

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 signifi-

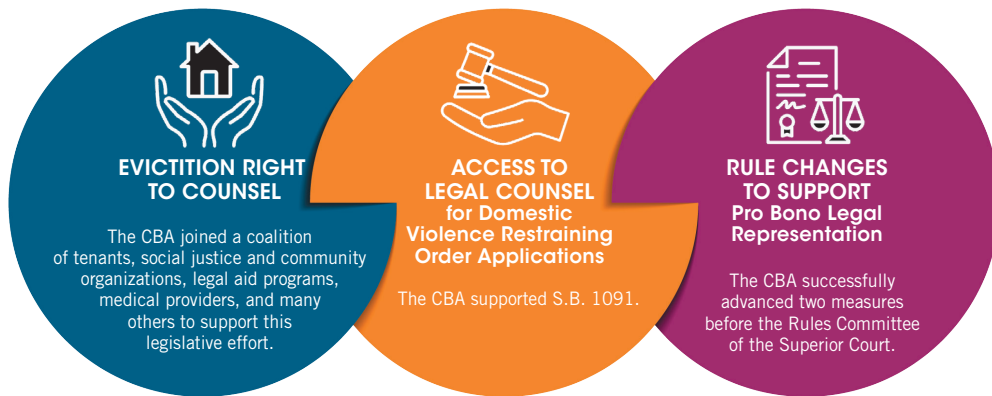
cant increases in domestic and intimate partner violence.⁶ These statistics present serious access to justice, personal safety, and hardship concerns for Connecticut residents.

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 orga-

nizations, 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 re-

straining 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 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

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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.

Pro Bono

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Incoming President's Speech

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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

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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. ■

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