropriate level of protection
  - Avoid phishing attacks. A USDOJ report says that on average more than 4,000 ransomware attacks have occurred daily since January 1, 2016
    - Spear phishing attacks are emails that try to get you to click on a malicious link
    - Whale phishing emails are similar to spear phishing, but they appear to come from a CEO or other VIP and ask you to deliver valuable information
    - Use the mouse rollover technique to check the link and click on the sender's email address to verify that it really comes from the purported sender. Generally, this must be done on a desktop browser
    - Secure your servers
    - Delete data using file shredder software
    - Keep your guard up!

- **Don't get Juicejacked! Juicejacking is a scam involving public chargers, such as USB ports in hotels and free charging stations (such as in airports and malls) in which the cable is supplied. The problem is that malware can be hard-wired into the cable or the port and once you connect, the malware can be loaded onto your device. This, in turn, can open a gateway for malicious attacks such as spyware, stolen data, and ransomware. Even cables given away as promotional gifts should be considered suspect. Best practice: carry your own wires and charge directly through a power outlet. If you rely heavily on public charging stations, seek out a USB data blocker—a charging cable that has had the data pin disabled**

• Any public Wi-Fi is inherently insecure. Public Wi-Fi is any Wi-Fi you do not control. That includes hotel, airport, and other public Wi-Fi networks. Avoid them unless you are sure it is legitimate and you are using a VPN with end to end encryption

• Never connect your device to an insecure USB port to charge it, since you don't know what is connected on the other end. Always use AC power and the charger

• Cellular data is more secure but you should still use a VPN as they too can be attacked

• Always use an end-to-end encrypted VPN any time you are out of the office

• With your own office Wi-Fi, use an inconspicuous network name, set it up for WPA2 encryption, change your network key regularly, and make sure to change the router's password from the factory default!

• Be careful of international travel with your iPad or laptop that has confidential arbitration information stored. In certain countries, as soon as you activate your device on their cellular system, your device may be penetrated by malware. Many people travel to these countries with a clean device having no confidential information, and then wipe the device clean after leaving the country

• Insurance—make sure your professional liability insurance policy includes cyber-liability and data breach response coverage. It is available as an add-on if not part of your basic policy. Even if you do not maintain an arbitrator malpractice insurance coverage, consider a separate policy for Cybercrime and Privacy claims. For instance, HUB International (https://www.hubinternational.com/) provides such coverage for a fairly nominal charge

• Update and upgrade your passwords

• Consider using a password manager, which is encrypted and can store all your passwords.

• Update your software—older versions may lack security improvements and make it easier to infiltrate your system

• Don't let your browser memorize your passwords (such as your password to the e-Center)

• Use services that require (or opt to utilize) two-factor authentication wherever possible. You get an email or a text message which you have to enter before you are able to log in.

• Encrypt your portable devices, such as smart phones and tablets. The operating systems usually include the ability standard.

• Check the site www.haveibeenpwned.com to see if your account information is showing up on nefarious websites, which will mean at one point or another, your computer or an online account has been hacked. It's an identity theft early warning site. You input your email addresses and usernames and the site will tell you if they come up in the site's database of known hacks. It's a good way to screen for your password having been stolen.

• Carefully handle and dispose of written documents (usually you do not need both an electronic and hard copy of the material)

• Be wary of "virtual assist devices, such as the Amazon Alexa—they are always listening. That's how she hears her name to wake up! Guess where everything said in its presence is sent for voice recognition?

• Don't pick up stray cables you may find, as malware can be placed on microchips and inserted into the cable ends

For most of us in ADR, particularly full-time neutrals who typically are solo practitioners, focusing on our greatest vulner-

abilities is likely the best first step. It's a process. Let's all get started!

This article is updated from one originally published in New York Dispute Resolution Lawyer, *Volume 12 No. 1 (Spring 2019) at page 14.* ■

Steven A. Certilman *is a chartered arbitrator and CEDR accredited mediator on the panels of AAA, ICDR, CPR, CAfA and other ADR panels worldwide. He is a frequent author, lecturer, and trainer in the ADR field, a former adjunct professor of Law at Fordham University, and has served as chair of the Board of Trustees of the Chartered Institute of Arbitrators.*

Eric W. Wiechmann *is an independent ADR neutral who has served as an arbitrator and mediator for the past 30 years. Attorney Wiechmann was a partner at McCarter & English LLP where he served as the firm's managing partner. He serves on several AAA National arbitration and mediation panels, is a CPR distinguished neutral, a fellow of the College of Commercial Arbitrators, and a member of the National Academy of Distinguished Neutrals.*

NOTES

1. American Arbitration Association Commercial Arbitration Rules and Mediation Procedures (2007)
2. The Code of Ethics for Arbitrators in Commercial Disputes, American Bar Association and American Arbitration Association (2004)
3. *See*, e.g., JAMS Comprehensive Arbitration Rules & Procedures Rule 26; ICDR International Dispute Resolution Procedures Article 37; CPR Administered Arbitration Rules Rule 20; *See also* CPR 2018 Non-Administered Arbitration Rules Rule 9,3. "Matters to be considered in the initial prehearing conference, may include, F. The possibility of implementing steps to address issues of cybersecurity and to protect the security of information in the arbitration."
4. ABA Model Rules of Professional Conduct, Rule 1.1 (Competence) and 1.6 (Confidentiality of Information); ABA Formal Opinions 477R and 483: Securing communication of protected client information (2017); New York State Bar Association Ethics Opinion 842 (2010) "Using an outside online storage provider to store client confidential information."
5. Examples include the Chartered Institute of Arbitrators and the College of Commercial Arbitrators.
6. Health Insurance Portability and Accountability Act, Pub.L. 104-191, 110 Stat. 1936.
7. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
8. *See*, e.g., *Austern v. Chicago Board Options Exchange, Inc.*, 898 F.2d 882, 885–86 (2d Cir. 1990) and *Calzarano v. Liebowitz*, 550 F.Supp. 1389, 1391 (S.D.N.Y. 1982); *Stasz v. Schwab* (2004) 121 Cal.App.4th 420.
9. *See*, e.g., AAA Commercial Arbitration Rules R-52(d); ICDR International Dispute Resolution Procedures Article 38; JAMS Comprehensive Arbitration Rules & Procedures Rule 30(c); CPR Administered Arbitration Rules Rule 22.

Diversity, Equity, and Inclusion in the Pipeline to the Legal Profession

By CECIL J. THOMAS AND KAREN DEMEOLA

In our last column, we encouraged you to consider the "whys" and "why nots" of your organizational and individual Diversity, Equity, and Inclusion (DEI) efforts. Evaluating the legal profession as a whole, there are many factors that contribute to our progress and challenges in advancing a more diverse, equitable, and inclusive profession. As discussed previously, recruitment and retention are critical elements to any diversity plan. Recruitment traditionally began at the admissions or interview process, but legal organizations and law schools now know that connecting with diverse students begins much earlier. As we consider the many potential "whys" and "why nots" of the legal profession's DEI efforts, we must consider the pipeline to our profession.

To ensure a diverse legal profession, we must have diverse representation in the pipeline. The pipeline is the pathway to the profession from K-12 to higher education, law school, and finally the practice. At each juncture in the pipeline, there are opportunities for individuals to move forward or flow out. Entry into the profession is controlled by parents and community members, teachers and guidance counselors, professors and pre-law advisers, test administrators and admissions officers, and law faculty and bar examiners. These individuals serve as formal and informal gatekeepers to the profession, and are critical in maintaining the pipeline and ensuring those in the pipeline continue flourish.

The CBA has created several opportunities to encourage students, from fourth grade through college. *Lawyers in the Classroom* exposes students in elementary school to civics education and the practice of law. *LAW Camp* is a high school summer camp that exposes students to critical and analytical thinking, mock trial, and oral advocacy. *The Future of the Legal Profession Scholars Program* provides college students access to the profession through scholarships for the LSAT preparation course, mentorship, and networking with attorneys. Other programs run by Hartford Promise, the Connecticut Commission on Human Rights and Opportunities (CHRO), Lawyers Collaborative Diversity (LCD), and others provide additional opportunities for students underrepresented in the profession to learn about the law. Without sustained and intentional focus on the pipeline at all levels, we risk losing students along the way.

To highlight the challenge with the pipeline, we can examine relevant data points from US population through attorneys. In 2019, Whites made up 60 percent of the US population, attained 63.2 percent of Bachelor's degrees, were 52.4 percent of the law school applicant pool, 58.8 percent of people admitted to law school, 59.8 percent of law school classes, 62.1 percent of JD degrees awarded, and 86.5 percent of lawyers. Compare this to Latinx individuals, at 18.4 percent (US population), 14.2 percent (Bachelor's degrees), 10.3 percent (JD applicant pool), 8.5 percent (admitted to law school), 8.4 percent (enrolled in law school), 12.4 percent (JD degrees awarded), 5.8 percent (lawyers). Compare this also to Black Americans at 12.4 percent (US population), 10.4 percent (Bachelor's degrees), 11.7 percent (JD applicant pool), 7.6 percent (admitted to law school), 7.7 percent (enrolled in law school), 8 percent

Image credit: YinYang/E+ GettyImages

"The impact of explicit and implicit bias; structural racism and inequality; and a lack of mentorship, guidance, and advocacy play a role throughout the process, impeding our efforts to achieve a more diverse, equitable, and inclusive legal profession."

(JD degrees awarded), 6.8 percent (lawyers).[1] What happens as non-white students enter the pipeline is worth exploring. The impact of explicit and implicit bias; structural racism and inequality; and a lack of mentorship, guidance, and advocacy play a role throughout the process, impeding our efforts to achieve a more diverse, equitable, and inclusive legal profession.

The Law School Admission Council (LSAC), which organizes and administers the LSAT and manages the law school admissions process for JD programs across the United States, Canada, and other countries. As of June 18, 2021, LSAC reports that application volume has increased by 16.1 percent. Each racial and ethnic minoritized group, except for Indigenous Canadians, realized double digit increases.[2] It is too early to report on the number of admitted and enrolled student data, but given the increase in the applicant pool, the class entering in the fall of 2021 may be more diverse than we have ever seen before.

This increasingly diverse group of law students enters law school at a time when we are wrestling with the short- and long-term impacts of COVID-19, as well as issues of structural and systemic racism. Law applicants and law students are not immune to the effects of these pandemics. The Law School Survey of Student Engagement (LSSSE) 2020 Diversity & Exclusion report highlights some of the challenges students of color face in law school. Minoritized students reflect on their identity more often compared to those with racial, gender, economic, and class privilege. Microaggressions, a lack of belonging, and experiences with discrimination and bias impact not only the experiences of minoritized students in law school,[3] but also academic performance. These experiences are rarely, if ever, accounted for when reviewing transcripts during the recruitment process.

Recently, the Standards Committee of the American Bar Association (ABA) proposed changes to Standard 206: Diversity, Equity, & Inclusion. In addition to adding "Equity" to the title, the proposed updates include language requiring law schools to create an inclusive and equitable environment for students. The proposal includes most of the recommendations we have provided throughout this series, including assessments, trainings, outreach, and mentorship. Meeting the standard, assuming it is approved, will require top-down commitment and intentionality while assessing whether the initiatives are working by asking those who are directly impacted, and being vulnerable and flexible.

The path to the profession for too long been inaccessible to minoritized students whether through structural inequities or bias. The data shows that the pipeline is hemorrhaging minoritized students. We have an opportunity to right the wrongs of structural inequality in our profession. As aptly said by Ida B. Wells, "The way to right wrongs is to turn the light of truth upon them." Imagine what it would take to provide an equitable and inclusive legal education or to have a diverse and inclusive profession. We must question our system, our pedagogy, and our policies. We must hold up the mirror and hold ourselves accountable. Sometimes a change in regulation is necessary to attain the accountability. If we are successful, we have the potential to change the experience of minoritized students in our classrooms. Changes that occur within the law school environment will then influence the expectations of law students as they enter the profession. We must be prepared for these changes, to ensure that our profession is ready to welcome its newest members to the fullest, and to ensure a strong and vibrant legal profession of the future. ■

NOTES

1. *See*, Law School Admission Council (LSAC), *Diversity in the US Population & the Pipeline to Legal Careers* https://report.lsac.org/View.aspx?Report=DiversityPopulationandPipeline
2. *See*, LSAC, *Current Volume Summary by US Ethnicity, School Type, and Gender Identity*, https://report.lsac.org/VolumeSummaryOriginalFormat.aspx.
3. *See*, LSSSE, *2020 Diversity & Exclusion Report*, https://lssse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf
4. *See* May 7, 2021 Memo, www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may21/21-may-standards-committee-memo-proposed-changes-with-appendix.pdf

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.

Advancing Access to Justice in Unprecedented Times

By CECIL J. THOMAS

As I write this, both hope and uncertainty continue to rise. Connecticut's COVID-19 infection and mortality rates have dropped precipitously, and our state's vaccination program has been continuously successful. With these developments, warmer weather, and the loosening of restrictions come opportunities to reconnect with our communities, and to begin to visualize a post-pandemic world.

This is not to disregard the great uncertainty and suffering that so many are continuing to experience. The Center on Budget and Policy Priorities estimates that 19 million adults live in households that did not get enough to eat, and that 10.4 million renters are behind on their rent, with renters of color experiencing this housing instability at double or higher the rate of their white counterparts.[1] Connecticut ranks relatively high for renter instability, as approximately 22 percent of renters report that they are behind on their rent as of April 2020.[2] With both state and federal eviction moratoria set to expire on June 30, 2021, many predict a surge in evictions in the coming months.[3] Real estate market analysis from CoreLogic estimates that as of March 2021, 4.9 percent of mortgages were delinquent by at least 30 days, up 1.3 percentage points from March 2020.[4] Connecticut ranks among the top ten states with the highest serious mortgage delinquency rates, defined as 90 or more days behind or in foreclosure proceedings, at 4.5 percent as of March 2021.[5] The COVID-19 pandemic has also brought a "shadow pandemic" of domestic violence, with cities across the country and numerous surveys reporting significant increases in domestic and intimate partner violence.[6] These statistics present serious access to justice, personal safety, and hardship concerns for Connecticut residents.

Financial help is available to respond to these serious economic hardships. UniteCT, Connecticut's federally-funded rental assistance program, opened on March 15, 2021. The Connecticut Department of Housing has recently liberalized the program's assistance criteria,[7] following guidance issued by the Treasury Department on May 7, 2021. UniteCT, a $235 million federally-funded program, offers eligible COVID-19 impacted renters up to $10,000 in prospective rent and arrearage assistance, together with up to $1,500 in electric utility arrearage assistance.[8] The assistance may cover a total period of 12-15 months of rent.[9] The Connecticut Department of Housing is also expected to open a pilot homeowner assistance program, using approximately $123 million in federal funds, in June 2021. In July 2021, the Internal Revenue Service will begin to issue advance monthly payments of $250 to $300 per child on the newly expanded Child Tax Credit, to a potential 36 million American families.[10] These significant state and federal benefit programs, coupled with other pandemic stimulus and relief efforts, will offer much-needed relief.

Throughout the COVID-19 pandemic, the Connecticut Bar Association (CBA) has responded to these needs in a variety of ways. Project Feed Connecticut,[11] a collaborative project of several bar associations and other professional organizations, has raised significant funds to address food insecurity in Connecticut. The CBA launched Pro Bono Connect,[12] a virtual on-demand pro bono training and case referral system, at the start of the pandemic, and many attorneys have taken the Pro Bono Pledge in the past year. Attorneys interested in representing tenants in evictions, homeowners in foreclosures, consumers in bankruptcy, or survivors of domestic violence in temporary restraining order proceedings, can access relevant on-demand training videos and materials through Pro Bono Connect. Attorney volunteers regularly help members of the public through CBA Free Legal Answers,[13] answering questions in family, landlord-tenant law, and a variety of other civil legal matters, at a response rate that is consistently above 95 percent. The CBA has shifted its legal clinics to a virtual format, and held them twice this bar year, allowing dozens of lawyer, law student, and paralegal volunteers to help many members of the public get answers to critical legal questions. The Lawyers in Libraries program has placed attorney volunteers in public libraries around the state, to provide free legal advice to members of the public within their communities. I look forward to seeing these programs continue to grow and have increased impact in the coming years.

The CBA has also helped to successfully advance important access to justice measures before the Connecticut General Assembly and the Rules Committee of the Superior Court this year. These new initiatives promise to significantly advance the civil right to counsel movement in Connecticut, building upon the recommen-

dations of the 2016 Task Force to Improve Access to Legal Counsel in Civil Matters.[14] Additionally, two changes to the Rules of Professional Conduct, which will facilitate the provision of pro bono legal services, were approved at the Annual Meeting of the Judges of the Superior Court on June 11, 2021.

Eviction Right to Counsel: Connecticut has just become the third state in the country to enact a statewide right to counsel program for tenants facing eviction. The CBA was proud to join a coalition of tenants, social justice and community organizations, legal aid programs, medical providers, and many others to support this legislative effort. Public Act 21-34 (2021)[15] was signed into law by Governor Ned Lamont on June 10, 2021, and will provide a right to counsel, within available funding and phased-in by geographic area, to income-eligible tenants facing eviction. The new eviction right to counsel program is expected to be funded with appropriations of $10 million in each of the next two fiscal years, using federal funds. This is an unprecedented and long-overdue investment in access to justice for tenants facing the threat of homelessness through eviction in Connecticut.

Access to Legal Counsel for Domestic Violence Restraining Order Applications: The CBA is also proud to have supported S.B. 1091,[16] which has been passed in both houses of the Connecticut General Assembly, and is expected to be signed by Governor Ned Lamont. This new program will provide indigent individuals seeking restraining orders against domestic violence with access to legal counsel, in the Judicial Districts of Fairfield, Hartford, New Haven, Stamford-Norwalk, or Waterbury. This program will expand the prior domestic violence restraining order pilot project, previously concluded in 2019, and will be funded with $1.25 million dollars from lawsuit settlement proceeds obtained by the Office of the Attorney General. This new program will go a long way towards advancing access to justice to those seeking relief from domestic violence, just as the need for such services has grown so significantly during the pandemic.

Rule Changes to Support Pro Bono Legal Representation: The CBA Pro Bono Committee and Standing Committee on Professional Ethics have also successfully advanced two measures before the Rules Committee of the Superior Court—changes to Rule 5.5 and Rule 1.8 of the Rules of Professional Conduct, which will further facilitate the provision of pro bono legal services in Connecticut. These changes will go into effect on January 1, 2022. The first of these changes, Rule 5.5(d), will permit attorneys who are licensed and in good standing in other jurisdictions to engage in pro bono practice in Connecticut, under the supervision of a legal aid program or bar association project. The second change, to Rule 1.8(e), will allow a humanitarian exception to the prohibition on providing financial assistance to a client in litigated matters, allowing lawyers providing pro bono service to indigent clients to provide modest financial gifts for food, shelter, transportation, medicine, and other basic living expenses. Both changes will help provide additional relief to Connecticut's indigent residents while they are facing serious legal problems.

Significant challenges call for a significant response, and I am proud of all that the CBA has accomplished to advance access to justice in the midst of a devastating global pandemic. Incoming President-elect Daniel J. Horgan will step in as the new chair of the Pro Bono Committee, and I have no doubt that he will help lead our pro bono initiatives and efforts to new heights. The CBA, consistent with its constitutional commitment, will proudly continue to seek equal access to justice for all. ■

NOTES

1. Center for Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships (updated June 11, 2021) www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and
2. *Id.*
3. WNPR.ORG, Millions Could Face Eviction With Federal Moratorium Ending and A Logjam in Aid (June 10, 2021) www.wnpr.org/post/millions-could-face-eviction-federal-moratorium-ending-and-log-jam-aid
4. CoreLogic, Loan Performance Insights Report (March 2021) www.corelogic.com/insights-download/loan-performance-insights-report.aspx
5. *Id.*
6. *Time Magazine*, "Domestic Violence is a Pandemic Within the COVID-19 Pandemic," February 3, 2021 (time.com/5928539/domestic-violence-covid-19/)
7. State of Connecticut, Department of Hous-

Continued on page 40 →

Cecil J. Thomas *is the 2020-2021 president-elect of the Connecticut Bar Association and chair of its Pro Bono Committee. He is an attorney at Greater Hartford Legal Aid, where he has represented thousands of low-income clients, predominantly in housing matters, since 2006, and has obtained significant appellate and class action victories on behalf of low-income Connecticut residents. Attorney Thomas also co-chairs the legal aid subcommittee of the COVID-19 taskforce, which led the development and launch of CBA Pro Bono Connect.*

The Legal Fallout of Coeducating a Fraternity

By CHARLES D. RAY and MATTHEW A. WEINER

A college president, tired of the antics of a fraternity whose members refer to him as a "fascist," shuts it down. A plot line in a John Belushi or Will Farrell movie? Maybe. But also the backdrop for the Supreme Court's more mundane discussion of the rights and obligations between parties to a contract in *Kent Literary Club of Wesleyan University at Middletown v. Wesleyan University*, ___ Conn. ___ (Mar. 5, 2021).

Kent Literary Club of Wesleyan University at Middletown owns the Delta Kappa Epsilon (DKE) fraternity house, which is in the center of the Wesleyan University campus, directly across from the university president's house. Kent has owned the house since 1888. DKE is the local chapter of Delta Kappa Epsilon, a fraternity whose charter bars local chapters from admitting women as members. Wesleyan has recognized DKE since 1867.

With few exceptions, Wesleyan requires undergraduate students to live on campus. Students can choose between traditional dormitory life and placement in Wesleyan's program housing system, which allows students to "live in a theme based house based on shared hobbies, experiences, cultural interests, or identities." Fraternities are included in Wesleyan's program housing system.

To participate in program housing—and, therefore, to have students placed in its house and to receive those students' housing dollars as rent—Kent had to execute, on an annual basis, a Greek Organization Standards Agreement. Under the agreement, either party could terminate the relationship for any reason with 30 days' notice; Kent had to comply with all Wesleyan rules and policies, which Wesleyan could modify at any time; and Wesleyan had to apply the provisions of the agreement to Kent in a manner consistent with how it treated other residential Greek organizations.

In September 2014, Wesleyan announced that all residential fraternities on campus would be required to coeducate within three years. At the time, Wesleyan had no sororities and DKE was one of three all-male fraternities. Wesleyan made its decision in response to allegations that female Wesleyan students had been sexually assaulted at fraternity houses other than DKE's, and after Wesleyan had been sued in connection with those allegations.

Following the announcement, Kent and Wesleyan attempted to negotiate a plan for coeducating the DKE House. When those negotiations failed, Wesleyan terminated the agreement. As a result, Wesleyan students were barred from living at the DKE House, or even using it for nonresidential purposes.

Kent, DKE, and an individual DKE student member sued Wesleyan and its president and vice president for student affairs. Interestingly, the plaintiffs did not allege that Wesleyan had breached any contractual obligation. Instead, they asserted a host of claims—including promissory estoppel, negligent misrepresentation, tortious interference with business expectancies, and violations of the Connecticut Unfair Trade Practices Act—premised on the contention that Wesleyan's conduct was independently tortious. In support, the plaintiffs contended that Wesleyan: (1) had falsely assured the plaintiffs that DKE members could remain in program housing if the plaintiffs agreed to coeducate at the residential, rather than organizational, level; (2) did not honor a promise it had made to DKE that DKE would have three years to coeducate if it satisfied certain criteria; and (3) broke a promise to future Wesleyan students that they would have the opportunity to reside at the DKE House. In addition to damages, attorney's fees, and costs, the plaintiffs sought injunctive relief.

After a trial, a jury found in favor of the plaintiffs on all counts and awarded Kent $386,000 in damages. Though unspecified, the damages award was consistent with Kent's request for $216,000 to cover

Image credit: Geber86/E+

lost revenues following Wesleyan's termination of the agreement and $170,000 in costs to maintain the empty DKE House in 2016-2017.

In addition, the trial court awarded the plaintiffs approximately $411,000 in attorney's fees and costs under CUTPA. It also issued a mandatory injunction that required Wesleyan to reinstate the DKE House as a program housing option, enter into a new contract with Kent and DKE identical to the agreements it has with other fraternities, and give DKE three years to coeducate.

On appeal to the Supreme Court, the defendants made various arguments that could be boiled down to this: because Wesleyan did not breach the agreement, it could not be held liable under any of the plaintiffs' legal theories. Stated another way, because the Agreement gave Wesleyan the right to terminate its relationship with Kent for any reason, its decision to terminate it based on Wesleyan's residential housing policy shift and the parties' failure to reach a new agreement was unassailable. In a unanimous opinion authored by Justice Palmer, the Supreme Court mostly agreed.

The Court tackled the broad legal question of whether the terms of the agreement, in effect, granted Wesleyan immunity through the lens of instructional error. Specifically, the Court framed the issues as whether the trial court had improperly denied the defendant's request to instruct the jury that "[w]hen a party acts consistently with its rights under a contract, its conduct cannot violate CUTPA," as well as the defendant's proposed instructions that "[t]he principle of promissory estoppel applies only when there is no enforceable contract" and a "party cannot prevail on a claim for promissory estoppel based on alleged promises that contradict the terms of a written contract." Although the Court ultimately determined that the defendants' requests to charge overstated the strength of their legal position, it concluded that the trial court's failure to direct the jury to consider the terms of the Agreement when evaluating the plaintiffs' legal claims constituted reversible error.

Beginning with the plaintiffs' promissory estoppel theory, the Court observed the well-established principle that when a written contract exists, the parties cannot succeed on a promissory estoppel theory that relies on promises that contradict the terms of the contract. The trial court, therefore, should have given that portion of the defendant's charge that accurately set forth that principle. However, the defendant's proposed instruction that promissory estoppel only applies "when there is no enforceable contract between the parties" was incorrect. Here, the plaintiffs alleged that the defendants had made promises—such as that DKE could participate in the housing program if it took good faith steps to develop a residential coeducation plan—that did not alter or contradict the terms of the agreement. Accordingly, the plaintiffs could have succeeded on their promissory estoppel theory even though they had an enforceable contract with the defendants.

Similarly, even though the defendants' requested CUTPA instruction also overshot the mark, the Court concluded that the jury charge's failure to address the significance of the agreement in relation to the CUTPA claim constituted reversible error. Because bad faith efforts to modify an existing contract effort can implicate CUTPA, it is not true that a party immunizes itself against a CUTPA claim by acting consistently with a contract to which it is a party. Nevertheless, by failing to instruct the jury that it had to take into account the terms of the Agreement when assessing whether the defendants had committed an unfair act or practice, the jury was left without "sufficient guidance as to a central legal issue."

Having concluded that the trial court committed reversible error with respect to the plaintiffs' promissory estoppel and CUTPA claims, the Court next addressed whether the damages award nevertheless could be upheld by the jury's findings with respect to tortious interference and negligent misrepresentation. It concluded that additional instructional errors rendered the award unsustainable.

In particular, the Court determined that the general damages instructions that the jury received did not adequately advise them in three respects. First, the instructions did not explain that damages for tortious interference were limited to Kent's anticipated lost revenues minus its costs. Instead, the instruction impermissibly permitted the jury to award gross revenues. Second, the instructions did not explain that compensable losses were limited to those that occurred before June 18, 2015, when Wesleyan exercised its right under the agreement to terminate its commercial relationship with Kent. Third, the instructions failed to provide that, with respect to the negligent misrepresentation claim, Kent could recover only reliance damages, not expectation damages.

The Court also concluded that the trial court's imposition of a mandatory injunction was wholly inappropriate under the circumstances. Even setting aside the stringent standards that govern the "drastic" remedy of a mandatory injunction, the trial court's order could not stand because it either lacked legal effect or sanctioned a result contrary to law. For example, if one read the order as requiring the parties to reach a new agreement identical to the

Continued on page 40 →

■ 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.

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

Matthew A. Weiner *is Assistant State's Attorney in the Appellate Bureau of the Office of the Chief State's Attorney. ASA Weiner clerked for Justice Richard N. Palmer during the Supreme Court's 2006–2007 term and litigates appellate matters on behalf of the State.*

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.

Arbitration Law

Horrocks v. Keepers, Inc., 70 CLR 348 (Abrams, James W., J.), holds that a judicial determination that the substantive provisions of a contract containing an arbitration clause are void as a violation of public policy does not invalidate the arbitration clause. The opinion holds that a finding that an employment agreement designating the plaintiffs as independent contractors was void as an attempt to avoid wage and hour laws, does not invalidate the arbitration clause. Findings stated in an arbitration award are entitled to collateral estoppel effect even if the arbitrator provided no explanation of the findings. All that is required for collateral estoppel to apply is that issues were presented to and ruled on by the arbitrator. *Imbruce v. Johnson*, 70 CLR 416 (Lee, Charles T., J.).

An arbitration agreement that provides that arbitration shall be conducted "under the Commercial Rules of the AAA" incorporates the AAA rule that any dispute over arbitrability of a matter must be resolved by the arbitrators, rather than the general common-law rule that the preliminary issue of arbitrability normally is resolved by the court. The opinion orders that arbitrability be resolved by the arbitrators even though the terms of the party's basic agreement would otherwise have defaulted to a requirement that arbitrability be resolved by a court. *Claridge Associates, LLC v. Canelas*, 70 CLR 448 (Krumeich, Edward T., J.).

Bankruptcy and Foreclosure Law

Whether to apply judicial estoppel to dismiss a complaint for a plaintiff's failure to have disclosed the existence of a personal injury cause of action that accrued during an earlier bankruptcy proceeding requires an evaluation of three factors: whether (a) the plaintiff's position during the proceeding was inconsistent with a position taken after the proceeding; (b) the bankruptcy court had formally adopted the debtor's inconsistent position; and (c) the debtor would gain an unfair advantage over the party seeking estoppel. This opinion holds that a debtor who failed to disclose a personal injury cause of action that came into existence during a bankruptcy proceeding was not judicially estopped from prosecuting the cause after the bankruptcy was dismissed based on the court's findings that the failure to disclose the civil action would have had little impact on the bankruptcy proceeding and the debtor gained no advantage over the defendant in the civil action by not pressing the civil action until the bankruptcy was dismissed. *Emond v. DePersia*, 70 CLR 427 (Taylor, Mark H., J.).

Civil Procedure

Doe v. Yellowbrick Real Estate, 70 CLR 363 (Krumeich, Edward T., J.), holds that the granting of a motion to use a pseudonym to one party does not automatically entitle the other party to a reciprocal right. The opinion presents a useful summary of opinions ruling on motions to use pseudonyms, emphasizing the very special circumstances required for granting such motions and the necessity of providing evidence going beyond a general description of the nature of the matter.

Jurisdiction over a resident defendant who recently moved to Connecticut from another state may be obtained pursuant to service under the longarm statutes if a diligent search of contemporaneous records reveals only the former foreign residence, even though the defendant was not a nonresident at the time of service. *Gasparini v. Mena*, 70 CLR 369 (Krumeich, Edward T., J.).

The provision of the Anti-SLAPP Suit Statute authorizing the use of affidavits in support of or opposition to Special Motions to Dismiss, Conn. Gen. Stat. § 52-196(e)(2), authorizes only affidavits that present facts. Therefore affidavits from expert witnesses and character witnesses or that contain hearsay evidence are generally inadmissible at hearings on special motions to dismiss. *Greenberg v. Gunnery*, Inc., 70 CLR 425 (Shaban, Dan, J.).

Constitutional Law

The State Constitution should not be construed as providing a constitutional tort remedy for injuries for which a reasonably adequate statutory remedy is already available, because to do otherwise would be inconsistent with the principle of separation of powers. *Evans v. UConn*, 70 CLR 355 (Budzik, Matthew J., J.). The opinion holds allegations that UConn's dismissal of a graduate assistant was motivated by racial discrimination does not state a cause of action for violation of Article First, Section 8 of the Connecticut Constitution, because the Fair Employment Practices Act provides an adequate remedy.

Contracts

Zeolla v. Flight Fit N Fun (New Britain), LLC, 70 CLR 376 (Taylor, Mark H., J.), holds that a noncustodial adult accompanying a child to a recreational facility has no apparent authority to sign a liability waiver on behalf of the child.

The legal sufficiency of a general contractor's third-party complaint for indemnification against a subcontractor for claims asserted by the project sponsor against the general contractor, with respect to the issues of exclusive control and liability for negligence, must be evaluated in light of the factual allegations of both the direct complaint against the general contractor and the third-party complaint asserting the indemnification claim. *A. Pappajohn Co. v. Mende*, 70 CLR 392.

Education Law

Desloges v. Griswold, 70 CLR 325 (Jongbloed, Barbara Bailey, J.), holds that the School Districting Statute, which provides that "[e]ach town shall through its board of education maintain the control of all the public schools within its limits," Conn. Gen. Stat. § 10-240, constitutes a delegation of the authority to maintain discipline in public schools from the state to its municipalities, and in turn from each municipality to its board of education. Therefore each municipality is vicariously liable for the torts of its board of education and the board's employees and agents with respect to claims arising out of, inter alia, disciplinary matters.

Insurance Law

Allegations that the defendant, an insurance agent, negligently misrepresented to a customer that Employment Practices Liability Coverage had been added to an existing business liability policy with retroactive coverage, when in fact no such coverage had been added, are sufficient to state a violation of the provision of CUIPA that defines as an unfair insurance practice the making of a statement that "[m]isrepresents the benefits, advantages, conditions or terms of any insurance policy," Conn. Gen. Stat. § 38a-816(1)(A), and therefore states a violation of CUTPA as well. *General Digital Corp. v. Anderson-Meyer Insurance, Inc.*, 70 CLR 430 (Taylor, Mark H., J.).

Goncalves v. UTICA Mutual Insurance Co., 70 CLR 411 (Roraback, Andrew W., J.), holds that in an action for damages from an accident caused in part by the negligence of an unidentified operator and in which a recovery has been obtained against a UIM insurer sued as a surrogate for the unidentified operator, any damages attributed to the unidentified operator in excess of the insurer's policy limits may be reallocated to the remaining tortfeasors pursuant to the Apportionment Reallocation Statute, Conn. Gen. Stat. § 52-172h(g).

A defendant in a motor vehicle accident case may implead the plaintiff's UIM insurer as a surrogate for an unidentified hit and run operator, even though there is no contractual privity between the defendant/apportionment plaintiff and the insurer. *Stackpole v. Selvaraj*, 70 CLR 454 (Povodator, Kenneth B., J.T.R.).

Real Property Law

Westchester Modular Homes, Inc. v. 21 Heusted Drive, 70 CLR 441 (Lee, Charles T., J.), holds that an assignment of a mortgage constitutes a "conveyance" within the meaning of that term as used in the Connecticut Recordation Statute, Conn. Gen. Stat. § 47-10 ("No [unrecorded] conveyance shall be effectual to hold any land against any other person but the grantor and his heirs …"). The opinion rejects the plaintiff's claim that the Statute applies only to transactions involving the transfer of fee interests.

The provision of the Marketable Record Title Act authorizing the recovery of attorneys fees "in any action brought for the purpose of *quieting title to land* … for the [sole] purpose of slandering title to land," Conn. Gen. Stat. § 47-33j, does not apply to all actions to quiet title but rather only to actions brought under the Act pursuant to Conn. Gen. Stat. § 47-33f (authorizing the filing of notices of claims within 40 years of the effective date of a person's root of title) and Conn. Gen. Stat. § 47-33g (governing the contents of those notices). This opinion holds that the Act does not apply to an action brought by an easement holder challenging the servient estate holder's filing of a notice disputing the easement. *Aron v. Shesler*, 70 CLR 458 (Calmar, Harry E., J.).

State and Local Government Law

Carbonardo-Schroeter v. Mancini, 70 CLR 373 (Kamp, Michael P., J.), holds that a municipal employee with an employment claim against a municipality must exhaust all administrative remedies before commencing suit, including, as in this case, all grievance hearings in a 3-step grievance process available under a collective bargaining agreement and a subsequent arbitration also available under the agreement. Punitive damages may not be awarded in an action against a municipality in the absence of legislative or charter authorization, because such relief would penalize the public for the improper acts of municipal agents. *Dingle v. Stamford*, 70 CLR 335 (Bellis, Barbara N., J.). Although the State Defective Highway Act requires that a notice of claim include, inter alia, "the time of occurrence of injuries caused by a road defect," Conn. Gen. Stat. § 13a-149, a notice which states the date without referencing a specific time is sufficient to entitle the plaintiff to rely on the Act's savings clause to amend the notice. *Timperanza v. Fairfield*, 70 CLR 421 (Welch, Thomas J., J.).

Zoning Law

Brookside Package, LLC v. Bridgeport PZC, 70 CLR 402 (Radcliffe, Dale W., J.), holds that the Bridgeport PZC's interpretation of the phrase "the entrance" as used in a zoning regulation prohibiting the location of any liquor package store within a 750-foot radius of the entrance to any house of worship, hospital or commercial day care center, as referring only to the store's main entrance for customers and not to secondary doors, is reasonable and therefore valid. The opinion holds that the regulation is not violated by the fact that a service door at the rear of a proposed package store is within the prohibited radius. ■

Lessons Learned While Leading the YLS During a Pandemic

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.

This year was unique in that the entire bar year was engulfed by the pandemic. Despite that challenge, I believe the YLS had a successful bar year, although those successes were measured in different ways. As my role as chair of the Young Lawyers Section ends, I have been reflecting on the past year and what it has taught me. Taking on a leadership role within the Young Lawyers Section has been quite fulfilling. Therefore, I wanted to share the lessons I have learned while leading the YLS during an unprecedented year.

Lesson #1: We Join Organizations to be Connected

Earlier this year, as part of a leadership training, I was asked, "Why do individuals join organizations?" The answers to this question centered around the theory that organizations are merely groups of people striving to serve the needs of its members. But then we were asked, "What do members want?" Members join organizations to help themselves as an individual, but they also join to be part of a community and a vision larger than themselves.

Indeed, colleagues and I have recently discussed how to make a meaningful transition when attorneys return to work full time (if they haven't already). We discussed that attorneys, and especially younger attorneys, want to feel important or part of something meaningful. Despite our busy lives, it is important to be nice, appreciate others, and recognize the hard work of the members on your team.

Through the YLS's various initiatives this year, I have come to learn how truly valuable membership in the Connecticut Bar Association is in terms of creating relationships and connections on a personal and professional level, as well as the CBA's impact our communities. Perhaps the isolation many of us felt during the pandemic magnified our desire to be connected, which in turn led to our members giving time and energy to our initiatives.

Lesson #2: There Are Several Ways to Accomplish a Goal and Recognizing that Will Improve Results

During the pandemic, the YLS operated completely through emails and Zoom calls for planning events, and during our monthly meetings we offered various substantive or social programs in addition to regular business. Perhaps not being in-person at a large group meeting relieved the pressure of public speaking, but whatever the reason, I found that individuals spoke up during the planning process and the brainstorming process for creating events flourished. Oftentimes, my fellow officers and I would offer an idea to get us started in the planning process, but by the end of planning, our event had morphed into something completely different and better than the original idea. I think virtual meeting platforms are here to stay because of its efficiency.

Lesson #3: It Is Okay to Slow Down

I'm a workaholic. I wish I wasn't, but it is hard for me to shut my work brain off and to disconnect from work communications. Additionally, when I started working from home in March 2020, and I was without childcare for three months, I did what I had to do—which meant working during the hours my son would be sleeping, foregoing health, exercise, and nutrition, as well as regular communication with friends and family. But we are not meant to function on all work and no play (or sleep)! And I quickly learned that many young lawyers were also operating this way. The Young Lawyers Section needed to emphasize the importance of lawyer well-being even more during the pandemic, and moreover, I needed to utilize the tools we were offering. My ability to balance work and my personal life is better because I have become a little better, and I am continuing to get better, at setting boundaries and blocking my time to allow me to fulfill each "bucket" that I need to have a fulfilling life outside of or in tandem with the law.[1] I hope that young

Image credit: Eva Almqvist iStock/Getty Image +

lawyers recognize that taking breaks, vacations, and time off is critical to their success as an attorney.

I hope this year demonstrated the strength of the Young Lawyers Section and promotes section growth. I have noted in nearly every article I have authored this bar year that we are operating during a pandemic. This was not a complaint, but rather a reminder of the strength of our organization. I was unable to interact with or meet new YLS Executive Committee members in person this year. However, we worked as hard as we otherwise would to bring value to our members. We highlighted that while networking remains important, members may gain other types of value from active participation in the Young Lawyers Section. Although we had to reduce the types of networking events, we were able to focus our events on diversity, equity and inclusion; lawyer well-being and professionalism; civics education; public service; and upholding the bar and the rule of law.

These accomplishments would not have been possible without the hard work of each and every YLS Executive Committee member to whom I express my sincere gratitude. We would not have had a successful year without all of your hard work.

I hope that seeing the YLS remain active during a difficult bar year will encourage other young lawyers to become involved. As this bar year concludes, it almost feels as though we have hit "refresh," and I am excited to see what the next year offers as we regain the ability to connect in person! ■

NOTES

1. *See* Cindy M. Cieslak, "It's Not Personal, It's Business: How Your Well-Being Could Impact Your Practice," *CT Lawyer*, Jan.-Feb. 2021, at 38-39.

Pro Bono

Continued from page 33

ing, UniteCT Guidelines, Version 1.9, May 28, 2021. https://portal.ct.gov/-/media/DOH/UniteCT/UniteCT-Guidelines-Condensed.pdf

8. *Id.*
9. *Id.*
10. Internal Revenue Service, IRS Sending Letters to More than 36 Million Families Who May Qualify for Monthly Child Tax Credits (June 7, 2021) www.irs.gov/newsroom/irs-sending-letters-to-more-than-36-million-families-who-may-qualify-for-monthly-child-tax-credits-payments-start-july-15
11. www.ctbar.org/home/coronavirus-response/project-feed-connecticut
12. www.ctbar.org/members/volunteer-today/pro-bono/CBA-pro-bono-connect
13. https://www.ctbar.org/public/pro-bono-legal-aid-services/ct-free-legal-answers
14. Judiciary Committee, Connecticut General Assembly, Report of the Task Force to Improve Access to Legal Counsel in Civil Matters (2016) www.cga.ct.gov/jud/tfs/20160729_Task%20Force%20to%20Improve%20Access%20to%20Legal%20Counsel%20in%20Civil%20Matters/Final%20Report.pdf
15. www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=H-B06531&which_year=2021
16. www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=S-B01091&which_year=2021

Incoming President's Speech

Continued from page 15

Almost 250 years ago, in 1776, our founders stated a bedrock principle of this country, that equality is a self-evident truth. It was, at the moment of its writing, an ideal that was perfect in its conception, and imperfect in its application. We debated then, and have continued to debate ever since, what those words should mean in application. Ninety-nine years later, in 1875, a group of lawyers formed one of the oldest bar associations in this country—the Connecticut Bar Association—the statewide bar association of lawyers in Connecticut. It was then, as it is now, a perfect vision, imperfect in its application, as is the way of all human endeavors. The common thread of both moments is the creation of an opportunity for togetherness; social contracts that brought people together to advance ideals that are greater than any one individual, the pursuit of which would continue long after them. Today, in 2021, we are no different, we pursue the perfect ideals of our profession imperfectly, but with commitment and dedication to the journey. The challenges facing us may be unprecedented and at times, overwhelming, but we are stronger and more effective when we face them together.

I am honored and humbled by this measure of trust and confidence. I believe that leadership is service, and I will do my utmost to fulfill the trust and confidence you have placed in me. I am reassured that I will not be alone in that service. The incoming slate of officers of the Connecticut Bar Association is incredibly diverse, with deep experience, from the private and the public sector, representing the richness of our profession, and bringing the strengths of our collective differences to the common issues facing the bar. It is therefore my great privilege to introduce to you the incoming officers of the Connecticut Bar Association: Daniel J. Horgan, president-elect; Margaret I. Castinado, vice president; David M. Moore, treasurer; Sharadchandra Samy, secretary; and Cindy M. Cieslak, assistant secretary-treasurer.

I look forward to working with all of these accomplished individuals, along with Immediate Past President Amy Lin Meyerson, in the year ahead. Together we represent a bar association that is open and inclusive to all lawyers in this great state, unwavering in its commitment to the needs and concerns of our profession, and to advancing the bedrock principle of equality and justice for all. We are all but stewards, who hope to leave the CBA a stronger organization for those that will follow us. We will need your help in this pursuit, as we work Together for Justice, Together for Equity, Together in Service. ■

Supreme Deliberations

Continued from page 35

agreements Wesleyan currently has with other fraternities, then nothing would prevent Wesleyan from immediately giving notice of its plan to terminate the agreement. If, on the other hand, one read the order as requiring Wesleyan to reach a new agreement with DKE that impinged on Wesleyan's right to terminate its relationship with the fraternity for any reason, then the order violated established law prohibiting a court from expanding the rights of parties governed by an enforceable contract. (Justice D'Auria authored a concurring opinion that expressed additional concerns regarding the mandatory injunction.)

Finally, resolving an issue with broader implications, the Court concluded that the trial court did at least one thing right: it correctly instructed the jury that the cigarette rule governs a CUTPA claim. The cigarette rule is a test for whether a practice is unfair. It originally was set forth decades ago by the Federal Trade Commission but, after a statutory amendment, is no longer applied by the FTC or by federal courts. The Court concluded that, notwithstanding certain justices' openness to abandoning the rule in Connecticut, it is up to the General Assembly to change the operative standard for unfair trade practices claims under CUTPA.

In the end, what we find most interesting is a big picture observation: the defendants secured a reversal based on claims of instructional error even though the proposed charges they submitted to the trial court were, themselves, legally incorrect. We're curious to see whether Kent is a one-off matter based on how badly the trial court's instructions missed the mark, or whether it signals the Court's openness to consider imperfectly preserved claims of instructional error in civil cases at a level traditionally reserved for criminal cases. ■

Member of
NATIONAL SOCIETY
OF PROFESSIONAL
ENGINEERS (NSPE)

CONNECTICUT SOCIETY OF
PROFESSIONAL ENGINEERS
(CTSPE)

CONSULTING ENGINEERS and EXPERTS IN:

- Construction Accident Investigations
- Construction Defect Claims
- Construction Management
- Standard of Care for Engineers and Contractors
- Slips/Trips and Falls
- ADA compliance
- Variance and Land Boundary Issues
- Electrocution Matters
- Vehicular Accident Reconstruction
- Water Intrusion Cases

and more

866·432·4677
203·658·3910

PO Box 4532
Stamford, CT 06907

PO Box 394
Montvale, NJ 07645

CLM
ENGINEERING ASSOCIATES, LLC

FORENSIC ENGINEERING CONSTRUCTION MANAGEMENT INSPECTIONS

www.clmpe.com

Serving clients throughout the State of Connecticut

Maintain an active case-load of working with plaintiff and defense firms

Hundreds of investigations performed and reports generated

Experience testifying in court along with providing deposition testimony

Assisted in the settlement of numerous cases

Craig L. Moskowitz, MBA, MS, PE, CME

Direct: 917·270·8822

clmprofessionalengineer@gmail.com