

Volume 32 | Number 1

September | October 2021

CT

LAWYER

GIVING BACK

Lawyers in
Libraries

Bankruptcy
Pro Bono Program

CBA Pro Bono
Connect



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



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.

Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Copyright © 2015 CNA. All rights reserved. PS043M

Pre-Order the 2022 CBA Membership Guide and Directory

Your Guide to Connecticut's Largest Legal Community



Stay Informed and Connected with Convenient Access to:

- Contact information for thousands of your colleagues
- Listings of CBA officers, section chairs, and staff
- MCLE requirements and resources
- Ways to save money with member benefits

\$39.99 + Tax

Exclusively available to CBA Members

Name: _____

Firm/Organization: _____

Street Address: _____
(No PO Boxes, Please)

Ste/Rm/Apt #: _____

City: _____

State: _____ Zip: _____

Person Ordering: _____

Phone: _____

E-mail: _____

Method of Payment

Check Visa MC AMEX Discover

Card #: _____

CVV: _____ Expiration Date: _____

Name on Card: _____

Billing ZIP code: _____ Date: _____

Signature: _____

Quantity	Price	Quantity x Price
_____	\$39.99 member	_____
	6.35% CT Sales Tax:	_____
	Total:	_____

(Shipping and handling is included)

Submit Your Order

Visit ctbar.org/2022Directory
Call us at (844)469-2221
E-mail us at info@ctbar.org

Send this completed form and payment to:

Connecticut Bar Association
30 Bank St
New Britain, CT 06051

Make checks payable to the Connecticut Bar Association.
Payment must accompany order.

Save 10% on orders of 10 or more.
Contact our Member Service Center to receive this discount.



2021
Roster



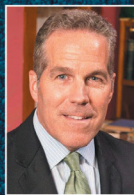
THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS CONNECTICUT CHAPTER

WWW.CONNMEDIATORS.ORG

*The following Chapter Members are recognized in 2021 for
Excellence in the field of Alternative Dispute Resolution*



Thomas Barrett
West Hartford



Thomas Cella
Hartford



Steven Certilman
Stamford



Joseph Garrison
New Haven



Hon. Elaine Gordon
Westbrook



Hon. Robert Holzberg
Hartford



Hon. Ian McLachlan
Hartford



Hon. Douglas Mintz
Stamford



Richard Renehan
Waterbury



Jay Sandak
Stamford



Herb Shepardson
Hartford



Hon. Jonathan Silbert
New Haven



Charles Stohler
New Haven



Eric Wiechmann
Hartford

FEBRUARY 2022

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25		27	28		

Check your preferred available dates or
schedule appointments online, directly
with Academy Members - for free.

Visit www.ConnMediators.org/dateselector

* The National Academy of Distinguished Neutrals is an invitation-only professional association of over 1000 litigator-rated mediators & arbitrators throughout the US and a proud sponsor of the AAJ and DRI. For more info, please visit www.NADN.org/about

CT LAWYER

Volume 32 | Number 1 | September/October 2021

2021-2022 OFFICERS

President, Cecil J. Thomas

President-elect, Daniel J. Horgan

Vice President, Margaret I. Castinado

Treasurer, David M. Moore

Secretary, Sharadchandra A. Samy

Assistant Secretary-Treasurer,
Cindy M. Cieslak

Immediate Past President, Amy Lin Meyerson

ADVISORY COMMITTEE

Jeffrey A. Zyjeski (Chair), Myles H. Alderman, Jr., Thomas Chapman, Dean M. Cordiano, Jeffrey C. Dannenberg, Proloy Das, Brian J. Donnell, Steven J. Errante, Theodore W. Heiser, Noah Kores, Kyle LaBuff, Regan O'Malley, Charles Ray, Daniel J. Roberts, Fred D. Sette, Jeffrey M. Sklarz, Bolesh J. Skutnik, Elizabeth C. Yen

CONNECTICUT LAWYER STAFF

Executive Director: Keith J. Soressi,
ksoressi@ctbar.org

Publications Manager: Alysha Adamo,
aadam@ctbar.org

Design/Production: Susan Lampe-Wilson

Advertising: advertise@ctbar.org

Copyright 2021 by the Connecticut Bar Association. All rights reserved. The copying, duplication, transferring, reproducing, reusing, or reprinting of the *CT Lawyer* is strictly prohibited without permission. Publication of advertising does not imply endorsement of products, services, or statements made concerning them. All advertising copy is subject to approval. The editor reserves the right to reject advertising. The goal of the *CT Lawyer* is to provide a forum for the free expression of ideas. The opinions and positions stated in signed articles are those of the authors and not those of the Connecticut Bar Association. The Connecticut Bar Association welcomes the submission of articles by its members. For editorial guidelines, please e-mail editor@ctbar.org.

Manuscripts accepted for publication become the property of the Connecticut Bar Association. No compensation is paid for articles published.

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 In Memoriam: Ralph J. Monaco

15 CBA Members Now Have Access to FastCase

16 Lawyers in Libraries: Volunteer Today!

18 Enhancing Pro Bono Representation in Consumer Bankruptcy Cases

By Matthew K. Beatman and Thomas A. Gugliotti

22 It Is Time to Take the Pro Bono Connect Pledge

By Erin O'Neil-Baker

COLUMNS

**4 PRESIDENT'S MESSAGE
Together**

By Cecil J. Thomas

**31 TIME TO GO PRO BONO
Who Has Time to Volunteer to Do Pro Bono Hours?**

By Daniel J. Horgan

**32 DIVERSITY, EQUITY, & INCLUSION
What's the Issue with Critical Race Theory?**

By Karen DeMeola

**34 SUPREME DELIBERATIONS
Clerical Omissions and Mistakes**

By Charles D. Ray and Matthew A. Weiner

**38 YOUNG LAWYERS
Get Comfortable Being Uncomfortable**

By Joshua J. Devine



DEPARTMENTS

6 News & Events

7 Upcoming Education Calendar

11 Peers and Cheers

25 Informal Opinions

36 Court Decisions

Cover Image Credit:
Smartboy10/DigitalVision
Vectors

Together

By CECIL J. THOMAS

I was 15 years old when I decided that I wanted to become a lawyer. My decision caused some consternation in my family. No other member of my immediate or extended family had entered the profession. I was born in Cambridge, MA, and our community of Indian American immigrants, hailing from Kerala, India and settled all over the country, was a big part of the fabric of my upbringing. Lawyers were, at the time, still very rare within that community. Upon announcing my decision, I found myself in a conversation with my grandmother, calling on a poor telephone connection from India, who urged me to reconsider and choose a different profession. She feared that my chosen profession would be inconsistent with our family traditions, faith, and values. Assurances given in that conversation, many years ago, still guide my path today.¹

Among all of those early conversations with family and friends, I also remember one other conversation very vividly. A close friend of my parents' was enthusiastic about lawyers and the practice of law, and expressed joy at my youthful aspirations. He shared that lawyers referred to each other as brothers and sisters of the bar, and spoke of the profession's commitment to ethics, integrity, cohesion, and camaraderie. That conversation has stayed with me, and my experience as a lawyer and as a proud member of the Connecticut Bar Association have confirmed those statements to be true many times over. While the tradition of referring to each other as brothers and sisters of the bar has perhaps faded, we are, in our own way, a family. We have taken the same oaths, are

Cecil J. Thomas is the 98th president of the Connecticut Bar Association. He is an attorney at Greater Hartford Legal Aid, where he has represented thousands of low-income clients, predominantly in housing matters, and has obtained significant appellate and class action victories on behalf of low-income Connecticut residents.



bound by the same code of ethics, and are committed in service to our clients. We are all, as attorneys, “a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”² It is for us to find and work together upon that immense common ground, and in so doing, advance the vital purposes of the Connecticut Bar Association³ amidst these incredibly difficult times.

Over the past 18 months, the COVID-19 pandemic has brought about unprecedented change and new challenges to this organization, to our members, to the profession, and to society around us. As lawyers, we have had to face an ever changing “new normal” that has impacted our practices; forced us to embrace new technology; isolated us from those who are dearest to us; and brought loss, fear, and grief to so many. We have all been forced to juggle our various personal and professional responsibilities even more precariously, as the lines between those worlds have become increasingly blurred. Our own cares and worries are amplified by those of our clients, which

we bear also, and the unsettling lack of certainty in an increasingly uncertain and ever-changing world. This pandemic has not affected all of us, or the world around us, in equal measure, and we have borne witness, during these troubling times, to great social unrest, humanitarian crises, social injustice, and devastating attacks on the rule of law.

Perhaps both hope and solutions for the present and future lie, at least in part, in an examination of our history. Alexis DeTocqueville, in his study of Americans and our democracy, noted our tendency to balance self-interest with common interest, which he called “the principle of interest, rightly understood.” “[A]n enlightened regard for themselves” he wrote, “constantly prompts them to assist each other...”⁴ This goal, in DeTocqueville’s observations, was accomplished by individual “daily small acts of self-denial” effectuated for the common good.⁵ DeTocqueville, as highlighted in the opening quote of this article, also noted our particular American inclination to advance our common interests through associations. As we consider the long his-

In their political associations, the Americans of all conditions, minds, and ages, daily acquire a general taste for association, and grow accustomed to the use of it. There they meet together in large numbers, they converse, they listen to each other, and they are mutually stimulated to all sorts of undertakings. They afterwards transfer to civil life the notions they have thus acquired, and make them subservient to a thousand purposes. Thus it is by the enjoyment of a dangerous freedom that the Americans learn the art of rendering the dangers of freedom less formidable.

—Alexis de Tocqueville, *Democracy in America*, Vol. 2, Ch. 7 (1840)

tory of the CBA, and its potential to address the issues and challenges of today, our organization and its work take on new importance. In the work of our sections, committees, and task forces; our debates; our projects and initiatives; and all of our collective efforts on behalf of the profession and society, we practice everyday democracy, and preserve the strength of our community and society. In this, we strive to balance “I” with “We,” and model the type of civic engagement and association that has always defined our identity as Americans.

During my installation, on June 15, 2021, I announced the theme for this bar year: “Together for Justice, Together for Equity, Together in Service.” Exactly 146 years before that date, on June 15, 1875, a group of 58 lawyers joined together to found the State Bar Association of Connecticut,⁶ and adopted its first Constitution.⁷ In the years that followed, the organization grew to about 200 lawyers, and held at that level, admitting no more than seven attorneys in any given year during the next few decades.⁸ The CBA’s founding leaders, in particular Simeon E. Baldwin, joined a group of 75 lawyers three years later, in Saratoga, NY, to found the American Bar Association.⁹ This was an age of bar association founding,¹⁰ with many bar associations springing up across the country, driven by a desire to increase professionalism; standardize the law, legal education, and bar admission criteria; and provide opportunity for social engagement.

This associational movement for our profession was mirrored in American society. Professor Robert Putnam, who has studied and written about the ebbs and flows of civic engagement and membership organizations, reveals that “half of all the largest mass membership organizations in American history—the fifty-eight national voluntary organizations that ever enrolled at least 1 percent of the adult male or female population—were founded in the decades between 1870 and 1920.”¹¹ It is impossible to disregard the context within which these organizations were founded. This was the Gilded Age, a time that is often compared by historians to our present day,¹² featuring great polarization and division, nativism and rampant inequality, challenges to the rule of law, and the untimely demise of Reconstruction, with all of its unfulfilled promises. Early efforts to guarantee civil rights and protect individuals from discrimination were struck down by the U.S. Supreme Court in *The Civil Rights Cases* in 1883.¹³ In 1896, *Plessy v. Ferguson*¹⁴ provided constitutional sanction to segregation with the doctrine of “separate but equal.”

What happened in the following decades? Civic associations grew and became more influential, as American society reached a “togetherness” peak in the 1960s.¹⁵ This sense of togetherness was not universal, as historically excluded groups and people continued to fight for equal rights and meaningful inclusion, as they do today. The lessons that we can draw from this “I-we-I” century, as Putnam calls it,

present great potential and hope for the future, if we can commit to a collective course. Within the past century, we have joined together to advance greater equality and community, while also increasing opportunities for economic growth and advancement for many. In doing so in the past, however:

...we didn’t set our sights high enough for what the ‘we’ could really be, and we didn’t take seriously enough the challenge of full inclusion. Therefore, the question we face today is not whether we can or should turn back the tide of history, but whether we can resurrect the earlier communitarian virtues in a way that does not reverse the progress we’ve made in terms of individual liberties. Both values are American, and we require balance and integration of both.¹⁶

The CBA’s organizational trajectory has tracked some of the trends of other civic associations, but in some very positive ways, also differs. We have, for the last ten years, maintained strong and consistent membership levels. At its founding in 1875, the CBA featured just four committees. Today, the CBA has over 70 sections and committees, and the scope and scale of our initiatives, drawing upon the selfless commitment of countless volunteers, is continuously inspiring to me. Just as our profession has led in other moments of great difficulty in this coun-

Continued on page 40 →

News & Events

CBA Hosts Summer Picnic

On June 27, over 200 CBA members, officers, and past presidents and their family and friends enjoyed a summer picnic at Holiday Hill in Prospect. Those in attendance enjoyed cotton candy, ice cream truck treats, and a picnic lunch. Attendees had their choice to participate in many activities, including pony rides, mini-golf, kayaking, canoes, basketball, softball, yard games, bingo, and a rock-climbing wall. Most families enjoyed the pool and the day ended with dancing. Please save the date for next year's picnic that will be held on June 26, 2022.



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

2021 L.A.W. CAMP FOR HIGH SCHOOL STUDENTS

The CBA hosted the 2021 L.A.W. Camp virtually over the week of July 12-16. During the camp, high school students were taught about different aspects of the legal profession, helping them to develop the critical thinking skills that will be essential to expanding their education and eventually embarking on professional careers. Thirty students attended the camp and 33 attorneys, judges, and law school representatives volunteered to guide the students through the week. The students were introduced to L.A.W. Camp with a welcome from past CBA President and UConn School of Law Assistant Dean for Finance, Administration, and Enrollment Karen DeMeola and CBA President Cecil J. Thomas.

Over the course of the week-long camp, the students joined Zoom sessions led by CBA members who introduced them to the Connecticut court system; the principals of court



proceedings; basic legal concepts; and the roles of lawyers, judges, and juries. Attendees were able to virtually sit in on an arraignment hearing and participate in a follow-up question-and-answer session with Judge Robert M. Spector.

For the second half of the week, the student campers were assigned to small groups to prepare for and engage in a series of mock trials. Prior to each mock trial, each group met

to plan how to present their case and strategize their arguments. Judges Tejas Bhatt, Matthew Gordon, and Vernon Oliver and Attorney Carolyn Ikari presided over the mock trials. At the end of the final mock trial, Judge Bhatt congratulated the students on the use of the skills they had developed over the week, telling them, "You all did an amazing job. This requires an immense amount of skill, self-confidence, and hard work." CBA President Cecil Thomas closed L.A.W. Camp by thanking the students for participating in the camp as well as all those who assisted in making this year's camp possible.

The CBA has assisted in organizing L.A.W. Camp since 2019. L.A.W. Camp was originally founded in 2011 by Hon. Angela C. Robinson, now of Halloran Sage LLP, and Sung-Ho Hwang of the Law Offices of Sung-Ho Hwang LLC.

Upcoming Education Calendar

SEPTEMBER

- 14** Net Gain: Small Law Firm Legal Operations on a Budget (LEAP)
- 22** Legislative Training Workshop
- 23** Civil Jury Innovations: Oh, the Possibilities
- 24** Attorney Fees in Workers' Compensation Cases
- 29** Legal Ethics: Law Office/IOLTA Management*

OCTOBER

- 14** 4th Annual Connecticut Bankruptcy Conference*
- 20** The Diversity, Equity & Inclusion Summit: The Collaborative Blueprint*
- 21** Appellate Procedure 101

NOVEMBER

- 3** Professionalism, Ethics, and Technology (LEAP)*
- 3** Civil Jury Panels in Connecticut: Its Time has Come
- 5** More Effective Writing Makes More Effective Lawyers
- 16** Hot Topics in Probate
- 18** Commercial Real Estate Closings
- 19** Practice, Procedure, and Protocol in the Connecticut Courts

DECEMBER

- 3** Raising the Bar: Bench/Bar Symposium*
- 10** Professionalism Boot Camp*

**Ethics credit available*

CBA HOSTS FOURTH RULE OF LAW CONFERENCE

The CBA Rule of Law Committee hosted its fourth conference, Rule of Law: The Integrity of the American Election System, virtually over Zoom on June 28 for an audience of 135 attendees. The event was divided between two panels hosted by CBA past presidents and Rule of Law Committee Co-Chairs Ralph J. Monaco and Jonathan M. Shapiro. The first panel featured Connecticut Secretary of the State Denise W. Merrill; Rhode Island Secretary of State Nellie M. Gorbea; and David Becker, executive director and founder of the Center for Election Innovation & Research in Washington, DC. The second panel featured Connecticut Attorney General William Tong and two university deans, Heather K. Gerken of Yale Law School and Sudha N. Setty of Western New England School of Law.

The conference began with an introduction from outgoing CBA President Amy Lin Meyerson. The first panel discussed the changes made to voter registration laws and processes in Connecticut and Rhode Island in recent years. Secretary Merrill thanked the CBA's attorney volunteers that assisted with election day issues this past fall. The panelists promoted the technological advancements made in expanding access to voter registration and ease of participation, such as allowing eligible citizens to register to vote at the Department of Motor Vehicles. They also stressed how the paper trails created by increased mail-in voting and the introduction of ballot drop boxes have improved election security. They roundly rejected the claims that largescale voter fraud has occurred in recent US elections. Panelist David Becker declared, "In 2020, there is absolutely no doubt we had the most accurate voter list in the history of the United States." While all the panelists were confident in the security of our state and federal election systems, they emphasized that increasing federal funding for elections could expand voter access and help defend against potential hacking attempts.



The second panel's discussion focused directly on the partisan disputes over the process of the 2020 presidential election. General Tong began by referencing how he was forced to engage in arguments with attorneys general of other states over their actions in attempting to overturn the results of the election. He also mentioned that he personally reached out to thank Republican colleagues who resisted political pressure that demanded that they attempt to overturn the popular vote counts of their states. He cautioned that false statements by elected officials can be extremely damaging to the public trust in elections.

The panelists warned that the recent rise in disinformation, political polarization, election litigation, and gerrymandering as well as the loss of critical elements of the Voting Rights Act of 1965 have conspired to create a voting rights crisis in the United States. Dean Gerken noted, "There isn't a simple and robust conception of what is the right to vote and what is an acceptable limitation upon it." The panelists suggested that multiple federal reforms are necessary to combat the current voting rights crisis, but they argued that the US Congress likely lacks the political will to pass legislation that would further define the right to vote and provide increased protections for it. They warned that the current politicization and partisanship over voting rights issues will likely further worsen before it improves. The panelists encouraged the public to remember that it is the voters who decide the results of an election and it is their responsibility to uphold the integrity of our election processes.

The 2021-2022 CBA President Cecil J. Thomas closed the conference by thanking all those involved with it and encouraging the attorneys in attendance to continue to protect and advance the rule of law.

Elder Law Section Presents Lifetime Achievement Award

The CBA Elder Law Section's Executive Committee has presented Lea Nordlicht Shedd with its Lifetime Achievement and Career Service Award in recognition of and appreciation for her outstanding service as a lawyer, extraordinary leadership of and service to the Elder Law Section over the years, her work and efforts in the development of elder law, and her continuing commitment to excellence in the legal profession.

Attorney Shedd taught at Quinnipiac College (now Quinnipiac University)

from 1980 to 1986 as chair of the Legal Studies Department, where she developed and taught the undergraduate course "Legal Problems of the Elderly," and continued to teach elder law at Quinnipiac as an adjunct faculty member to both undergraduates and law school students. Additionally, she served as one of the first chairs of the CBA Elder Law Section in 1992-1994, has served as co-chair of the Elder Law Section's Continuing Legal Education Committee, and has continuously served as a member of the Elder Law

Section Executive Committee.

She practiced elder law with her partner and friend, Judith Hoberman, in the law firm of Shedd and Hoberman LLC in Hamden, which was recognized by all as a pre-eminent elder law firm in Connecticut, until her retirement in 2015.

In the citation presented to Attorney Shedd, she was noted as a trail-blazer in the area of elder law and was commended for upholding the highest ethical standards.

Ten CBA Young Lawyers Receive Service Awards

Ten Young Lawyers Section (YLS) Executive Committee members of the Connecticut Bar Association (CBA) received awards at the section's Leadership Retreat on August 6-7 for their service during the 2020-2021 bar year.

Rookie of the Year Award

Scott Garosshen, Horton Dowd Bartschi & Levesque PC, received a Rookie of the Year award for his work as the Civics Education Committee co-director and for reinvigorating the Lawyers in the Classroom project, which had previously been dormant for several years.

Jermaine A. Brookshire, Jr., Wiggin and Dana LLP, was recognized with a Rookie of the Year award for his work as the Business Law Committee co-chair, his participation in an online voter registration drive, and his assistance with organizing various other YLS events.

Leadership Award

Vianca Malick, Diana Conti & Tunila LLP, garnered a Leadership Award for her exceptional work as a CLE director during the 2020 COVID-19 pandemic as well as coordinating the CLEs that comprised the Bridge the Gap Series.

Leland Moore, Office of the Attorney General, received a Leadership Award for coordinating the Lawyers in the Classroom Project and for his involvement in several other programs through his roles as membership director and Civics Education Committee co-director.



Star of the Year Award

Aigne Goldsby, Goldsby Law PLLC, and **Ronald J. Houde, Jr.**, Ouellette Deganis Gallagher & Grippe LLC, received a Star of the Year award for their work as the YLS diversity directors, raising awareness for diversity, equity, and inclusion within the legal profession. They organized CLE programs that discussed issues regarding hate speech and organized a night of networking that encouraged difficult conversations about current social issues and racial injustice.

Megan Wade, Sexton & Company LLC, was recognized with a Star of the Year award for her service as the Appellate Practice Committee co-chair and for advocating for an amendment to the YLS Rules of Professional Responsibility to expressly prohibit discrimination and harassment in the practice of law.

Sara Bonaiuto, Cohen and Wolf PC, received a Star of the Year award for her work in her role as Business Law Committee co-chair and as a liaison with the CBA Lawyer Well-Being Committee. She assisted in the planning of several well-being programs for the YLS, including events for Lawyer Well-Being Week.

Benjamin Schimelman, United Healthcare, was recognized with a Star of the Year award for his service as the Insurance Law Committee co-chair and his work in planning the YLS year-end membership event at Lyman Orchards.

Christopher DeMatteo, DeMatteo Legal Solutions, received a Star of the Year award for his work as Criminal Law Committee co-chair and for planning and moderating a three-part Legal Entrepreneur CLE Series to assist those looking to open their own firm.

IN MEMORIAM

David L. Belt passed away on June 26 at the age of 77. Attorney Belt attended Yale University and went on to serve in the United States Army as a military intelligence officer, including a tour of duty in Vietnam between 1966 and 1967, where he was awarded the Bronze Star Medal for Meritorious Achievement. After his service, he attended Yale Law School. Attorney Belt, a commercial litigator, practiced law in the New Haven area for more than 50 years, most recently as a member of Hurwitz Sagarin Slossberg & Knuff LLC. He was also an adjunct professor at the Quinnipiac University School of Law. He worked on many publications, including as co-author of "Connecticut Unfair Trade Practices, Business Torts and Antitrust, Vol. 12" of the *Connecticut Practice Series*, and authored numerous *Connecticut Bar Journal* articles; he served as a senior topical editor on the Connecticut Bar Journal Board of Editors.



quently became a partner of a Hartford firm, in charge of all tax operations, eventually opening his own firm in the Greater Hartford area until age 80, when he retired from full-time active practice.

Hubert J. Santos passed away on June 22 at the age of 76. He was a graduate of the University of Hartford and the University of Connecticut Law School. Attorney Santos began his legal career at Updike, Kelly and Spellacy and went on to become the first federal public defender in the District of Connecticut in 1972. Since 1974, he had practiced with his own firm in Hartford and tried a broad variety of civil and criminal cases in state and federal courts, including all types of criminal defense cases, trade secrets, personal injury matters, death penalty litigation and business disputes. In 1978, he was appointed as corporation counsel for the City of Hartford and in 1986 he was appointed as an original member of the Judicial Selection Commission. He has lectured in trial practice as a member of the adjunct faculty of the UConn School of Law and has received numerous awards throughout his legal career.



Jane Kinney-Knotek passed away on July 11 at the age of 69. She graduated from SUNY College Buffalo, Niagara University, and Western New England University School of Law. She dedicated her legal career to serving the low income population while working at Communities Law Center and Statewide Legal Services of Connecticut, where she spent the last 18 years. Attorney Kinney-Knotek also served as a tribal prosecutor for the Mashantucket Pequot Tribal Nation where she represented the tribe's interest in family and juvenile matters in Connecticut Superior Court. Throughout her career, she was a dedicated legal advocate and friend and mentor to her peers.

Simon John Malinowski passed away on June 13 at the age of 88. He received a BS degree from the UConn School of Business Administration and received a commission as a lieutenant in the US Air Force Reserve, serving two years on active duty during the Korean War conflict, and was promoted to the rank of captain. Attorney Malinowski was later employed as a tax specialist at a major international CPA firm and went on to earn a JD degree from UConn Law School. He successfully passed both the Connecticut Bar exam and the Connecticut CPA exam that same year. He subse-



John F. Spindler passed away on June 3 at the age of 91. He graduated from the University of Michigan College and obtained his JD from the University of Michigan School of Law. Attorney Spindler was commissioned as a second lieutenant in The Quartermaster Corps of the Army through ROTC and was called to active duty. He transferred to the Army Judge Advocate General Corps and served in the Procurement Branch of the Litigation Division in the Office of the Judge Advocate General in the Pentagon (1954-1956). Attorney Spindler began his career as an attorney in 1956 when he joined Cummings & Lockwood as an associate and went on to become partner; his special focus was breaches of fiduciary duty by trustees and fights for control of both publicly and privately held corporations. He enjoyed mentoring young lawyers in legal analysis and writing and often consulted with his partners on issues of professional liability and ethics. He served as a member of the Ethics Committee of the Connecticut Bar Association.



Constance Baker Motley Centennial Commemoration

Hon. Constance Baker Motley, born and raised in New Haven, was recognized by Resolution of the United States House of Representatives of the 110th Congress in 2007 for her “lifelong commitment to the advancement of civil rights and social justice.” Judge Motley was the first female staff attorney of the NAACP Legal Defense and Education Fund (LDF), hired by then Chief Counsel Thurgood Marshall. She argued and won many of the defining cases in the civil rights movement, including those to desegregate schools and universities, housing, transportation, and public accommodations. Judge Motley later became the first Black woman appointed as a federal judge, rising to chief judge of the United States District Court for the Southern District of New York.

Throughout her life, Judge Motley maintained her deep roots in Connecticut. A graduate of Hillhouse High School, she married her husband Joel W. Motley, Jr. at Saint Luke’s Episcopal Church in New Haven, where her family held her funeral nearly 60 years later. She maintained a home in Chester, where she spent weekends and interwove her Connecticut life with her legal career, inviting civil rights activists as well as her court clerks and staff throughout her years on the federal bench to her home for legal discussions and dinner parties. An integral part of the Chester community, she was a lifelong member of the Chester Historical Society and maintained many close relationships with her fellow Chester residents.

To honor Judge Motley’s career and legacy, the CBA and Connecticut Bar



Hon. Constance Baker Motley

Foundation launched the Constance Baker Motley Speaker Series on Racial Inequality in July of 2020, and held a total of 13 events during the 2020-2021 bar year. The series will continue with a centennial commemoration of the birth of The Honorable Constance Baker Motley in September. Visit ctbar.org/MotleySeries for further information.

PEERS AND CHEERS

Robinson+Cole is pleased to announce the addition of **Benjamin M. Daniels** as counsel in the firm’s Business Litigation Group. Daniels’ practice focuses on complex litigation and education law. He will be resident in the firm’s Hartford and New York offices.

Scott Brian Clark has joined Day Pitney as chair of its Multistate Tax practice, based in the Stamford. Attorney Clark is well-versed in the intricacies of tax planning and has handled a vast number of diverse high-profile cases and issues and has significant tax experience representing both prominent entertainers and personalities, ultra-high net worth individuals, and well-known domestic and multi-national companies.

Kahan Kerensky Capossela LLP is pleased to announce **Brandon B. Fontaine** as an associate attorney at the firm. He is an experienced advocate for clients on a variety of family matters, including all aspects of divorce and custody actions and his practice will also focus on appellate, having handled numerous complex matters before the Connecticut Supreme and Appellate Courts.

State of Connecticut Department of Veterans Affairs Commissioner **Thomas J. Saadi**, who serves as a Judge Advocate in the U.S. Army Reserves, was promoted to the rank of Lieutenant Colonel. He has served as commissioner of the Department of Veterans Affairs since 2017, where

he previously served as chief of staff and general counsel. Lt. Col. Saadi is a first-generation Lebanese American, making him the first Arab American commissioner of Veterans Affairs in Connecticut.

Murtha Cullina LLP is pleased to welcome **Raquel Herrera-Soto** as an associate in the firm’s Regulatory Department. She is a member of the Energy, Environmental and Utilities Practice Group, represents clients in a wide range of energy and environmental matters, and has extensive experience with state and federal compliance regulations and permitting processes.

Bruce Loudon, of Loudon Katz & McGrath, received a Lifetime Achievement Award from the Connecticut Law Tribune at its annual award ceremony, for “having made a lasting impact on the Connecticut legal community.” Attorney Loudon was one of two lawyers who spearheaded the establishment of a statewide grievance system in the 1970s. In the 1980s, he developed and taught a family law seminar at the UConn Law School and has been a national pioneer for over three decades on handling divorce cases through a non-adversarial approach. ■

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



Ralph J. Monaco

Ralph J. Monaco, the CBA's 87th president, passed away suddenly on Saturday, July 10. Attorney Monaco served as president during the 2010-2011 bar year, and was, at the time of his service, the second youngest president in the history of the Connecticut Bar Association.

Attorney Monaco was a champion of civics education, founding the Civics Education Committee and continuing to serve as a co-chair and member for many years thereafter. Most recently, he served as co-chair of the Rule of Law Committee, which held its fourth Rule of Law Conference on June 28, and the Financial Impact on the Legal Profession Subcommittee of the COVID-19 Task Force, which provided much-needed information, resources, and advocacy for the profession at the height of the pandemic. Attorney Monaco served as chair of the Modernizing Lawyer Referrals & Law Firm Models Subcommittee of the State of the Legal Profession Task Force as well as legislative liaison of the Litigation Section. He previously served as chair of the Opioid Taskforce, as a member of the House of Delegates and Board of Governors, and as chair of the Young Lawyers Section.

As a partner at Conway Londregan Sheehan & Monaco PC, Attorney Monaco practiced in civil and commercial litigation, with an emphasis in the areas of personal injury, wrongful death, product liability, medical malpractice, insurance litigation, municipal litigation, and workers' compensation. He was a Board Certified Trial Lawyer and had extensive experience with jury and court trials in both federal and state court.

Attorney Monaco served on the Jury Committee of the Chief Justice's Public Safety and Trust Commission and was appointed by Connecticut Secretary of the State Denise W. Merrill to serve on the Civics Commission. He was an active member of the Connecticut Trial Lawyers Association, Connecticut Bar Foundation, and New London County Bar Association.

Attorney Monaco's sudden passing is a deep loss to our profession and to our community, and we will miss his wise counsel, his thoughtful and impactful leadership, and his warm and reassuring presence. He is survived by his wife, Dina, and two daughters, Abby and Anna. ■

REFLECTIONS FROM COLLEAGUES

The passing of Ralph Monaco is tragic and unexpected. My office worked with Attorney Monaco for a decade, shepherding Law Day Programs as well as our partnership with CBA through the Volunteer Attorney program. Ralph was a strong supporter of civic education through his work on the Civic Education Committee of the CBA. I grieve with his family and all who knew him. His legacy of public service will live on through the lives of countless students who benefitted from those programs.

—Connecticut Secretary of the State
Denise W. Merrill

Attorney Ralph Monaco was a dedicated member of the CBA, leading numerous important initiatives before, during, and after his service as president. He was a true role model for so many of us within the profession, and always exhibited the highest levels of professionalism and civility. His record of service and leadership within our profession is truly inspiring. Ralph was always willing to answer the call to service, and led highly effective CBA initiatives focused on the most pressing issues of our times. All of us feel his absence deeply, and will miss his warmth, wisdom, and kindness.

—Cecil J. Thomas
2021-2022 CBA President

Ralph wasn't just a colleague but a great friend for over 25 years. I will carry fond

memories with me of the many NY Giants games we attended with his big Italian family in the Meadowlands and his eagle in golf the last time we played together. His reputation as a tireless advocate for his clients is well-known throughout the statewide Judiciary. Whether he was litigating difficult cases against Louisville Slugger, Ski Sundown, Rhode Island Station Fire defendants or handling small scale matters for friends, Ralph gave 100% effort to the case. His willingness to mentor younger lawyers and volunteer his time to his community and Bar Associations brought out his character of putting other's needs before his own—truly admirable and the likes not often seen in today's world.

—Daniel J. Horgan
CBA President-elect

"[T]here's no Connecticut lawyer who has done more than Ralph to advance the legal profession's responsibility to aid in education about civics and the rule of law. Ralph used his influence...to bring much needed attention to national and statewide deficiencies in civics education.... Ralph made civics education initiatives the centerpiece of his CBA presidency, beginning with a gala event featuring United States Supreme Court Justice Sandra Day O'Connor and her then-new iCivics project, and culminating in a much needed elementary

teachers' training session. Ralph's leadership led to the very successful interactive Law Day programming that the CBA Civics Education Committee organizes to this day, and spurred the organized bar to actively support other civics education projects, such as the Civics First high school mock trials where he both coached and judged.

—Jonathan Weiner

Ralph was my mentor, my friend and my hero. We are all blessed to have witnessed his extraordinary legal ability, utter dedication to the legal profession and most importantly the love for his family, friends and community. As a young lawyer during our days in the YLS and all the way through his most recent commitments to civics and the rule of law, he was a leader I always followed because he knew the way. While he will be profoundly missed, Ralph's inspirational legacy will be in our hearts and minds forever.

—Lawrence F. Morizio

Ralph was a lawyer's lawyer—one of the finest trial lawyers in the state and an amazing person. Ralph was chair of the CBA YLS a few years before me and was always a role model to me of what I wanted to do to follow in his footsteps. There was never a time he didn't have a smile on his face and he brought such a graciousness and care to everything he did.

—Daniel A. Schwartz

LAWPAY[®]

AN AFFINIPAY SOLUTION

POWERING PAYMENTS FOR THE LEGAL INDUSTRY

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

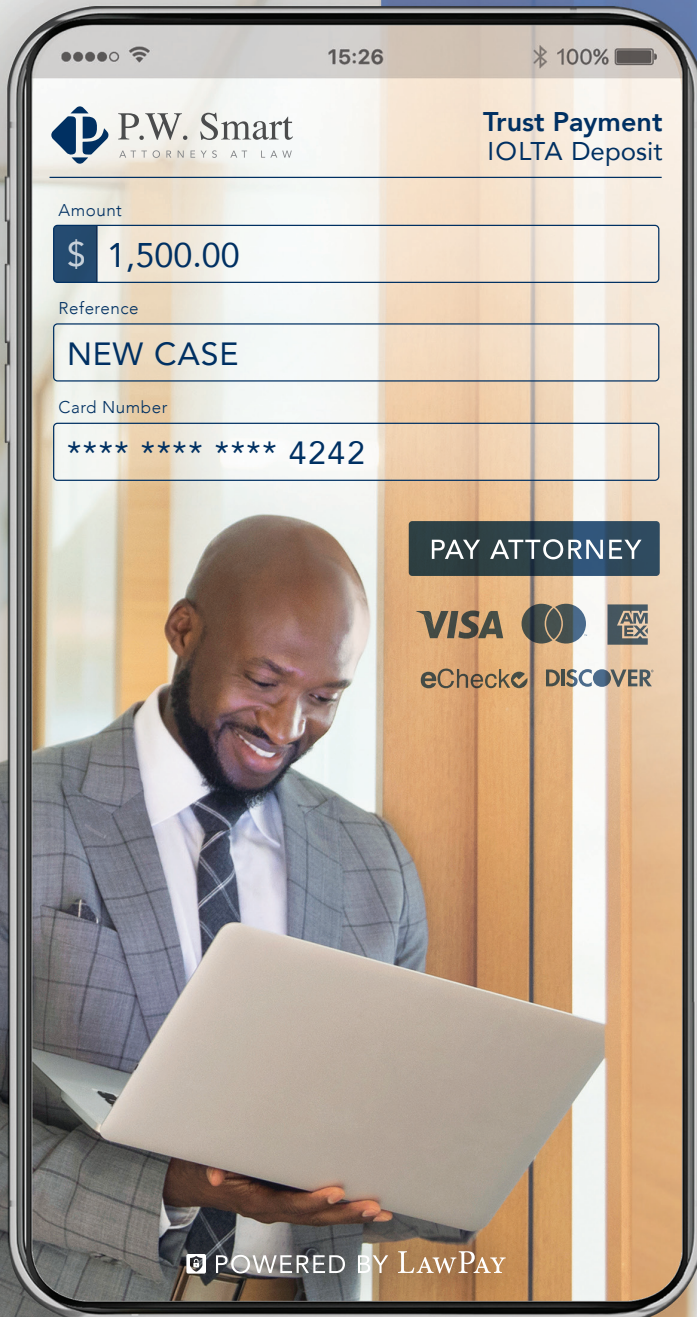
The ability to accept payments online has become vital for all firms. When you need to get it right, trust LawPay's proven solution.

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.



ACCEPT MORE PAYMENTS WITH LAWPAY
877-737-1297 | lawpay.com/ctbar



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

CBA Members Now Have Access to Fastcase

FOLLOWING THE MERGER OF FASTCASE AND CASE-MAKER in January 2021, CBA members can now conduct legal research using Fastcase—one of the largest legal online law libraries in the world.

As of this fall, access to Casemaker will no longer be available. CBA members can access Fastcase similar to how they previously accessed Casemaker, by logging on to the CBA website and clicking on the Fastcase icon on the homepage or in the black navigation bar. Alternatively, CBA members can visit ctbar.org/Fastcase to access the platform.

Fastcase has numerous resources and support services available to help CBA members through the transition from using Casemaker Legal or Casemaker 4 to Fastcase. Pre-recorded videos that can be accessed on-demand to learn how to complete common tasks in Fastcase. Free, live webinars are available, through Fastcase, that will guide you through the transition. To access Fastcase's webinar schedule and the pre-recorded webinars, visit ctbar.org/Fastcase-about.

What is Fastcase?

Fastcase is the leading next-generation legal research service that puts a comprehensive national law library and powerful searching, sorting, and data visualization tools at your fingertips. It includes case law, statutes, regulations, court rules, constitutions, and law review articles. More than 1.1 million lawyers nationwide have a subscription to Fastcase's legal research tools. In addition to primary legal research, users will find more than 750 books, treatises, and journals. Fastcase also integrates with Docket Alarm's briefs, pleadings, and motions database and syncs with America's most popular legal research app, on iOS and Android. Their powerful sorting algorithms bring the best results to the top of the list every time—making research powerful, fast, and easy. Find the cases you need, no matter what kind of research you are performing.



Law Street Media

Law Street Media aims to revolutionize legal news by providing smart, accessible, and practical content in a modern way. Using the latest in research and analytics tools, our content is ahead of the curve and enriched



with the latest insights, and they are just getting started. Law Street Media is available free to all CBA members.



Docket Alarm

Fastcase also integrates with Docket Alarm's briefs, pleadings, and motions database. Docket Alarm comes with everything attorneys need to reduce errors and improve work product quality. It has advanced searching, document delivery, deadlines, and calendaring, analytics, automation, and exporting, case law integrations, enterprise tools, and more. Docket Alarm is available for an additional fee paid directly to Fastcase.



NextChapter

Automation is key to smarter legal practice. NextChapter's automation and workflow tools make form-based practice areas smarter. Fastcase data feeds and APIs can easily integrate into client dashboards for a centralized workflow experience. NextChapter's web-based bankruptcy software program allows you to prepare Chapter 7, Chapter 11, and Chapter 13 bankruptcy cases on any browser, any device, any time. CBA members can utilize Next Chapter for an additional fee paid directly to Fastcase. ■

Fastcase's Outreach Team is available to assist you by phone at (866)773-2782 or email at support@Fastcase.com to answer any questions regarding the platform. Additional resources regarding the platform can be found at Fastcase.com/support.

Lawyers in Libraries:

CT Lawyer interviewed Kyle LaBuff, a 2019-2021 CBA Presidential Fellow and Deputy Assistant State's Attorney Division of Criminal Justice in Rocky Hill, who began the Lawyers in Libraries pro bono program. Read on to learn more about the program, its inception, and how you can get involved.

CT Lawyer: Why did you want to start the Lawyers in Libraries program?



Kyle LaBuff

Kyle LaBuff: There is a need in our state for those who cannot afford an attorney, yet are challenged with crippling legal issues. We have a tremendous wave of evictions and immigration challenges. This program is designed to offer those in need hope by actually *meeting* an attorney face-to-face. For example, we meet with many senior citizens who believe they have a legal issue and do not feel comfortable using an online platform.

They are more at ease speaking to an attorney in person and this allows clients to come in and show us written documentation that is a part of their case which they may not be able to upload or translate with an online platform.

CL: What is your goal for the program?

KL: The goal is to be one avenue for those in need to utilize in these trying times. In addition to providing legal assistance, it also allows attorneys who were just sworn in to gain experience in areas where they studied in law school and to obtain client management skills, including, where appropriate, to tell a client that they do *not* have a case. A final goal of the program is to be in every county of the state. This allows those in need easy access to the program.

CL: How does the program work?

KL: Participating libraries will provide a room or rooms for clients to meet with volunteering attorneys. The clients will need to call ahead to the library to schedule an appointment, as these clinics are only once per month, for around a two-hour duration. When they call to schedule the appointment, they will tell the library what kind of legal issue they have, such as immigration, family, contract, etc.

Once they check in, they will sign a release form and then meet with the volunteering attorneys. The clients are allocated 20 minutes to speak to the attorneys and show them any documentation relative to their case. The attorney will then provide legal advice.

CL: How can a member get involved? What is the time commitment for volunteers?

KL: A member of the CBA can certainly reach out to me or President-elect Dan Horgan. We will place the volunteer at a library that is convenient for them. The time commitment is minimal—as the program is now, each library will have one clinic a month which will run from around 6:00 p.m. to 8:00 p.m.

CL: How did you select the cities you included? How will you select additional cities?

KL: Stamford and New London were cities that were able to use their physical structure in a way that did not violate COVID-19 restrictions. The cities were selected based on population, need, and location in the state so that this resource can be accessible no matter where one lives in Connecticut. Norwich just opened in September, and I am hoping Danbury and Torrington will open up in the fall. We will be hopefully opening up at Middletown soon too.

CL: How are volunteers paired with program participants?

KL: Volunteers are assigned to the library that is closest to them. Once assigned to the library, the volunteers can see the list of clients in advance, so they can determine if there is a potential conflict of interest. If there is a conflict of interest, then the client can be passed to another volunteer attorney. So far, we have multiple volunteer attorneys at each clinic, so this has not been an issue.

CL: What is your vision of the future of the program?

KL: Twofold: First, to have this program in all of the major cities in Connecticut and in every county. This way, no matter where one lives, they can easily travel to a clinic. Secondly, to have the volunteer attorneys have the knowledge of *other* pro bono organizations where, if the client needs more help than this program can provide, we can refer the client to an organization built to represent the client from start to finish. For example, if someone has an eviction case, we can send them to Statewide Legal Services so they can quickly obtain the help they need. Since Lawyers in Libraries is new, it will certainly grow and could change its function as time develops.

Attorneys who wish to provide pro bono services through the Lawyers in Libraries program should e-mail probonoclinic@ctbar.org. ■

Volunteer Today!



Enhancing Pro Bono

CREATION OF A WORKABLE PRO BONO REPRESENTATION RULE

On August 2, 2021, D. Conn. Bankr. L. Civ. P. 9083-6 became effective. Local Rule 9083-6 (and related Appendix P, which provides the operative procedures of the program) creates a volunteer lawyer pro bono program for consumer Chapter 7 cases, and is the product of a lengthy collaboration involving Chief Judge Julie A. Manning and Judges Ann M. Nevins and James J. Tancredi of the United States Bankruptcy Court in Connecticut; the CBA's Commercial Law & Bankruptcy Section largely working through its Pro Bono Committee, which is also the Panel Administrator ("PA") of this pro bono program under the Local Rule; and Statewide Legal Services of CT, Inc. ("SLS"). The goal of this collaborative effort was to address the ever-increasing need for competent bankruptcy counsel in consumer bankruptcy matters. In addition, the efforts of this working group have created a comprehensive and uniform process to increase lawyer participation in the pro bono volunteer program, as set forth in detail in Appendix P to the new Local Rule. Most critically, this entirely new Local Rule helps to ensure that the most indigent individuals will receive pro bono legal assistance from experienced attorneys, enhancing the prospects for success in their efforts to obtain relief under Chapter 7 of the Bankruptcy Code.

Representation in Consumer Bankruptcy Cases

BY MATTHEW K. BEATMAN AND
THOMAS A. GUGLIOTTI



HOW THE NEW RULE WORKS TO PROMOTE PARTICIPATION

The unique structure of Local Rule 9083-6 is creative in how it assists financially strapped consumers seek Chapter 7 Bankruptcy relief, and encourages more attorneys to participate in providing the necessary professional assistance. As more fully explained in the Local Rule and Appendix P, www.ctb.uscourts.gov/local-rules-effective-august-2-2021, there are two sections to the volunteer pro bono attorney pane (the “Panel”) for which an attorney can register. Section 1 of the Panel is for services to be provided in preparing and filing Chapter 7 petitions. Section 2 of the Panel is for representation in adversary proceedings and contested matters. Volunteer attorneys can select either or both of these two Sections in which they desire to participate. In addition, a volunteer attorney can designate which of our three Bankruptcy Courts into which they would be willing to practice under this new program. There is no restriction against a volunteer participating in more than one court. Members of the two Sections are limited in the number of active cases they would be asked to handle each year (capped at no more than four) and retain discretion whether to accept or reject a particular referral. Appendix P and Local Rules also details the process for withdrawal of representation once an appearance has been filed, should that become necessary. Potential volunteer attorneys will be interested

to note that participation in either Section of the Panel also satisfies the requirement for pro bono service in the United States District Court for the District of Connecticut as otherwise required under D. Conn. L. Civ. R. 83.10 for the year in which such services were performed.

WHO CAN PARTICIPATE IN THE PROGRAM

The program is open to all qualified attorneys admitted to the United States Bankruptcy Court in the District of Connecticut and is not limited to CBA members. Attorneys who wish to participate in this bankruptcy pro bono program should complete the application form on the CBA website or by using the following direct link:

<https://members.ctbar.org/general/custom.asp?page=AttorneyApplicationforProBonoChapter7>

PRO BONO CLIENT SCREENING

Potential pro bono clients are initially screened by SLS using structured financial standards established by the PA. SLS then makes a referral to a Section 1 or Section 2 volunteer attorney based upon the representation required and the practice location preference indicated by the volunteer attorney. The PA has oversight over the SLS’s screening process as well as



Providing **VALUE-DRIVEN**
Title Resources, Support, & Education To
Connecticut Real Estate Attorneys.

CATIC

building partnerships together.

www.CATIC.com

Rocky Hill (860) 257-0606 | Hartford (866) 462-2842 | Norwalk (203) 840-1141

the solicitation and development of Section 1 and Section 2 volunteer attorneys.

AVAILABLE FUNDING FOR EXPENSES RELATING TO A PRO BONO MATTER

In addition, and subject to certain guidelines available from the PA, and court oversight, there are also resources available to the pro bono counsel for reimbursement of non-routine expenses and disbursements associated with handling an individual bankruptcy pro bono matter. This resource is primarily the “Krechevsky Fund,” which was established by the Commercial Law and Bankruptcy Section some time ago, named in honor of the late Hon. Robert L. Krechevsky, who presided over the Hartford Bankruptcy Court for many years. Resources are limited, so counsel should carefully assess the need and limits for each reimbursement request.

WHY GIVE PRO BONO SERVICE

Apart from service to the profession and the public, there are many reasons why attorneys should consider providing time dedicated to the voluntary service of the financially less fortunate Connecticut residents. The recent crushing and continuing effects of the COVID-19 pandemic is but one reason. There are many other personal benefits, including additional experi-

ence in the Bankruptcy Court as well as enhancing one’s professional reputation, developing opportunities, networking, and fostering a greater sense of community and purpose. Not to mention the mandate of Rule 6.1 of the Connecticut Rules of Professional Conduct.

It is hoped that every bankruptcy attorney will consider volunteering for this program. We encourage you to join today. Further information can be obtained by contacting a member of the Panel Administrator by writing to ProBonoAdministrator@ctbar.org. ■

Matthew K. Beatman is a principal at Zeisler & Zeisler PC in Bridgeport. For over 30 years, Attorney Beatman has acted as lead counsel to individual and corporate debtors, creditors’ committees, trustees, secured and unsecured creditors, investors, lessors, acquirers of assets, and financial institutions in complex workout, restructuring, insolvency and bankruptcy matters.

Thomas A. Gugliotti is a principal in Updike Kelly & Spellacy PC’s Hartford office and is chair of the firm’s creditors’ rights practice. For over 45 years he has focused his practice on creditors’ rights, including all aspects of bankruptcy law, representation under Article 9 of the Uniform Commercial Code, workouts, restructuring, foreclosures, real estate litigation, commercial lease, and franchise disputes.

Attorneys Beatman and Gugliotti are long-time members of the Commercial Law & Bankruptcy Section of the Connecticut Bar Association, and have served as Chair of the Section.

IT TAKES A STEADY TEAM TO NAVIGATE THROUGH PERILOUS WATERS.



In times of economic uncertainty and stock market volatility, you need a trusted team to help you set your financial course.

At Bradley, Foster & Sargent, we have assisted clients for over 25 years by constructing customized portfolios that have weathered the storms.

Let us help you navigate toward your life and investment goals.

Bradley, Foster & Sargent, Inc.
Investment Management

PORTFOLIO MANAGERS

Robert H. Bradley | Cameron H. Burns | Rosa Y. C. Chen | S. Tucker Childs | Timothy H. Foster | David P. Korzendorfer
Keith G. LaRose | Roger H. Manternach | Jeffrey G. Marsted | Gregory M. Miller | William R. Peelle, Jr. | Josh Peteet | Thomas D. Sargent

860-527-8050 | www.bfsinvest.com

HARTFORD, CT | WELLESLEY, MA | WEST PALM BEACH, FL



It Is Time to Take the PRO BONO CONNECT PLEDGE

By ERIN O'NEIL-BAKER

SISTER MARY JUDE NAVIGATED BETWEEN THE church's crowded waiting area and the conference room where a volunteer intake attorney met with a father and son who faced deportation. The father and son recently fled violence, poverty, extortion, and death threats in Guatemala and now live in Willimantic. A Quiché language translator was present because neither Spanish nor English is the family's first language. They nervously and eagerly waited to hear if they have a possible asylum case or perhaps the son can seek a Special Immigrant Juvenile visa. The most important question they wanted answered, however, was whether they will have an attorney with them for their upcoming hearing in the Hartford immigration court. The idea of appearing in court alone was terrifying for the father, who feared returning to Guatemala and understood that he could not win his case on his own. At the end of the meeting, Sister Mary Jude escorted the family to the door, nodded, and said, "Yes, an attorney will be assigned to you." But she fretted: where will she find an attorney for them?

Many people in Connecticut facing homelessness, deportation, violence, and financial crisis need attorneys but cannot afford representation. Those who have no hope of a level playing field turn to legal aid services for help. The need, however, surpasses the ability to provide representation to all who seek it. CBA members can help alleviate that need through Pro Bono Connect, a CBA program that allows volunteer attorneys to connect with legal service providers to be assigned a pro bono case. Pro Bono Connect also offers volunteers relevant, on-demand trainings to prepare for pro bono representation. The program was developed by the Legal Aid Sub-Committee of the CBA Covid-19 Taskforce in 2020 and currently has 52 volunteer attorneys who have signed up.

DON PHILIPS

According to Don Philips, the pro bono attorney manager at Statewide Legal Services (SLS) of Connecticut, CBA pro bono attorneys are "vital to SLS' mission and ability to provide high quality, pro bono services to its clients." In 2020, SLS received over 50,000 contacts for legal services and generally has approximately 200 active cases that are assigned to pro bono attorneys. "Pro bono attorneys provide extremely valuable services for our clients, but the need for legal help far exceeds our ability to refer most clients to a volunteer attorney. We are always looking to recruit and grow our pro bono panels," Philips explained. Pro Bono Connect helps bridge the gap between CBA volunteers and the needs of SLS. "The relationship between the CBA and SLS is so important because it is crucial for SLS to maintain a robust panel of pro bono attorneys," Philips explained.

MELVIN A. SIMON

For CBA member Melvin Simon of the law firm Cohn, Birnbaum, Shea, "The license to practice law is a privilege. There is a responsibility to make sure those members of society [in need of legal representation] are not shut out of the process." That responsibility led Simon to take the Pro Bono Pledge and agree to take an eviction defense case. "I have been doing pro bono work in the housing area since 1983. I recognized that there are large numbers of tenants that could use my knowledge and skills and I wanted to help those who can't afford an attorney," Simon said.

CILEENA TERRA

Volunteering through Pro Bono Connect is not only an option for experienced attorneys. Newly licensed attorney Cileena Terra, an associate at Biller, Sachs, Zito & LeMoult, decided



to take the Pro Bono Pledge in order to assist low-income individuals who need representation in immigration and bankruptcy cases. Terra, who represents clients in homeowner's insurance claims and plaintiff's personal injury claims, is excited to "have the opportunity to get training and become well versed in new areas of law." She has received full support from her firm to volunteer her time through Pro Bono Connect and is "looking forward to working directly with clients and getting hands-on experience with immigration cases."

Don Philips acknowledges that "there is a significant justice gap in our state and anything we can do to close it by increasing volunteerism is important. We are extremely grateful for the assistance and support we get from the CBA." If you are interested in taking the Pro Bono Pledge, "Think about the time you can commit and the type of legal issues that interest you. If going to court is not your thing, there are non-court opportunities such as drafting powers of attorney, simple wills, or working in a legal clinic helping clients to draft court forms. Even if you have a little bit of

time there is an option for you and training is always available," Philips said. "I encourage you to look. Get into Pro Bono Connect and think about what you want to do. If you're still unsure, please contact me and I'll help you to find a program that might work for you," Philips added.

As attorneys, we have an ethical obligation to provide pro bono legal representation to those in need. Make the connection now with a person in need of your help. Use Pro Bono Connect to volunteer your time and benefit from free training. Extending ourselves to aid others is part of our calling as a profession. Please help bridge the justice gap and join the fight by taking the Pro Bono Pledge and lend your legal talents to Connecticut's most vulnerable residents. ■

Erin O'Neil-Baker is an immigration attorney practicing in Hartford. She is the co-chair of the Immigration Committee, co-chair of the Pro Bono Connect sub-committee, and former CBA Secretary.

READY TO TAKE PRO BONO PLEDGE?

Here are all the details on how to begin, take the pledge, access the training, and be assigned a case.

What is the sign-up process?

Navigate to ctbar.org/ProBonoConnect to start the process. Under "For Attorneys," click on the "Learn More" button and then select the "Sign Up Now" button. Fill out the online form, where you will be able to provide your basic contact information and the type of case you would like as well as your preferred geographical area. Once you submit the form, your name and selections will be shared with Statewide Legal Services (SLS), which will contact you with appropriate case referrals.

What is the Pro Bono Pledge?

The Pro Bono Pledge is a personal commitment to take at least one pro bono referral per year. If you take the pledge, you will be able to access on-demand

webinar training videos and supporting materials relevant to the case referral preferences you selected, for free. The trainings are available for one year after signing up.

What areas of law are available?

Landlord/Tenant (eviction defense, security deposits), Immigration Law (Removal Defense, Asylum and SIJ), Family Law (divorce, custody, etc.), School Expulsions, Employment (Unemployment and Employment Discrimination), Wills/Health Care Directives/Power of Attorney, Social Security, and Consumer cases (debt collection, creditor harassment and bankruptcy).

How do I access the trainings?

Once you have taken the pledge, the trainings will appear automatically in your CBA Education Portal Dashboard. If you chose not to take the pledge, you

may pay to access the trainings within the "CBA Pro Bono Connect" portion of the CBA Education Portal Course Catalogue.

What trainings are available?

There are 14 on-demand webinar trainings. Topics include eviction and foreclosure defense, emergency custody hearings, domestic violence protective and restraining orders, introductions to immigration law, immigration detention and bond hearings, consumer bankruptcy, auto repossessions, and veterans administration benefits.

What about malpractice insurance?

The CBA does not provide malpractice insurance coverage. However, some of Connecticut's legal aid providers are able to offer malpractice insurance coverage with a case referral.

RECENT PRO BONO RULE CHANGES

A recent rule change to Rule 5.5 allows emeritus and out-of-state attorneys in good standing to provide pro bono legal representation under the supervision of a legal aid organization or bar association project.

Changes to Rule 1.8(e) allows attorneys to provide modest financial assistance for basic human needs to indigent clients receiving pro bono legal assistance.

Payment of Indigent Client's Litigation-Related Expenses

NOVEMBER 18, 2020

The question presented is whether an attorney who works for the State of Connecticut's Division of Public Defender Services may, consistent with our Rule of Professional Conduct 1.8(e), pay for certain litigation-related expenses of an indigent client "including, but not limited to, providing the...client a bus pass, train ticket, hotel room, meal, or clothing to wear for a court trial."

The answer, in short, is yes, because the financial assistance listed by the inquirer—new clothes for a court appearance, a train or bus ticket to get to court, and a hotel room when the client must stay overnight near the court¹—relate to the litigation and pertain to an indigent client, and hence are expressly permitted by Rule 1.8(e)(2).

Rule 1.8 is entitled "**Conflict of Interest: Prohibited Transactions.**" Subsection (e) provides:

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

- (1) A lawyer may pay court costs and expenses of litigation on behalf of a client, the repayment of which may be contingent on the outcome of the matter;

- (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

In the situation presented in the inquiry before us, there is no expectation of repayment; hence, the first exception to the general prohibition on financial assistance to a client is not applicable. The second exception expressly permits attorneys to pay both "court costs" and "expenses of litigation" on behalf of an indigent client. Both exceptions apply to all attorneys and are not limited to those undertaking a pro bono representation or working for a non-profit organization. Thus, they apply to attorneys working for a government agency such as the State of Connecticut Division of Public Defender Service. We understand that all clients of a public defender in Connecticut are indigent, and it appears that virtually all of the payments the inquiry asks about are payments for expenses related to litigation.² Hence, we conclude that such payments would be permissible under the second exception in Rule 1.8(e).

This Committee has previously determined that the term "expenses of litigation" should be narrowly construed to encompass only those expenses that are integral to the lawsuit itself, such as sheriff's fees, an appeal bond, or an MRI in a personal injury action performed for the



purposes of establishing causation. See Informal Opinion 93-12 (1993) (*Attorney Advancing Cost of Client's Medical Test*). Likewise, travel and hotel expenses to enable the indigent client to attend a court hearing may be paid by the attorney. See Informal Opinion 00-21 (2000) (*Right of Lawyer to Pay Client's Transportation and Lodging to Attend Deposition*). On the other hand, transportation expenses not directly related to the litigation, such as to allow the client in a personal injury case to obtain medical treatment, are not within the exceptions of Rule 1.8(e). See Informal Opinion 00-21 (citing *Attorney Grievance Commission of Maryland v. Kandel*, 563 A.2d 387, 389 (1989)), which held that living expenses, including transportation for medical treatment, were not "litigation expenses"). We have also opined that payment of a DMV license restoration fee is not an expense of litigation and therefore is not permissible under Rule 1.8(e). See Informal Opinion 04-02 (2004) (*Payment of License Restoration Fee by Lawyer*). Although there is no prior ethics opinion on point in Connecticut about clothes, it is reasonable to conclude that the clothes worn by an indigent client may have an impact on the judge, witnesses, other attorneys, and a jury. Hence, we conclude that an attorney may pay for the clothing a client wears to a court or other litigation appearance.

As this Committee has previously noted, Connecticut's Rule 1.8(e) does not currently have a general "humanitarian ex-

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

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

ception” to the prohibition on providing financial assistance to a client. See Informal Opinion 90-03 (1990) (Financial Assistance to a Client) (concluding that a \$300 loan to a client to avoid a home foreclosure is not a litigation expense); Informal Opinion 00-21, *supra* (citing Informal Opinion 90-03 approvingly); Informal Opinion 11-10 (2011) (Humanitarian Financial Assistance to Client) (again noting the absence of a “humanitarian exception” in Rule 1.8(e) and concluding that such a payment “made through the medium of a church or done anonymously would not change the essential character of the payment”).

We understand that some states do permit payments to indigent clients beyond those currently permitted by Connecticut. See, e.g., *Louisiana State Bar Association v. Edwins*, 329 So. 2d 437, 446 (La. 1976); *The Florida Bar v. Taylor*, 648 So. 2d 1190 (Fla. 1994). On June 18, 2020, New York amended its counterpart to Rule 1.8(e) to allow lawyers undertaking a pro bono representation or working for a non-profit legal services organization to provide financial assistance to indigent clients. See 2020 Amendments to Rule 1.8(e) of the New York Rules of Professional Conduct. ABA Model Rule 1.8(e) also was recently amended to permit limited humanitarian assistance to indigent clients. The task of this Committee, however, is to interpret the Rules of Professional Conduct as adopted in Connecticut.

NOTES

1. We address “meal” payment *infra* note 2.
2. The one payment inquired about that may not be a litigation expense is for the client’s “meal.” We understand the question to be whether it is permissible to buy the client lunch now and then when the attorney and client are meeting. In these circumstances, we do not think the provision of or payment for the client’s meal amounts to “financial assistance” because it is de minimis and an ordinary part of civil discourse. See Informal Opinion 18-05 (Nominal Value Gift for Client Referrals) (stating that “a gift of such nominal value does not violate” Rule 7.2(c)); see also Commentary to Rule 1.8 (explaining that the Rule likewise does not prohibit clients from giving lawyers “a simple gift such as a present given at a holiday or as a token of appreciation”).

Maintaining Client Files and Original Wills When a Partner Departs



JANUARY 20, 2021

The Committee received an inquiry from an attorney, as partner in a law firm (“Requesting Partner”) regarding the ethical obligations owed to clients and former clients about the client’s files and original executed Wills when a partner leaves the firm (“Departing Partner”). The Requesting Partner provided the following facts: (1) the Departing Partner left the law firm to practice elsewhere; (2) at the time of departure, the Departing Partner sent “ballot” letters to clients soliciting consent to transfer the active clients’ files to the Departing Partner’s new firm; (3) some clients did not return the “ballot” or otherwise consent to transfer their active files to the Departing Attorney; and (4) the firm maintains clients’ files and former clients’ original executed Wills.

The Requesting Partner asked whether:

1. The Departing Partner is entitled to take the active clients’ files from the

firm at the time of departure where the clients did not return the “ballot” or otherwise consent?

2. The Departing Partner is entitled to take former clients’ original executed Wills and estate planning documents from the firm at the time of departure without notice to the former clients or client consent?

Rule 5.1(a) of the Rules of Professional Conduct (the “Rules”) requires attorneys with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all attorneys in the firm will conform to the Rules.

Rule 1.15 of the Rules imposes the affirmative duty upon an attorney to safeguard client property in the attorney’s possession. While this duty is most frequently applied in the context of an attorney’s handling of client funds or tangible

property, the Rule extends to *all* forms of client property, including a client's file and/or original executed Will. *See* CBA Informal Opinion 98-23 (concerning reasonable steps to safeguard file documents and original Wills).

The questions presented here underscore the importance of attorneys in a firm creating a file and record retention policy. Implementing and enforcing such a policy helps every attorney safeguard client confidences and organize information to permit effective representation and compliance with the Rules. Properly maintaining client files during representation and for an established time-period thereafter benefits the attorney, the law firm, and client. Ideally, attorneys inform their clients of the retention policy in the retainer agreement or file closing letter. *See* CBA Informal Opinion 10-07.

Rule 1.4(a)(3) of the Rules provides, in pertinent part, that "a lawyer shall . . . keep the client reasonably informed about the status of the matter," which includes the attorney's status and the location of the client's file. *See* CBA Informal Opinions 88-23, 97-14, 97-15 and 00-25 (confirming that an attorney's departure from a law firm is sufficiently noteworthy to warrant notice to the client).

In the Committee's view, the size of the firm, the sophistication of the client, and the nature of the client matter are relevant to the client's reasonable expectation with respect to who will act on the client's behalf when an attorney leaves the firm. For example, the reasonable expectation of a corporate client retaining a mid-size firm for representation in multiple contract matters may differ significantly from that of an individual client retaining an attorney in a two-attorney firm for representation in a custody dispute. In every situation the client's reasonable expectation under the circumstances is an important consideration in determining the timing, content, and method of notification.

Where a client engages the law firm and the firm advises the client that its professional staff will provide representation in

the client's matter, the client may understand that no particular lawyer in the firm will handle every aspect of the client's matter. However, where a client reasonably expects that a particular lawyer will handle the client's matter, the departure of that attorney is a significant development that triggers the duty to inform the client. Timely notification to the client regarding the departure of an attorney involved in the client's matter is critical to assist the client to decide who will represent him. *See* CBA Informal Opinion 00-25 (quoting ABA Formal Opinion 414 (1999)).

When fulfilling this duty to inform the client, partners at the law firm or the Departing Attorney may solicit the client's consent (in the form of a "ballot" letter) for transfer of representation and delivery of the former client's original Will and file to the Departing Attorney. If a client responds to a "ballot" that directs the transfer of the client's file, then the client's direction controls. Both the Requesting Attorney and the Departing Attorney must comply with the client's instruction. *See* ABA Formal Opinion 489 (12/4/19).

In response to Question #1 presented about the Departing Attorney's "ballot" sent to active clients about their files, if a client fails to return the "ballot" or otherwise respond with consent to transfer the client's file in an active or pending matter, neither the Requesting Attorney nor the Departing Attorney can assume consent to the transfer representation of the client (and the client's file) to the Departing Attorney. The client's silence cannot be construed as acquiescence under these circumstances.

If no "ballot" is received, it's equally important for the Requesting Partner who has managerial and/or supervisory authority, to ensure that the law firm's remaining attorneys are capable and sufficiently competent to continue representation in the client's active or pending matter. *See* Rule 1.1. Without a reasonable means to competently handle the client's active matter, the Requesting Partner may consider an arrangement with the Departing Partner to provide or assist in the pro-

vision of legal services to the firm's client in the active, pending matter.

In response to Question #2 presented about the former client's executed Will in the possession of the law firm, the Will is the property of the client. Under Rule 1.15, the law firm must safeguard it until the firm's client gives different instructions. If a Departing Attorney takes the client's Will from the law firm without notice to the client or the client's consent, then in most instances, the Departing Attorney would be frustrating a material purpose of Rule 1.15.

When an attorney leaves a law firm, the original Will and estate planning documents in the client's file should remain with the law firm, unless the client's reasonable expectation under the circumstances manifestly warrant transfer. For example, if the Departing Partner exclusively represented the client in preparation and execution of the Will, and was specifically entrusted with possession of the client's original Will, the Requesting Partner may transfer the Will to the Departing Partner provided the Requesting Partner is satisfied that the Departing Partner will preserve and safeguard the original Will, and Requesting Partner notifies the former client of the transfer, and the client does not object to the arrangement.

While the Rules do not precisely answer the questions presented, the Committee concludes that the Departing Partner is not automatically entitled to take the active clients' files from the firm at the time of departure where the client does not return the "ballot" or otherwise consent. The Departing Partner is not entitled to take a former client's original executed Will from the firm at the time of departure without notice to the former client or client consent. The Requesting Partner may transfer to the Departing Partner a former client's original executed Will and estate planning documents where the arrangement conforms to the reasonable expectations of a particular client, and the firm advises the client of the transfer to the Departing Partner, and the client does not object to the arrangement.

Use of a Vendor in Connection with Filing a Patent Application

MARCH 17, 2021

A Connecticut patent lawyer asks two questions: (1) whether it is permissible to use a service in which the vendor, using its knowledge and experience, provides guidance on writing a patent application so the application may be “classified” more favorably by the United States Patent and Trademark Office (“USPTO”) when the vendor separately provides the USPTO with government contractor services by classifying incoming patent applications; and (2) if it is permissible, whether a lawyer is obliged to use such services for the benefit of a client.

When a patent application is filed at the USPTO, the application is assigned to a patent examiner in an Art Unit¹ that has skill relevant to the invention technology. Based on law and an assessment of what is new and nonobvious, a patent examiner determines whether the application should be allowed, i.e., whether a patent will be granted. While the USPTO’s proceedings are a mixture of public and non-public information, with few exceptions, when a patent is granted all information about the patenting process becomes electronically accessible public information. Datamining of such public information can ascertain the statistical likelihood for a favorable outcome—i.e., the allowance of a patent as a function of the examiner’s Art Unit. The USPTO has a classification system that is a highly detailed organization of technology (or “art,” e.g., chemistry, physics, human necessities, etc.), comprised of more than 150,000 possible codes. Art Units are aligned with this classification system and the USPTO uses a vendor to classify new patent applications.

Here, a vendor that provides classification services to the USPTO also supplies its classification expertise as a commercial service to patent lawyers. The vendor analyzes a prospective application and offers its opinion on how the application will be classified as drafted. In addition, the service makes suggestions about changing the wording and emphasis, so that when it is filed, the application will likely be classified in the Art Unit where the chance for obtaining a patent should be greater, as indicated by public data.

As an initial matter, patent lawyers in the State of Connecticut are not only subject to the Connecticut Rules of Professional Conduct (the “CT Rules”), they are also subject to the United States Patent and Trademark Office’s Rules of Professional Conduct (the “USPTO Rules”). See CT Rule 8.5(a) (stating “[a] lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct”). Although the USPTO Rules are similar in many respects, this opinion only addresses whether the conduct in question is permissible under the CT Rules. Consistent with *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379, 383 (1963) (agreeing with the determination that the preparation and prosecution of patent applications constitutes the practice of law under Florida law), this Committee has previously concluded that an attorney practicing in Connecticut who seeks to secure letters patent from the USPTO is practicing law in Connecticut. Informal Opinion 12-02. Further, the USPTO Rules recognize the co-extensiveness of state professionalism standards with its regulations. See 37 C.F.R. § 10.1.² Under the doctrine of federal preemption, a state cannot set the rules by which a lawyer may practice before the USPTO, however “the State maintains control over the

practice of law within its borders except to the limited extent necessary for the accomplishment of the federal objectives.” *Sperry*, 373 U.S. at 402. “That the PTO and the states may share jurisdiction over certain disciplinary matters, however, does not mean that the states’ authority is pre-empted.” *Kroll v. Finnerty*, 242 F.3d 1359, 1365 (Fed. Cir. 2001).

The consideration of this service requires us to consider Rule 8.4. Here, the vendor supplying its expertise for the service provided to a lawyer is also classifying applications into Art Units for review by patent examiners, however we are told that the vendor screens the employees providing the service from the employees tasked with classifying applications for the USPTO. It is also critical to note that while the vendor in its work for the USPTO is responsible for which Art Unit initially reviews a particular application, the substantive review of an application’s merits rests with a USPTO patent examiner. Further, supervisors of patent examiners are able to negotiate among themselves a change of classification, and thus a change of Art Unit, when they deem it is appropriate. Thus, the value of the service in question is not that it is able to ensure an application will be passed on to a particular Art Unit, but rather it is providing expert opinion on: (1) what Art Unit the application will likely be assigned to in its current form; and (2) changes to the application that, if made, will increase the likelihood the application is assigned to an Art Unit that public data shows has a more favorable allowance rate and possibly a faster response time.³

The service described and represented appears to provide an objective assessment of how the application would be classified as written and how it might be



classified differently if altered. It appears that the vendor is providing advice to a patent lawyer using its expertise with respect to how applications are classified at the USPTO, while at the same time it is providing classification services to the USPTO. As presented, there is no indication of a connection between the advice (which the lawyer may or may not follow) and how the patent application might be handled by the vendor if and when it is filed.⁴ Thus, as presented, the lawyer's use of the service described above would not appear to violate any provision of Rule 8.4.

The question posed by the lawyer also requires consideration of Rule 5.3(3)(A) which provides that a lawyer who employs, retains, or associates with a non-lawyer is responsible for the conduct of the non-lawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer—provided that the lawyer “orders or, with the knowledge of the specific conduct, ratifies the

conduct involved.” We are told that the vendor represents its service does not violate any agreement with the USPTO and that the USPTO is aware of the service. Taking this representation at face value and considering the public promotion of the service by the vendor, it appears reasonable to conclude that the USPTO is aware of the service. The commentary to Rule 5.3 states that “a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer’s professional obligations.” The open and notorious nature of the service appears to be sufficient to allow the lawyer to conclude that use of the services would not be a violation of Rule 5.3(3)(A).

Accordingly, it is the Committee’s opinion that, consistent with Rules 5.3(3) and 8.4(3), the lawyer may use the service described above, provided the lawyer is not aware that the service constitutes a breach of the vendor’s obligations to the USPTO.

Based upon the Committee’s opinion as to the first question, the lawyer also asks for the Committee’s opinion as to whether the lawyer is obligated to use such a service to satisfy Rules 1.1 and 1.3. Rule 1.1 states in relevant part that a “lawyer shall provide competent representation to a client.” The commentary to Rule 1.1 provides that a relevant factor in determining whether a lawyer has employed the requisite knowledge and skill is the relative complexity and specialized nature of the matter. Here, arguably the practice of law regarding intellectual property, specifically patents, is inherently specialized based upon the additional academic credentials and examination required. Indeed, Rule 7.2(d) addresses instances in which a lawyer holds him/herself out as a specialist, and the commentary to this rule specifically notes that the “Patent and Trademark Office has a long established policy of designating lawyers practicing before the Office.” Accordingly, the obligation of competent representation in the context of a patent application is subject to a different, if not higher, standard under the USPTO Rules. *See* USPTO Rule 11.101 (“A practitioner shall provide competent representation to a client. Competent representation requires the legal, scientific, and technical knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”).

Here, the value of the service is that it relies upon the experience obtained from classifying millions of patent applications to predict the likely Art Unit that a prospective application will be classified into. Although the criteria for classifying a patent application are publicly available,⁵ a patent lawyer may not be able to appreciate how the USPTO is likely to classify a particular application given the detailed and complex taxonomy of the USPTO’s system. Further, the client’s objectives factor into whether the service’s recommendations would be of value. For example, a client that seeks to obtain any patent might find this service appealing. In contrast a client seeking a patent that provides protection for specific technical aspects may believe that re-crafting the application solely for possible better classification requires unacceptable tradeoffs.

Further, it is worth noting that even if the lawyer implements the vendor’s suggested changes and is successful in having the application classified to a more desirable Art Unit, that classification is not final. Indeed, where a supervisory patent examiner “believes an application, either new or amended, does not belong in their art unit, they may request transfer of the application from their art unit (the ‘originating’ art unit) to another art unit.”⁶ There can be substantial variation within an Art Unit amongst the examiners with respect to the likelihood of a favorable outcome.⁷ So, the value of the vendor’s service is that it might provide the client’s application with some statistically better chance of having a patent issued. Whether an application altered for classification purposes would result in a diminished degree of desired patent protection is a determination for the patent lawyer to make, consulting with the client as appropriate.

Rule 1.3, states a “lawyer shall act with reasonable diligence and promptness in representing a client.” The commentary to Rule 1.3 provides in relevant part, that a “lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client.” Therefore, in accordance with the lawyer’s communication obligations under Rule 1.4(a) (2) and 1.4(b), if the lawyer believes the client’s chances of receiving a patent with the desired degree of protection would be materially improved by using the service, the lawyer is encouraged to inform the client of the option and abide by the client’s decision. ■

NOTES

1. Patent examiners are organized into “Art Units,” focused on different areas of technology (e.g., electronic systems, cooling systems with compressors, etc.).
2. “This part governs solely the practice of patent, trademark, and other law before the Patent and Trademark Office. Nothing in this part shall be construed to preempt the authority of each State to regulate the practice of law, except to the extent necessary for the Patent and Trademark Office to accomplish its federal objectives.”
3. For example, an application may be presented as “data center (collection of detailed electronic devices) having a cooling system” which might be classified as “electronic system.” It might be recrafted as “cooling system” with little emphasis on what are the electronic components, whereupon it would be classified as “cooling system with compressor / controls.”
4. For reference, about 600–700,000 patent applications are filed with the USPTO each year.
5. See generally United States Patent and Trademark Office, MANUAL OF PATENT EXAMINING PROCEDURE, Chapter 900, www.uspto.gov/web/offices/pac/mpep/mpep-0900.html (last visited December 24, 2020).
6. *Id.* at Section 903.08(d)(II).
7. Data about chance for allowance as a function of named examiner is publicly available, www.patentbots.com/stats.

ALAN BUDKOFSKY
BUDKOFSKY APPRAISAL CO.
 Certified General Real Estate Appraiser
 RESIDENTIAL · COMMERCIAL · EXPERT WITNESS
 ONE REGENCY DRIVE, SUITE 109, BLOOMFIELD, CT 06002
 E-Mail Budappraisal@hotmail.com
 Phone 860-243-0007
www.BudkofskyAppraisal.com



We know where to look.

ForensicAccountingServices.com

Embezzlement. Fraud. White-Collar Crime. Business Litigation. We bring over thirty years of experience in uncovering the facts and interpreting the evidence, to help you resolve your complex financial matters. **Contact us today at 860-659-6550.**

 **Forensic Accounting Services, LLC**
 Piecing Together Financial Puzzles®

Who Has Time to Volunteer to Do Pro Bono Hours?

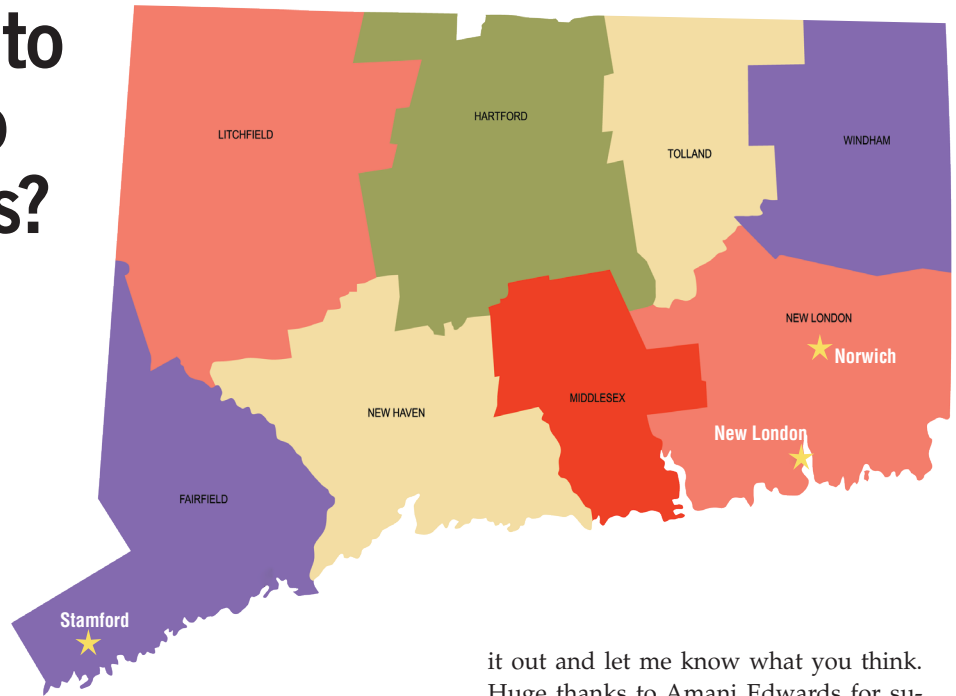
By DANIEL J. HORGAN

I bet all our CBA members have asked themselves this question at one point in their careers. I certainly have. Considering the pressing demands of our practice/careers coupled with family and community obligations, not to mention quality well-being time to recharge our batteries—how can we help the less fortunate with their legal issues and meet our ethical duties as lawyers, especially coming out of a global pandemic with so much catching up to do? Look no further than the CBA’s **CT Free Legal Answers** and **Lawyers in Libraries** pro bono programs. Both of these programs require limited time and effort while the benefits to those in need and the personal feeling of satisfaction is far reaching and fulfilling. I have found these two programs to be nicely tailored to fit with my busy litigation practice, CBA responsibilities, and my never a dull moment personal life. Here has been my experience with these two programs.

CT FREE LEGAL ANSWERS

In conjunction with the ABA, CT Free Legal Answers is a virtual legal advice clinic. Qualifying users post their civil legal question to their state’s website, or to the federal site for immigration and federal veterans’ questions. Users will then be emailed when their question receives a response.

I received an email one extremely busy day several months ago from Amani Edwards, the CBA’s administrator of the program, inviting me to participate. During my lunch break, I grabbed a sand-



wich and logged on to the website—ct.freelegalanswers.org. I clicked the tutorial on YouTube and learned how easy it was to participate. I read the topics of several questions and skipped over areas of the law I was clueless on (about 75 percent of the questions, LOL). I was able to sufficiently answer questions on statute of limitations and a small claims credit card dispute. That consumed about 20 minutes of my time working from the comfy confines of my office and then I went back to my regular work activities. I logged on the website a week later and had this response from the credit card client:

Comment from a Client

“Just wanted to let you know I explained my case to the judge and the lawyer. They accepted my argument and agreed to withdraw the suit after receipt of payment within 30 days. I appreciate your help in the matter. Thank you.”

I was stoked with that response. On top of the limited time I spent and the personal satisfaction in truly resolving a stressful legal situation for the participant in need, the website logs your hours to be used for CLE credit. Join me in volunteering and together we can increase participation in this important program. Just try

it out and let me know what you think. Huge thanks to Amani Edwards for supervising this program.

LAWYERS IN LIBRARIES

This great idea was the brainchild of Presidential Fellow and Young Lawyers Section member Kyle LaBuff. Implemented in December of 2020 in Stamford and New London public libraries, this program allows CBA members to provide pro bono services to members within the community. In New London, CBA members Roger Scully, Kyle Zrenda, and Joseph Strafaci joined myself in December and met several community members who had signed up for 20-30 minute meetings through library director, Thomas Kramer. Waivers were signed by the patrons/clients and topics regarding the legal issues were divided among us to determine who had the most knowledge for each topic. We met from 4:00–6:00 p.m. in secure conference rooms. The pro bono services are limited to the 20–30 minute conference. Instead of having just the one event in December, the feedback from the library director was so positive and the need for continued legal services evi-

Continued on page 40 →



Daniel J. Horgan is the CBA vice president and chair of its Pro Bono Committee. He is an experienced litigator with Horgan Law Office in New London.

What's the Issue with Critical Race Theory?

By KAREN DEMEOLA



This issue marks one year that Cecil Thomas and I centered a column on diversity, equity, and inclusion (DE&I) creating, we hoped, a space to consider, learn, and understand the terminology; the importance; and how to move forward in your personal and institutional DE&I journey. At the same time, the topics about which we wrote—diversity, equity, inclusion, privilege, structural racism—were called into question, and now at the center of a national dialogue centered around banning teaching critical race theory (CRT) in K-12 schools. Admittedly, critical legal theorists made law school bearable for me and, through this scholarship, I found my place in the law.

In 2020, then President Trump issued an Executive Order banning the federal

government and contractors from engaging in diversity training, including those that allegedly espoused race-based ideologies, implicit bias, white privilege, structural racism, and critical race theory. Many DE&I trainings were cancelled, or postponed, while others removed targeted words from announcements and calendar invitations. Although the courts intervened and President Biden reversed the ban, critical race theory continues to be verboten. Before we ban CRT from K-12 curriculum, or comment on CRT, we should understand what it is.

Critical race theory is a movement of scholars interested in the relationship between race, power, and racism. CRT scholars contend that race is socially constructed and used to oppress and mar-

ginalize people of color. Further, that the legal system and the law are inherently racist as they function to maintain the political, social, and economic power of whites.¹

This theory has unfortunately been used by critics who believe that CRT is divisive, espouses racist ideologies, and is anti-white, to challenge schools that are adding diversity, equity, and inclusion into the curriculum. Currently, eight states have successfully banned, and 15 states are considering bans or have pre-filed bans, against teaching CRT in the next legislative session. Other states are considering or have acted at the school board level to ban or limit discussion of white privilege, implicit bias, using teaching modules from the *New York*

Times' The 1619 Project, and teaching CRT in K-12 education. Several Connecticut towns have taken up the issue at the school board level and State Senator Sampson, concerned about children being taught about systemic racism, proposed an amendment in June to stop such "divisive teaching."

Critical Legal Studies (CLS) was developed in the late 1970s as a way of reexamining the theory and practice of the legal system. Many observed the justice system in action; instead of ensuring justice, the system maintained the status quo. Academics and practitioners acknowledged that the legal system was not immune to and was itself influenced by social issues, biases, and systems of power and oppression. CLS explored the politics, social constructs, and power relationships as they existed and continue to exist within the legal framework. Out of CLS came a vast collection of writings targeted to critically study the law as it relates to a variety of subgroups: feminist legal theory, queer theory, LatCrit, and critical race theory. Each contributed to the critical theorists by further acknowledging that individual and group identities were similarly constructed and differently impacted by the legal system.

Critics have reframed this area of scholarship and teaching as a form of indoctrination, an effort to marginalize whites, and ultimately as anti-American. Critical race theory does focus on the structures, systems, and the impact of same on individual and group identities. It is about systems and the impact on people not on individual actors. CRT is taught in law schools, undergraduate, and graduate schools. It is not a formal curriculum, and the theory is not part of K-12 curriculum.

The move to add diversity, equity, and inclusion into K-12 curriculum has,

however, been advanced this year in Connecticut. On June 12, 2019, Governor Lamont signed Public Act No. 19-12, An Act Concerning the inclusion of Black and Latino Studies in the Public School Curriculum. The Act states, "(a) For the school year commencing July 1, 2021, and each school year thereafter, each local and regional board of education shall include African-American and Black studies and Puerto Rican and Latino studies as part of the curriculum for the school district, pursuant to section

"We should care what our children are being taught and who is teaching; and that teachers are equipped with language and resources necessary to ensure that they can effectively teach difficult subjects and address national and local events."

10-16b of the general statutes, as amended by this act."² This curriculum will roll out this fall to K-12 schools across the state. This is an acknowledgement that some people are excluded from history, that certain narratives are missing from our required reading, and voices left out of our national story. This is inclusion.

We should care what our children are being taught and who is teaching; and that teachers are equipped with language and resources necessary to ensure that they can effectively teach difficult subjects and address national and local events. Not everyone has the skillset. There is no surprise that I believe diversity, equity, and inclusion should be part of the curriculum, but teachers need the training and expertise to engage in those conversations.

After George Floyd's murder, we started talking nationally about structural racism and inequality. People engaged in protests, demanded institutions become anti-racist, and DE&I efforts were elevated. With each civil rights movement, there is backlash. So, it is not surprising that critics began using CRT and the education of our children to stall efforts to move social justice and equality forward.

Understanding structural racism and its impact on individuals, systems, and so-

ciety would help usher diversity, equity, and inclusion forward. It would allow us to recognize and own our past, freeing us to see a future where diversity, equity, and inclusion are possible. ■

NOTES

1. Delgado, Richard, et al. *Critical Race Theory: An Introduction*, Second Edition. NYU Press, 2012.
2. www.cga.ct.gov/2019/act/pa/pdf/2019PA-00012-R00HB-07082-PA.pdf



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 DeMeola has been instrumental in the development of many of the CBA's diversity and inclusion initiatives, and regularly speaks on and teaches diversity, equity, and inclusion in the legal profession.

Clerical Omissions and Mistakes

By CHARLES D. RAY and MATTHEW A. WEINER

Municipal taxation of real property is, in Connecticut, controlled almost exclusively by statutes, many of which have been around, in one form or another, for many, many years. These statutes are, quite often, lacking as models of clarity. Such was the case in *Wilton Campus 1691, LLC v. Wilton, SC 20388*, released as a slip opinion on May 26, 2021.

As framed by Justice D’Auria, the issue in *Wilton Campus* involved “the temporal limits of a municipal assessor’s authority to impose penalties on taxpayers.” Peering into the weeds, however, the real question was “whether the assessor for ... the town of Wilton ... must impose late filing penalties on taxpayers pursuant to General Statutes § 12-63c(d), if at all, before taking and subscribing to the oath on the grand list for that assessment year pursuant to General Statutes § 12-55(b), or may impose the penalties later.” The answer is “before” and not “later,” but how Justice D’Auria got to that answer provides a useful guide to how courts will go about their business of trying to work through a thorny statutory analysis.

The facts relied on by the Court were undisputed. The plaintiffs own a retail shopping center in Wilton and were required by General Statutes § 12-63c(a) to provide a 2013 income and expense report to the Wilton assessor no later than June 1, 2014. The plaintiff’s report did not arrive in the assessor’s office until June 3, 2014. As a result, the plaintiffs were subject to the penalty provision in § 12-63c(d), which provides that a taxpayer who fails to submit the information required by subsection (a) “shall be subject to a penalty equal to a ten per cent increase in the assessed value of such property for such assessment year.”

The plaintiffs did not dispute that they were subject to the penalty. Instead, they claimed that the assessor waited too long before invoking and applying the penalty provision to the assessment of their property. The assessor, it turns out, did not actually impose the penalty until April 29, 2015 and did so under the supposed auspices of General Statutes § 12-60, which provides that any “clerical omission or mistake in the assessment of taxes may be corrected according to the fact by the assessors or board of assessment appeals, not later than three years following the tax due date relative to which such omission or mistake occurred, and the tax shall be levied and collected according to such corrected assessment.” By long-standing practice, the Wilton assessor imposed § 12-63(d) penalties retroactively under § 12-60. The problem? General Statutes § 12-55(b), which mandates that “[p]rior to taking and subscribing to the oath upon the grand list, the assessor or board of assessors shall equalize the assessments of property in the town, if necessary, and make any assessment omitted by mistake or required by law.” Section 12-55(a) requires the assessor to publish the finalized grand list “on or before” January 31st of each year.

And thus, the battle was drawn, with the plaintiffs claiming that the penalty was “required by law” and needed to be imposed and included in the grand list by no later than January 31, 2015, while the assessor claimed that not including the penalty in the certified grand list was a “clerical omission or mistake” that could be cured by way of § 12-60. The Appellate Court agreed with the plaintiffs. So did the Supreme Court.

Justice D’Auria’s trip to the finish line is well worth the read. That journey begins

with the question of whether the § 12-63c(d) penalty was “required by law.” The Court’s analysis involved consulting dictionaries both old and new (the statutory phrase went into the books in 1849), from which the Court concluded that the phrase “required by law” is “commonly understood to include at the very least, official actions ‘commanded’ by a state statute.” Thus, if the penalty is mandatory, it is “required by law.”

But that only raised the question of whether the penalty provision in § 12-63c(d) is mandatory, an inquiry predicated on the imprecise nature of the word “shall” (“a property owner shall be subject to a penalty upon late filing”). Because “shall” sometimes means “must” and other times can mean “may,” Justice D’Auria needed to determine which version of “shall” the legislature intended in § 12-63c(d). This became a two-step process, the first of which was to note that the statute, as a whole, included both “shall” and “may” (“shall be subject to a penalty,” the assessor “shall waive” the penalty if the party required to submit the income and expense report does not own the property, and the assessor “may waive” the penalty upon receipt of the report if the town has an ordinance allowing for such a waiver). The use of both “shall” and “may” in the same section, although not dispositive, indicated that the legislature understood and intended the difference in their meaning. The second step in the Court’s analysis hinged on the fact that the plaintiffs did not qualify for either of the two exceptions provided for in the penalty provision. That being the case, the expression of the two exceptions operates to exclude any others (the doctrine of *expressio unius est exclusio alterius*). Thus, the penalty provision is mandatory and, accordingly, “required by law.”



Next, the Court turned to the assessor’s assertion that a penalty is not an “assessment” for purposes of § 12-55. This particular claim was probably doomed once the Court realized that removing the penalty from the purview of § 12-55(b) would result in there being no deadline at all for imposing the penalty, “as the text of § 12-63c(d) contains no date by which the assessor must act.” Regardless, the Court sets off to determine the meaning of “assessment” in this context, but with dictionary definitions and case law not conclusive, the Court moved on to its next statutory interpretation tool: “the broader statutory scheme and ... case law interpreting our taxing statutes.”

That review “makes clear that, although a municipal assessor’s powers are abundant during the statutory time period for performance of the assessor’s duties, the assessor’s authority to act is strictly time bound.” And while there are several express extensions of time allowed to the assessor by way of other statutes, the lack of any time extension in § 12-63c(d) is telling, because without an extension, the deadline in § 12-55(b) controls. This, according to Justice D’Auria, is the only reasonable interpretation of “assessment” as used in § 12-55(b).

With “required by law” and “assessment” out of the way, the Court’s next task was to determine whether the assessor’s actions could be saved by § 12-60, which allows the assessor to correct any “clerical omission or mistake.” Up to this point, Justice D’Auria wrote for a unanimous Court. But on the question of clerical omissions or mistakes, Chief Justice Robinson had a different take. The source of disagreement proved to be two prior cases: *Reconstruction Finance Corp. v. Naugatuck*, 136 Conn. 29 (1949) and *National CSS, Inc. v. Stamford*, 195 Conn. 587 (1985). According to Justice D’Auria, both of those cases stand for the proposition that “when the mistake consists of a deliberate action taken to effect a particular intended result, . . . the mistake cannot be clerical.” And because “clerical” had previously been held to modify both “omission” and “mistake” in § 12-60, the assessor’s deliberate action in delaying imposition of the penalty could not be “clerical” and, thus, neither an “omission” nor a “mistake.”

Chief Justice Robinson had a different view of *Reconstruction Finance* and *Nation-*

al CSS, concluding that those cases “hold that an error is not clerical when it pertains to the substance or subject of the assessment.” With that understanding, the Chief Justice concluded that neither case was controlling because they both dealt with situations that involved the substance of the assessment and not “mistakes made during the execution of ministerial duties.” For the chief justice, the assessor’s “mistake” was one of timing and not one of substance and, therefore, qualified as having been “clerical.”

We leave it to you to agree or disagree with the outcome, but *Wilton Campus* should be at the top of your reading list the next time you are confronted with a knotty, puzzle of statutory interpretation. ■



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



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

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

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

Highlights

Recent Superior Court Decisions

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

■ Civil Procedure

Friere v. Werdann, 70 CLR 572 (Sizemore, Nada K., J.), holds that although the Prejudgment Remedy Statute on its face recites that a signed writ, summons, and complaint should be served *after* court approval of a prejudgment remedy application, and that an approved PJR “shall” be dismissed if not served and returned to court “within 30 days of” approval, simultaneous service and return of a *signed* writ, summons, and complaint pursuant to Conn. Gen. Stat § 52-578j is permitted.

■ Contracts

The practice of some automobile dealerships to receive an undisclosed commission for arranging financing with commercial lenders for motor vehicle purchases, even though such commissions could be avoided if the customer were to deal directly with the lender, does not violate either the federal Truth in Lending Act or the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a et seq. The opinion presents a useful description of dealer-arranged financing practices. *Thompson v. Connex Credit Union*, 70 CLR 570 (Schuman, Carl J., J.).

■ Criminal Law

State v. Gonzalez, 70 CLR 566 (Fasano, Roland D., J.), holds that the 2018 Public Act amending the statute that authorizes sentencing courts to impose an enhanced, “special parole” period for certain categories of more serious crimes, to require that the presiding judge make a determination that such an enhancement “is necessary to ensure

public safety,” is a procedural rather than substantive statute and therefore is *not* retroactively available to inmates sentenced prior to the Act’s October 1, 2018 effective date.

■ Driving Under the Influence

State v. Borges, 70 CLR 536 (Schwartz, Joseph B., J.), holds that evidence that a defendant was found sleeping in the driver’s seat of a motor vehicle without having placed the key in the ignition or having started the vehicle with a remote starter is insufficient to establish a criminal charge of Operating Under the Influence, Conn. Gen. Stat § 14-227a. Some evidence of an attempt to turn on the vehicle motor must be presented.

■ Family Law

A property loss insurance policy taken out on a \$15,000 engagement ring identifying only the groom as the insured can be enforced following a loss only by the groom and not the bride-to-be. *Caccamo v. State Farm Fire & Casualty Insurance Co.*, 70 CLR 535 (Noble, Cesar A., J.).

■ Insurance Law

Indian Harbor Insurance Co. v. Steadfast Insurance Co., 70 CLR 553 (Moukawsher, Thomas G. J.), holds that allegations by an excess insurer of prematurely being forced to honor claims because of a primary insurer’s unnecessary honoring of uncovered claims are not sufficient to state a claim of equitable indemnity brought by the excess insurer against the primary insurer,

because an essential element of a claim of equitable indemnification is that the indemnitee be unjustly enriched due to the indemnitor’s honoring of a claim that the indemnitee had a legal obligation to satisfy. The allegations do, however, state a claim for *equitable subrogation*, because the basis for an equitable subrogation claim is inequity rather than unjust enrichment.

■ Real Property

An equitable interest in real property is not sufficient to establish standing to sue. *Schettino v. Orange Landing Association, Inc.*, 70 CLR 281 (Abrams, James W., J.). The opinion holds that a spouse residing in a condominium unit solely owned by the other spouse lacks standing to sue the condominium association. The opinion rejects the occupant spouse’s arguments that standing is established by a constructive trust in the unit through occupancy, and by an unvested right to inherit the unit from the owner spouse.

■ State and Local Government Law

Girolametti v. Danbury, 70 CLR 554 (Bellis, Barbara N., J.), holds that governmental immunity is waived under the Municipal Indemnification Statute, Conn. Gen. Stat § 52-557n, for a claim against a city building inspector for allegedly conducting an inadequate inspection of a building and improperly issuing a building permit and certificate of occupancy, regardless of whether the duties are discretionary or ministerial, but only if the approvals were issued with a *reckless disregard for health and*

safety or, in the case of inspections, if the inspector was aware of violations. The opinion denies a motion for summary judgment on the portions of a complaint alleging that inspections were conducted and permits were issued with a “reckless disregard for health and safety,” even though it is well settled in Connecticut that such functions are discretionary.

■ Torts

Although not expressly stated in the listing of the types of loss of consortium which may be recovered by a surviving spouse in an action under the Wrongful Death Statute, Conn. Gen. Stat § 52-555b, the statute does authorize the survivor to recover for personal “anguish” and “anxiety” caused by the death. *Cadavid v. Stamford Health, Inc.*, 70 CLR 530 (Krumeich, Edward T., J.T.R.).

Davenport v. Belniak, 70 CLR 563 (Noble, Cesar A., J.), holds that a physician or hospital may be liable in medical malpractice for a patient’s suicide death, provided there is evidence that the defendant should have reasonably anticipated the suicide. The defendants unsuccessfully argued that there is no liability for medical malpractice in the absence of evidence that the defendant had a special relationship of control over the patient.

The risk of financial ruin of a defendant found liable on a CUTPA claim is a valid consideration in establishing a punitive damages award. *Russo v. Thornton*, 70 CLR 397 (Lee, Charles T., J.). This opinion limits punitive damages to an award of attorneys’ fees and nontaxable costs, so as to avoid the imposition of a catastrophic financial loss on the defendant. The opinion is also useful for its holding that the clandestine establishment of a new, competing business to which a corporate officer of a family-owned business unilateral-

ly diverted production equipment and funds constitutes conduct occurring in “trade or business” within the meaning of CUTPA, exposing the defendant to punitive damages and attorneys’ fees.

Ligouri v. Sabbarese, 70 CLR 356 (D’Andrea, Robert A., J.), holds that the 90-day extension of the statute of limitations authorized for personal injury and wrongful death actions, created to allow additional time for the plaintiff to obtain an opinion of negligence from a similar health care provider and prepare a certificate of good faith, Conn. Gen. Stat § 52-190a(c), remains in effect even though no medical malpractice claim is ultimately included in the plaintiff’s complaint, provided it was reasonable for the plaintiff to have believed at the time of the extension request that a malpractice claim was reasonably feasible.

Although the Wrongful Conduct Rule—no party may seek affirmative relief based on prior conduct by that party that was illegal—generally has been applied only to circumstances where a party is seeking to benefit from *criminal* conduct, the rule also may be applied to claims based on conduct of the plaintiff that constituted a violation of the Statutory Theft Statute, Conn. Gen. Stat § 52-564. *Imbruce v. Johnson*, 70 CLR 416 (Lee, Charles T., J.).

■ Trusts and Estates

Haider v. Hernandez, 70 CLR 461 (Lee, Charles T., J.), holds that a probate court’s ancillary jurisdiction over a nonresident decedent’s assets in this state, Conn. Gen. Stat § 45a-287, applies not only to assets located in this state at the decedent’s death but also to property transferred post death into this state, provided the transfer occurs before the filing of an application for ancillary probate in this state.

An attorney engaged to draft a will is liable to beneficiaries under either a theory of tort or breach of contract only if (a) both the client and attorney agreed that the attorney owed a duty to beneficiaries as well as the client, and (b) the alleged error relates to the drafting and execution of the will. *Wisniewski v. Palermino*, 70 CLR 423 (Noble, Cesar A., J.).

■ Unemployment Compensation

Javier v. Administrator, Unemployment Compensation Act, 70 CLR 473 (Wiese, Peter E., J.), holds that an applicant’s mistaken belief that the 21-day period to appeal an administrator’s decision to deny benefits was based on business days rather than calendar days does not, as a matter of law, constitute good cause for a late filing. Therefore an appeal *must* be denied by the Employment Security Appeals Division Board of Review if the applicant’s misunderstanding is the only grounds offered as justification for a late appeal.

An appeal upholding the denial of unemployment compensation benefits on the grounds that the employee had been terminated for “wilful misconduct in the course of the individual’s employment,” Conn. Gen. Stat § 31-236(a) (B), requires formal written findings by the Administrator that the employee (a) had “acted in disregard of the employer’s interest” and (b) had done so deliberately and a written recitation of the facts that support those particular findings. This opinion remands a decision by the Employment Security Board of Review upholding the dismissal of an employee because there are no facts in the record to support the “employer interest” and “deliberate action” findings. *Harris v. Administrator, Unemployment Compensation Act*, 70 CLR 432 (Farley, John B., J.). ■

Get Comfortable Being Uncomfortable

By JOSHUA J. DEVINE

Each year, the Young Lawyers Section Executive Committee is expected to coordinate Continuing Legal Education (CLE) courses, networking events, and set the professional standard as leaders for other young lawyers throughout the state.

This past September marked the beginning of my seventh year as a Young Lawyers Section Executive Committee member, another year of commitment to meeting that expectation and the start of my year as chair of the largest section of the Connecticut Bar Association. As I started mapping out the year and how I would lead this year's Executive Committee, to not only meeting these expectations but exceeding them, I spent time reflecting on my prior years' experiences. Specifically, I thought back to the leadership of the six past chairs whom I have had the pleasure of working with. With them in mind, I selected an event or theme from each that this year's Executive Committee would carry forward while putting its own twist on them.

As a nod of the cap to past Chair Matthew Necci (2015-2016), I will be bringing back an Executive Committee team competition, in which Executive Committee members will be split into teams where they will compete against one another. Many of us are naturally competitive and with competition comes a drive to perform and exceed expectations. Each team will be tasked with coordinating a volunteer event throughout the state while the Executive Committee as a whole will have a goal of committing one thousand plus (1,000+) hours to volunteer and pro-

Joshua J. Devine is the Chair of the Connecticut Bar Association Young Lawyers Section for the 2021-2022 bar year. Josh is investigations lead counsel and associate general counsel at UnitedHealthcare in Hartford, where he advises on data protection and cyber security laws. He graduated from Massachusetts School of Law in 2012.



duce pro bono events, leading by example to encourage other young lawyers throughout the state to do the same.

To thank past Chair Dana Hrelc (2016-2017) on her years of continued service to both the Connecticut and American Bar Associations, we will look to continue our strong relationship and presence within the American Bar Association while also exploring the opportunity to bring back the Pre-Law symposium for high school students from across the State of Connecticut. The goal of the symposium is to educate and inform local high school students about law school and the legal profession, and to encourage them to consider pursuing a career in the law.

To continue the growth of the Connecticut Bar Association and specifically the Young Lawyers Section, we will look to past Chairs Aidan Welsh (2017-2018), David McGrath (2018-2019), and Amanda Schriber (2019-2020) to exemplify that the Connecticut Bar Association is "worth the price of admission," while closing the gap with the "big bar" sections and continuing the strong membership drives established by each of them respectively. Lastly, I can only hope to

carry on the leadership from our Immediate past Chair Cindy Cieslak (2020-2021) that she exemplified in an unprecedented year, while also continuing to grow a past program that she helped rekindle—the "Lawyers In the Classroom" program.

While these are some of the events and themes you can come to expect from me and this year's Executive Committee, the work does not stop there. As chair, it is my duty to elevate and challenge our organization to reach new heights. While this is the first time you are hearing from me this year, the Executive Committee has already been hard at work. In early August, more than 50 leaders from the Young Lawyers Section gathered to prepare and organize events for the 2021-2022 bar year. This annual leadership retreat is an opportunity for the Executive Committee members to come together for training in their respective roles and afford them the opportunity to network with one another while also beginning the planning of CLE and our many other events.

At this year's annual Leadership Retreat Conference, I challenged the members of the Connecticut Bar Association

Young Lawyers Section Executive Committee to become comfortable being uncomfortable. In line with the challenge I issued at the leadership retreat, I believe that some of our greatest growth comes when we are uncomfortable. Now stay with me here—when I say “uncomfortable” I don’t mean doing something that makes you sick or puts you in a compromising situation, but rather doing something that takes you out of your comfort zone. For some of us that may be as simple as applying for a leadership opportunity, for others it may be networking and attending an event where we do not know a single person in the room, and yet for others it may be the opposite where we are not comfortable being the one listening versus sharing a story/experience. Regardless of which of these statements most accurately depicts you, challenge yourself to be uncomfortable and then reflect on that experience and I think you will

be pleasantly surprised. The next time you’re in that situation you will notice less discomfort. I have the same expectations for our Executive Committee members. I’m hopeful that that by the end of the 2021-2022 bar year that they will reflect on their experiences and see the growth that occurred when they stepped outside of their comfort zones.

It is my will and desire that the Young Lawyers Section Executive Committee will work tirelessly and when appropriate push ourselves outside our own comfort zones this year. We will bring new and exciting events to the membership and ensure they are more diverse, equitable, and inclusive to members of our profession.

Our Executive Committee members come from diverse backgrounds and communities across the state. I hope to harness the power of that diversity along

with their leadership skills and talent to promote the growth of the Connecticut Bar Association, the Young Lawyers Section, and our profession as a whole.

The ambitious objectives I have issued to the Young Lawyers Section Executive Committee will not be easy to accomplish. Growth is never easy. However, I know that the group of leaders we have this year are committed to the challenge and I look forward to sharing their progress throughout the year with you all.

I challenge you to do something new this bar year—join the Young Lawyers Section for an event (or two or three), or do something that takes you out of your comfort zone. Then take time to reflect on that moment. I anticipate that you will find that you grew in that moment in some way and hopefully had fun along the way. Become comfortable being uncomfortable. ■



Serving the Needs of the Connecticut Legal Community

Lawyers Concerned for Lawyers – Connecticut, Inc. (“LCL-CT”) is a Connecticut non-profit corporation created to provide assistance to Connecticut lawyers, judges and law students who experience substance use disorders, mental health issues, stress, age-related problems or other distress that impacts the individual’s ability to function personally and professionally.

LCL services are available at no cost to all attorneys, judges and law students in the State of Connecticut.

All LCL services are strictly confidential and protected under C.G.S. §51-81d(a), as amended.

Visit our website: www.lclct.org

**Contact LCL today for FREE, CONFIDENTIAL support
HOTLINE: 1-800-497-1422**

President's Message

Continued from page 5

try, drawing together as “We the People” to advance the highest ideals of equality, freedom, justice, and the rule of law, this moment, with all of its difficulties, gives us the opportunity to do so again.

I am incredibly honored to serve as the 98th president of the Connecticut Bar Association. I am intensely aware of the challenges facing us, arising in the world around us, threatening the most vulnerable among us and the pillars of society that we are sworn to uphold. But I believe in this profession and our bar association, in our collective potential to care for each other, and to advance and uphold the ideals and principles that we have aspired to in this country since its founding. In this, our path and purpose as a bar association is clear. In this, we must set our common resolve. In this, we must stand and work: Together. ■

NOTES

1. My family's initial fears and concerns were tied to the uncertainty of the unknown, and the worries that all parents have when considering a child's future. They have long since come to celebrate and take pride in my chosen profession and in particular in my work as a legal aid lawyer. Shortly after my admission as a lawyer, I was able to visit my grandmother in India for the last time, who beamed with pride at my early accomplish-

ments and chosen career, and set me off with the love, blessings, and encouragement that only a grandmother can provide. I write this footnote in particular because my mother will likely read this someday, and will want to ensure a complete and correct record. I hope this footnote will suffice, although she may insist on her own column in the *CT Lawyer*. Like many lawyers, I am often reminded that some of the earliest indications of my future career were exhibited in childhood and teenage arguments, from which there were rarely judgments in my favor, and no appeals.

2. Connecticut Rules of Professional Conduct, Preamble (2021).
3. Our organization's stated purposes are broad, and are addressed to the needs of our members, the profession, and to society as a whole. See, *The Constitution of the Connecticut Bar Association, Inc.*, Article II, Purpose. https://www.ctbar.org/docs/default-source/resources/cba-constitution-by-laws-and-procedures_7-31-18.pdf.
4. Alexis de Tocqueville, *Democracy in America*, Vol. 2, Ch. 8 (1840).
5. Alexis de Tocqueville, *Democracy in America*, Vol. 2, Ch. 8 (1840).
6. Records of the State Bar Association of Connecticut, 1875-1910 p. 1-4; “A History of the First One Hundred Years of the Connecticut Bar Association 1875-1975,” *49 Connecticut Bar Journal* 2, p. 203-226 (June 1975).
7. The CBA's 1875 constitution provided as follows:

The Association is established to uphold and improve the standard of professional qualifications; to maintain the honor and dignity of the profession of law; to aid all proper measures for the improvement of the jurisprudence of the state, the organization of Courts and mode of practice, and to promote social

intercourse among its members.

Records of the State Bar Association of Connecticut, 1875-1910, p. 5. The core of our constitutional mission remains much the same today. See note 3, above.

8. “A History of the First One Hundred Years of the Connecticut Bar Association 1875-1975,” *49 Connecticut Bar Journal* 2, p. 203-226 (June 1975); See also, Lawrence M. Friedman, *A History of American Law (4th Edition)* Oxford University Press (2019), p. 635, (“With few exceptions, state and city bar associations were not open to everybody; they did not invite the bar as a whole, but sent out feelers to a select group, the ‘decent part’ of the bar.”)
9. *Id.* at 202-204, Friedman, p. 695.
10. See Friedman, p. 635, “Between 1870 and 1878, eight city and eight state bar associations were founded in twelve different states.”
11. Robert D. Putnam, *The Upswing: How America Came Together a Century Ago and How We Can Do It Again*, Simon & Schuster (2020), p. 112.
12. *Id.* at p. 8
...the United States in the 1870s, 1880s and 1890s was startlingly similar to today. Inequality, political polarization, social dislocation, and cultural narcissism prevailed—all accompanied, as they are now, by unprecedented technological advances, prosperity, and material well-being... Looking back to a time Mark Twain disparagingly called the Gilded Age turns out to feel eerily like looking in the mirror.
13. *The Civil Rights Cases*, 109 U.S. 3 (1883)
14. *Plessy v. Ferguson*, 163 U.S. 537 (1896)
15. See generally, Robert D. Putnam, *The Upswing: How America Came Together a Century Ago and How We Can Do It Again*, Simon & Schuster (2020).
16. *Id.* at p. 341

Pro Bono

Continued from page 31

dent, that the New London crew made it a monthly event! Every month has been successful and satisfying for our CBA participants with at least two meetings turning into paying clients. Library Director Thomas said, “The Public Library of New London is so grateful to be partnering with the CBA to offer the community the monthly Pro Bono Lawyers in Libraries Program. Simply referring our patrons to a book or legal website for their problems just isn't enough.”

I am pleased to announce that Norwich Public Library joined the program in September and Kyle Labuff is connecting

with Danbury and Litchfield to get those cities on board—let's keep the momentum going by adding additional libraries and fill up the map! Contact myself at djh@horganlawoffice.com or Kyle at kjlabuff@gmail.com if you wish to participate in your town and/or bring another public library on board. Remember senior partners/colleagues, pro bono programs like these help younger lawyers gain experience and build their skillsets—something that the old short calendar call use to do. For senior lawyers like myself, it is a way to connect with younger lawyers as we often have a beverage of our choice following the sessions. As Kyle knows, this program is a perfect opportunity for

young lawyers to get involved with pro bono work. To learn more about this program, turn to page 16 for an interview with Kyle LaBuff.

The CBA continues to lead the way with so many opportunities to provide much needed Pro Bono services—YES, we all have some time to squeeze in pro bono services. Oh, by the way, I am the new chair of the Pro Bono Committee and honored to follow in Cecil Thomas' footsteps. I look forward to working with all the committee members to help pro bono participation expand. Cheers to a successful and rewarding Pro Bono 2021-22 Year! ■



We understand malpractice risk is always on the docket.

For more than 50 years, the CNA Lawyers Professional Liability program has helped attorneys manage risk with a broad range of insurance products, programs and a comprehensive series of risk control tools and services. And our Professional Liability Risk Control hotline helps you navigate the challenges facing law firms today.

As part of an insurance organization with more than \$56 billion in assets and an "A" rating from A.M. Best, CNA has the financial strength you can count on.

Start reducing your firm's liability risk now.

For a quote or more information, contact Kronholm Insurance Services* at jkronholm@bbhartford.com or visit www.kronholminsurance.com.

Kronholm insurance services is dedicated to serving the needs of the Connecticut legal community. We offer a full range of insurance products specially designed for attorneys.



www.lawyersinsurance.com

www.kronholminsurance.com

CNA is a registered trademark of CNA Financial Corporation. Copyright © 2011 CNA. All rights reserved.

Looking for another way to protect your retirement funds?



Long-Term Care Insurance may be the answer.

- Connecticut Partnership Certified Long-Term Care insurance (LTCi) policies offer dollar-for-dollar asset protection.
- Discounts for CBA members, spouses and eligible extended family members
- Underwriting concession for CBA members
- Affordable inflation options
- Work with LTCi specialists with extensive experience in enrolling members from other associations, such as:
 - Bar Associations of MA, ME and NH
 - Massachusetts Society of CPAs
 - Massachusetts Medical Society
 - AFT CT and many more



For more information, contact: **Kronholm Insurance Services**
800.LTC.ATTY (800.582.2889)

Member of
NATIONAL SOCIETY
OF PROFESSIONAL
ENGINEERS (NSPE)

CONNECTICUT SOCIETY OF
PROFESSIONAL ENGINEERS
(CTSPE)

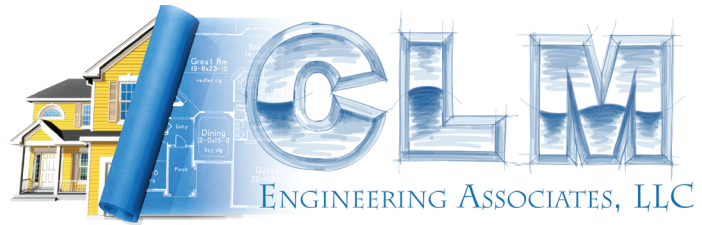
CONSULTING ENGINEERS and EXPERTS IN:

- 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



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