

Volume 32 | Number 2

November | December 2021

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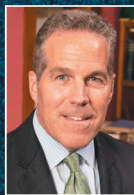
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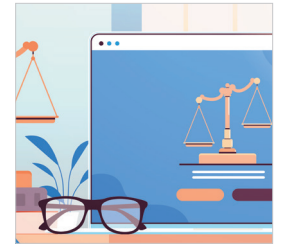
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Justice

By CECIL J. THOMAS

This is my second presidential column, in which I hope to expand further on the theme I have selected for this bar year, "Together for Justice, Together for Equity, Together in Service." Here, I will begin to address the expression of "justice" in that theme.

What is justice? Process? Experience? Outcome? All of the above? These are questions that have many possible answers. What is certain is that our profession upholds and serves a system by which justice is determined, often an adversarial one that anticipates two or more litigants on equal footing, presenting their arguments before an impartial arbiter. Justice to one may be perceived as injustice by another, but a just process, on a level playing field, is our fallible attempt at omniscience. What happens when that process is imbalanced, because one litigant may afford an attorney, and the other may not? When I speak of justice, you will not be surprised to learn that I speak of access to justice, and the pressing need for our profession to address an ever-increasing access to justice gap in areas of critical civil legal needs, such as housing and family law. Before I address this further, allow me to digress and share more of my own story.

My parents immigrated to this country from Kerala, India, in the late 1970s. They came to this country individually to pursue higher education, initially residing with older siblings who had immigrated here before them. They were introduced to each other and married shortly thereafter, and settled in Massachusetts. I was born a year later, and our first home as

a new family was a small apartment in Cambridge, MA. I do not remember that home, but as my parents tell it, the apartment had several serious issues, which their landlord refused to repair. They soon moved into another apartment on the third floor of a three-family home in the Winter Hill neighborhood of Somerville, MA. We were not always welcomed by our neighbors, but the apartment itself was decent, safe, and sanitary, and that was the place that we called home for the first 13 years of my life.

My parents started out life in this country with relatively little, and their story, as new immigrants, is a quintessentially American one. My parents are the hardest-working people I know, and I am grateful to them for the values, culture, and faith that they instilled in me from birth. My mother always worked during the day, and my father in the evening, so that they could ensure that one of them was with my younger brother and I as we were growing up. My father worked long hours, starting in the evening and then often working a successive shift until the next morning, arriving home in time to

get us off to school. He would then sleep for a few hours and run errands during the day, pick us up from school and wait for my mother to get home, and then head off to work again. My mother would transition from her work to home responsibilities immediately, helping us with homework, ensuring we participated in extracurricular activities, and somehow also preparing amazing traditional South Indian meals. Weekends were for church and community activities, which my parents devoted themselves to completely, helping to build communities that continue to thrive and grow today. These are just a small sampling of their many sacrifices for the future of their family, for which I remain deeply grateful.

During those 13 years in that third-floor apartment, my parents worked hard, saved, and eventually built their first home in the suburb of Lincoln, MA. Moving to this new community was a culture shock, to say the least, but also liberating, with new opportunities that opened new doors. I joined my high school speech and debate team, and developed my writing and speaking skills with the special sup-



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.

"My work with the poor and the incarcerated has persuaded me that the opposite of poverty is not wealth; the opposite of poverty is justice...I've come to believe that the true measure of our commitment to justice, the character of our society, our commitment to the rule of law, fairness, and equality cannot be measured by how we treat the rich, the powerful, the privileged, and the respected among us. The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned."

–Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (2015)

port of three very influential teachers, Mr. Conti, Mr. Danko, and Ms. Weisse. I played recreational soccer, and my brother and I enjoyed the newfound freedom to play basketball and ride our bikes on long summer days. When it was time for college, a friend from our new hometown put in a good word for me at Brandeis University, which opened the door for my admission there, and furthered my path towards the law.

This story was made possible, in part, by the law. My parents' immigration to this country was a direct result of the civil rights movement of the 1960s, which brought about the Hart-Cellar Act of 1965. This legal change opened the door to new immigration from large segments of the world that had previously been excluded from the United States, including India.¹ My parents were allowed to immigrate to this country because of the end of express racial discrimination in our immigration laws, and because U.S. immigration policy favored their education and family ties to this country.² My parents were able to rent the apartment that was our home for 13 years because their landlord, who was of Portuguese descent, was willing to rent to and welcome a family of color, even if others around us were not. Fair housing laws supported our former landlord's right to purchase that apartment building, and my parents' right to rent an apartment within it, and eventually their ability to obtain a loan and purchase their first home. My parents' careers, which were stable and provided fair compensation and benefits for their hard work, were protected by professional unions, and by extension a host of labor and employment

laws. In our family, we attribute our journey to grace, providence, and mercy. But the law also supported that path. The law, in its expression and application, opened doors, created and supported opportunity, and led to this moment, where I may share these observations with you as the 98th CBA president.

The law can also devastate. During their journey, my parents faced legal challenges, experiences that helped cement my own future career in the law. These legal challenges could have crushed their long-held dreams of homeownership, but thankfully did not. I have spent my legal career representing the indigent in the Greater Hartford area, often those at risk of homelessness. That work frequently causes me to reflect on my own journey, the sacrifices made by my parents, and the many ways in which our path might have easily turned out so differently. In my work with my clients, I have always recognized in them the same central motivations: the search for stability and safety; the fear, sacrifice, and dreams that parents bear for their children; a desire for opportunity and a drive to succeed; care for their communities and the needs of their families; and, most of all, a desire for justice, fairness, and equity.

In my 15 years of representing low-income individuals, and in my observations of the work performed by my legal aid colleagues, I have come to recognize that poverty is incredibly complex, and its impact far-reaching and devastating. I have seen the legal problems facing the poor frustrate the best of lawyers, who strive mightily to reach a just outcome. Some of

these complexities are structural: the over-regulation of poverty and the difficult legal landscapes we create for those seeking to access and maintain basic subsistence. These complexities combine with other systemic challenges to create personal legal crisis points: an eviction, a foreclosure, family breakup, employment or government assistance instability, immigration status disputes. Our profession's response to these crisis points is too often inadequate, or non-existent. Some members of the public are able to hire a lawyer, or qualify for legal aid. Others rely on brief advice, clinics, and self-help materials, including the many pro bono programs offered by the CBA. Many, however, receive no assistance at all.

Why should the CBA work to address the access to justice gap? Some might respond that it is "the right thing to do." We might also refer to our CBA Constitution, which includes "to facilitate the delivery of competent legal services to the public and particularly to those in greatest need" among our organizational purposes.³ We might view our organizational efforts to address the access to justice gap as an extension of our individual ethical responsibility, expressed in Rule of Professional Conduct 6.1.⁴ We could also understand this work as in the best interest of our membership, as reflecting our professional commitment to equal access to justice for all, an obligation that arises from the privileges we hold as lawyers. Here, to draw on the themes from my first column, our efforts to address access to justice issues are "interest, rightly understood." Our collective efforts to engage in pro bono

Continued on page 40 →

News & Events

CBA Members Volunteer at Stand Down 2021



For the second year of the COVID-19 pandemic, CBA members continued to provide pro bono legal services to veterans at the Connecticut Department of Veterans Affairs' annual Stand Down event, which the CBA has assisted with since 1998. On Friday, September 24, Attorneys Richard D. Arconti, Melissa Biggs, Dennis M. Carnelli, Jason M. Fragoso, Joshua G. Grubaugh, James M. Hyland, Frank A. Manfredi, and Winona W. Zimmerlin represented the CBA and provided in-person assistance to Stand Down attendees in Bridgeport, Danbury, Danielson, Norwich, and Rocky Hill.

Stand Down was established after the Vietnam War and provides veterans with "one-stop" access to a range of programs and services offered by state and federal agencies, Veterans organizations, and community-based non-profits. This year's Stand Down event included a virtual kickoff ceremony and informational

webinars on September 22 and 23. For the in-person services on September 24, the five-location format helped to create socially distanced environments for veterans to safely receive in-person services.

"This was my first-year volunteering for Stand Down, and I'm so grateful for the opportunity. I was able to speak with veterans and some of their loved ones, all who have given so much for our country," stated Melissa Biggs. "It was wonderful to give back to veterans in need and I'm looking forward to participating next year."



Attorney Melissa Biggs with Executive Director of the Connecticut Office of Higher Education Tim Larson at the Danielson Stand Down location.

Solo and Small Firm Resource Center

The Solo and Small Firm Resource Center provides resources to CBA members to assist with the business and management aspects of law practice, including technology, marketing, personnel, client development, finance, and compliance with pertinent ethical regulations, along with wellness, time management, and work-life balance challenges, so that they may optimize their effectiveness and competence as advocates for their clients and their satisfaction and success with the practice of law. Visit ctbar.org/SoloSmallFirmResources to learn more.

GET THE NEWS and JOIN THE CONVERSATION
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Upcoming Education Calendar

NOVEMBER

- 2** In the Weeds: Employee and Employer Rights Post Legalization
- 3** Professionalism, Ethics, and Technology (LEAP)*
- 3** Civil Jury Panels in Connecticut—A View from Both Sides of the Bench
- 4** Motley Series: Policing Task Force Presentation*
- 5** More Effective Writing Makes More Effective Lawyers
- 8** The Essentials of Federal Practice

- 16** Hot Topics in Probate*
- 18** Commercial Real Estate Transactions—From Acquisition to Closing*
- 19** Practice, Procedure, and Protocol in the Connecticut Courts
- 30** Common Ethics Issues and Addressing IOLTA Audits and Grievances*

DECEMBER

- 1** Transition Services for Special Ed. Students: DDS, DMHAS and ADS

- 1** Gambling Law
- 3** Raising the Bar: A Bench-Bar Symposium on Professionalism*
- 7** IP Ethics*
- 7** Litigation—Short Calendar
- 8** Adult-Use Cannabis in CT: Business, Criminal Justice, and Insurance Considerations
- 9** Say What Now? When and How to Ask Trial Courts to Clarify or Change Their Decision Pre-Appeal
- 10** Professionalism Boot Camp*

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IN MEMORIAM



Herman S. Bershtein

passed away on September 3 at the age of 95. Attorney Bershtein, a WWII Veteran,

served with the 86th Black Hawk Infantry Division and later served as a lieutenant under General Douglas McArthur. After he was discharged from the Army in Japan, he remained in Tokyo as a civilian employee of the US Civil Service. He went on to attend Columbia University, University of South Carolina, Cornell University, and graduated from Yale University. Attorney Bershtein was admitted to the South Carolina Bar in 1953, the Connecticut Bar in 1954, and the Federal Bar in 1955. He was the founder and senior partner of the law firm of Bershtein Bershtein & Bershtein, Professional Corporation, d/b/a Bershtein Law Center. Attorney Bershtein was a member of the New Haven County and Connecticut Bar Associations, and he was an arbitrator for the American Arbitration Association. Additionally, he served as a judge advocate for many years for the Jewish War Veterans, Hamden Post 204, now associated with Levitow, Post #45.

Charles Arthur Heckman passed away on August 2 at the age of 82. He attended Brown University for his A.B. and one year graduate study in French and was awarded a full academic scholarship to the University of Chicago School of Law where he was a managing ed-

itor in the Law Review. Attorney Heckman went on to teach law, specializing in legal history and commercial law at the University of North Dakota, University of Houston, Western New England University, Whittier Law School, and finally at Quinnipiac University in Connecticut, where he retired as professor emeritus and elected member of the American Law Institute. His studies in law were multidisciplinary and multinational, including helping to establish a legal course in Mexico while at the University of Houston and attending a yearly meeting of the European Society for Comparative Legal History.



Jeffrey Joseph Tinley, Sr.

passed away on September 3 at the age of 66. He received his undergraduate

degree from SUNY Stony Brook and his JD from St. John's University. Attorney Tinley began his legal career in litigation at Cummings & Lockwood in Stamford and soon went on to serve as an assistant United States (AUSA) attorney in Orlando, FL. As an AUSA, he handled both civil and criminal matters and earned two Department of Justice special achievement awards for his exceptional work. After three years, he moved back to Connecticut where he worked at Gager Henry as a partner in commercial litigation. Soon after, he founded his own firm in Waterbury, Tinley Nastri

& Renehan (now Tinley, Renehan & Dost). As an active member of the Connecticut Bar Association, he served on the Professionalism and CLE Committee and on the Professional Discipline Executive Committee. He enjoyed taking on pro bono cases, serving as the town attorney of Southbury, and advocating for environmental preservation as a board member of the Friends of the Lake.

Frederick Tse-shyang Chen

passed away on June 3 at the age of 85. He earned an LLB from Soochow University School of Law in 1958, earned an LLM degree while studying under Professors Myres McDougal and Harold Lasswell at Yale Law School in 1961, and later earned a JD from The University of Chicago School of Law. In 1966, he decided to teach law in the US and became the first student from Taiwan ever to be a tenure-track assistant professor of law in this country. Over the course of his career, Attorney Chen taught at the law schools of Drake University, Ohio Northern University, Catholic University of America, Texas Tech University, University of Wyoming, and Quinnipiac University. Attorney Chen lectured at Chuo University Law School in Japan and served as visiting professor at Japan Institute of Comparative Law and visiting professor of law at National Chengchi University in Taiwan. From 1993-95, he was dean of Soochow University Law School; he also served as advisor of the Ministry of Finance, Republic of China.

CBA Welcomes New Director of Access to Justice Initiatives

The Connecticut Bar Association is pleased to announce the addition of Attorney Jennifer Shukla as its Director of Access to Justice Initiatives. She is responsible for developing and coordinating the CBA's initiatives on improving access to the legal system for indigent and underserved individuals, as well as participating in related legislative and public policy advocacy.

Attorney Shukla is a Connecticut native that earned bachelor's degrees in finance and psychology at the University of Connecticut, summa cum laude, and a JD at Harvard Law School, magna cum laude. She is admitted to the state bar of Connecticut and numerous federal courts.

Attorney Shukla has experienced the obstacles facing various people in our legal system firsthand as a litigator. In addition to practicing in corporate law and family law, she has also had extensive experience working with underserved populations, including individuals with low or no income, inmates, homeless, non-native speakers, and elderly clients.

She served as the chair of the Connecticut Bar Association's Resolution of Legal Fee Dispute Resolution Program from 2018 to 2021 and has been on the executive committee of the Alternative Dispute Resolution Section of the CBA. Attorney Shukla served as a coordinator of volunteer legal clinics at



*Director of
Access to Justice
Initiatives, Attorney
Jennifer Shukla*

the South Park Inn, a Hartford-based homeless shelter, and is a mother of three children.

"I am honored to join the CBA team, and I am committed to working with CBA members to make courts, lawyers, and our justice system more accessible and available to more people," stated Attorney Shukla.

PEERS AND CHEERS

Siegel Colin & Kaufman is pleased to announce the addition of **Hon. Thomas D. Colin** (ret.) to the firm. He brings unrivaled skill and capability to our firm in all aspects of family and matrimonial law and will be leading the firm's mediation/arbitration department.

FLB Law in Westport has promoted **Enrico (Rick) R. Costantini** and **Laura A. Penney** to partner. Attorney Costantini focuses his legal practice on commercial and residential real estate, land use, zoning, and commercial transactions. Attorney Penney is a civil and commercial litigator with a primary focus on defense, including auto and premises liability, professional liability, condominium law, contract law, insurance coverage, employment discrimination, and construction defect cases.

Day Pitney LLP is pleased to announce the completion of its merger with Rhode Island-based law firm Howland Evangelista Kohlenberg LLP, a dedicated trusts and estates boutique handling complex and sophisticated planning, probate, and trust matters for high net worth individuals and families. With the completion of the merger, Day Pitney has nearly 300 attorneys and operates 14 offices along the East Coast.

Murtha Cullina LLP partner **Jennifer Morgan DelMonico** has been elected to the American Law Institute (ALI), an exclusive group of the nation's top attorneys, judges, and law professors. ALI is the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law. Attorney DelMonico is a trial lawyer for parties in complex commercial litigation disputes and defendants in tort and product liability actions.

Murtha Cullina LLP is pleased to welcome **Alyssa R. Ferreone** and **Julie A. Lavoie** as associates in the firm's Litigation Department. Attorney Ferreone was previously a Judicial Law Clerk for the Honorable Robert J. Devlin, Jr. and the Honorable Melanie L. Cradle at the Connecticut Appellate Court. Attorney Julie Lavoie was previously a judicial law clerk for the Hartford Superior Court and for the Honorable Eliot D. Prescott at the Connecticut Appellate Court.

Gfeller Laurie LLP is pleased to announce **David 'Dave' Kenna** as a partner in the West Hartford office. Attorney Kenna has practiced law for close to 25 years, predominantly in the insurance industries, litigating through trial numerous insurance coverage and reinsurance disputes in state and federal courts as well as arbitration panels throughout the US.

Neubert Pepe & Monteith PC is pleased to welcome **Patrick R. Linsey** to the firm. Attorney Linsey is experienced in bankruptcy and commercial litigation.

Robinson+Cole managing partner **Rhonda J. Tobin** has been named one of Benchmark Litigation's Top 250 Women in Litigation for 2021 for the eighth consecutive year. Attorney Tobin has represented insurance companies for 30 years in litigation, arbitration, and mediation of complex disputes involving insurance and reinsurance coverage. ■

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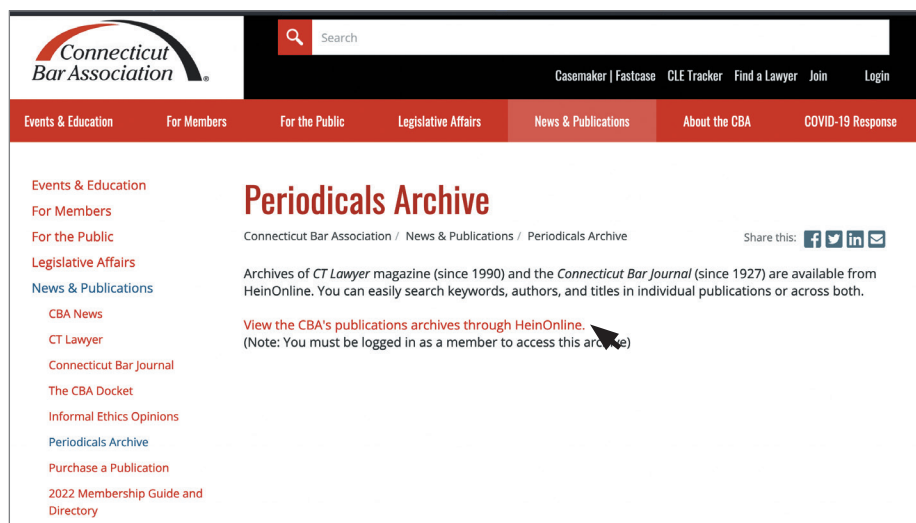
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An electronic edition of the magazine is available at ctbar.org/CTLawyer.

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You can access the complete archives of *CT Lawyer* magazine since its first issue in 1990 and the *Connecticut Bar Journal* since its first issue in 1927 through the CBA's Periodicals Archive. This invaluable tool puts every issue of the CBA's periodicals at your fingertips. Note that you must be logged in as a member to access this database.



The screenshot shows the Connecticut Bar Association website's Periodicals Archive page. At the top, there is a search bar and navigation tabs for 'Events & Education', 'For Members', 'For the Public', 'Legislative Affairs', 'News & Publications', 'About the CBA', and 'COVID-19 Response'. The main content area is titled 'Periodicals Archive' and includes a search bar, a brief description of the archives, and a link to view the archives through HeinOnline. The sidebar on the left contains links to various CBA services and publications.

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- On this next screen, you are able to search the publications in multiple ways:
 - Select the link for either publication—*Connecticut Bar Journal* or

CT Lawyer—in order to access the individual catalog of each publication; from there, you can search by keyword or browse by year within each publication

- Alternatively, under the search bar at the top of the webpage, you can select **Advanced Search** to search across both publications with options such as keywords, year, and/or author
- Content in this database can be downloaded, saved, and printed for your convenience

Professional Discipline Digest

VOLUME 30 NUMBERS 1&2 | By JOHN Q. GALE

Stipulated Sanction entered for alleged violation of Rules 1.3, 1.15(e), 8.1(1), 8.4(3), and 8.4(4) where attorney admits he failed to timely remit client's funds. Attorney ordered to take three hours of in-person CLE in ethics in addition to annual requirements of Practice Book 2-27A. *Perez v. Dean Popkin*, #19-0482 (10 pages).

Reprimand issued by Stipulated Disposition for violation of Rules 8.1(2) and 8.4(4) and Practice Book Section 2-32(a)(1) where attorney failed to answer grievance complaint and failed to comply with terms of disposition in a prior grievance case. Attorney ordered to take four hours of in-person CLE in ethics in addition to annual requirements of Practice Book 2-27A. *Staines v. Thomas G. Cotter*, #19-0405 (10 pages).

Presentment ordered by agreement for alleged violation of Rules 1.1, 1.3, 1.5, 1.15, 8.1(1), and 8.1(2) and Practice Book 2-32(a)(1) and 2-27(d) where attorney has another presentment pending with which this matter will be consolidated. *Kornberg v. Keisha Gatison*, #19-0455 (8 pages).

Stipulated Sanctions where attorney admits there was clear and convincing evidence of violation of Rule 8.4(4). Attorney ordered to take three hours of in-person CLE in ethics in addition to annual requirements of Practice Book 2-27A. *Fields v. Tony Anthony*, #19-0448 (11 pages).

Presentment ordered by agreement for alleged violation of Rules 1.3,

1.4(1), 1.4(3), 1.4(4), 8.1(2), 8.4(3), and 8.4(4) and Practice Book 2-32(a)(1) where attorney has another presentment pending with which this matter will be consolidated. *Stasiak v. Paul M. Cramer*, #19-0652 (8 pages).

Reprimand issued for violation of Rule 8.4(4) where attorney in divorce proceedings, with prior history of inappropriate statements in court, used profane language within hearing of judge and other counsel. *N.B. and Htfd JD Grievance Panel v. Alisha Carrie Mathers*, #19-0475 (8 pages).

Presentment ordered by agreement where attorney has another presentment pending and probable cause was found that attorney violated Rules 8.1(2), 8.4(2), and 8.4(3) and P.B. § 2-32(a)(1). *New Haven JD Grievance Panel v. Michael J. Cronin*, #19-0459 (8 pages).

Presentment ordered by agreement where probable cause was found that attorney violated Rules 1.15(b) and 8.3(2) and Practice Book Sections 2-27, 2-28(h), and 2-32(a)(1) and attorney has another presentment pending with which this matter will be consolidated. *Bowler v. Christopher Anthony Bacotti*, #19-0619 (8 pages).

Presentment ordered for violation of Rules 3.4(7), 5.4(c), 8.4(1), 8.4(2), 8.4(3) and 8.4(4) where attorney had a state marshal deliver a letter to the elderly parents-in-law of an adversary party, which letter was found to be intended to harass, intimidate, and coerce the

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

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

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

in-laws so that they would "remedy" a potential \$3 million liability of their son by coming to an "understanding" with the attorney. Attorney was subject of two prior disciplinary actions issued within 6 months of this complaint. *Findley v. Walter Ambrose Shalvoy, Jr.*, #19-0620 (9 pages).

Reprimand issued by Stipulated Disposition for violation of Rule 3.4 (7). Attorney ordered to take at least 1 credit hour of CLE in civility/zealous advocacy within boundaries as part of his 2020 MCLE requirements. *Kosswig v. Abelardo J. Arias*, #19-0321 (10 pages). ■

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CONNECTICUT JUDICIAL BRANCH:

Remote Technology Is Here to Stay

BY THE HONORABLE PATRICK L. CARROLL III



Image credit: gmast37/Stock/Getty Images Plus

THE PAST YEAR-AND-A-HALF has been unlike anything we have experienced in our lives—or care to again. However, the pandemic also continues to present the Connecticut Judicial Branch with opportunities to do its important work more effectively and efficiently via remote technology, which ultimately enhances access to justice for the bar, litigants, and other stakeholders.



REMOTE TECHNOLOGY IS HERE TO STAY

Moreover, it's time to dispel any notion of our state courts ever returning to business as usual, pre-pandemic. Remote technology is here to stay, and the Judicial Branch's heavy reliance on virtual proceedings via Microsoft Teams will continue. Consider, for example, that the Judicial Branch's expanded delivery of remote justice has led to more than one million minutes on the record since August 2020. We have made tremendous strides in enhancing our virtual infrastructure and have expanded the number of Remote Justice Courtrooms to an astounding 145. The benefit of such expansion is obvious: flexibility and peace of mind that we can provide an alternative way of hearing cases, no matter the circumstances. We also livestream civil and housing proceedings from 42 of those remote courtrooms, greatly enhancing public access. Of particular interest to attorneys is the use of Microsoft Teams to conduct pre-trials. No longer do attorneys have to drive a long distance to get to a courthouse for a brief pre-trial. Additionally, the Judicial Branch has developed Microsoft Teams-based "Remote Rooms," by which attorneys and litigants may appear remotely from within a courthouse.

It goes without saying that our remote technology initiatives have positively impacted all four disciplines: civil, family, juvenile and criminal. At the same time, we recognize that some proceedings—criminal trials, for instance—simply cannot be done remotely. It has been a balancing act throughout the pandemic, particularly when public safety considerations dictated minimal in-person

contact. Yet, at this point, the Judicial Branch has succeeded in implementing an effective blend of remote and in-person proceedings to resolve matters brought before it in a fair, timely, efficient, and open manner.

Updates regarding the divisions are as follows:

- ▶ **CIVIL:** Jury trials, jury selection, and cases involving civil orders of protection occur in person; only under extraordinary circumstances would anything else be done live. This situation will be reassessed in the future, but barring a significant change with the virus, we will be keeping things "as is" past the first of the year. While some attorneys prefer in-person over remote, they are greatly outweighed by those who like doing their matters remotely.
- ▶ **JUVENILE:** Remote technology has proven to be efficient, safe, and cost-effective when conducting certain child protection matters. Specifically, with minor exceptions, short calendar matters, judicial pre-trials, case status conferences, and some half-day contested hearings can—and should be—conducted virtually. In addition, litigants in child protection and delinquency matters may now apply remotely for legal representation through the Office of Chief Public Defender. (Previously, litigants would appear in person at a courthouse to apply for legal representation.) Finally, for



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those juveniles who are detained in our juvenile residential centers, virtually-held detention hearings allow them to participate in their weekly detention review hearing without substantive disruption to their daily educational and/or therapeutic programming schedule.

- ▶ **FAMILY:** Remote technology will continue to be used for status conferences, judicial settlement conferences, many shorter hearings and proceedings, and situations where a party may be incarcerated or lives in another state. The Family Division is moving toward scheduling longer hearings and trials in person rather than virtually, unless both parties request a remote proceeding or the judge determines there is a reason to hold the proceeding remotely. In addition, the Family Division is working on plans to resume some in-person dockets for shorter matters, where the efficiencies of being in person are especially important. As an example, Resolution Plan Dates can be done more effectively when the parties are in person and can complete and/or file documents needed to move their case along.
- ▶ **CRIMINAL:** Our criminal courts have continued leveraging remote technology, while, at the same time, increasing the frequency of in-person proceedings. The result has been the ability to adjudicate a greater number of cases more expeditiously. Most pretrial conferences are now conducted virtually, a prac-

tice that is likely to continue, unless counsel requests otherwise or the issues at hand require the parties to be physically present in court. Remote proceedings have also proved effective in resolving, by way of plea, matters involving incarcerated defendants. First-time offenders applying for diversionary programs have benefitted as well from virtual appearances. It is important to note that in-person plea and sentencing proceedings will be scheduled if the needs of a particular case or interests of a stakeholder—including a crime victim—warrant it. By and large, though, the opportunity to resolve criminal cases without the need for multiple in-court appearances has been broadly embraced by counsel, defendants, and the Judicial Branch.

It is difficult to predict where we will be at the end of this year. If COVID-19—and now, the Delta variant—has taught us anything, it is that a pandemic can change direction very quickly. Throughout the crisis, the Judicial Branch’s top priority has been to balance our constitutional responsibilities with the overarching goal of keeping every person inside of our facilities safe and healthy. We have succeeded only through the dedication, hard work, and resolve of our staff, judges, family support magistrates, the CBA, and indeed, the entire legal community. With such talented individuals and a virtual infrastructure in place, the Judicial Branch is well poised to respond to any future challenges. ■

The Honorable Patrick L. Carroll III is the Chief Court Administrator.

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TIME MASTERY

By Tanyee Cheung

ONE OF THE MOST powerful life skills is time mastery. For lawyers, developing and honing this skill can help us improve both our business and personal relationships, our productivity, and our well-being. For law firms, recognizing the importance of developing these skills in our attorneys and fostering well-being in our community is not only a noble goal but our duty to our profession.

Time Management Matrix Quadrants

Important and Immediate

QUADRANT 1

Deadlines
Crisis
Key Meetings

Manage
and
Do

Not Important and Immediate

QUADRANT 2

Emails
Phone Calls
Other Meetings

Minimize
and
Delegate

Important and Not Immediate

QUADRANT 3

Life Planning
Relationships
Health

Plan
and Do

Not Important or Immediate

QUADRANT 4

Busy Work
Escape
Time Wasters
Work that can be outsourced

Eliminate



WORKING FROM HOME (WFH) TIPS:

HOW TO KEEP YOUR WORK AND HOME LIFE SEPARATE

- Family affair—Get everyone on the same page!
- Work Life—Get everyone on the same page!
- Separate your work and home spaces—even setting aside a corner in the bedroom will help
- Separate your work and home time—time block and stick to it!
- If you can, use earbuds with soothing sounds
- Use meeting times wisely—consider micro meetings to check in
- Well-being is critical (Quadrant 3)—*plan for it!*



FAMILY AFFAIR:

MAKE SURE THE FAMILY IS ON THE SAME PAGE!

- Be realistic in your evaluation of the situation
- Decision fixing—Pre-arrange meals and set a family schedule at the beginning of the week
- Separate home and workspace
Even if you share workspace, ensure everyone is working in the “workspace” and that a separate area is designated for play, conversations, watching TV, etc.
- Separate home and work tasks
- Keep regular office hours – When you leave “the office,” shut down your computer and respond as you would if you weren’t working from home
- Take breaks (can be used for kid time, meal prep, exercise, or meditation time!)

The COVID-19 pandemic added a few extra balls to the juggling act that attorneys have been practicing well before work and non-work life began to meld into one another. As some of us slowly became one with our computer, rocking babies with a foot on their car seat as we zoomed away on calls, we started to lose our balance without even realizing it. Our new normal became, well, normal. We became “masters” of multi-tasking. Not only could we have it all, we could have it all at once! Unfortunately, studies show that multi-tasking in reality is task-switching, moving between tasks as opposed to doing multiple tasks at the same time. Researchers at the University of Michigan found that participants lost time when they multi-tasked. Moreover, the time lost increased with the complexity and the unfamiliarity of the tasks.

Think of your brain like open tabs on the computer screen—the more tabs you have open, the slower your computer goes, the more you multi-task, the slower your brain is working. So, if multi-tasking/task switching isn’t the answer, what is? After reading hundreds of articles on productivity, I found that there were a few fundamental time mastery skills: To Do Lists, Time Blocking, Decision Fixing, Saying No, and Thoughtful End to the Day.

To Do Lists

Many of us have probably had to-do lists but often the list is done with items off the top of our head. We don’t actually think about how we organize our lists. The lists themselves becomes unmanageable with us needing to add “organize to-do-list” to our to-do-list! There are a number of ways to create effective and productive lists. The top one is the Eisenhower Matrix.

This method requires us to consciously bucket our activities. Quad 1 is what you expect it to be. These are the tasks you have with specific upcoming deadlines, “fires” that arise during the day, and key meetings.

Quad 2 are things we treat/think are “important” because, well, we don’t really think about it. So, we will pick up phones, chat with someone who walks in our office, respond to emails that interrupt our flow, taking care of that “one small ask,”—all of which gets in the way of getting Quad 1 tasks done effectively. Quad 2 items are in our face leading us to *believe* they require our immediate attention, but they don’t. We should set aside time for Quad 2 items (see time blocking below) and those which can be delegated should be, those that are not a priority and we don’t have time for need to be declined/dismissed and if they are important and immediate, then we should move them to Quad 1.

Quad 3 items are the nourishment we need to maintain our balance. These are sleep, healthy relationships, exercise, meditation, and hobbies. While often overlooked because they are not immediate needs, they are very important to maintaining our productivity. Without replenishing ourselves, we become more susceptible to “burn-out.” We need to actively block out time for these important activities.

Finally, we have Quad 4, the not important or immediate box. I know you are wondering, why do I want to include these activities in my to do list if they are neither important or immediate. While we may not want to include them in our to-do lists, we often do. How much time do you spend scrolling through social media or the news feed? Shopping online? Fighting with your spouse or kids? Complaining about an adversary or our boss? These are all tasks that we unwittingly devote a block of our time to. We don’t have to eliminate everything, but when we are aware of where our time is going, when we see that these “time wasters” are taking away from our Quad 3 time, we can then make a deliberate choice about where to spend our time. If you can’t give up your timewaster, consider tying timewasters to Quad 3 activities. For instance, I can look at my news feed for five min-

utes *after* I complete my 10 minutes of meditation or set aside an hour to watch a show with friends or family that can inspire discussion to build relationships (personal current favorite, *Ted Lasso*).

Time Blocking

Time blocking helps us stay away from the productivity suck of task-switching. If we continue to disrupt our flow, we are more likely to lose our train of thought, make mistakes, and be less productive. Set aside a set amount of time to do your most difficult work, brief writing, contract review, etc. (your “Productivity Period”) and don’t allow interruptions during this time. This means not responding to emails, picking up the phone, chatting with the random person who walks by your desk, etc. These time blocks can be as short as 25 minutes to be effective. So, you can set aside 25 minutes for your thoughtful work and then take a 10-minute email break to go through your emails. You can quickly answer emails that only require a short response. You can flag important emails that require more thoughtful responses for your next Productivity Period and let the sender know you will get back to them later in the day. Staying on task can help reduce stress, produce higher quality work product, and save you time. You may find that you have the most focus first thing in the morning or maybe you are better late at night. You can time block around your personal productive times.

Decision Fixing

Time is so precious that we all want every minute we can get. We often don’t realize that when we have choices, the minutes we take to make a decision can add up. In addition, having too many choices can lead to stress. By removing choices, we can gain time and calm. We can automate some basic decisions like our wardrobe, meal choices, or food shopping. Create a standard food shopping list, set an old-fashioned meal menu (Taco Tuesdays!), create your uniform rotation (Steve Jobs and many other successful entrepreneurs wear the “same” uniform daily). By setting these basic functions on au-

to-pilot, we can save our energy and time for more important work. While it might seem small, if we eliminated these choice decisions, we might be able to get in that exercise or meditation routine or get an extra half hour of sleep!

Saying No (or Saying Yes to Productivity)

A wise partner once told me, drafting the most protective, “perfect” contract for your client that no one will sign or that blows up a deal is actually not perfect. Professional, quality work is not perfect. There, I said it—we do not need to be perfect. Productivity is not only about high quality, it is about efficient, high quality work in a reasonable time frame. Proofreading your work is good, proofreading your work four times to ensure there is not a single typo is wasting your client’s money. Balance is the key to avoiding burnout.

Similarly, taking on too much work will lead to lower productivity and contribute to burnout, a real problem affecting attorneys today. Saying “No” to unreasonable and harmful demands is a skill that we need to cultivate in order to be and do our best. Becoming familiar with and using key phrases such as, “I would love to help, but my plate is full” or “I wouldn’t be able to give that project the time it deserves given my current projects” sets up your “no” in a thoughtful, non-dismissive tone. You can also consider whether by swapping some tasks that are more efficiently done by others can free you up for work that requires your level of knowledge and experience. Say “no” so you can say “yes.” Most importantly, use the time you save wisely and remember that self-care is not selfish. To perform at your best, you need to have balance and self-care is essential to your performance as an attorney, a mother or father, a son or daughter, a friend, and everything else you do and are.

Thoughtful End to the Day

Take 15 minutes at the end of each day to evaluate your day and learn from it. Do you need to re-prioritize your goals? Did



WORK LIFE:

MAKE SURE YOUR EMPLOYER IS ON THE SAME PAGE!

- COMMUNICATE!
- Be honest about your home situation
- Get employer buy-in by coming up with a plan
 - Propose a productive work model
 - Discuss time blocking strategies
 - Discuss work distractors
- What are the best days for you to be in the office?
- Be **clear** on deadlines—time block accordingly
- Check in with team members—schedule micro meetings and stick to micro timing



AT HOME WITH KIDS

FIND WAYS TO KEEP INTERRUPTIONS TO A MINIMUM

- **Toddlers/babies**—You need to have an adult on call; time block and do tasks that do not require focused concentration and/or household tasks that you can easily step away from when you are “on-call”
- **School age children**—Agree to “Classroom Rules” (when working, everyone works); time block and schedule breaks to take with kids
- **Teenagers**—Time block discussion time; great opportunity for them to learn independence
- **Separate spaces** (red/yellow/green post-it notes can show your kids if it’s emergencies only or if you have time to answer a quick question)

the task you thought would take an hour take three? Like any other activity we seek to master, time mastery takes practice and reflection. Refine your daily activities and experiment with what works for you.

The first step we need to take to achieve time mastery is to be aware of where you are spending your time. Taking the time to evaluate your time and your goals might require a little bit of effort to start but in the long run, the benefits are often well worth the effort. To avoid becoming discouraged, don’t try to tackle everything at once. Audit your time for seven days straight and then pick one habit to implement.

Habits are best formed with a **SNAP** mindset: **S**tart strong, **N**o exceptions, **A**lways act and **P**ractise the will. In order to start strong, you need to be deliberate with your practice and keep the challenge(s) manageable so you aren’t tempt-

ed to let the ball drop. Pick one thing, get good at that, and then cultivate the next “habit.” Habits are, by definition, something that becomes second-nature; if you allow for exceptions, the act doesn’t become ingrained, so no exceptions. Instead of preparing all meals for the week, start with a simple breakfast chart that you can easily follow and stick to. Build over time and soon all your meals will be fixed. Then start the next area that you want to change. By ensuring that you always act and practice the will to take these small incremental steps, you will build up your toolbox of helpful habits. Over time, your newfound habits will help you become a master of your time and energy! ■

Continued on page 40 →

Tanyee Cheung is a debt finance partner at Finn, Dixon & Herling, LLP and is chair of the firm’s Wellness Committee and co-chair of the Connecticut Bar Association’s Wellbeing Committee. Tan received her Masters in Applied Positive Psychology from the University of Pennsylvania and is incredibly passionate about wellbeing.

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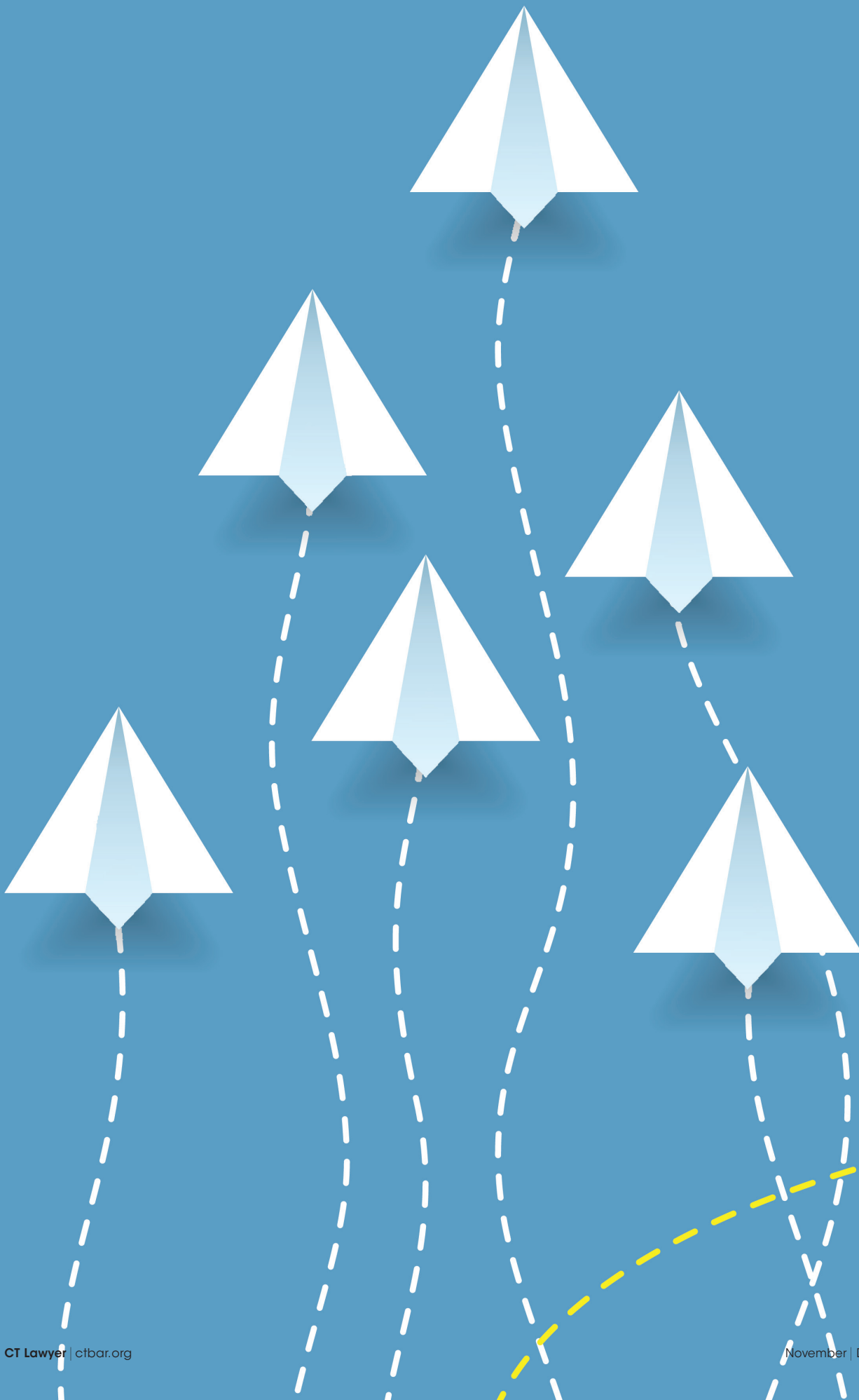
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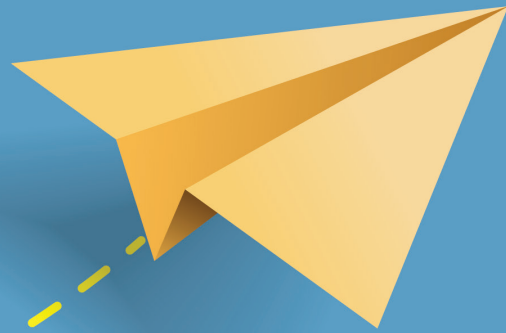
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How Choosing a **NICHE** Can Improve Your Practice (and Your Life)



Back in 2012, I was managing litigation for Hartford Steam Boiler. I was pushing 10 years in practice at that point, with two previous roles litigating at Shipman & Goodwin and Bingham McCutchen. My wife, Kristen Marcroft, graduated from law school that year—she was a non-traditional student—and she wasn't drawn to the conventional career path that I'd taken back when I graduated in my 20s. That, combined with some fatigue of the (initially very rewarding) extensive travel required by my in-house position and a real desire for a new professional adventure, led to my resigning from my corporate role to open the firm that's now Freed Marcroft together with Kristen and another partner.

BY
MEGHAN
FREED

Choosing a Niche

In the first couple of years, Freed Marcroft was essentially a small general civil practice. We wore way more hats each day than just “lawyer”—including bookkeeper, receptionist, paralegal, marketing assistant, custodian—you get the picture. Although our independence was rewarding, we were also stuck in the weeds. By 2014, we realized that we needed help learning how to make Freed Marcroft a place where the two of us could focus our time on giving clients an exceptional experience. We scheduled an initial call with a coaching firm, “How to Manage a Small Law Firm.” I do not overstate it when I say that we walked away from that first conversation with the single most transformational piece of practice management advice we’ve ever received: “Limit your practice.”

We have had significant growth since that day—Freed Marcroft is currently a team of 15 plus—but the most critical decision we made was back in 2014 when we decided to pick a niche and throw everything we had at it. That was the key that unlocked everything that followed.



How to Pick Your Niche

The fateful question that the coach asked us was, “If you could pick just one practice area, what would it be?”

It’s your immediate, gut response to that question that has the potential to help you build a practice you truly love. For Kristen and me, the answer was family law—we said it in unison. For you the answer might be personal injury or trust and estates or bankruptcy or criminal or tax—it doesn’t matter what it is, it only matters that it matters to *you*. To be clear, our choice of matrimonial law wasn’t based on anything objective. We didn’t know how many divorces there were in Connecticut that year, or how much competition existed, or have any sense of the margins on family law. People in the divorce transition were just the people we were called to help. That was the work we wanted to do.

Find a niche that provides you with purpose and meaning. Don’t make the mistake of picking a practice area based largely upon what work you have the most of, or what others think, or what appears profitable. Reflect on the kind of law you enjoy practicing, the clients you love helping, and what truly gives you meaning at the end of the day, and choose a focus based on those factors.



Making the Shift to One Practice Area

With our coach’s guidance, we began winding down our other practice areas. I’m not going to try to tell you it wasn’t scary, because it was incredibly scary. Frankly, back then the idea of losing any income was downright petrifying. When your life partner is also your law partner, your firm is your family’s sole source of income. At the time, we were also responsible for 100 percent of our one employee’s household income. Turning away any business we could competently serve seemed bananas. But two things made us keep going. First, we were simply eager to have an exclusively divorce and family law practice. Second, the way we

had been managing our practice wasn’t working. We’d had the same stress (way too much) and the same revenues (way too little) for our firm’s entire existence. We held our noses and took the plunge.

One of the reasons we were successful is that we had professional help. When you niche down, make sure you hire someone with the experience to help you structure how to ease out of the practice areas you’re dropping and how to ramp up your marketing and systems to support your new single focus. This isn’t the time to be penny wise and pound foolish. You should not go it alone, and you should not try to use free articles from the Internet as a substitute for a coach.



Pick One Thing and Do It Really, Really Well

Today, everything at Freed Marcroft is focused on divorce and family law. Everything. Our blog and videos educate clients on divorce and family law. Every book and research tool in our office is about divorce and family law. Aspects of divorce and family law are the subject of all our CLEs, and each of our lawyers benefits from membership in the CBA’s Family Law Section and other divorce-centered legal organizations. Our paralegals aren’t trying to witness a will or prepare closing docs while they draft a client’s financial affidavit; they are focused on family law practice and how to help family law clients. Our lawyers appear in every family court in Connecticut. We know the judges, the clerks, the rules, the latest caselaw, and our colleagues in the family law bar.

Because our practice area is an inch wide, our lawyers’ experience runs a mile deep. Since limiting our practice, Freed Marcroft has developed an extensive international and interstate practice and regularly takes high complexity financial and custody cases to trial. We are trained and experienced in all divorce modalities—mediation, collaborative law, and both high and low-conflict litigation—enabling us to assist clients in whatever approach is the best fit for their circumstances and goals.

All our practice management systems are created for family law clients and practice. Because we are trying to do just one thing really, really well, we have been able to thoughtfully design our firm in a way that delivers not only in-depth legal knowledge and skills, but also a client experience rooted in the unique emotional and financial realities of divorce and family matters.



The Benefits to Attorneys

While the idea of a narrow focus might seem limited compared to the broader approach of either small general practice firms or Big Law firms like where I began my career, a tight focus offers several benefits to lawyers. First, it permits lawyers to practice the law that inspires them. Second, it provides the freedom to build or expand expertise. Finally, it allows attorneys to focus on designing and delivering exceptional client experiences.

Senior attorneys spend their time on sophisticated work, including complicated facts and complex legal issues. Rather than jacks of all trades, they are masters of one. Lawyers are happier, less stressed, and more efficient. As the firm grows, senior lawyers mentor junior lawyers in how to develop the strategy of a case, effectuate that strategy, and serve not only as a client's attorney but also her counselor at law. Additionally, a team of lawyers devoted to one practice area allows for cross-pollination and brainstorming. At Freed Marcroft, we call on each other's collective knowledge, expertise, and experience to help our clients daily. Clients and professionals alike benefit from our hivemind.

For junior attorneys who are passionate about becoming exceptional in a certain area of the law, working at a boutique law firm in that niche can bring great training, satisfaction, and opportunities to develop and grow their career. For example, while Freed Marcroft provides structured onboarding for all our attorneys, our training program is more intense and extended for junior attorneys. We created our Divorce College to teach junior attorneys divorce and family law and practice. Its curriculum includes everything from one-on-ones, homework, moot court, role-playing, and a Divorce Lab. As junior lawyers' experience increases, their training is further tailored to them and their specific professional development needs and goals.

The Benefits to Law Firm Owners

In addition to all the above benefits, law firm owners who select and embrace a niche have the opportunity to run a more agile, entrepreneurial business. You get to create a focused legal practice in your vision.

If growing your law firm is one of your goals, and you niche down deliberately and successfully, your firm will flourish. Freed Marcroft's gross revenues increased about 700 percent between when we decided to transition to family law exclusively and today. We have eight lawyers instead of two lawyers, and a team that big again to support them. Rather than being a source of stress, referring out potential clients that have a legal need other than divorce and family law is an opportunity. We help the potential client by getting them to a lawyer experienced in the relevant practice area who can do an excellent job on their behalf. And, we get to build rewarding relationships and strong referral connections with attorneys across the Connecticut bar.

As Freed Marcroft's owners, two things stand out to Kristen and me as the most exciting and rewarding benefits of our growth: the team of people we now get to work with, and the number of clients we now get to help in the way we get to help them.

I'm often asked why we grew by narrowing our niche. To many lawyers it seems counterintuitive that limiting your clients grows your practice. There are a lot of reasons, but you can boil it down to two. First, all our marketing is streamlined and focused on attracting exactly the type of clients we are best able to help. The

message is clear, the mission is focused, and all energy and dollars go in that direction. Second, similarly, our attorneys are freed up to focus on understanding and accomplishing each client's goals. In other words, clients are happier.

The Benefits to Clients

Benefits to lawyers translate into benefits to clients, and benefits to clients translate into benefits to lawyers. The two are inextricably linked.

Lawyers who limit their practice to one area they love can focus on delivering personalized, efficient, client-centered service to the clients that they can help best. In our experience at Freed Marcroft, it's clear more and more clients want to connect with their lawyers in an open, authentic way and in a comfortable, welcoming environment. A boutique practice can encourage that type of connection while offering clients high-quality service based on significant accumulated experience.

And there are just no two ways about it: happy, confident lawyers do better work. ■

Meghan Freed is managing co-partner of Freed Marcroft, a Connecticut law firm that devotes its practice exclusively to divorce and family law.



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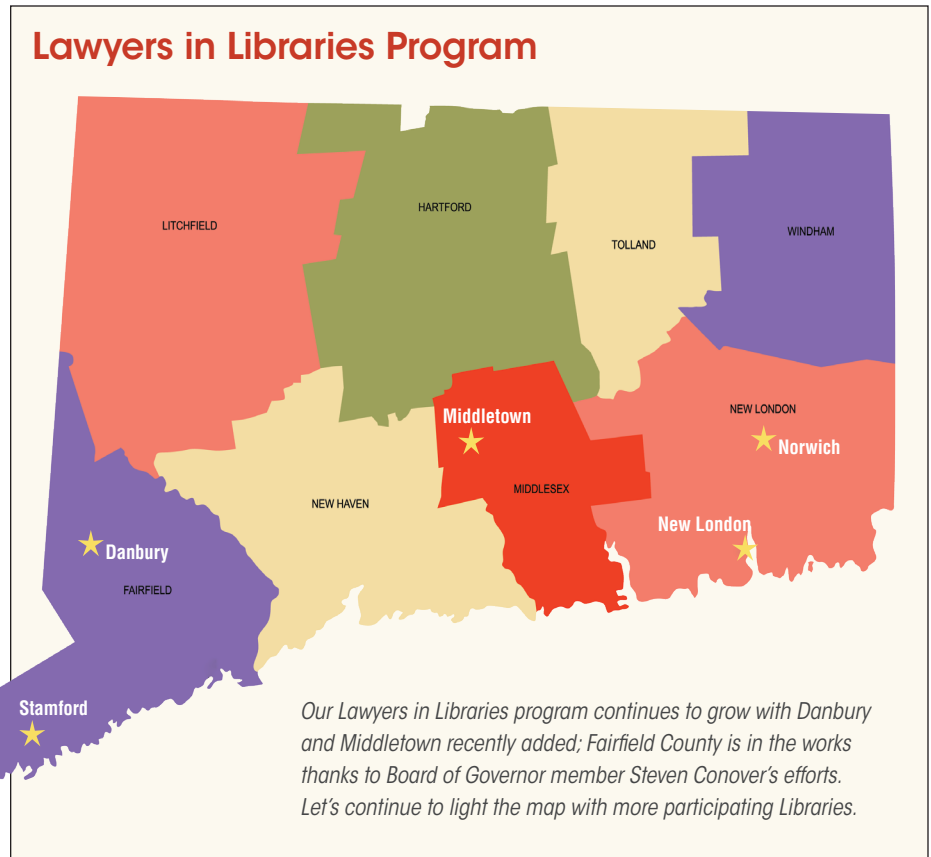
News Flash: Lawyers Are Among the Most Generous People on the Planet

By DANIEL J. HORGAN

The bar year for pro bono programs is off to a good start. The lingering effects of the pandemic remain with us and the need for legal assistance for so many of our citizens is great. By the time this column goes to print, our fall virtual free legal clinic will have taken place on October 26, 27, and 28. The clinic ran from 10:00 a.m. to 7:00 p.m. with dedicated 30-minute consultations slots through Zoom. This format made it so easy for our members to hop on a Zoom call and offer advice to a Connecticut resident in need from the comforts of their office or home. I estimate more than 70 consultations took place based on last year's participants. Confirmed numbers will be published in the next edition.

Thank you to all CBA volunteers and employees who continue to make this program a huge success, especially Don Philips, Marc Finer, and Ashleigh Morelli. We hope to hold another clinic in December and two more in 2022 before the end of the bar year in June—lofty expectations but we can do it! Lastly, special thanks to new CBA member Jamal Wright who gave me free radio time to promote the clinics on his iHeartRadio show, *The Jamal Show—The Place to Get Intelligent*.

The CBA encourages your support of its many pro bono projects, including Lawyers in Libraries, CBA Pro Bono Connect, Bankruptcy Pro Bono Program, and CT Free Legal Answers. We also wish to recognize and applaud CBA members who selflessly offer their legal expertise free through their firm's sponsored programs. One example is Attorney Christopher Kriesen of the Kalon¹ Law Group.



His firm aspires to promote social good through a social entrepreneurship model. Chris is well known to CBA leadership through his work on our COVID-19 Task Force, and opened his private practice in 2017. At the core of his practice was a pro bono mission born from his time spent overseas and his yearning to help others in need, especially refugees.

Chris created the Kalon Human Rights Clinic, which consists of third year law students called Kalon Fellows who work with attorneys in assisting asylum-seeking refugees from Central America. The referrals come from the Connecticut Insti-

tute for Refugees and Immigrants (CIRI). Chris and his team provide representation through the deportation hearings, which can take years to reach. "Most of our clients are terrorized by violent gangs such as MS-13. Our fellows are fluent in Spanish, which aids in the communication and representation process," said Kriesen. As I perused the firm's website, I noted that the pro bono services provided is woven into the purpose of forming the firm. It states in part, "Some firms measure pro bono work by the number of hours they contribute. We measure our pro bono work by the value we add to the lives of our clients," (kalonlawfirm.com). Hats off

to Chris and other CBA members who use their practices in part to provide free legal services on an ongoing basis without fanfare. We are interested in hearing from other CBA members about their pro bono activities. Your programs and ideas can help the CBA Pro Bono Committee in forming future free legal programs. Don't be shy—reach out to me. After all, it is your efforts in giving away countless hours of free legal services that makes Connecticut the greatest and most generous state to practice our chosen craft. Cheers to you!! ■

NOTES

1. Kalon is a word used by ancient Greek philosophers to describe certain ideals they held.



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

4 WAYS TO PROVIDE PRO BONO SERVICE

Connecticut's Rules of Professional Conduct for attorneys (Rule 6.1) defines Pro Bono Publico legal services as: "... professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means." Volunteer today through one of our pro bono programs.

CBA Pro Bono Connect

Get connected with one of Connecticut's civil legal services providers, based on your expressed pro bono interests, to provide civic legal services to Connecticut residents in need. Connections to training is also available.

CT Free Legal Answers

CT Free Legal Answers is an online civil legal service for people who cannot afford to pay for an attorney. Attorneys will answer questions through an online portal.

Lawyers in Libraries

Provides pro bono legal services to members of the public at libraries throughout the state in the areas of landlord/tenant, immigration law, family law, employment, consumer rights, and personal injury.

Bankruptcy Pro Bono Program

The Commercial Law and Bankruptcy Section has formed a panel of volunteer attorneys to represent needy and qualified individuals or married spouses pro bono in Chapter 7 bankruptcy cases, contested matters, and adversary proceedings.

Visit ctbar.org/members/volunteer to learn more about these programs and other pro bono resources.



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Find a Lawyer CT is a publicly searchable online directory of CBA attorney members accessible at ctbar.org/find. This valuable self-search tool is a quick and easy way for the public to tap into our network of attorneys through criteria such as name, employer/firm name, location, practice area, or language(s) spoken.

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Maintaining the Integrity of the Profession: Connecticut Rule of Professional Conduct 8.4(7)

In June of 2021, the judges of the Superior Court of Connecticut approved amended Connecticut Rule of Professional Conduct 8.4(7). The new rule, which goes into effect on January 1, 2022, defines discrimination, harassment, and sexual harassment in professional contexts as professional misconduct. CT Lawyer interviewed Cecil J. Thomas, CBA president and chair of the CBA 8.4(7) Working Group, to learn more about the rule. A reprint of the text of the new rule may be found on page 32.

Where did Connecticut Rule of Professional Conduct (RPC) 8.4(7) originate?

Like many of Connecticut's Rules of Professional Conduct, RPC 8.4(7) is adapted from the American Bar Association (ABA) Model Rules of Professional Conduct. In 2016, the ABA House of Delegates approved revisions to the Model Rules of Professional Conduct to add Rule 8.4(g), making discrimination and harassment in the practice of law a form of professional misconduct. The revision was approved by voice vote with overwhelming support, including the unanimous support of the ten-member Connecticut delegation.

The ABA was following the lead of the states in adopting this revision in 2016. Even before the ABA adopted Model Rule 8.4(g), 24 states had some form of antidiscrimination or antiharassment provision in the black letter of their versions of Rule 8.4. Connecticut, and at least 12 other states, included language regarding bias or prejudice on the basis of certain protected classes in the commentary to Rule

8.4, based on the pre-2016 Comment [3] to Model Rule 8.4.

How was RPC 8.4(7) introduced in Connecticut?

In June of 2020, Attorneys Aigné Goldsby and Megan Wade, acting on their own initiative, requested that the Rules Committee of the Superior Court of Connecticut adopt ABA Model Rule 8.4(g). The Rules Committee tabled the matter until the September 2020 Rules Committee meeting, with instructions to the proponents to "coordinate with the Connecticut Bar Association and to submit additional materials to the Committee for review." (Minutes of the Meeting, Rules Committee of the Superior Court, June 5, 2020).

How did the CBA respond to this request from the Rules Committee?

Attorneys Goldsby and Wade contacted then CBA president, the Honorable Ndidi N. Moses, and requested to be heard on the matter at the June 15, 2020 CBA House of Delegates meeting. Attorneys Goldsby and Wade, along with Attorney Marcy Stovall of the CBA Standing Committee on Professional Ethics, addressed the House of Delegates, and President Moses announced the formation of a CBA 8.4(7) Working Group. President Moses asked me to serve as chair of the 8.4(7) Working Group, which included CBA officers; several past CBA presidents; leaders of the Young Lawyers Section; employment lawyers; representatives of the CBA Diversity, Equity, and Inclusion Committee; and the Standing Committee on Professional Ethics, as well as Attorneys Goldsby and Wade.

What process did the Connecticut Bar Association 8.4(7) Working Group follow in considering and developing CBA Proposed Amended Rule 8.4(7)?

ABA Model Rule 8.4(g) has been regarded as controversial, so we took a very deliberate approach, first shaping and updating the CBA version of the rule to address common concerns, and to ensure its consistency with the substantive law of protected classes in Connecticut. The CBA 8.4(7) Working Group met almost weekly through the summer of 2020 to refine the rule, gather supporting materials, develop a survey to better understand the prevalence of harassment and discrimination in Connecticut, and presented the proposed rule to several CBA sections and committees for comment and potential sponsorship.

Most proposed changes to the Rules of Professional Conduct are sponsored by one or two CBA committees or sections. CBA Proposed Amended Rule 8.4(7) was sponsored by eight different CBA committees and sections before its submission to the CBA Legislative and Policy Review Committee (LPRC): the Diversity, Equity, and Inclusion Committee; Standing Committee on Professional Ethics; Young Lawyers Section; Human Rights and Responsibilities Section; LGBT Section; Women in the Law Section; Veterans and Military Affairs Section; and the Professionalism Committee. After the Rule was submitted to the LPRC, the rule was approved by the Professional Discipline Section, Litigation Section, and the Labor and Employment Section. Many of these approv-

als and sponsorships were unanimous or by a substantial majority. The LPRC and Executive Committee each unanimously approved the CBA version of the rule. The CBA House of Delegates then held a special meeting on September 10, 2020 to consider the rule, and after extensive debate, approved it, with 39 in favor, 11 opposed, and 1 abstention.

The CBA submitted its approved version of 8.4(7), along with supporting materials, to the Rules Committee in time for the September 2020 meeting, as requested. ABA Model Rule 8.4(g) was also withdrawn from consideration at this time.

You mentioned that ABA Model Rule 8.4(g) has been regarded as controversial. What are some of the common objections to the Rule?

Opponents of ABA Model Rule 8.4(g) commonly criticize it as violative of the First Amendment rights of lawyers, in particular freedom of speech. Opponents also allege that the rule is over-reaching, because it reaches conduct outside the traditional practice of law, such as conduct occurring at bar association events or in the workplace. Other common criticisms are that the rule is not specific enough, preventing lawyers from knowing what conduct is proscribed, or that the rule will cause a flood of grievances and disciplinary actions against lawyers.

How did the CBA 8.4(7) Working Group address these concerns in developing the Connecticut version of the rule?

The Connecticut version of the rule (reprinted on page 32 for reference) has a number of changes addressed to these concerns, for example: the language in the commentary confirming that the Rule does not reach conduct protected by the First Amendment; clarification that conduct must rise to a certain level, and be directed at an individual or individuals, to violate the rule; the addition of more specific standards to the definitions of dis-

crimination and harassment; and stronger links to the substantive law of antidiscrimination and antiharassment, among other changes.

The primary focus and greatest impact of the Rules is not found in the disciplinary context. This is borne out in the language of the Rules of Professional Conduct:

Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

CT RPC, Scope.

Ultimately, the Rule is addressed to the very real concerns of discrimination and harassment in the practice of law, conduct which can be deeply harmful to those who experience it. The Rules of Professional Conduct reflect our statement of values as a profession, and we should all agree that discrimination, harassment, and sexual harassment have no place in the professional and ethical practice of law.

How prevalent are discrimination and harassment in the practice of law?

Unfortunately, harassment and discrimination are still far too prevalent within the legal profession. The Working Group considered national and international surveys and reports on the subject, and also conducted its own brief survey of Connecticut attorneys.

For example, a 2020 study, conducted by Women Lawyers on Guard and Nextions, LLC, found that 75 percent of women

lawyer respondents had direct experience with sexual harassment or misconduct.¹ Twenty-five percent of respondents reported the frequency of such harassment as “often” and 48 percent as “somewhat” frequent currently, showing only modest changes from the culture of sexual harassment in the legal profession 30 years ago.² Eighty-six percent of respondents reported that they did not report their experiences, although 35 percent of respondents indicated that they wanted to report. “The results of this Survey,” the study concludes, “lead to the inescapable conclusion that the system for addressing sexual harassment in the legal profession is still broken.”³

Another 2020 study, conducted by the ABA and the Burton Blatt Institute at Syracuse University, found that nearly 40 percent of lawyers who identify as having disabilities and/or as LGBTQ+ reported experiencing discrimination, harassment, and bias in the workplace.⁴ A 2018 survey of attorneys, conducted by the American Bar Association’s Commission on Women in the Profession and the Minority Corporate Counsel Association, found that women and people of color reported higher levels of bias than white men in hiring processes, performance evaluations, mentoring, high-quality assignments, accessing networking opportunities, compensations, and promotions.⁵

Do we have any indication that this type of conduct occurs within the legal profession in Connecticut?

Unfortunately, yes. As part of its evaluation of CBA RPC 8.4(7), the CBA conducted its own survey of Connecticut attorneys to better understand the prevalence of discrimination, harassment, and sexual harassment in professional contexts in Connecticut. The survey, which was conducted from September 4, 2020 until September 9, 2020, was completed by 578 respondents, of which 564 (97.6%) identified as an attorney licensed to practice law in Connecticut. Of the respondents, 293 (51%) reported that they had experienced

discrimination, harassment, or sexual harassment based on membership in a protected class, in conduct related to the practice of law. Exactly 252 (44%) of the respondents reported that they had witnessed discrimination, harassment, or sexual harassment, based on membership in a protected class, in conduct related to the practice of law. Of those lawyers reporting experiences with discrimination and harassment, the most common were on the basis of sex or pregnancy (243 responses), followed by race, color, ancestry, national origin, and/or ethnicity (183 responses); age (93 responses); and sexual orientation, gender identity, and/or gender expression (30 responses).

Of those lawyers reporting experiences with discrimination, harassment, and sexual harassment, the majority reported these experiences as taking place in the workplace. Client representation; personnel decisions; other professional meetings; activities or events; and bar association meetings, activities, or events were identified as common contexts in which such experiences took place. Respondents identified managers, supervisors, and other superior colleagues; opposing counsel; and other lawyers as among the most common of those who had engaged in this conduct.

Accompanying these responses were hundreds of narrative descriptions of Con-

necticut attorneys' individual experiences with discrimination, harassment, and sexual harassment. Reading these narratives was truly heartbreaking, and further confirmed the importance of ensuring that our Rules of Professional Conduct reflect our clear stance against this type of conduct.

The Rule will become effective on January 1, 2022. Where can Connecticut attorneys learn more?

There are a wealth of training and informational resources available on discrimination, harassment, and sexual harassment, including past CLE presentations that are available in our CBA Education Portal, and resourc-

RULE OF PROFESSIONAL CONDUCT RULE 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

- (1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (4) Engage in conduct that is prejudicial to the administration of justice;
- (5) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; [or]
- (6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law[.]; or
- (7) Engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, sexual orientation, gender identity, gender expression or marital status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation, or to provide advice, assistance or advocacy consistent with these Rules.

COMMENTARY: Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Subdivision (1), however, does not

prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, which have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation. Counseling or assisting a client with regard to conduct expressly permitted under Connecticut law is not conduct that reflects adversely on a lawyer's fitness notwithstanding any conflict with federal or other law. Nothing in this commentary shall be construed to provide a defense to a presentment filed pursuant to Practice Book Section 2-41.

[A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates subdivision (4) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate subdivision (4).]

Discrimination and harassment in the practice of law undermine confidence in the legal profession and the legal system.

es made available by the Connecticut Commission on Human Rights and Opportunities⁶ and Equal Employment Opportunity Commission.⁷ Additionally, the CBA 8.4(7) Working Group hopes to put on some educational presentations in this bar year to help guide attorneys on the substance and scope of the new Rule.

Any closing words for our readers?

Our profession is one that upholds the equality of all people, as one of the cornerstones of our legal system. Discrimination, harassment, and sexual harassment demean the profession, and are deeply harmful to those who experience it.

This new Rule encompasses our profession's rejection of such conduct, and a reaffirmation of our commitment to integrity, professionalism, and ethical conduct in the practice of law. The Rules reflect our values as a profession, and I am proud that we have taken this important stance here in Connecticut. ■

NOTES

1. *Still Broken: Sexual Harassment and Misconduct in the Legal Profession* (2020) <https://womenlawyersonguard.org/wp-content/uploads/2020/07/Still-Broken-Full-Report.pdf>; See also, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (May 2019) (International Bar

Association) <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>

2. *Id.*

3. *Id.*

4. *First Phase Findings From a National Study of Lawyers With Disabilities and Lawyers Who Identify as LGBTQ+* (2020) <https://www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/bbi-survey-accessible.pdf>

5. *You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession* (ABA, MCCA 2018). Executive Summary: <https://www.americanbar.org/content/dam/aba/administrative/women/Updated%20Bias%20Interrupters.pdf>

6. See e.g., *Sexual Harassment Prevention Resources* (ct.gov)

7. See e.g., *EEOC Resources* | U.S. Equal Employment Opportunity Commission

Discrimination includes harmful verbal or physical conduct directed at an individual or individuals that manifests bias or prejudice on the basis of one or more of the protected categories. Not all conduct that involves consideration of these characteristics manifests bias or prejudice: there may be a legitimate nondiscriminatory basis for the conduct.

Harassment includes severe or pervasive derogatory or demeaning verbal or physical conduct. Harassment on the basis of sex includes unwelcome sexual advances, requests for sexual favors and other unwelcome verbal or physical conduct of a sexual nature.

The substantive law of antidiscrimination and antiharassment statutes and case law should guide application of paragraph (7), where applicable. Where the conduct in question is subject to federal or state antidiscrimination or antiharassment law, a lawyer's conduct does not violate paragraph (7) when the conduct does not violate such law. Moreover, an administrative or judicial finding of a violation of state or federal antidiscrimination or antiharassment laws does not alone establish a violation of paragraph (7).

A lawyer's conduct does not violate paragraph (7) when the conduct in question is protected under the first amendment to the United States constitution or article first, § 4 of the Connecticut constitution.

Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or professional activities or events in connection with the practice of law. Lawyers may engage in conduct undertaken to promote diversity, equity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse

employees or sponsoring diverse law student organizations.

A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (7). Moreover, no disciplinary violation may be found where a lawyer exercises a peremptory challenge on a basis that is permitted under substantive law. A lawyer does not violate paragraph (7) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of a particular segment of the population in accordance with these rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5 (a). Lawyers also should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2 (1), (2) and (3). A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2 (b).

[A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists.] The provisions of Rule 1.2 (d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of a lawyer. The same is true of abuse of positions of private trust, such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

AMENDMENT NOTE: The amendment to this rule defines discrimination, harassment and sexual harassment as professional misconduct.

DeMaria v. City of Bridgeport: Revisiting the “Absolute Right” to Cross-Examination in Civil Cases

By CHARLES D. RAY and MATTHEW A. WEINER

Ever since the United States Supreme Court decided *Crawford v. Washington*, 541 U.S. 36 (2004), trying to understand the contours of a criminal defendant’s sixth amendment right to confront witnesses has confounded law professors, judges, and practitioners alike. Pre-*Crawford*, the issue of whether the admission of hearsay violated the right to confrontation turned on the reliability of the hearsay as measured by whether it fell within a “firmly rooted hearsay exception” such as the business records exception—or whether it bore “particularized guarantees of trustworthiness.” Post-*Crawford*, the substantive reliability of the hearsay is irrelevant. Fueled by the notion that the right to confrontation requires that reliability be assessed in a particular manner—i.e., through the “crucible of cross-examination”—the constitutional question now turns on whether the non-testifying declarant’s hearsay statement was “testimonial,” in that it resembles testimony that would be offered at trial in aid of a prosecution. Attempting to answer the question of what is “testimonial” has proven daunting in the criminal sphere.

In *DeMaria v. Bridgeport*, ___ Conn. ___ (2021), the Connecticut Supreme Court reassessed the right of a defendant in a civil case to confront an adverse witness. In doing so, the Court—as the United States Supreme Court did in *Crawford*—abrogated precedent and set forth a new framework for determining whether certain hearsay statements may be admitted at trial when the declarant is unavailable to testify.

The facts giving rise to the litigation in *DeMaria* seemed straightforward enough.



The plaintiff, Victor DeMaria, tripped on a raised portion of sidewalk in Bridgeport. Initially, the plaintiff’s injuries were limited to abrasions, a broken nose, and a broken finger. After two months, however, he began to experience, among oth-

er things, a burning sensation in his left arm. Eighteen months of treatment and consultations with various specialists did little to improve his condition. Eventually, the plaintiff’s treating physician assistant, Miriam Vitale, “wrote a document for his

medical file titled 'Final Report of Injury,' in which she opined that the plaintiff had reached the maximum potential use of his left hand, retained only 47 percent of his former grip strength and continued to experience pain and neuropathy in that hand." She further wrote that the plaintiff's injuries "were caused with a reasonable degree of medical certainty" by his fall.

Medical opinion in hand, Mr. DeMaria sued the City of Bridgeport, claiming that the City's failure to remedy a defect in the sidewalk had caused his injuries. Given that the opinions contained in Vitale's expert report formed the basis of the plaintiff's suit, one might have expected Vitale to have been a star witness. However, Vitale was a physician assistant at the veteran's affairs hospital in West Haven. Because she was employed by the Department of Veterans Affairs, federal regulations precluded her from providing "opinion or expert testimony in any legal proceedings concerning official [Department of Veterans Affairs] information, subjects or activities, except on behalf of the United States or a party represented by the United States Department of Justice." 38 C.F.R. § 14.808(a).

Nevertheless, the plaintiff attempted to present Vitale's opinions to the jury by admitting into evidence Vitale's treatment records and reports. The plaintiff relied on General Statutes § 52-174(b) which provides, in relevant part, that in certain civil actions "any party offering in evidence a signed report...for treatment of any treating physician ... may have the report... admitted into evidence as a business entry and it shall be presumed that the signature on the report is that of such treating physician...and that the report...[was] made in the ordinary course of business...." The defendant, relying on the common-law right to cross-examine witnesses, objected and argued that Vitale's records were inadmissible because she was unavailable to testify at trial or at a deposition. The trial court overruled the defendant's objections, the jury rendered a verdict in favor of the plaintiff in the amount of \$92,795.47, and the defendant appealed.

The appellate court sided with the defendant and ordered a new trial. *DeMaria v. City of Bridgeport*, 190 Conn. App. 449 (2019). For the unanimous panel of Judge Sheldon, Judge Lavine, and Judge Prescott, existing Supreme Court precedent rendered the decision an easy one. Specifically, the Court, in *Struckman v. Burns*, 205 Conn. 542 (1987), recognized that there is an "absolute" common-law right to cross-examination in a civil case. The *Struckman* Court further held that the admission into evidence of medical reports from the plaintiff's out-of-state physician did not infringe on the defendant's common-law right to cross-examination where the out-of-state physician could have been questioned at a deposition. Two decades later, the Court determined that medical records from a chiropractor who invoked his fifth amendment privilege against self-incrimination and, therefore, was unavailable to testify at trial or at a deposition, were not admissible under § 52-174(b) because "the defendants did not have an adequate opportunity to cross-examine [the chiropractor]..." *Rhode v. Milla*, 287 Conn. 731, 744 (2008). The Appellate Court reasoned that Vitale was more like the completely unavailable chiropractor in *Rhode* than the out-of-state physician available for deposition but not trial in *Struckman* and determined that the trial court had improperly admitted the report that contained Vitale's opinions.

A unanimous Supreme Court disagreed. In an opinion authored by Chief Justice Robinson, the Court identified a distinction between medical records created in the ordinary course of diagnosing and treating a patient and those prepared exclusively for use in litigation. The former fall squarely within the language of § 52-174(b)—i.e., "any party offering in evidence a signed report...for treatment of any treating physician...may have the report...admitted into evidence as a business entry"—which supports the conclusion that reports like Vitale's are admis-

sible regardless of whether their authors are tested by the crucible of cross-examination. Indeed, business records, though hearsay, are admissible because the circumstances under which they were created render them trustworthy.

The Court also explained that the policy underlying § 52-174(b) supports the admission into evidence of reports like Vitale's. According to the Court, the "very purpose for which § 52-174(b) was enacted was to avoid the delay and expense that obtaining the testimony of the author of the medical record would entail." To require, as a prerequisite for admission of medical records, that the author be available for cross-examination at trial or a deposition would subvert that purpose.

But what of the case law suggesting that medical records are not admissible if the defendant is unable to cross-examine the author? In short, it has, according to the Court, been misunderstood. The Court explained that *Struckman's* reference to an "absolute right" to cross-examination must be understood based on the context in which it arose. Specifically, the defendant in *Struckman* argued that the plaintiff's medical reports were not properly admitted because they were prepared for litigation "and, therefore, were not entitled to the presumption of reliability." Thus, the defendant did not argue, and the *Struckman* Court did not hold, that medical records prepared for treatment rather than litigation are admissible under § 53-174(b) only if their author is subject to cross-examination. Rather, *Struckman*

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

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.

■ Administrative Law

The statutory right to appeal to the Superior Court from an administrative ruling pursuant to Conn. Gen. Stat. § 4-177c on an application for an order that a final agency decision be rendered “forthwith” following expiration of the agency’s statutory 90-day time limit for rendering a decision in a contested case applies only to rulings for which there is a statutory right of appeal. Therefore, because the Covid-19 Emergency Executive Orders delegate authority to agency commissioners to extend agency deadlines during the Covid-19 pandemic without also delegating a right to appeal such an extension, no appeal may be filed from an agency’s own decision to grant an extension to the 90-day time while the Emergency Orders remain in effect. *1st Alliance Lending, LLC v. Connecticut Department of Banking*, 71 CLR 3 (Noble, Cesar A., J.).

■ Arbitration Law

A prejudgment remedy on a claim subject to a mandatory arbitration cannot be commenced until a civil action on the claim has been commenced, because PJR remedies are available only for claims being pursued in civil actions, even a request under the provision of the Arbitration Statute that authorizes a civil court to issue an order pendente lite at “[a]ny time before an award is rendered,” Conn. Gen. Stat. § 52-422. *Conspec Associates, Inc. v. Freedom Cement, LLC*, 70 CLR 1 (Richards, Sybil V., J.).

The phrase “undue means” as used in the provision of the Arbitration Act authorizing a Superior Court to vacate an arbitration award “[i]f the award has been procured by corruption, fraud or undue means,” Conn. Gen. Stat. § 52-418, requires proof

of intentional misconduct, such as acting with a nefarious, bad faith or immoral intent, even for a claim of not receiving notice of an proceeding. *Johnson v. Ashley Construction Group, LLC*, 71 CLR 13 (Welch, Thomas J., J.). The opinion also holds that the provisions of the COVID-19 Executive Orders modifying the time limits for processing civil actions, Order Nos. 7G and 7000, do not apply to *arbitration* proceedings.

■ Civil Procedure

Carbone v. Marcus, 71 CLR 112 (Wilson, Robin L., J.), holds that a motion to dismiss for failure to establish a prima facie case must be ruled on before the defendant presents evidence; deferral to the close of all evidence is no longer permitted.

For a voluntary association to have standing to sue a complaint must contain allegations that satisfy a three-part test: (a) some members have a personal interest sufficient to establish standing in their own right; (b) the issues raised are germane to the association’s purposes; and (c) neither the claim asserted nor relief requested requires the participation of individual members. *Friends of Kensington Playground v. New Haven*, 71 CLR 101 (Young, Robert E., J.). The voluntary association in this case seeks to enjoin a city from replacing a park with residential housing without complying with the statutory requirements that a taking of park land be preceded by (1) a special public hearing and (2) the acquisition of comparable replacement land for a park at another location. The opinion dismisses the complaint for a lack of allegations concerning member interests in the litigation.

■ Civil Rights

The Discriminatory Practices Act, which prohibits any person from depriving any other person of rights secured by state or federal law “on account of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran,” Conn. Gen. Stat. § 64a-58, does not provide a private cause of action and may be judicially prosecuted only by first prosecuting an administrative complaint with CHRO. *Barristers Coffee Co. v. DaSilva*, 71 CLR 56 (Kowalski, Ronald E., J.). The opinion holds that the statute does not provide a judicial remedy for a seller’s refusal to lease commercial property to the plaintiff because of the plaintiff’s nationality.

■ Contracts

“Construction-related work” as that phrase is used in the statute capping at ten years the length of time to which state entities may agree to extend limitations periods for the commencement of actions against contractors arising out of “construction-related work,” Conn. Gen. Stat. § 52-584c, does not apply to incidental and peripheral work such as, in this case, the connection by a sewer pollution control agency of an existing local sewer system to a newly-constructed state building. *Metropolitan District Commission v. Marriott International, Inc.*, 71 CLR (Schuman, Carl J., J.).

Brookstone Homes, LLC v. Merco Holdings, LLC, 71 CLR 53 (Noble, Cesar A., J.), holds that the individual members of a limited liability company have no ownership interest in real estate owned by the LLC and therefore have no standing to prosecute an

application for the discharge of a lis pendens filed to protect a litigant's interest in an action involving the ownership of the real property, Conn. Gen. Stat. § 52-325a (authorizing only "the property owner" to prosecute an application to discharge a lis pendens). The opinion holds that the members of a group of limited liability companies, organized as investment vehicles for the purchase of individual multi-tenant apartment buildings to be managed by a single management company, lack standing to prosecute applications to discharge lis pendens filed against each of the apartment buildings.

■ Education Law

State v. Connecticut State University Organization of Administrative Faculty, AFSCME, 71 CLR 93 (Shapiro, Robert B., J.T.R.), holds that an arbitration award overturning a university's decision to dismiss a Director of Student Conduct for having engaged in an off-duty standoff with police over a domestic dispute that endangered the director's own children, neighbors and responding police officers, would violate public policy and therefore should be vacated. The opinion reasons that to affirm the arbitrator's decision would be inconsistent with multiple public policies including providing protection to children under the age of 16, Conn. Gen. Stat. § 53-21(A); protecting children from neglect, Conn. Gen. Stat. § 46b-120(4); and interfering with police officers, Conn. Gen. Stat. § 53a-167(a).

■ Employment Law

The statute prohibiting discrimination or retaliation of nursing home employees who advocate on behalf of patients, Conn. Gen. Stat. § 19a-532, applies not only to advocacy in public forums but also to advocacy to management within the confines of a place of employment. *Smalls v. Mary Wade Home, Inc.*, 71 CLR 16 (Kamp, Michael P., J.). This opinion holds that allegations that the plaintiff, a licensed practical nurse employed by a nursing home, was terminated in retaliation for reporting to management that a supervisor with COVID-19 symptoms was working in an area reserved for non-COVID-19 patients in conflict with facility protocol,

are sufficient to state a claim for a violation of the anti-retaliation statute.

A complaint under the federal statute that creates a cause of action for a public or private employer's retaliation against an employee for engaging in conduct protected by the free speech clauses of the federal and state constitutions, Conn. Gen. Stat. § 31-51q (the Whistleblower Statute), must include an allegation of compliance with the statute's requirement that any activity upon which a claim is based, "not substantially or materially interfere with the employee's bona fide job performance or the working relationship between the employee and employer." *Coffy v. State*, 71 CLR 109 (Jacobs, Irene P., J.).

■ Landlord and Tenant Law

A commercial tenant's willful withholding of lease payments in order to satisfy other obligations does not necessarily disqualify the tenant from relying on the doctrine of equitable estoppel to avoid termination of the lease. *Dawid Investments, LLC v. Jing Fu, Inc.*, 71 CLR 63 (Spader, Walter M., J.). The opinion holds that the plaintiff, the owner of a restaurant, may rely on the doctrine, based on the following factors: the tenant's financial difficulties appear to be related solely to the business decline caused by the COVID-19 pandemic; the lease is for 20 years and has been faithfully honored by the tenant for the first nine of those years; and the tenant claims to have access to funds sufficient to bring the arrearage current. The opinion also holds that the doctrine of equitable nonforfeiture applies to commercial as well as noncommercial tenancies.

The only stay of execution available in summary process actions is the five-day stay of the execution of a judgment; there is no right to a stay of execution following the denial of a motion to open a default or to reargue. *Atlantic St. Heritage Associates, LLC v. Bologna*, 71 CLR 67 (Spader, Walter M., J.).

The necessity of an easement to reach a landlocked parcel of land formed by a parcel-division does not necessarily es-

tablish the existence of an easement implied by necessity, because ultimately the existence of any easement must be based on the intent of the parties to the transaction which created the necessity; necessity merely provides evidence of that intent. *Main Street Conservancy, Inc. v. 346 Main, LLC*, 71 CLR 70 (Gordon, Matthew D., J.). The opinion holds that no permanent easement was created because the buyer to the original transaction had refused to accept the seller's proposal for a permanent easement, offering instead to agree to a 20-year contractual easement, thereby providing clear evidence of the parties' intent to create only a limited-time easement. The opinion also holds that the necessity relied on to establish the existence of an easement implied by necessity must be the necessity of the owner of the servient estate, not the owner of the dominant estate.

■ Tax Law

Falkenstein v. Manchester, 71 CLR 86 (Klau, Daniel J., J.), interprets the 2016 Public Act that provides some tax relief to owners of residential buildings discovered to have foundations constructed with defective concrete by allowing immediate interim property tax assessments, rather than forcing compliance with the normal rule that assessments may be altered only at the beginning of new five-year assessment periods, Conn. Gen. Stat. § 29-265d. The opinion holds that an owner that obtains an assessment reduction in reliance on the statute is precluded from obtaining any further relief through a conventional appeal under the assessment statutes, Conn. Gen. Stat. § 12-111 for appeals to a tax board of assessment appeals and Conn. Gen. Stat. § 12-117a for judicial appeals from assessment board decisions. In this case a taxpayer who had obtained an adjustment pursuant to the new statute for the next assessment period may not appeal the old assessment which, for an unexplained reason, otherwise remained available. The opinion reasons that to allow such an appeal would improperly allow a taxpayer owning a home built with defective concrete a maximum tax benefit in excess of the five years intended by the tax relief statute. ■

Opportunity Is Knocking

By JOSHUA J. DEVINE

The Young Lawyers Section (YLS) has been active this fall creating and promoting valuable programs despite the ongoing pandemic. The current YLS Executive Committee is a group of highly motivated young lawyers dedicated to developing outstanding programs for our members. These programs include continuing legal education (CLE), networking or non-CLE events, and programs that promote personal well-being and family friendly environments.

While September presented many programming challenges due to the ongoing pandemic, the Executive Committee was still able to hold its monthly meeting and hosted its first Lawyers in the Classroom Volunteer Training program of the year, both virtually.

For those of you unaware of the Lawyers in the Classroom program, it is a civics workshop for Connecticut elementary school students in grades 4-6 taught virtually by volunteer attorneys. The program responds to research on declining civic engagement and the call by Chief Justice Richard A. Robinson of the Connecticut Supreme Court for attorneys to do their part in educating the public on racism and civics throughout their careers. During the 2020-2021 bar year, the YLS and its 38 attorney volunteers reached 22 classrooms and nearly 400 students in schools throughout Bridgeport, Bristol, New Britain, New Haven, Southington, Vernon, and Wethersfield. If you are interested in volunteering or learning more about the program or know of a school that may be interest-

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ed in participating, please reach out to me directly.

October was an opportunity for young lawyers to return to some sense of normalcy, with the YLS organizing and hosting a slate of events. The Executive Committee's civics education directors hosted their second Lawyers in the Classroom Volunteer

network with other young lawyers and nearly 15 non-profits from throughout the state, while also hearing from members of CBA leadership and the Honorable Ingrid L. Moll. Lastly, the YLS had several members participate in the Virtual Pro Bono Clinics held during the last week of October during National Pro Bono Week, working towards my challenge for us to

“Opportunity is knocking at YLS sponsored events, whether you are looking to network, find a new career opportunity, or find a mentor.”

Training program and a group within the Executive Committee organized the YLS 2021-2022 Kick-Off Happy Hour in Milford. Additionally, the YLS hosted the “Be the Best You”: A Health and Wellness Event, which included a hike on Talcott Mountain, a yoga session, and a presentation by a licensed nutritionist. YLS members also gathered for our annual pro bono fair where they had the opportunity to

achieve 1,000 hours of public service and pro bono time.

The bar year is well underway and the YLS will continue to organize and host several other events for young lawyers throughout the state. These events will include CLEs such as “Essentials of Federal Practice;” “Professionalism, Ethics and Technology;” and “Com-

mon Ethics Issues and Addressing IOLTA Audits and Grievances” as well as volunteer, networking, and well-being initiatives.

The YLS Executive Committee understands young lawyers have busy schedules and committing to multiple events a month can be difficult. Our expectation is not for you to attend every meeting or CLE but rather we will continue to strive to provide our 2,200 plus members with as many opportunities to learn, grow, and network as possible.

Past Chair Cindy Cieslak once said, “... if new attorneys are not taking advantage of networking opportunities, they could be missing out on an opportunity to meet a potential mentor” and I could not agree more. YLS sponsored events are attended by attorneys in all stages of their careers. Attendees range from attorneys who are partners, leaders, business owners, referral sources, and colleagues. Additionally, seasoned



attorneys and judges often attend and support YLS events.

Opportunity is knocking at YLS sponsored events, whether you are looking to network, find a new career opportunity,

or find a mentor. My question for you is are you ready to “Get Comfortable, Being Uncomfortable” and do something that pushes you outside of your comfort zone? I hope you are, and I hope to see you at a YLS sponsored event soon. ■

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President's Message

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and shrink the access to justice gap then become more, the type of “daily small acts of self-denial” that accumulate for the collective good. Our profession, and the profound potential of our work, cannot be seen as limited only to the wealthy, and the elite. We must be seen as accessible and available to all, because this influences the public perception of our profession, and by extension the public perception of the rule of law.

Solutions abound, some existing, and some under discussion now. Expansion of pro bono programs,⁵ advocacy for legal services funding on the state and federal level,⁶ and efforts to advance a civil right to counsel⁷ are all areas of progress in recent years. Some also look to new technology, non-lawyer ownership of law firms, and new law firm business structures, seeking a market solution to the access to justice gap.⁸ However these

efforts advance in the coming years, one thing is certain: our profession is called to address the access to justice gap, and is uniquely situated to do so. Whether we do so effectively will rely upon our individual and collective will and efforts, for the greater benefit of society, and for our profession. ■

NOTES

1. Villazor, Rose Cuisson, “The Immigration Act of 1965 and the Creation of a Modern, Diverse America,” *Huffington Post Contributor Blog*, (Fall 2015) https://www.huffpost.com/entry/the-immigration-act-of-19_b_8394570
2. “An Introduction to South Asian American History,” *South Asian American Digital Archive*, <https://www.saada.org/resources/introduction> (last retrieved on October 13, 2021)
3. The Constitution of the Connecticut Bar Association, Article II. https://www.ctbar.org/docs/default-source/resources/cba-constitution-bylaws-and-procedures_7-31-18.pdf
4. “A lawyer should render public interest legal service. A lawyer may discharge this

responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.” *Connecticut Rule of Professional Conduct* 6.1

5. See generally, *CT Lawyer*, September/October 2021.
6. See e.g., “ABA Day Features Member-Advocates for LSC, Judicial Security” (April 19, 2021), <https://www.americanbar.org/news/abanews/aba-news-archives/2021/04/aba-day-2021/#:~:text=ABA%20Day%20features%20member-advocates%20for%20LSC%2C%20judicial%20security,issues%20important%20to%20lawyers%20and%20the%20justice%20system>.
7. See Thomas, Cecil J., “Advancing Access to Justice in Unprecedented Times,” *CT Lawyer* (July/August 2021)
8. See e.g., “Utah became first state to change ethics regulations to allow for alternative business structures.” *ABA Journal*, February 1, 2021.

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Time Mastery

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Supreme Deliberations

Continued from page 35

stands for the general rule that medical records prepared in the course of treatment are admissible under § 52-174(b), while medical records prepared for litigation are inadmissible because they were not made in the ordinary course of business. As for *Rhode's* apparent conclusion that an opportunity for cross-examination is an “absolute prerequisite” for the admission of a medical record, the *Rhode* Court had simply misunderstood *Struckman*.

DeMaria, then, replaces one rule with another. Following *Rhode*, the admission of a medical report under § 53-174(b) turned on whether the defendant had the opportunity to cross-examine its author; under *DeMaria*, the question is whether the report was prepared for use in treatment as opposed to litigation. One can only hope that the new civil test will prove easier to apply than *Crawford* has proven in the criminal context. ■



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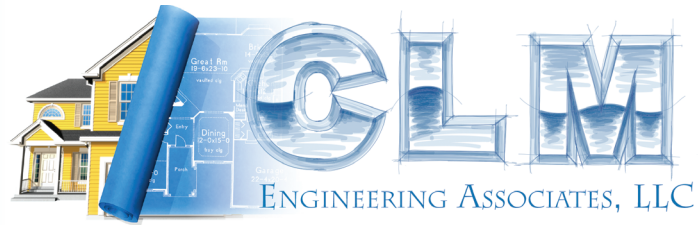
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