Volume 32 | Number 3

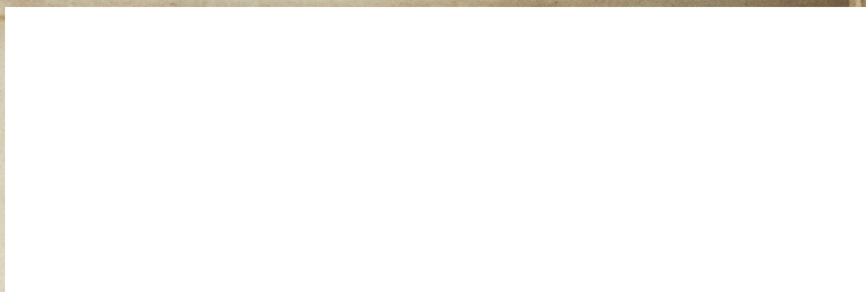
January | February 2022

CT LAWYER

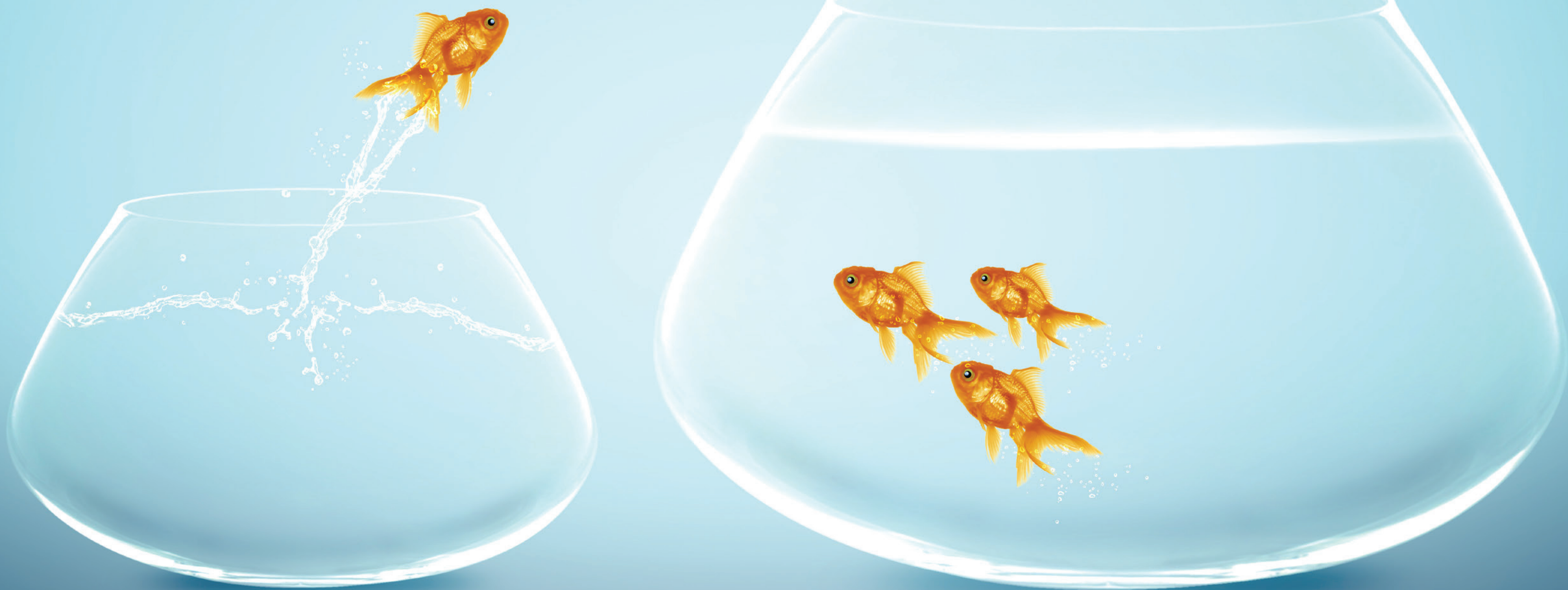
RECONSIDERING WILFULNESS

LINCOLN ON THE VERGE

PROPOSED NEW STANDARD OF TITLE ON CT ESTATE TAX LIEN



MAKE THE SWITCH



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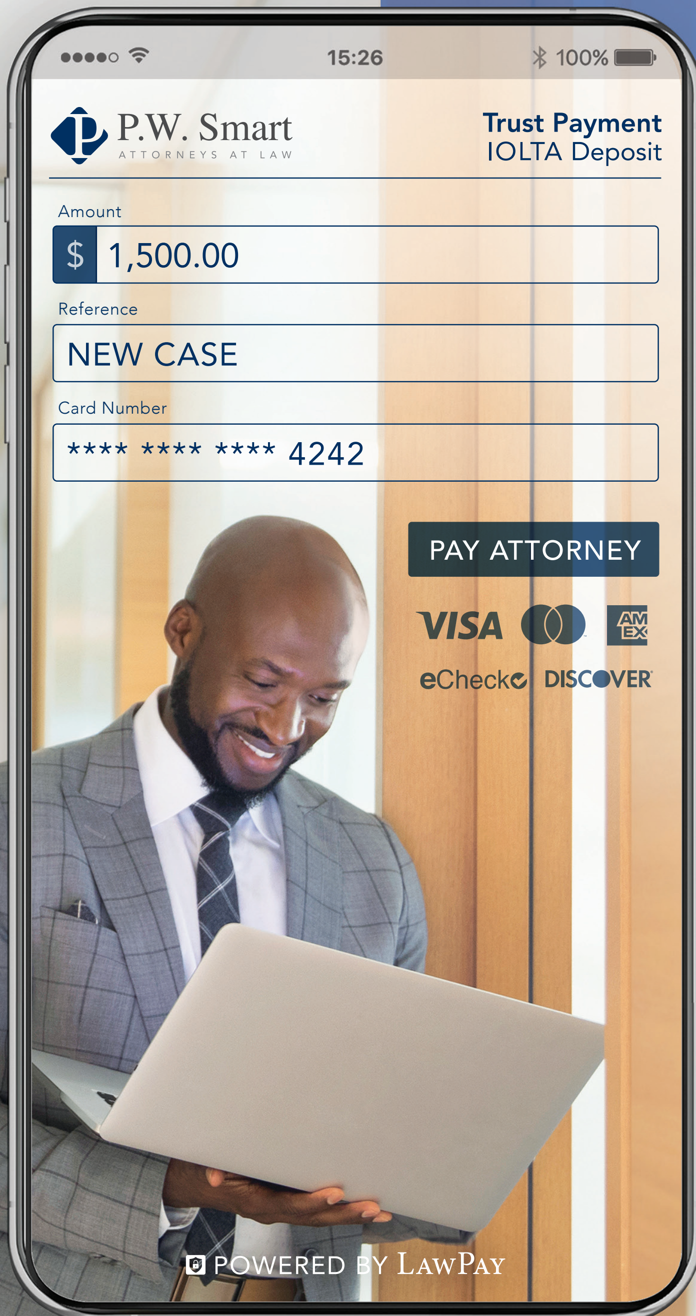

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Justice, Continued

By CECIL J. THOMAS

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.

Equal and exact justice to all … should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety.

–President Thomas Jefferson
First Inaugural Address (March 4, 1801)

This is my second column expanding on "Justice" in this year's theme, "Together for Justice, Together for Equity, Together in Service." In my last column, I explained the particular need for our profession to contend with, and find solutions to, the serious civil access to justice gap that faces Connecticut litigants in housing, family, and other matters involving personal safety, security, and stability. Every day, thousands of Connecticut residents of every economic background navigate these complex and potentially devastating legal disputes without the assistance of counsel. The causes of this access to justice gap, as well as potential solutions, are far-reaching and complex, and require coordinated and committed strategy and action.

Even a cursory evaluation of our current systems reveals a fundamental disparity between these bedrock principles, and a troubling present reality. According to Connecticut Judicial Branch data, 70 percent of litigants in evictions and 57 percent of litigants in foreclosures filed between July 1, 2018 and June 30, 2019 were unrepresented.[1] In family cases, 71 percent of litigants in dissolution cases, and 77 percent of litigants in custody cases filed between July 1, 2020 and June 30, 2021, were unrepresented.[2] These are legal processes that are incredibly complex, with devastating potential personal and multigenerational consequences. MacArthur "Genius" Award recipient Professor Rebecca Sandefur has found that, "Americans spend large proportions of their lives experiencing civil justice problems: for example, eighteen-to-thirty-four-year-olds can expect that, on average, 44% of the rest of their lives will be overshadowed by these problems. And these problems involve a range of hardships, affecting health, relationships, financial and housing stability, and substance use."[3] In these moments of personal legal crisis, the legal system and our profession come into high focus, leaving an indelible lasting impression.

That public perception remains, unfortunately and unfairly, largely negative. A 2013 Pew Research Center study found that "about one-in-five Americans (18%) say lawyers contribute a lot to society, while 43% say they make some contribution; fully a third (34%) say lawyers contribute not very much or nothing at all."[4] A 2013 review of two decades of lawyer public perception surveys found that "more than half of all Americans in polls sponsored by the organized bar have agreed with the following statements: 'lawyers are greedy,' 'lawyers make too much money,' 'it is fair to say that lawyers charge excessive fees,' and 'lawyers are more interested in making money than in serving their clients.'"[5] We, within the profession, know these statements to be broadly untrue. But public perception matters, as it influences individual and collective action and choice. This trend is one we must address, as it affects not just the economically-disadvantaged, but also those who are able to afford our essential services.

Bar associations, including the CBA, have long wrestled with the issue of access to justice for those who are economically-disadvantaged. In 1910, the CBA appointed a special committee to study the expense and delay of judicial proceedings, and the resulting impact on the indigent. This committee was led by Justice Simeon E. Baldwin, who had been one of the principal founders of both the CBA and the American Bar Association (ABA) in 1875 and 1878 respectively. Justice and the Poor, a report published in 1919 by Reginald Heber Smith,[6] served as the inspiration for the ABA's focus on the legal needs of the poor in 1920. ABA President Charles Evans Hughes launched the ABA Standing Committee on Legal Aid, which just celebrated its 100-year anniversary.[7]

“If one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected - those, precisely, who need the law’s protection most! — and listens to their testimony.”

–James Baldwin, No Name in the Street (1972)

The CBA also formed a committee on the report in 1920. In the ensuing century, the CBA has launched similar evaluations at periodic intervals, most recently the 2016 Report of the Taskforce to Improve Access to Legal Counsel in Civil Matters.[8]

While we have made significant advances in access to justice in the last 100 years, Reginald Heber Smith’s report, in 1919, could very well describe our situation today. “The administration of American justice,” he wrote, “is not impartial, the rich and the poor do not stand on an equality before the law, the traditional method of providing justice has operated to close the doors of the courts to the poor, and has caused a gross denial of justice in all parts of the country to millions of persons.”[9] Among the three primary defects identified by Smith in 1919 was the cost of legal counsel. Even in 1919, “[t]he lawyer is indispensable to the conduct of proceedings before the courts, and yet the fees which he must charge for his services are more than millions of persons can pay.”[10] Smith estimated that there were 35,000,000 individuals in America “whose financial condition renders them unable to pay any appreciable sum for attorneys’ services”[11] in 1919. In 2017, almost 100 years later, the Legal Services Corporation issued its Justice Gap Report, finding that 71 percent of the 60 million Americans that lived at or below the federal poverty line had experienced at least one civil legal problem in the prior year, including problems with domestic violence, veterans’ benefits, disability access, housing conditions, and health care, and that 86 percent of those reported civil legal problems received inadequate or no legal help.[12]

During this period, however, the number of lawyers has increased significantly. According to the ABA,[13] there were 122,519 lawyers across the country in 1920. In 2017, the year the Justice Gap Report was issued, the number of U.S. lawyers had grown to 1,335,963. However, this increase in lawyer population has not decreased the access to justice gap. The National Center for Access to Justice (NCAJ) maintains a Justice Index, which measures access to justice on multiple fronts, including access to civil legal aid lawyers. NCAJ recommends a ratio of 10 legal aid lawyers for every 10,000 individuals living below 200 percent of the federal poverty line.[14] In 2020, Connecticut had just 151.2 total civil legal aid attorneys across the state, or less than two attorneys for every 10,000 low-income individuals.[15]

Pro bono efforts certainly help, but may be relatively modest in the aggregate. In 2018 and 2019, the Judicial Branch included a voluntary questionnaire on pro bono services during the annual Attorney Registration process. Participation rates were exceptionally low, but in both years, only a few hundred attorneys answered that they had provided pro bono services to an individual. If we are to shrink the civil access to justice gap, we need to improve our systems of delivering civil legal services broadly and comprehensively.

“The system,” noted Reginald Heber Smith in his seminal report in 1919, “not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented.” This unfortunately still rings true today. The civil access to justice gap is a systemic issue that requires a systemic response by and within the legal profession. Consider, for example, our civil legal aid funding mechanisms, originally heavily reliant on Interest on Lawyers Trust Accounts, and more recently, on court filing fees. Civil legal aid funding dropped significantly at two major moments in recent history: during the Great Recession of 2007-2009, when interest rates plummeted, and during the first phase of the COVID-19 pandemic, when court closures and the halt of most court business caused significant declines in filing fee revenue. These periods of funding decline unfortunately correlate with periods of significant increases in Connecticut’s poverty rate and civil legal need. Connecticut’s newly-created Eviction Right to Counsel program, which is an unprecedented investment in access to legal counsel for tenants facing eviction, is funded by federal pandemic-relief funds, and will require long-term funding and support to prevent another regression in the years ahead.

We need to continue to expand attorney engagement with our pro bono programs across the state, with a heightened emphasis on full representation in the areas of greatest civil legal need. Even a cursory review of the history of the Legal Services Corporation tells us that support for equal access to justice has moved from a foundational principle of our government to a fraught political issue, with those in greatest need caught in the middle. We need to work together, in a sustained and organized manner, to address public misperceptions of our profession. In doing so, we must demonstrate the value of our services, and the honor, integrity, and commitment to service and justice that are the hallmarks of our great profession. We must engage with the public to identify solutions that are measurably impactful and conceived with a focus on the public good. New technology and virtual platforms can promote access to justice, but the digital divide poses the risk of only deepening the access to justice gap for those who are economically disadvantaged.[16] Leveraging technology, efficient law practice management, and other efficiencies will allow our profession to deliver our services at a lower cost, while also delivering personal and professional benefits to our members.

Continued on page 40 →

CBA Hosts Sixth Annual Diversity, Equity, & Inclusion Summit

More than 170 people attended the CBA's sixth annual Diversity, Equity, & Inclusion Summit: The Collaborative Blueprint, held on October 20. The interactive and engaging virtual summit explored strategies for increasing retention in legal organizations and creating a more diverse, equitable, and inclusive legal community within Connecticut.

CBA president and Diversity, Equity, and Inclusion Committee co-chair, Cecil J. Thomas, welcomed participants to the summit. "The work we do here and throughout the year is incredibly vital," stated President Thomas. "It speaks to our professional and personal commitments to advance the ideals and principals that this country was founded upon: equality, equity, and justice. A more equitable and inclusive legal profession is one that increases confidence in our system of justice and the rule of law, so that the law and those of us who are sworn to serve it reflects the diversity of our society and confirms that the law works for all people and not just for some."

Similar to years past, President Thomas presented the data from the Connecticut Legal Community's Diversity & Inclusion Pledge & Plan Signatories, which showed changes in the diversity of signatory organizations. The signatories represent varying legal sectors from solo and small firms to large firms, as well as public/non-profit legal professionals and corporate counsels. The Diversity & Inclusion Pledge & Plan reflects a reaffirmation of the legal profession's commitment to approaching diversity and inclusion strategically, collaboratively, and with accountability.

Neeta M. Vatti, one of the Diversity, Equity, and Inclusion Committee co-chairs, introduced plenary workshop speaker Dr. Arin N. Reeves. Dr. Reeves's workshop allowed for interactions between participants and focused on solutions and best practices for retention, emphasizing the difference between retention and attrition and how organizations can implement best practices to account for each.

Diversity, Equity, and Inclusion Committee co-chair, Kean Zimmerman, welcomed the summit's keynote speaker, Dr. Robert Livingston of Harvard University. Dr. Livingston spoke about the PRESS model—Problem Awareness, Root Cause Analysis, Empathy, Strategy, Sacrifice. This model set a foundation for best practices to move beyond biases in organizations and help members become more vocal and active with diversity, equity, and inclusion initiatives.

The summit received positive responses from all attendees and enthusiasm from the speakers. Thank you to the presenters and Diversity, Equity, & Inclusion Summit Committee members for organizing an interactive and engaging event and to all our sponsors for making the event possible.

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DONATION DRIVE HELD DURING 2021 FALL SHRED TRUCK EVENTS

Donations to Connecticut Foodshare provided by attendees of the fall shred trucks events.

This fall, the CBA continued hosting its seasonal shred truck events, where members had the opportunity to bring their files for free, confidential shredding. This season's shred truck events were expanded to include three locations in Fairfield, West Hartford, and New London and were held the first three Wednesdays in November. Young Lawyers Section members and several past and present board officers assisted with the events. Those who registered for the events were encouraged to bring food items and household supplies for donation to Connecticut Foodshare.

In total, 111 CBA members attended the three shred truck events. Attendees provided a variety of donations, including canned and boxed foods, paper towels, and toiletries for those in need. The CBA thanks everyone who attended this fall's shred truck events and generously provided these much-needed donations to the Connecticut community.

Virtual Pro Bono Clinics held during National Celebration of Pro Bono

On October 26-28, the CBA Pro Bono Committee, in coordination with Statewide Legal Services of CT, hosted a series of Pro Bono Clinics virtually. The clinics took place as part of the National Celebration of Pro Bono, an initiative that shines a spotlight on the amazing pro bono work by lawyers, paralegals, and law students across the country, which occurred from October 24-30.

During the CBA's clinics, 25 attorney volunteers met with and assisted a total of 39 clients over Zoom meetings. Prior to the clinic, 30 volunteer law students completed client intake forms and asked follow-up questions to help the attorneys prepare for the meetings and provide the best possible legal advice.

On the days of the clinic, the volunteer attorneys provided free legal guidance to the clients in the areas of family law, landlord/tenant law, immigration law, tax law, consumer law, bankruptcy, employee rights/unemployment, and pardons. Four law students sat in on the meetings to learn more about the process of providing pro bono services.

"The legal quagmires facing the neediest of our residents have exponentially increased during the Pandemic," stated CBA President-elect and Pro Bono Committee Chair Daniel J. Horgan. "These free clinics provide a significant way to assist those in need that face serious challenges, such as looming evictions or increasing debt. The CBA will continue to offer these clinics throughout the bar year, creating more opportunities for access to justice in these difficult times."

Additional opportunities for participating in pro bono work through the CBA include CBA Pro Bono Connect, CT Free Legal Answers, and Lawyers in Libraries. Learn more at ctbar.org/probono. Thank you to all those who volunteered at this important event that supports the public's access to legal representation.

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CBA Releases Policing Task Force Report

The Connecticut Bar Association (CBA) Policing Task Force has released its public report and 23 recommendations, which were unanimously approved by the CBA. The report was released on November 4, ahead of the Constance Baker Motley Speaker Series on Racial Inequality Event, "The CBA Task Force's Recommendations on Policing in Connecticut." The 22-member task force is comprised of attorneys and academics with varied practices and work experiences, current and former members of state and federal law enforcement, and a diverse group of community members and activists. The mission of the task force was to bring together a group of informed people with varied backgrounds, perspectives, and experiences in an effort to provide some practical suggestions regarding policing in Connecticut. The task force was created by CBA past president, Judge Ndidi Moses, and has been continued under the support and guidance of successive Presidents Amy Lin Meyerson and Cecil J. Thomas.

Since June 2020, the task force met on a weekly basis, attended community listening sessions, and elicited the advice and counsel of the state judiciary, individual police officers, and representatives of police unions. The report documents the work of the task force and the recommendations are the product of respectful but rigorous debate, and informed by legal and other research. The task force partnered with the Police Transparency and Accountability Task Force created by the General Assembly ("PTATF"). With the permission of the CBA, draft recommendations were shared with the PTATF to ensure they had the benefit of the work of the CBA Task Force on a timely basis. A number of the CBA Task Force's recommendations have been adopted by the legislature.

The task force is chaired by Deirdre M. Daly, the former United States attorney for the District of Connecticut and a partner at Finn Dixon & Herling LLC; Reverend Keith King, senior pastor at Christian Tabernacle Baptist Church and a former federal prosecutor; and Alexis Smith, executive director of New Haven Legal Assistance Association. The task force membership also includes representatives from the affinity bar associations and the NAACP, leaders within the CBA, former and current federal prosecutors, the chief state's attorney, two police chiefs, and other respected individuals and community activists from throughout the state.

The CBA Policing Task Force was divided into four committees that also met regularly, often weekly, and focused on the following:

1. The Data Collection Committee reviewed in detail approximately 86 incidents since 2001 in which Connecticut police officers and state troopers used deadly force. Relying on the information contained in public investigative reports, the Committee prepared a comprehensive dataset that documents critical facts relating to these incidents. The public sharing of this data is critical to any meaningful assessment of police work. A link to the dataset is included in the Report.

2. The Oversight Committee examined how police departments, local communities, and state governments resolve allegations of systemic and individual instances of police misconduct. They reviewed internal affairs divisions, civilian review boards, hiring practices, consent decrees, and pattern-or-practice lawsuits; evaluated police department accreditation standards; and surveyed how citizen complaints are recorded across the state.

3. The Moral Recognition Committee focused on the understanding that there is often distrust of the police, with deep historical roots, among African Americans, other people of color, and their communities. Through reconciliation initiatives; diversity, equity, and inclusion trainings; and community conversations, the Committee believes police departments can build more just, equitable, and effective police-community relationships, and address the past and present impacts of structural and systemic inequality.

4. The Reimaging Police Committee examined the appropriate scope of police responsibility, considered calls for deploying alternative responders and related support proposals, and examined relevant police training and policies. The Committee also explored redefining public safety and combating systemic inequality by investing in programs that address the root causes of violence and crime (*e.g.*, lack of employment opportunities, housing, quality education, or health care) by creating economic ecosystems in under-resourced communities.

For more information on the CBA Policing Task Force, including the report and dataset on which it is based, visit ctbar.org/policing-task-force.

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President Cecil J. Thomas with fellows in attendance at the event: Paige M. Vaillancourt, Aigné Goldsby, Andres D. Jimenez-Franck, Johnny Ross III, Jeffrey D. Bausch, and Samim Jabarkhail.

CBA President Cecil J. Thomas introduced and congratulated each of the fellows.

CBA Past Presidents Karen DeMeola, Jonathan Shapiro, Hon. Ndidi Moses, and Amy Lin Meyerson (who attended virtually) during their panel discussion.

2021 Presidential Fellows Dinner: Together for a Stronger Profession

On November 18, the Connecticut Bar Association hosted this year's Presidential Fellows Dinner, which featured the theme of "Together for a Stronger Profession," as a hybrid (virtual/in-person) event at Grassy Hills Country Club in Orange.

The 2020-2022 and 2021-2023 CBA Presidential Fellows were individually introduced and congratulated by CBA President Cecil J. Thomas at the start of the event, which served as the launch for this year's fellows programming. The event also served as a reunion for prior graduates of the Presidential Fellows and allowed members of the CBA Presidential Fellows Committee, as well as leaders of the CBA sponsoring sections, to meet and network with the current fellows.

During his opening remarks, President Thomas highlighted the importance of developing the future leadership of the CBA, noting the importance of bar association involvement and leadership to professional development as well as the strength of the legal profession. "The CBA Presidential Fellows Program creates an opportunity for all of us gathered here to stand up with and for you tonight," stated President Thomas. "As you grow and develop as future leaders of the bar, you too will stand up with and for others, towards a stronger legal profession for all of us."

A panel discussion held during the evening featured CBA Past Presidents Karen DeMeola, Amy Lin Meyerson, Hon. Ndidi Moses, and Jonathan Shapiro. The panelists each discussed

their path to CBA leadership, the CBA initiatives they helped to launch, and the challenges and emerging trends they faced during their service as CBA officers.

The CBA Presidential Fellows Program was launched in 2015 as a prestigious leadership development program for the future leaders of the Connecticut legal profession. New Presidential Fellows are selected each year and assigned to the executive committee of a sponsoring CBA section. Graduates of the program have gone on to hold prominent leadership positions within the Connecticut Bar Association and the Connecticut legal community at large.

The CBA congratulates all the current Presidential Fellows and looks forward to seeing their development and achievements within the association.

2021-2023 Presidential Fellows

Aigné Goldsby
Goldsby Law PLLC

Andres D. Jimenez-Franck
Pullman & Comley LLC

Thomas Lambert
Pullman & Comley LLC

Yamuna Menon
State of Connecticut–Office of the State Comptroller

Johnny Ross III
State of Connecticut–Connecticut State Division of Criminal Justice

Megan Wade
Sexton & Company LLC

2020-2022 Presidential Fellows

Jeffrey D. Bausch
Updike Kelly & Spellacy PC

Jenna T. Cutler
Ryan Ryan Deluca LLP

Samim Jabarkhail
Nuzzo & Roberts LLC

Paige M. Vaillancourt
Rescia Law PC

NEW JUDGES APPOINTED TO THE DISTRICT COURT

Hon. Sarah A. L. Merriam

On October 6, the United States Senate confirmed the Honorable Sarah A. L. Merriam as a United States District Judge for the District of Connecticut. President Joseph R. Biden, Jr. signed her commission on October 8, and she was sworn in by the Honorable Stefan R. Underhill, Chief United States District Judge, on October 12. She fills the vacancy created by the Honorable Janet C. Hall, who assumed senior status in January 2021.

Judge Merriam is a 1993 graduate of Georgetown University and a 2000 graduate of Yale Law School. In 2018, she earned her L.L.M. in judicial studies from Duke Law School. Prior to becoming a district judge, she was appointed as a magistrate judge for the District of Connecticut on April 3, 2015, and served over six years in that position, handling both civil and criminal matters. Judge Merriam is the first magistrate judge to be seated as a district judge in the District of Connecticut's history. Prior to serving as a magistrate judge, she served as an assistant federal defender from 2007-2015; as an associate at the law firm of Cowdery, Ecker & Murphy in Hartford; as a law clerk to Judge Thomas Meskill of the Second Circuit Court of Appeals; and as a law clerk to Judge Alvin W. Thompson of the United States District Court for the District of Connecticut.

Hon. Sarala Vidya Nagala

On October 27, the United States Senate confirmed Judge Sarala Vidya Nagala as a United States District Judge for the District of Connecticut. She received her commission from President Joseph R. Biden, Jr. on November 3, and was sworn in that same day by the Honorable Stefan R. Underhill, Chief U.S. District Judge. She fills the vacancy created by Judge Vanessa L. Bryant, who assumed senior status in January 2021.

Judge Nagala is a 2005 graduate of Stanford University and a 2008 graduate of the University of California Berkeley School of Law. She began her legal career as a law clerk to the Honorable Susan P. Graber of the Ninth Circuit Court of Appeals. Following her clerkship, Judge Nagala was an associate attorney with the law firm of Munger, Tolles & Olson, LLP in San Francisco before joining the U.S. Attorney's Office for the District of Connecticut in 2012. During her tenure with the U.S. Attorney's Office, she prosecuted cases dealing with human trafficking, child exploitation, hate crimes, identity theft, and fraud; served as deputy chief of the Major Crimes Division since 2016; and served as both the human trafficking coordinator and hate crimes coordinator. Judge Nagala was a visiting lecturer in law at Yale Law School from 2017 to 2019, where she taught a prosecution externship course.

Hon. Omar A. Williams

On October 28, the United States Senate confirmed Superior Court Judge Omar A. Williams as a United States District Judge for the District of Connecticut. He received his commission from President Joseph R. Biden, Jr. on November 12, and was sworn in by the Honorable Michael P. Shea, U.S. District Judge, on November 22. He fills the vacancy created by Judge Alvin W. Thompson, who assumed senior status in August 2018.

Judge Williams is a 1998 graduate of the University of Connecticut and a 2002 graduate of the University of Connecticut School of Law. He began his legal career as an assistant public defender for the State of Connecticut Division of Public Defender Services where he served for over 11 years. In 2014, he was nominated by Governor Dannel P. Malloy to serve as a superior court judge and was unanimously confirmed by the Connecticut legislature in January 2015. In this role, Judge Williams presided over housing and criminal matters in the New London judicial district. In 2017, while sitting in the Hartford G.A. court, Judge Williams was appointed by the chief judge administrator as the presiding judge for criminal matters.

IN MEMORIAM

Richard W. Parker passed away at the age of 65 on October 3. He received a BA in Politics from Princeton University and was elected as a Rhodes Scholar. He went on to receive a D. Phil. in Politics from Oxford University and a JD from Yale University. Attorney Parker worked at the Office of the US Trade Representative, the Environmental Protection Agency, and the law firm of O'Melveny and Myers prior to his appointment in 1995 as professor of law at the University of Connecticut, where he taught and wrote in the fields of environmental law and administrative law. He served as consultant to several national and international organizations, including the European Commission on the Trans-Atlantic Trade and Investment Partnership talks, and participated in the work of the American Bar Association, most recently as chair of the Environment and Natural Resources Committee in the Section on Administrative Law & Regulatory Practice. His areas of expertise included negotiated rulemaking, regulatory cooperation, and the use of trade leverage to advance environmental goals.

PEERS AND CHEERS

Biller Sachs & Robert is pleased to announce that **Brianna Kastukevich Robert** has become a named partner with the firm. Attorney Robert has been with the firm for almost a decade and her primary focus is insurance coverage litigation on behalf of policyholders and representation of victims of serious personal injuries. The firm is also pleased to welcome **Cileena Terra** as an associate. Attorney Terra joined the firm as a law clerk in 2018 while attending law school and joins the firm's insurance coverage and personal injury practice.

Cummings & Lockwood is pleased to announce that **Joseph Cessario** has joined the firm as a principal in its Private Clients Group and Commercial Real Estate Group. Attorney Cessario practices in a residential and commercial real estate and is based in the firm's Stamford office.

Lisa Stefano has been named a partner at the litigation law firm of Gfeller Laurie LLP, based in West Hartford. Attorney Stefano has extensive experience managing insurance coverage, underwriting, and claim and bad faith litigation for insurers.

Kahan Kerensky Capossela LLP, a full-service law firm with offices in Vernon and Storrs, has named **Michael J. Kopsick** as managing partner. Attorney Kopsick has been with the firm for over 31 years and manages the Litigation Department. He focuses on business disputes, debtor/creditor rights, foreclosure, and employment law. Attorney Kopsick takes over the position from Attorney Michael Bars, who will continue to lead the firm's Business & Corporate practices.

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; she is resident in the firm's Stamford office. Attorney Lavoie was previously a judicial law clerk for the Hartford Superior Court and for the Honorable Eliot D. Prescott at the Connecticut Appellate Court; she is resident in the firm's Hartford office.

Gretchen G. Randall, principal with the law firm of Neubert Pepe & Monteith PC, has been appointed as a member of the New Haven Legal Assistance Association, Inc. (NHLAA) Friends Board of Directors. The NHLAA relies on private donations and grants for support and members of the Friends Board of Directors focus on fundraising for the organization. NHLAA, founded in 1964, offers free, high-quality legal services to those living in poverty and strives to provide equal access to the justice system, enhance the rights and living conditions of their client community, and help their client community protect their own rights.

The law firm of Neubert Pepe & Monteith PC is pleased to welcome **William C. Sherman** as Counsel to the firm. Attorney Sherman practices in the areas of estate planning, trust and estate administration, commercial finance, and real estate law.

Robinson+Cole is pleased to launch its Environmental Law + blog. The latest addition to the firm's network of blogs is dedicated to providing a timely and thoughtful forum for discussion of developments in the environmental, health and safety (EH+S), and energy landscapes. The Environmental Law + blog is produced by Robinson+Cole's Environmental, Energy + Telecommunications Group, one of the largest and most diverse in the Northeast, with Jonathan H. Schaefer serving as editor. Several posts have already been published to the blog covering the areas of Environmental, Social, and Governance (ESG); environmental compliance and permitting; environmental enforcement; and Occupational Safety and Health Administration (OSHA) compliance. Visit environmentallawplus.com to access the blog. ■

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

Proposed New Standard of Title: Creation, Scope and Duration of the Connecticut Estate Tax Lien

By ELLEN L. SOSTMAN

The Standards of Title Committee has adopted a proposed new Standard 23.2, addressing the Connecticut estate tax, which replaced the Connecticut succession tax for estates of decedents dying on or after January 1, 2005. If approved, this new standard will become part of Chapter 23, which presently addresses only the Connecticut succession tax. In accordance with the requirements of the CBA bylaws establishing the protocol for the adoption of new standards, what follows is a brief synopsis of the proposed new Standard 23.2.

THE CONNECTICUT ESTATE TAX

PROPOSED STANDARD 23.2 Creation, Scope and Duration of the Connecticut Estate Tax Lien.

A. For decedents dying on and after January 1, 2005, the Connecticut Estate Tax Lien arises immediately upon death and without notice and attaches to all real property included in the gross estate of the decedent locate in Connecticut, in the amount ultimately determined to be due, including interest and penalties. The lien continues in favor of the State of Connecticut from the date of death until paid.

B. Title to real property that is subject to such inchoate lien is unmarketable until (I) a release of lien is recorded in the land records of the town where the property is located or (ii) either full payment of any tax due or the fact that no tax is due can be determined or established from other public records and made a part of the record title of the real property, in accordance with the procedure set forth in Comment 3.

Following the above headnotes are five paragraphs of comments that expand on the specifics of the Connecticut estate tax lien as set forth in the headnotes. Comment 1 addresses the provisions of CGS Section 12-391, including the fact that the Connecticut estate tax lien, like the federal estate tax lien on which it is based, arises automatically at death, secures the amount of any tax due including interest and penalties against the Connecticut real property of the decedent, whether resident or non-resident, and may remain inchoate for its duration. Comment 1 also includes a discussion of the types of real property interests which can give rise to and be affected by the estate tax lien.

Comment 2 addresses the provisions of CGS Section 12-392, which defines what a taxable estate is, based on the date of death and the value of the taxable estate, and specifies where the Connecticut estate tax return is to be filed. Estate tax returns that fall below the statutory threshold for taxability set out in Section 12-392 must be filed with the probate court having jurisdiction over the estate of the decedent. Estate tax returns for an estate that meets or exceeds the threshold for taxability must be filed with the commissioner of revenue services. Section 12-392 requires the probate court, in the case of a non-taxable estate, to issue an Opinion of No Tax Due and a release of lien, and requires the State of Connecticut to issue a release of lien, in the case of a taxable estate, when all taxes together with interest and penalties have been paid.

Comment 3 sets out what documents may be recorded in the land records to clear the inchoate estate tax lien from the title to the real property owned by the decedent at death or affected by an interest held by the decedent at death, in order to make that title marketable. Those documents include the release issued by the probate court or the State of Connecticut, the probate court's Opinion of No Tax Due, or, under certain circumstances set out in Comment 3, an affidavit attaching evidence of the termination or non-existence of the estate tax lien.

Comment 4 points out CGS Section 12-398, which provides that the lien for the Connecticut estate tax remains a lien from the date of death until paid.

Comment 5 provides that, notwithstanding the provisions of Section 12-398, under the definition of marketability of title established by Standard 1.1, a title that has no recorded evidence of a release of the inchoate lien may be considered to be marketable based solely on the passage of time which diminishes the probability of loss or litigation due to the lien.

After a 60-day comment period established by the CBA bylaws, which begins to run on the date of publication of this article, the committee will consider any comments received and will make whatever changes to the proposed standard it deems appropriate. Proposed Standard 23.2 will then be submitted to the Board of Governors for final approval. A complete copy of Standard 23.2 is available from the CBA. Any comments should be submitted to the committee chair, Ellen L. Sostman, by email to eslaramie15@gmail.com. ■

Ellen L. Sostman is a retired senior title counsel at Connecticut Attorneys Title Insurance Company, a member of the CBA's Real Property Section's Executive Committee, and chair of the Standards of Title Committee.

Legislative Affairs

By BILL CHAPMAN

The 2022 legislative session will begin on February 9. Stay up-to-date with the latest news throughout the session with the Capitol Update in *The CBA Docket* each week or browse our archive at ctbar.org/CapitolUpdate. And don't forget to follow us on Twitter @CTBarLeg!

The CBA has known since its inception that its attorneys need to be involved in the legislative undertaking of the way it practices and protects the Rule of Law within the State of Connecticut. Legislative positions are taken by the association, the sections and committees on proposals presented to the Rules Committee of the Superior Court affecting the practice book, federal and state regulations that affect certain areas of practice, and proposed legislation that may be supported or opposed by our members. Below provides you with the means by which the CBA manages its legislative affairs.

The **Legislative and Policy Review Committee** (LPRC) was designated in the CBA Constitution and Bylaws as one of its eight standing committees, traditionally chaired by the CBA president-elect and having a membership of at least nine members of which 2/3 are present or previous members of CBA governing bodies (the Board of Governors or House of Delegates). The LPRC meets throughout the year, including nearly weekly for at least five months of the year, reviewing proposed legislation, rules, and regulations. The committee is diverse in its makeup by its legal experience, its locations of practice, and its areas of legal practice.

Position requests are submitted by sections to the LPRC requesting the LPRC's recommendation. The request is then forwarded for authorization from the House of Delegates or Board of Governors. Additionally, the CBA Executive Committee may authorize an LPRC recommended position, if in a timely situation and in between meetings of the governing bodies. Prior to submission, sections or committees will need to discuss and receive approval by 2/3 of either its membership, executive committee, or Legislative Committee (of at least ten section members). Next, sections or committees should complete the position request form. After the position request form is submitted to the LPRC, it is distributed with pertinent background material, such as proposed draft legislation, to the chairs and legislative liaisons of each section and committee for review and comment. At that point, the LPRC meets with the section representatives to thoroughly review, discuss, and decide whether its proposal should be recommended. The proposal then moves on to the governing body—the House of Delegates or Board of Governors—which decides at its meeting whether it is to be authorized.

If authorized, the CBA can then lobby for that proposal, and, along with the CBA lobbyist, may meet with legislators and other stakeholders to discuss its position. The section is urged to present and/or submit testimony on the proposal.

If a section is asked by the Rules Committee to comment on proposals, it may. Otherwise, the section is to request approval through the LPRC to make section comments on specific proposals before the Rules Committee. If recommended by the LPRC, a section may also write comments regarding proposed federal regulations and provide them to the specific committee of cognizance and to the Connecticut Congressional delegation.

The **CBA Legislative Affairs** webpage is easily accessible at ctbar.org/Legislative or as a main navigation tab on the CBA website, and includes assistance and background to your participation and to the issues involved. This page includes the position request form as well as the CBA legislative policy, our up-to-date legislative agenda on what positions are authorized and by which sections, and the ongoing proposals to the rules committee and their monthly decisions. This resource page also provides a list of our legislative liaisons by section and a page of resources with links to your congressional delegation; the White House; Supreme Court; the Connecticut legislature members, its committees, and even its daily schedule; and finally the Connecticut Judicial Branch. You can also get to the Constitutional officers and every state agency. Also provided are links to the most used local political blogs and the CT Network (CT-N). ■

Bill Chapman *is the CBA director of government and community relations.*

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Lawyer Well-Being Pledge and Awards

Motivating Legal Employers to Discuss, Embrace, and Promote Positive Change

By TRACI CIPRIANO

A MAJOR CULTURE SHIFT IN THE LEGAL PROFESSION IS LONG OVERDUE and the COVID-19 pandemic has only further reinforced this need. In April 2021, the CBA Lawyer Well-Being Committee rolled out the annual CBA Well-Being Pledge. The goal of the pledge is to stimulate conversation around well-being issues, and help legal employers proactively promote change. The pledge is modeled after the ABA pledge, but expands on the latter's substance use focus to include more individual and organizational factors related to well-being. Each April, legal employers will be invited to commit (and re-commit) to as many—or few—aspects of the pledge as they believe they can reasonably implement in the coming year.

The Pledge Commitment form was designed with behavior change in mind. Signatories are instructed to commit to only those items which are reasonably believed to be attainable, no matter how few. In addition, signatories are asked to write out 2-3 objectives, or plans for how the pledged goals will be met. This process is intended to help employers think through what changes they want to make and the best way to go about it. In addition, signatories are asked to fill out a Pledge Progress form the following April, with which they rate (on a scale of 1-10) progress made toward the pledged items. For any goals not made, signatories are asked to write down any barriers to accomplishing their goals, with the intention of helping them to begin to think about what went wrong and what might be done differently in the coming year. Attorneys and staff working for each signatory employer are also invited to complete separate, *anonymous* Pledge Progress forms, again rating progress on goals, and highlighting any barriers. *The identity of respondents and law firms will be kept confidential.* The progress forms are intended to be used for future CBA Well-Being Awards.

The CBA Well-Being Pledge is just a starting point, a tool to stimulate thoughts and conversations about change within legal culture and cannot possibly address all aspects of well-being. Well-being is defined broadly in the pledge, encompassing both individual and organizational aspects needed to promote self-care and a healthy work environment. Self-care resources and strategies are key, such as in-house resources (*i.e.*, a meditation room, a lactation room, and/or a weekly yoga class) and educational opportunities addressing well-being, mental health, and substance use. At the same time, overall organizational culture is paramount. For instance, if you designate a "meditation room" in your office, but attorneys and staff are not supported in taking the time to utilize it (or worse, stigmatized), this meditation room simply serves as a well-being mirage. Alternatively, if the meditation room (or another resource or policy) is embraced by your firm, attorneys may freely utilize it, but if they must be accessible nearly 24/7, or the firm work culture is toxic, these negative workplace forces will likely eventually lead to burnout despite a person's best efforts at self-care.

Image credit: Feodora Chiosea/iStock/Getty Images

KEY ISSUES ADDRESSED IN THE CBA WELL-BEING PLEDGE INCLUDE:

- What are the expectations around electronic communications outside of "normal" business hours?
- Do attorneys and staff utilize their vacation time?
- What do typical interactions among attorneys and staff look like?
- Are help-seeking and self-care consistently promoted and encouraged by your firm?
- What is your organizational culture around substance use? Is alcohol a "must have" for all extracurricular team-building activities?

These are a few of the questions your firm leaders might consider asking as you embark on workplace culture transformation.

Among other things, flexible work schedules, positive communication strategies, and access to quality mental health care with a robust provider network should be top priorities on every law firm's list of goals.

To learn more about the CBA Lawyer Well-Being Pledge and future awards, you can access the CBA Lawyer Well-Being Committee Resources page at ctbar.org/LawyerWellBeingResources. ■

__Traci Cipriano JD PhD__ is a member and past (2020-2021) co-chair of the CBA Lawyer Well-Being Committee. She provides consultation, training, and coaching, and is an assistant clinical professor in the Yale Department of Psychiatry. She is currently working on a new book addressing the multidimensional aspects of lawyer well-being.

Lincoln ON THE VERGE

By HON. HENRY S. COHN

In Lincoln on the Verge: Thirteen Days to Washington, *historian Ted Widmer describes how Abraham Lincoln traveled in February 1861 to his inauguration as president.*

IN JULY 2019, my wife and I cruised by riverboat down the Ohio River from its origin in Pittsburgh to Cincinnati. At one stop, we made a land excursion to Wheeling, West Virginia's Independence Hall, where delegates had voted to secede from Virginia to form a new state. On April 20, 1863, President Lincoln ratified this action.

Wheeling is also remembered as the site where, on "Lincoln Day," February 9, 1950, Joseph McCarthy delivered a speech to a Republican women's group at the McLure Hotel. His national career began there as he attacked the State Department for allegedly failing to remove Communists from its employ.

We also toured Cincinnati, across the Ohio River from Kentucky, a stopping point prior to the Civil War for slaves traveling on the Underground Railroad. Harriet Beecher Stowe, who lived for some years in the town, famously featured Eliza crossing the Ohio River near Cincinnati in *Uncle Tom's Cabin*.

Ted Widmer's recent book, *Lincoln on the Verge*, already a classic among the approxi-

mately 15,000 books about Lincoln, also focuses in part on the Ohio River. The book describes Lincoln's February 1861 13-day train trip from Springfield, IL, to Washington, DC, just before his inauguration as president on March 4, 1861.

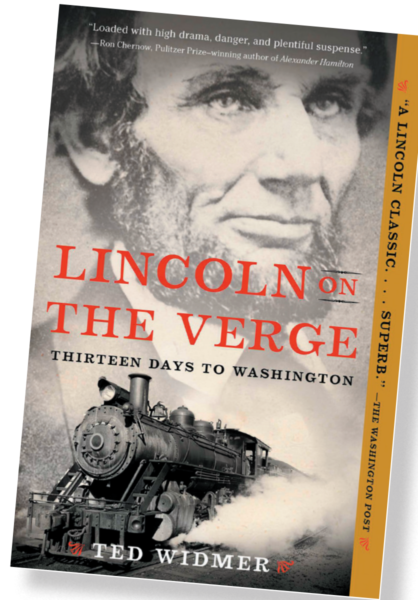
Lincoln made the trip to introduce himself to the Northern electorate. He wanted to demonstrate that he was not just a Western "hick," as he had been portrayed in several newspapers of the day.

In addition, the Confederacy was only coming together at this point; Virginia had not seceded. On each stop along the train route, Lincoln urged the public to support unity. He would not accept that war was the answer to the country's problems.

A train was the ideal vehicle to assist Lincoln in his goal of keeping the nation united. The North dominated the South in train travel and in the expansion of rail lines. This made for easy access to the many stops on Lincoln's route. Lincoln was familiar with train travel to attend court hearings in the Illinois eighth judicial circuit as well as from his campaign trips in the 1850s and during the 1860 election.

Located in the South and vulnerable to being occupied by Southern troops, Washington, DC, in February 1861, was waiting for Lincoln's arrival to bring stability to the city. Congress was still dominated by Southern sympathizers. Even the count of the electoral ballots from the 1860 election to take place on February 13, 1861, was threatened. The ballots were being stored in the office of Vice President Breckenridge, and it was feared that before they were counted, Lincoln's opponents might seize them. President Buchanan had placed federal military forces under the command of General Winfield Scott, a Mexican War hero. Though Scott committed himself to defend the US capital, he was riddled with disease and so overweight that he could not mount a horse.

Lincoln's trip began on February 11, 1861, with his tearful farewell to Springfield, delivered in the rain to a gathering of almost all the town's residents. As the train pulled away from the station, he and his secretary, John Nicolay, wrote out in hand the text of his oral address. This one-paragraph document remains moving. Widmer states that Lincoln "was also introducing himself to the American people and explaining where he came from." He noted the kindness of the Springfield citizenry; the public had assisted him here as he passed from "a young to an old man." He saw his challenges as greater than George Washington's and trusted their resolution to divine assistance. Widmer adds that Lincoln was never to see Springfield again.



Widmer proceeds to detail Lincoln's 13-day trip to Washington, DC.[1] The first major stop was Lafayette, IN, where Lincoln declared that "we are all united in our feeling for the Union."

Then the train headed on to Indianapolis, arriving at the original "Union Station," where the crowd was estimated at 50,000. He was welcomed by Governor Oliver Morton and a 34-gun salute. Thirteen-year-old Thomas A. Edison was present.

In a talk later that day, Lincoln compared the Southern states' ignoring the binding nature of the Union to someone who approved of "free love." This phrase was objected to by some commentators as not meeting Victorian good taste.

Another Indianapolis incident involved Robert Lincoln, Abraham Lincoln's oldest son. Teenage Robert was thrilled to be traveling with his father. He was allowed to ride in the engine and occasionally press the accelerator. He also enjoyed the company of some youths his own age whom he met in the town.

Lincoln asked Robert to watch a satchel that contained Lincoln's carefully written draft of his inaugural address, but, when Lincoln asked for the satchel in Indianapolis, Robert could not remember where the satchel was. Lincoln, panic stricken, spent some time looking for the satchel and eventually found it in his hotel's baggage room.

On February 12, Lincoln's 52nd birthday, the train reached Cincinnati, along the Ohio River. From Cincinnati, Lincoln could look across the river and see Kentucky, the state of his birth. Widmer describes the economy of Cincinnati: pig meat packers flourished to such an extent that the city's nickname was Porkopolis.

In Cincinnati, Lincoln led a parade of 150,000, which included the three-year-old William Howard Taft. He spoke at the German Industrial Association, cautiously declaring about the Southern threats that he "should wait until the last moment, for a development of the present national difficulties before I express myself decidedly what course I shall propose."

Temporarily leaving the Ohio River route on February 13, Lincoln's next major stop was Columbus, Ohio's capital. There he again asked the South to refrain from precipitous action. Widmer relates that Lincoln's hands were unbearably sore from greeting the public there.

On February 14, the train turned back toward the Ohio River and Pittsburgh. Lincoln told an enormous crowd at the Monongahela House: "I could not help thinking, my friends, as I traveled in the rain through your crowded streets, on my way here, that if all people were in favor of the Union, it can certainly be in no great danger—It will be preserved."

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On February 16, stopping in Cleveland, he declared that the so-called crisis was an "artificial crisis." Later that day, he stopped in Westfield, NY, where he called out for 12-year-old Grace Bedell and then kissed her when she appeared. As those in attendance yelled out in delight, Lincoln explained that Bedell had written to him during the 1860 campaign, urging him to "let his whiskers grow." And "acting partly upon her suggestion, I have done so."

Next in Buffalo, Lincoln met former president Millard Fillmore. On the following day, Sunday, February 17, Lincoln and Fillmore attended services at a local Unitarian church. On February 18, Lincoln arrived in Albany. He received word that Jefferson Davis had been inaugurated as president of the Confederate States of America.

Lincoln's train reached New York City on February 19. Walt Whitman observed, as he joined those welcoming Lincoln, that Lincoln had "perfect composure," but he also noted his "uncouth height; his dress of complete black, stovepipe hat pushed back on his head; dark-brown complexion; seamed and wrinkled yet canny-looking face; black, bush head of hair; disproportionately long neck; and his hands held behind…."

On February 20, Lincoln attended a Verdi opera at the Academy of Music. The audience interrupted the performance to sing the Star Spangled Banner in his honor. Lincoln also met with the New York City mayor and city council, telling them that he never would consent to the destruction of the Union.

The next stop, on February 21, was in Trenton, where he met with the New Jersey legislature. In a speech to the State Senate, he said that he wished "that this Union, the Constitution, and the liberties of the people shall be perpetuated in accordance with the original idea" for which the Revolutionary War was fought.

Speaking the same day to the New Jersey General Assembly, Lincoln departed from his usual cautious, conciliatory approach to the attempts of the South to take a separate course. "It may be necessary," he declared, "to put the foot down firmly." He lifted up his foot and pressed it to the floor. The representatives erupted in approval.

On September 22, he spoke at Independence Hall in Philadelphia, describing his lifelong affection for the Declaration of Independence. Later that day, he raised an American flag with 34 stars, including a new star representing the admission of Kansas to the Union. He then traveled to Pennsylvania's capital city of Harrisburg, telling listeners that he would "endeavor to preserve the peace of this country."

Beginning in Philadelphia and continuing in Harrisburg, Lincoln had been informed by Detective Allan Pinkerton and William Seward's son Fred that there was a plot to murder Lincoln as his train passed through Baltimore.

Lincoln and Pinkerton decided that he must secretly return from Harrisburg to Philadel-

phia and take an unpublicized night train from there to Baltimore and then Washington. Lincoln also agreed to disguise himself. This ruse was successful and Lincoln arrived in Washington unharmed on February 23, 1861.

Lincoln on the Verge is not only a history, but also a travelogue and a thriller. The main part of the book ends triumphantly, as Lincoln takes the oath of office on March 4, 1861, and survives the country's brutal war. Sadly, though, Widmer's epilogue is tragic. After Lincoln's assassination, his funeral train to Springfield in April 1865 covered much the same route in reverse that Lincoln traveled when he was "on the verge" in February 1861. ■

Hon. Henry S. Cohn *is a judge trial referee in New Britain.*

NOTES

1. In this summary, in addition to Widmer's book, I have relied upon Brian Wolly's "Lincoln's Whistle-Stop trip to Washington" found at smithsonianmag.com, February 9, 2011, and Harold Holzer and Thomas Horrocks, *The Annotated Lincoln* (2016).

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RECONSIDERING WILFULNESS as an element of CIVIL CONTEMPT

Image credit: ftwitty/E+/GettyImages

By Hon. Daniel J. Klau

Introduction

How did wilfulness become an essential element of civil contempt under Connecticut law? Should it be an element? Should proof of wilfulness be required for certain types of contempt remedies, e.g., coercive penalties, such as fines and incarceration, but not other remedies, such as compensatory damages and attorney's fees?

This article addresses these questions in light of the Connecticut Supreme Court's 2017 decision in *O'Brien v. O'Brien*.[1] In *O'Brien*, the court reaffirmed that a formal finding of civil contempt "requires the court to find that the offending party wilfully violated the court's order; failure to comply with an order, alone, will not support a finding of contempt."[2] At the same time the court reminded the bench and bar of a well-established, but oft neglected, legal proposition: "[e]*ven in the absence of a finding of contempt*, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order…. Because the trial court's power to compensate does not depend on the offending party's intent, the court may order compensation *even if the violation was not willful*."[3]

Critically, *O'Brien* also breathes new life into a 1984 Supreme Court case—*DeMartino v. Monroe Little League, Inc.*[4] *O'Brien*'s reliance on *DeMartino* is significant for three reasons. First, relying on longstanding U.S. Supreme Court precedent, *DeMartino* teaches that civil contempt doesn't require proof of wilfulness. Second, it instructs that courts have the inherent authority to award compensatory damages to parties injured by non-wilful violations of court orders. Third, it holds that compensatory damages for non-wilful violations may include attorney's fees. But by indicating that *DeMartino* remains good law, *O'Brien* also creates a tension in the law of civil contempt in Connecticut: is wilfulness an element or isn't it? *O'Brien* expressly states that wilfulness is an element; *DeMartino* says otherwise.

After *O'Brien*, the scope of the Superior Court's inherent power to award compensatory damages for non-wilful violations of court orders is largely coextensive with the court's power to remedy civil contempts. However, one key difference remains: a finding of wilfulness is still required before a court can impose conditional penalties, such as fines or incarceration, which are intended to *coerce* a defiant party's future compliance with court orders, not to punish the party for a past violation.

Only the Connecticut Supreme Court can conclusively answer the questions this article addresses. But the impact of *O'Brien* on the law of civil contempt and the scope of the Superior Court's inherent power to enforce its orders warrants thoughtful analysis and discussion. The author hopes that this article accomplishes those objectives.

Civil Contempt in Connecticut: A Historical and Comparative Review

Even as it held in *O'Brien* that proof of wilfulness is not required for orders intended to compensate a party for harm resulting from a violation of a clear order, the Supreme Court reaffirmed that, "to constitute contempt, a party's conduct must be willful."[5] By contrast, wilfulness is *not* a requirement of civil contempt under federal law. The United States Supreme Court has long held that:

> [t]he absence of wilfulness does not relieve from civil contempt. Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance…. Since the purpose is remedial, it matters not with what intent the defendant did the prohibited act. The decree was not fashioned so as to grant or withhold its benefits dependent on the state of mind of respondents. It laid on them a duty to obey specified provisions of the statute. An act does not cease to be a violation of a law and of a decree merely because it may have been done innocently."[6]

The *McComb* decision remains the law in the federal courts, including the Second Circuit.[7] In the Connecticut Supreme Court's 1984 decision in *DeMartino*, which discussed the differences between civil and criminal contempt at length, the court cited *McComb* with approval and quoted its statement that "[t]he absence of wilfulness does not relieve from civil contempt."[8] In other words, *DeMartino* teaches that proof of wilfulness is not a requirement of civil contempt.

Image credit: ftwitty/E+/GettyImages

So how did wilfulness become an essential element of civil contempt in Connecticut?

A search of the Westlaw database of all Connecticut cases dated before 1981 reveals not one in which a court squarely held that wilfulness was an essential element of civil contempt, and only several cases in which the wilfulness requirement was at best suggested or implied.[9] The earliest case is *Lyons v. Lyons* (1851), wherein the Supreme Court of Errors stated,

> [t]he disobedience of the defendant to the decree of that court, in this instance, is palpable, wilful, and utterly inexcusable; and therefore constitutes, beyond a doubt, what is termed a *contempt*, which is well described, by an eminent jurist, (Judge *Swift*,) who defines it to be "a disobedience to the court, by acting in opposition to the authority, justice and dignity thereof," and adds, that "it commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required by the process, order or decree of the court; in all which cases, the party disobeying is liable to be attached and committed for the contempt. 2 *Sw. Dig.* 358.[10]

Yet *Lyons* says only that the particular defendant's "palpable, wilful and inexcusable" violation of a court order was a contempt; it does not hold that wilfulness is a "but for" requirement of all civil contempts.

Between 1981 and 1990, only 28 cases in the Westlaw Connecticut database contain the words contempt and wilful in the same sentence.[11] One of those cases is *DeMartino*. Several others involve criminal contempts or are otherwise not relevant. Two cases in particular are significant. The first is *Connolly v. Connolly*.[12] The Supreme Court held,

> [t]he trial court's adjudication of contempt was premature. *The defendant's conduct cannot be reasonably viewed as wilful disobedience of a court order.* He had adequately demonstrated a willingness to make the requisite payments once the court concluded he was legally bound to do so. This willingness to purge himself of the contemptuous behavior should have been acknowledged."[13]

Notably, *Connolly* was decided one year before *DeMartino* and did not cite any authority for the implied holding that civil contempt requires wilful disobedience of a court order.[14]

The second notable case is *Marcil v. Marcil*, wherein the Appellate Court stated, "[a] civil contempt can involve a wilful failure to comply with a then outstanding court order."[15] This statement is obviously correct, but just as obviously does not stand for the proposition that wilfulness is a necessary element of civil contempt. The statement is also perfectly consistent with *DeMartino*.[16]

A search of the Westlaw database after 1990 reveals a dramatic increase in the number of cases in which the words contempt and wilful appear in the same sentence. Between 1991 and 2000, there are 221 cases; between 2001 and 2010, there are 655 cases; and between 2011 and the present, there are 722 cases. A substantial number of cases directly cite either *Connolly* or *Marcil*, or cite cases that rely on them. For example, in *O'Brien*, the Supreme Court cites its 1998 decision in *Eldridge v. Eldridge*.[17] *Eldridge*, in turn, cites *Connolly*. Interestingly, although some courts have discussed the difference between Connecticut law and federal law,[18] none appear to have discussed the intra-state tension between *Connolly* and *Marcil* on the one hand, and *DeMartino* and *McComb* on the other hand.

Based on these research results, the author proposes that wilfulness slowly became an element of Connecticut civil contempt law by accident, i.e., not wilfully, pun intended. Much as life on earth evolves through a process of random genetic mutations passed on to successor generations, the law occasionally evolves through random mutations—accidents—in the judicial opinion writing process. A passing statement in one case can take on a life of its own as it is cited as black letter law in subsequent opinions. The correct statement of the law of civil contempt in *DeMartino* (and *McComb*) was eventually forgotten and replaced by cases like *Connolly* and *Marcil* and their progeny.

DeMartino, however, was never expressly overruled. Its statement that civil contempt does not require proof of wilfulness lay dormant in the shadows of *Connolly*, etc. for nearly 33 years—until the Supreme Court brought it out of the shadows in *O'Brien*.

O'Brien and the Superior Court's Inherent Authority to Enforce Its Orders

While the reader may well disagree with the author's assessment of how the law of civil contempt evolved in Connecticut, it is hard to disagree with the import of the Supreme Court's decision in *O'Brien*.

The pertinent issue in *O'Brien* is how the Supreme Court treated the plaintiff husband's alleged violation of the automatic orders under Practice Book § 25-5(b) (1). That section provides that neither party in a divorce "shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action."

While the divorce was pending the plaintiff exercised certain stock options and sold stock he owned. He deposited all of the proceeds of the sale, net of taxes, in a bank account, which was fully disclosed during the divorce and divided when the court entered final judgment. The defendant did not challenge the stock sale in any way.

The plaintiff successfully appealed the judgment on unrelated grounds. The Appellate Court reversed and remanded the case for a new trial on all financial matters. On remand, the defendant moved to hold the plaintiff in contempt. She argued that the plaintiff's stock transactions before the first trial violated the automatic orders because it was done without her consent or the court's permission.[19] She argued further that the transactions caused her financial harm because the value of the stock and stock options had significantly increased over time, i.e., by the date of the retrial. That is, she contended that the total value of the parties' marital assets available for equitable distribution would have been substantially greater, but for the stock sales. The plaintiff denied that he violated the automatic orders. He testified that he exercised the options on the advice of counsel and because he believed the value of the stock and stock options was going to drop. That is, he was attempting to preserve the value of marital assets.

***O'Brien* says wilfulness is an element of civil contempt; *DeMartino*, relying on *McComb*, says wilfulness is not required. Only the Connecticut Supreme Court can resolve this tension conclusively.**

The trial court credited the plaintiff's testimony about the reasons for these financial transactions and declined to find him in civil contempt. However, the court accepted the defendant's argument that the transactions violated the automatic orders. To remedy the violation, the court made a significant adjustment to the final property division orders, highly favorable to the defendant, to compensate her for the financial damages she allegedly suffered from the transactions.

The plaintiff appealed again, raising several distinct grounds for his appeal, including that the trial court erred in punishing him for the stock transactions through its property division orders.[20] The Appellate Court held that, absent a finding of contempt, the trial court lacked the authority to afford the defendant a remedy for the plaintiff's violation of the automatic orders.[21]

The Supreme Court granted the defendant's certification to appeal and rejected this legal ruling. Initially, the Court reaffirmed that a finding of civil contempt requires proof of wilfulness.[22] But the Court proceeded to explain why the absence of wilfulness did not really matter in this case:

> Civil contempt … is not punitive in nature but intended to coerce future compliance with a court order…. A civil contempt finding thus permits the court to coerce compliance by imposing a conditional penalty, often in the form of a fine or period of imprisonment, to be lifted if the noncompliant party chooses to obey the court.
>
> …
>
> But a trial court in a contempt proceeding may do more than impose penalties on the offending party; it also may remedy any harm to others caused by a party's violation of a court order. When a party violates a court order, causing harm to another party, the court may "compensate the complainant for losses sustained" as a result of the violation. (Internal quotation marks omitted.) *DeMartino v. Monroe Little League, Inc.*, supra, 192 Conn. at 278, 471 A.2d 638. A court usually accomplishes this by ordering the offending party to pay a sum of money to the injured party as "special damages…."
>
> Unlike contempt penalties, a remedial award does not require a finding of contempt. Rather, "[i]n a contempt proceeding, even in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order." (Emphasis omitted; internal quotation marks omitted.)… Because the trial court's power to compensate does not depend on the offending party's intent, the court may order compensation even if the violation was not wilful…. cf. *DeMartino v. Monroe Little League, Inc.*, supra, 192 Conn. at 279, 471 A.2d 638 ("[s]ince the purpose is remedial, it matters not with what intent the [offending party] did the prohibited act.").[23]

Having explained the scope of a trial court's inherent power to order compensation for damages suffered due to a non-wilful violation of a court order, the Supreme Court reversed the Appellate Court. The Supreme Court held that the stock transactions plainly violated the automatic orders.[24] The Court then ruled that the trial court acted within its legal authority to divide the parties' marital assets in a way that compensated the defendant for the financial loss she allegedly suffered due to that non-wilful violation.[25]

DeMartino Revitalized

O'Brien is significant not so much for breaking new legal ground on the scope of a court's inherent powers to vindicate its orders—it really didn't—but for giving renewed life to some older precedents that had fallen by the wayside. Chief among those is *DeMartino v. Monroe Little League*. As the block quote above shows, *O'Brien* relied on *DeMartino* for two key legal propositions: (1) the Superior Court has the inherent power to compensate a complainant for losses suffered as the result of a violation of a court order; and (2) the court's inherent authority to award compensation does not depend on whether the violation was wilful (citing *McComb v. Jacksonville Paper Co.*).

By affirming that *DeMartino* remains good law, the *O'Brien* decision creates a tension in Connecticut civil contempt law. *O'Brien*

says wilfulness is an element of civil contempt; *DeMartino*, relying on *McComb*, says wilfulness is not required. Only the Connecticut Supreme Court can resolve this tension conclusively. Until it does so, a finding of wilfulness apparently is still required before a court can formally find a party in civil contempt and impose civil contempt *penalties*, i.e., fines or incarceration. Such penalties are not intended to punish a party for violating a court order, but to coerce a recalcitrant party to comply with the order in the future. However, wilfulness is not required for a court to issue remedial orders intended to compensate a party for harm caused by a violation of a court order.

The revival of *DeMartino* is significant for another reason, which was not discussed in *O'Brien*. Under the so-called "American Rule," parties generally must bear their own attorney's fees.[26] There are both statutory and common law exceptions to this rule. One exception is that a court may award a reasonable attorney's fee to a party who successfully prosecutes a civil contempt motion.[27] But success in prosecuting a civil contempt motion requires a finding of wilfulness. Yet *DeMartino* upheld an award of attorney attorney's fees as part of the compensation awarded to the party injured by the non-wilful violation of a court order. Accordingly, a more extensive examination of *DeMartino* is warranted.

In *DeMartino*, the plaintiffs alleged that the defendants violated an injunction which imposed certain restrictions on little league play at baseball fields in the Town of Monroe. The defendants relied on the advice of counsel in engaging in the activities that allegedly violated the injunction. Notwithstanding this fact, the trial court found that the defendants had violated the injunction, held them in civil contempt and ordered them to pay court costs and a reasonable attorney's fee.

On appeal, the defendants argued that the trial court's remedy was punitive in nature and not justified based on a finding of civil contempt. The Supreme Court disagreed:

> The trial court's memorandum of decision indicates that it determined this was a civil contempt, and in fashioning its remedial order it was correctly concerned about compensating the plaintiffs *for having been put to the expense of this proceeding because of the contumacious actions of both defendants.* The trial court properly awarded the plaintiffs their court costs *plus reasonable attorney's fees* and, in doing so, confined its 'compensation' to them to their actual losses."[28]

Significantly, the Supreme Court also stated, "[t]he United States Supreme Court aptly has observed that the absence of wilfulness does not relieve from civil contempt…. Since the purpose is remedial, it matters not with what intent the defendant did the prohibited act."[29] Thus, the Connecticut Supreme Court indicated its agreement with the U.S. Supreme Court that wilfulness is not an essential element of a finding of civil contempt. Nor is it required before a court may award attorney's fees.

In sum, *DeMartino* recognizes a Superior Court's inherent authority (but not obligation) to award a reasonable attorney's fee as part of the compensation for injuries resulting from a non-wilful violation of a court order. The state Supreme Court's repeated citations to *DeMartino* in *O'Brien* confirm that the earlier decision remains not only valid but sound precedent.[30] Notably, the weight of federal law, including in the Second Circuit, holds that wilfulness is not a prerequisite to an award of attorney's fees in the civil contempt context.[31]

Once again, only the Connecticut Supreme Court can provide a definitive position on whether proof of wilfulness is a necessary requirement under Connecticut law for an award of attorney fees when a court exercises its inherent authority to remedy violations of court orders. The author's position, however, is that the Second Circuit's view expressed in *Weitzman v. Stein*, *supra*, n.31—i.e., wilfulness is a consideration weighing in favor of an award of attorney's fees, but it is not an absolute precondition to an award—seems most consistent with *O'Brien* and *DeMartino*.[32]

Conclusion

Contrary to longstanding federal law, Connecticut law has evolved to require proof of wilfulness as an essential element of civil contempt. But the Connecticut Supreme Court's decision in *O'Brien* is an important reminder that the Superior Court has the inherent power to award compensatory damages for non-wilful violations of court orders. Yet by relying on *DeMartino*, which followed federal law on civil contempt, the *O'Brien* decision creates a tension in Connecticut law concerning the relevance of wilfulness. The Supreme Court's reliance in *O'Brien* on *DeMartino* is also significant because *DeMartino* supports the argument that the Superior Court's inherent power to award compensation for non-wilful violations of court orders includes the authority to award attorney's fees.

Even if *O'Brien* and other "wilfulness" cases after *Connolly* and *Marcil* overruled *DeMartino* sub silentio on the issue of wilfulness to civil contempt, the normative question remains: *should* wilfulness be an element of civil contempt under Connecticut law? It wasn't for most of our state's legal history, and it appears to have become an element by accident. Federal law doesn't require wilfulness. What purpose does this requirement truly serve in the civil contempt context, where the objective of the law is to compensate, not punish? If a party has notice of a clear and unambiguous court order, if the party has the ability to comply with the order, and if the party lacks a legally valid justification or defense for failing to comply, why should the law demand inquiry into the party's state of mind?

It also bears noting that parties and courts spend considerable resources, in terms of time and money, arguing and resolving disputes over whether a violation was wilful. These scarce resources are conserved in federal civil contempt proceedings.

Of course, wilfulness should be required before a court imposes civil contempt *penalties*, such as fines or incarceration, to coerce future compliance with court orders. In general, a court will only impose a coercive sanction *after* the court (1) has already determined that a party violated a clear and unambiguous court order, and (2) the party still refuses to comply with that court order. Thus, what matters for the imposition of coercive penalties is not whether the initial non-compliance was wilful, but whether the party continues to defy the court order in the face of an initial finding of noncompliance. Continued defiance is, by definition, wilful.

One final observation. *O'Brien* is a point on a line of cases, including *AvalonBay Communities, Inc. v. Plan & Zoning Commission*,[33] which suggest the Superior Court's civil contempt power is somehow distinct from its inherent power to enforce and vindicate its own orders and judgments. This distinction strikes the author as odd. The historical common law power of a court to enforce its orders through civil contempt is the very manifestation of the court's inherent power to enforce its judgments. The distinction in the *AvalonBay/O'Brien* line of cases only exists, however, if wilfulness is an element of civil contempt. Remove that element and the Superior Court's civil contempt power collapses into its inherent power to vindicate its orders. ■

Hon. Daniel J. Klau *is a judge of the Superior Court, State of Connecticut. Any opinions expressed in the article are solely the author's.*

NOTES

1. 326 Conn. 81, 96, 161 A. 3d 1236 (2017) [hereinafter *O'Brien*].
2. *Id.* 98.
3. *Id.* 98-99 (emphasis added; citations omitted).
4. 192 Conn. 271, 471 A.2d 638 (1984) [hereinafter *DeMartino*].
5. *O'Brien*, 326 Conn. at 98 (citing *Eldridge* v. *Eldridge*, 244 Conn. 523, 529, 710 A.2d 757 (1998)). The Connecticut Supreme Court has defined wilfulness as follows: "A wilful and malicious injury is one inflicted intentionally without just cause or excuse. It does not necessarily involve the ill will or malevolence shown in express malice. Nor is it sufficient to constitute such an injury that the act resulting in the injury was intentional in the sense that it was the voluntary action of the person involved. *Not only the action producing the injury but the resulting injury must be intentional.* A wilful or malicious injury is one caused by design." *Markey v. Santangelo*, 195 Conn. 76, 77, 485 A. 2d 1305 (1985) (emphasis added; internal quotations omitted).
6. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191, 69 S. Ct. 497, 93 L.Ed. 599 (1949) [hereinafter *McComb*].
7. See, e.g., *Canterbury Belts Ltd. v. Lane Walker Rudkin, Ltd.*, 869 F.2d 34 (2d Cir. 1989) ("We note, however, that sanctions for civil contempt can be imposed without a finding of wilfulness.") (quoting *McComb*).
8. *DeMartino v. Monroe Little League, Inc.*, supra, 193 Conn. 279.
9. See *Lyon v. Lyon*, 21 Conn. 185, 199 (1851); *Walden v. Seibert*, 102 Conn. 353, 128 A. 702 (1925); *Piacquadio v. Piacquadio*, 22 Conn.Supp. 47, 159 A.2d 628 (1960 (citing *Lyon v. Lyon*); *Papa v. New Haven Fed'n of Teachers*,

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No. 146164, 1976 WL 24924, at *1 (Conn. Super. Ct. Apr. 13, 1976), *judgment set aside*, 186 Conn. 725, 444 A.2d 196 (1982) (trial court recognizing claim for civil contempt "where that defendant is fully aware of the injunction and wilfully violates it).

10. 21 Conn. 185, 199 (1851).

11. The author employed the following search query: "contempt /s (wilful! willful!). This query captures the two conventional spellings of the verb, as well as noun forms, e.g., wilfulness. Changing the query to search for cases in which the term appears within 50 words of "contempt," rather than the same sentence, changes the search results only marginally. No doubt there are countless more cases which include the words "contempt" and "wilful." However, limiting the search to opinions in which the terms appear in the same sentence is a reasonable way to isolate those cases in which the court actually discusses wilfulness as an element of civil contempt.

12. 191 Conn. 468, 483, 464 A.2d 837 (1983).

13. *Id.* at 483 (emphasis supplied).

14. *Id.* at 468.

15. 4 Conn.App. 403, 405, 494 A.2d 620 (1985).

16. See *Brickley v. Waste Management of Connecticut, Inc.*, No. CV920060522, 1998 WL 7099, *4 (Superior Ct. Jan. 6, 1998)

17. 244 Conn. 523, 529, 710 A.2d 757 (1998) (quoting *Connolly* v. *Connolly*, 191 Conn. 468, 483, 464 A.2d 837 (1983)); accord *Gabriel v. Gabriel*, 324 Conn. 324, 333-34, 152 A.3d 1230 (2017).

18. See, e.g., *AvalonBayCommunities, Inc. v. Orange Plan and Zoning Com'n*, No. CV98492246, 2000 WL 1872087 (Superior Court, Dec. 6, 2000) (citing *Connolly* and *McComb* and noting the difference between Connecticut and federal law)

19. The defendant also challenged another stock sale that occurred while the first appeal was pending.

20. Before becoming a judge, the author represented the plaintiff in his second appeal.

21. *O'Brien* v. *O'Brien*, 161 Conn.App. 575, 591, 128 A.3d 595 (2015).

22. *O'Brien*, 326 Conn. 81, 98, 161 A. 3d 1236 (2017).

23. *Id.* at 99.

24. *Id.* at 102.

25. *Id.* at 102-112.

26. E.g., *Total Recycling Services of Connecticut, Inc. v. Connecticut Oil Recycling Services, LLC*, 308 Conn. 312, 326, 63 A.3d 896 (2013) ("Connecticut adheres to the 'American rule'… [which reflects the idea that] in the absence of statutory or contractual authority to the contrary, a successful party is not entitled to recover attorney's fees or other 'ordinary expenses and burdens of litigation…. "

27. E.g., General Statutes § 46b-87. Section 46b-87 authorizes a court to award reasonable attorney's fees "when any person is found in contempt of an order of the Superior Court…. " See also *Dobozy v. Dobozy*, 241 Conn. 490, 499, 697 A.2d 1117 (1997) ("Once a contempt has been found, § 46b-87 establishes a trial court's power to *sanction* a noncomplying party through the award of attorney's fees.") (Emphasis in original). The Supreme Court has held that § 46b-87 "merely recognizes the court's common-law contempt power and provides that the court may award attorney's fees to either party in contempt proceedings related to orders issued under the specified statutes." *AvalonBay Communities, Inc. v. Plan & Zoning Commission*, 260 Conn. 232, 243, 796 A.2d 1164 (2002).

Another exception is General Statutes § 46b-62, which authorizes a

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Pro Bono for the Soul

By DANIEL J. HORGAN

I bet most of us have read one or many *Chicken Soup for the Soul* books written by Jack Canfield and Mark Victor Hansen. The books are filled with short stories that open the heart and rekindle the spirit. They involve true stories about ordinary people having extraordinary experiences. I kept a copy of the original book on my nightstand when I first started practicing law, relying on the stories to pick my spirits up after a tough day or week at the office; a disappointing verdict or rejection for a sought-after job opening. The stories helped me deal with the vicissitudes of practicing law and allowed time for reflection and hopefully gratitude about how fortunate I have been in my legal career. I firmly believe that participating in pro bono programs give lawyers a chance to really make a difference in the lives of people who are struggling and in dire need of our legal abilities. In return, it makes us happy and feeling good about how we choose, in part, to use our legal skills and training. This year's CBA treasurer, David M. Moore, a solo practitioner in Simsbury, has devoted many hours of pro bono services throughout his 30 plus year career. He recently told me that his pro bono work has included winning pardons for two clients and that feeling of joy and accomplishment trumped his Connecticut Supreme Court oral argument wins and his obtaining settlements on behalf of several victims of sexual assault against St. Francis Hospital and Dr. Reardon. David recently participated in the CBA's virtual pro bono clinics and said, "the few hours we as lawyers give to clients participating in these clinics is so rewarding. We are a beacon of light to these people and knowing you have helped them through a very difficult legal problem when they have nowhere else to go is one of the best feelings you can experience."

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Thank you to all the lawyers and staff who are participating in the CBA's pro bono programs. We are not asking for you to devote endless hours of free work for we all know how busy a lawyer's life is; just a few hours here and there—just a few spoonfuls of pro bono—you can make a difference and it is good for your soul. ■

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.*

My Disability Makes Me a Better Lawyer

By KIMBERLY JACOBSEN

Image credit: ismagilov/iStock/Getty Images Plus

Envision yourself as a partner in a law firm when an associate tells you that they have been diagnosed with a brain disorder. The associate explains that the disease may affect their ability to verbally communicate clearly, cause them to have slow movement and stutter, lose their balance, and display limited facial expressions—what would go through your mind? The symptoms I described are common in Parkinson's Disease (PD). I am a lawyer working with PD.

Most of the last 20 years I have worked as an attorney for the Connecticut Commission on Human Rights (CHRO), the state's civil rights agency. A good deal of my practice has consisted of assisting people with disabilities who have experienced adversity in their employment or housing, or who have needed reasonable accommodations. When I started this work nearly 20 years ago, I never imagined that I would be diagnosed with a life-altering disability at the age of 51.

Parkinson's Disease is a chronic progressive movement disorder that causes slowness, stiffness, tremors, and many non-motor symptoms such as anxiety, insomnia, and digestive issues. PD is a neurodegenerative disease in which dopamine-producing neuron pathways are blocked. The way I try to explain it is as follows: The computer in my brain is not giving my body all of the proper signals, which causes many of its systems to be a little off. It is estimated that nearly one million people in the United States are living with PD and that number is supposed to rise to 1.2 million by the year 2030.[1]

There is no cure for the disease. Unfortunately, there has been very little medical advancement in the treatment of PD.[2] My symptoms will likely progress. Although there is a huge community of people who have the disease, you rarely hear about it in the news or other media. It is imperative to raise awareness, not only to fund research to find new treatments and a cure, but also to lessen the stigma of living and working with this disease—or any disability. I first spoke publicly about my diagnosis when I filmed a series of YouTube video blogs, a pandemic passion project.[3] The videos have been well-received and have been viewed by thousands of people all over the world. I talk about the disease personally and practically. My goal is to share my vision of living my best life through positivity while being open about my struggles.

Borrowing a phrase from my LGBTQIA friends, many people who have a PD diagnosis stay "in the closet" due to the stigma associated with their symptoms. People with PD often have slow movement or speech, which might be perceived as an intellectual disability. They may have imbalance, which could be perceived as intoxication. They frequently have limited facial expression, which might be mistaken for being unfriendly. People with PD often have tremors, which could be perceived

"Although I certainly was aware of my rights as an employee with a disability, telling my employer and coworkers about my diagnosis was still one of the hardest things I have done. I did not fear being discriminated against, but I did fear being perceived differently. I also was concerned that people would just be uncomfortable working with a lawyer with a brain disorder. What I found was quite the opposite."

as nervousness. People often need to weigh the real risks of disclosure at work, such as marginalization, humiliation, and lack of support, versus any benefit they may have in sharing the information. It is common that the first time an employer learns about the diagnosis is when the employee needs a reasonable accommodation. It is likely you know people with PD who have not disclosed their disability to you.

Although I certainly was aware of my rights as an employee with a disability, telling my employer and coworkers about my diagnosis was still one of the hardest things I have done. I did not fear being discriminated against, but I did fear being perceived differently. I also was concerned that people would just be uncomfortable working with a lawyer with a brain disorder. What I found was quite the opposite. My employer and coworkers have been extremely supportive and have encouraged me to speak publicly. Educating the public about living and working with a disability compliments the CHRO's mission to eliminate discrimination through education and advocacy. I also have found that I prefer to have my management and coworkers know medically what is going on rather than assume my symptoms relate to incompetency. I do wonder how receptive a prospective employer might be to this type of disclosure.

I am a newbie in this disability world. I have benefited from fabulous mentors. When I was an intern at a small employment discrimination law firm, I had the pleasure of working with Michelle Duprey, a lawyer who has Osteogenesis Imperfecta. Michelle was an example of living with a disability pragmatically and most importantly with a good sense of humor. When I started my career at legal services, I worked with Kathy Flaherty, who at that time was fighting to be admitted to the Connecticut Bar after disclosing her diagnosis of bipolar disorder. Kathy continues to boldly fight to end discrimination against people with mental health conditions in her role as executive director at Connecticut Legal Rights Project. I have maintained close friendships with Michelle and Kathy through the years and have benefited from watching their zealous advocacy in the field of disability rights. I believe seeing two strong women with disabilities who were not only working as lawyers but thriving made the transition of working as an attorney with a disability much easier. I look forward to you hearing from them both in upcoming installments of this column.

While it has been a huge weight off my shoulders to be living my most genuine life without a secret looming over me, I understand that it is easier for me to speak publicly about my disability than it is for many others. I am a unionized state employee, which lessens my fear of losing my job. I am also an educated white person, which gives me innumerable privileges that some others do not have.

Speaking publicly to the legal community about living with a disability reduces the stigma associated with being an attorney with a disability. As lawyers, we think we need to be almost superhuman, working hours on end to write the perfect brief or to make an irrefutable argument. However, our life experiences are just as important in finding solutions to our clients' problems. Just like the public, lawyers are faced with innumerable obstacles outside of work. There are lawyers right now dealing with complicated home lives, addiction issues, financial crises, and systemic discrimination. These life experiences make us more compassionate to our clients and adversaries, and overcoming adversity helps us find new ways to help others overcome hardships. There is something liberating about the realization that we are all human and our struggles enhance our work, rather than diminish it. My disability adds value to my work and ultimately, I believe it makes me a better lawyer…and a better person. ■

NOTES

1. Statistics | Parkinson's Foundation. www.parkinson.org/Understanding-Parkinsons/Statistics
2. The gold standard treatment, Carbidopa Levodopa, has been used since the late sixties .Levodopa | Parkinson's Foundation, www.parkinson.org/Understanding-Parkinsons/Treatment/Prescription-Medications/Levodopa
3. www.youtube.com/channel/UC2lcAmzCU_uKC7-vo-GMRg

Kimberly Jacobsen is a litigation attorney for the Connecticut Commission on Human Rights and Opportunities, the state's civil rights agency. In her spare time, she personally advocates for stopping the stigma associated with mental health issues and Parkinson's Disease.

Construing Statutes That Exempt Non-Taxable Property from Taxation—
An Exercise in Semantics?

By CHARLES D. RAY and MATTHEW A. WEINER

Image credit: TarikVision/iStock/Getty Images Plus

Despite the complexity of Connecticut's statutory scheme governing municipal taxation of real and personal property, that scheme is premised on the simple, underlying belief that the burden of taxation should be equally apportioned among all taxpayers, based on the value of the taxable property that they own. In service of this belief, § 12-62a(a) of the General Statutes provides for a "uniform assessment date" of October first of each year. Likewise, subsection (b) of that same statute provides that all property within a municipality shall be assessed "at a uniform rate of seventy per cent of present true and actual value…." Section 12-64(a) identifies the types of property subject to taxation and, once again, mandates that such property "shall be liable to taxation at a uniform percentage of its present true and actual valuation…."

Under this system, the starting point for taxation of property becomes a two-step process: 1) determine the true and actual value of the property as of the assessment date; and 2) multiply that value by 70 percent to determine the "assessed" value of the property. The Supreme Court has stated that these statutes, taken together, "contemplate assessments based upon a consideration of the individual characteristics of each property listed. Everything that might legitimately affect value must be considered." *Chamber of Commerce of Greater Waterbury, Inc. v. Waterbury*, 184 Conn. 333, 337 (1981). And any "circumstances indicating that a disproportionate share of the tax burden is being thrust upon a taxpayer would warrant judicial intervention." *Id*. at 336; see *Uniroyal, Inc. v. Board of Tax Review*, 182 Conn. 619 (1981); *Lerner Shops of Connecticut, Inc. v. Waterbury*, 151 Conn. 79 (1963).

This "uniform" system of equal sharing of the municipal tax burden is, however, rendered so much more complicated by the inclusion in § 12-64(a) of two words that apply the taxation scheme only to listed types of property that are "not exempted." First, there is the sheer volume of property that is exempt from taxation. The principal listing of such property is contained in § 12-81 of the General Statutes. In addition to § 12-81's listing of property that is exempt on a state-wide basis, §§ 12-81a through 12-81jj include a number of options for property to be rendered exempt at the municipal level. Second, and as you might suspect, the exemption statutes are not always models of simplicity or clarity. For example, § 12-81(41) exempts "asses and mules" owned and kept in Connecticut, but § 12-81(68) exempts any "horse or pony" only up to an assessed value of $1,000, unless the horse or pony is "used in farming," in which case it is totally exempt. Add to this the ability of a municipality to fully exempt a horse or pony "of any value" from taxation; § 12-81gg; and the taxation of horses and ponies gets complicated very quickly. And this is but one example.

Connecticut courts have been called on with some frequency to resolve disputes between taxpayers and municipal assessors over whether certain property falls within the bounds of a particular exemption. When confronted with a dispute over the meaning of statutory language that grants an exemption, the default rule for a court is to construe the statutory language strictly, in favor of rendering the property taxable. The underlying basis of this rule makes sense—exempting property from taxation lifts the burden off of one property owner and places that burden

on all other taxpayers under the "uniform" system that is the general rule. *St. Joseph's Living Center, Inc. v. Windham*, 290 Conn. 695, 707 (2009).

But this rule of strict construction may or may not be applicable to all statutory exemptions. Take, for example, § 12-81(7), which exempts real property owned, or held in trust for, "a corporation organized exclusively for scientific, educational, literary, historical or charitable purposes" and "used exclusively for carrying out one or more of such purposes." The Supreme Court, in *Loomis Institute v. Windsor*, 234 Conn. 169, 176 (1995), stated that this portion of the statute does not grant an exemption "in the technical sense" and, instead, "'merely states a rule of nontaxability.'" *Id*. (quoting *Arnold College v. Milford*, 144 Conn. 206, 210 (1957)). The *Loomis* Court went on to note that it "consistently has interpreted broadly the statutory requirement that property be used 'exclusively for carrying out' an educational purpose." *Loomis*, 234 Conn. at 176.

The notion of "exempt" property being nontaxable surfaced again in *St. Joseph's Living Center*, where Justice Zarella acknowledged the historical basis for the rule, but then allowed that the Court could not "discern precisely why this approach has seemingly become extinct" nor "whether it is applicable beyond the educational context." *Id*., 290 Conn. at 708 n.22. In the end, the Court's holding in *St. Joseph's Living Center* would have been the same under either approach. *Id*. The issue of strict construction versus nontaxable property was mentioned again, most recently, in *Rainbow Housing Corp. v. Cromwell*, ___ Conn. ___ (Slip opinion released Sept. 1, 2021). There, however, the Court did not "resolve the conflict between the modern trend of strict construction and the historical trend of liberal construction" because neither of the parties had asked the Court to do so. *Id*., ___ Conn. at ___ n.6.

At issue in *Rainbow Housing* was subsection (B) of § 12-81(7). That subsection provides an exception to the exemption contained in subsection (A), such that "housing subsidized, in whole or in part, by federal, state or local government…shall not constitute a charitable purpose under this section." To complicate things further, subsection (B) also sets forth an exception to the exception to the exemption. Namely, that "housing" shall not include "real property used for temporary housing belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes" where the primary use of such property is for one or more of five listed purposes.

The conundrum in *Rainbow Housing* involved the meaning of the word "temporary" in subsection (B). The plaintiffs own property in which up to five men are housed and who receive services until such time as they no longer need those services. There is no specific term by which residents must leave the facility. Instead, they move out once they are capable of living more independently. Because the housing provided by the plaintiffs was not limited to a finite length of time, the defendant town claimed that the housing provided was not "temporary" and, thus, the property did not qualify for an exemption.

Although endorsing the rule of strict construction for tax exemption statutes, Justice Ecker (for himself and Justices McDonald, D'Auria, Mullins and Kahn) also allowed that charitable uses or purposes are defined "rather broadly" and that the rule of strict construction "neither requires nor permits the contravention of the true intent and purpose of the statute as expressed in the language used." Under this view, "charity embraces anything that tends to promote the well-doing and the well-being of social man."

Because the word "temporary" is not defined in the statute, Justice Ecker first looked to dictionary definitions and concluded that subsidized housing is "temporary" if it is "limited in duration, impermanent, or transitory." As such, the term "temporary" is ambiguous in this context, because it "imposes no fixed durational limitation." Justice Ecker then turned to legislative history to resolve the ambiguity. Based on that history and the objectives animating the exemption, Justice Ecker concluded that the term "temporary" does not incorporate an "inflexible or fixed durational limitation." "So long as a resident's stay is impermanent, transitional, and in furtherance of one of the enumerated categories of charitable purposes, it is 'temporary' within the meaning of § 12-81(7)(B)." Based on this interpretation, Justice Ecker had little trouble affirming the trial court's determination that the plaintiffs' property was exempt.

The Cromwell assessor might argue, however, that regardless of whether the Court explicitly resolved any "conflict" in methodology it, in fact, applied in *Rainbow Housing* the historical trend of liberal construction. After all, shouldn't a strict construction of an ambiguous statute end in a result favoring taxation? That thought might, perhaps, explain Chief Justice Robinson's concurrence, in which he arrived at the same result as did Justice Ecker, albeit by concluding that the term "temporary" is plain and unambiguous in context, due to the legislature's failure to include any time limitation for temporary housing.

Our prediction is that statutes granting exemptions for educational, religious, and other charitable uses will continue to be broadly construed and applied, even without an explicit adoption by the Court of the notion that such property is nontaxable rather than exempt. And if you're curious about the theory of nontaxable property, we recommend *Yale University v. New Haven*, 71 Conn. 316 (1899), which discusses the historical basis for that doctrine. ■

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

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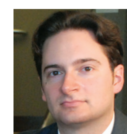

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Highlights | Recent Superior Court Decisions

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

Administrative Law

Cooke v. FOIC, 71 CLR 182 (Farley, John B., J.), holds that although the provision of the Administrative Procedure Act tolling the 45-day period for filing an appeal from a decision of the Freedom of Information Commission while an application for a waiver of fees is pending on its face only authorizes tolling of the period to *file* and not to *serve* the appeal, Conn. Gen. Stat. § 4-183(m), the provision tolls both the time to file and to serve the appeal.

A municipal pension board established by a town charter is similar to an administrative agency; therefore the scope of review in an appeal to court from such a board is the same as for the decisions of administrative agencies: whether there is substantial evidence in the record of the board's proceeding to support the board's factual findings. *Huston v. Meriden*, 71 CLR 129 (Burgdorff, Mary-Margaret D., J.).

Civil Procedure

While a corporation's registration to do business in a particular state might constitute consent to jurisdiction for *specific* jurisdiction for claims arising out of in-state activities, it does not confer general jurisdiction over actions with little or no relationship to in-state activities. Therefore an attempt to obtain general jurisdiction over a registered foreign corporation requires an analysis as to whether federal constitutional due process requirements have been satisfied. This opinion holds that general jurisdiction may not be asserted against a trucking company with headquarters in Tennessee that has registered to do business in this state for the operation of a satellite terminal, for injuries arising out of a collision in New Jersey between a company-owned truck and the New York operator of another vehicle. *Perdomo v. Western Express, Inc.*, 71 CLR 148 (Lynch, Ann E., J.).

A Rhode Island hospital's use of Yellow Page advertisements to solicit prospective patients residing in Connecticut is sufficient to allow longarm jurisdiction pursuant to the Longarm Statute, Conn. Gen. Stat. § 33-926(f), over a medical malpractice action brought by a Connecticut patient arising out of treatment provided by the Rhode Island hospital. *Binkowski v. Westerly Hospital*, 71 CLR 186 (Calmar, Harry E., J.).

Contracts

Dickau v. Mingrone, 71 CLR 171 (Wilson, Robin L., J.), holds that a clause of a contract authorizing the recovery of attorney fees "if any legal action is brought *to enforce any provision of this Agreement*" is not limited to the costs to litigate *express* terms of the contract but rather includes implied terms as well, such as, in this case, the implied covenant of good faith and fair dealing.

Education Law

Bradley v. Yovino, 71 CLR 184 (Jacobs, Irene P., J.), holds that a clause of a private university's handbook authorizing the Dean of Students to "impose an immediate suspension…from the university until a student conduct hearing can be scheduled," on students "facing allegations *of serious criminal activity*" authorizes, as a matter of contract law, the suspension of a student charged with the rape of another student without further investigation or an opportunity for a hearing, based solely on the Dean's evaluation that such action is "necessary to preserve…the welfare of the University community…."

Health Law

Western Connecticut Health Network v. Vasquez Salinas, 71 CLR 181 (Brazzel-Massaro, Barbara, J.), holds that an action by a hospital to enforce payment of an admission contract with a non-English-speaking patient requires proof that the patient was provided sufficient information to have understood the terms of the agreement. This opinion holds the submission in evidence by a hospital of an agreement signed by a non-English-speaking patient, without providing evidence that an interpreter or other assistance had been provided at signing, is insufficient to render the agreement enforceable.

Insurance Law

An exclusion from a business insurance policy for lost business income, for loss "caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or diseases," applies to and therefore bars coverage of claims for business income loss caused by the Corona-19. *Hartford Fire Insurance Co. v. Moda, LLC*, 71 CLR 135 (Bellis, Barbara N., J.). The opinion also holds that an "all risk" policy providing coverage for "all risks of direct physical loss or direct physical damage to property from any external cause" does not provide business interruption coverage caused by the COVID-19 virus, at least in the absence of damage to property. The opinion reasons that the emphasis on physical loss or damage clearly indicates an intention to exclude coverage for loss unaccompanied by physical damage.

Landlord and Tenant Law

Rent due on a commercial restaurant lease with a clause imposing on the tenant all costs of compliance with government regulations may be challenged on the grounds that the

unanticipated COVID-19 executive orders have rendered performance impractical, only if performance would be illegal and not merely impractical. *AGW Sono Partners, LLC v. Downtown Soho, LLC* 71 CLR 130 (Spader, Walter M., J.).

Perdomo v. Western Express, Inc., 71 CLR 148 (Lynch, Ann E., J.), holds that while a corporation's registration to do business in a particular state might constitute consent to jurisdiction for specific jurisdiction for claims arising out of in-state activities, it does not confer general jurisdiction over actions with little or no relationship to in-state activities.

Law of Lawyering

The denial of an application for reinstatement from an attorney who resigned from the bar following a criminal trial which resulted in a conviction on some charges but acquitted of other charges, may be based on the grounds that the attorney refused to answer questions about the acquitted charges posed by the panel of Superior Court judges assigned to rule on the application. The attorney argued that any questions concerning crimes for which acquittals were entered are irrelevant for purposes of ruling on an application for reinstatement. The application is denied on the grounds that the attorney failed to meet the burden of proving good moral character by refusing to respond to the panel questions, coupled with a failure to acknowledge responsibility for the guilty verdicts. *Disciplinary Council v. Spadoni*, 71 CLR 166 (Sheridan, Budzik, Lynch, Js.).

Public Utilities

Fuelcell Energy, Inc. v. Public Utilities Regulatory Authority, 71 CLR 175 (Klau, Daniel J., J.), holds that a ll procurement proceedings conducted by the Public Utilities Regulatory Authority are designated by statute as uncontested, Conn. Gen. Stat. § 16-35(c), thereby eliminating any opportunity for an appeal to the Superior Court on a final decision in such a proceeding because agency appeals to court may only be taken from decisions rendered in *contested* cases. This opinion holds that an alternate energy producer has no right to appeal from a PURA ruling that it was not qualified to participate in the Shared Clean Energy Facility Program, recently established to require that United Illuminating and Eversource purchase excess electricity produced by qualifying, in-state clean energy facilities.

Real Property Law

The existence of a foreclosure deed in the chain of title relied on to establish the 15-year period of continuous possession or use needed to establish a claim of adverse possession or prescriptive easement does not interrupt the period. The defendant unsuccessfully argued that nonconsensual transactions interrupt a continuous use period. The opinion provides a useful discussion of the requirements for establishing claims for adverse possession and prescriptive easement. *Caesar, LLC v. Cassaino*, 71 CLR 121 (Farley, John B., J.).

State and Local Government Law

Although decisions of municipal emergency dispatch center employees as how to classify incoming emergency calls and whether to dispatch emergency personnel are normally discretionary decisions and therefore immune from liability for negligence pursuant to the Municipal Indemnification Statute, Conn. Gen. Stat. § 52-557n, liability may be imposed under the common-law exception to governmental immunity for injury to an identifiable victim in imminent harm. This opinion holds that whether the defendant dispatchers were negligent in delaying notification to police personnel in addition to emergency personnel, in response to an emergency call to assist a person being viciously attacked by two dogs that resulted in the death of the victim, presents an issue of fact as to whether liability may be imposed under the "imminent harm/identifiable person" exception. *Bogan v. New Haven*, 71 CLR 190 (Young, Robert E., J.).

Torts

The owner of a competitive sports facility does not owe a duty to protect participants in competitive activities from injuries inflicted by other participants, at least in the absence of prior knowledge that a particular participant is prone to engage in unusually rough tactics. *Fernandez v. Parkin*, 71 CLR 89 (Gordon, Matthew D., J.). The opinion holds that a soccer facility is not liable to a participant for injuries caused by an apparently intentional kick by an opponent.

Allegations that the defendant physician intentionally understated the risks of surgically implanting pelvic mesh products while negligently and intentionally misrepresenting the benefits of such a procedure state claims for a lack of informed consent, negligent and intentional misrepresentation, and a violation of CUTPA, but do not state a claim for medical malpractice. The complaint, therefore, does not require an accompanying opinion of negligence from a similar healthcare provider. *DeJordy v. Johnson & Johnson*, 71 CLR 152 (Bellis, Barbara N., J.).

Toledo v. St. Vincent's Medical Center, 71 CLR 41 (Jacobs, Irene P., J.), holds that Connecticut does not recognize a cause of action for loss of consortium with an unmarried domestic partner of the opposite sex, although it does provide for such relief for injuries to a same-sex partner for injuries incurred before same-sex marriages were legally recognized. The plaintiff unsuccessfully argued that Connecticut courts should adopt a policy of weighing the *intensity* rather than the *legal status* of domestic relationships when evaluating loss of consortium claims.

Workers Compensation Law

Bourque v. Service Management Group, LLC, 71 CLR 77 (Stevens, Barry K., J.), holds that an employee of a subsidiary corporation is not necessarily an employee of the parent corporation for purposes of determining whether the parent is immune from liability under the subsidiary's immunity from common-law liability for employment-related injuries. Conn. Gen. Stat. § 31-284(a). The opinion denies a parent company's motion for summary judgment in an action brought by an employee of a subsidiary for injuries incurred at a building owned by the parent. ■

Goals, Accountability, and Opportunity

By JOSHUA J. DEVINE

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

Young lawyers are often highly motivated, extremely driven, and goal-oriented individuals. We need to be, as during this time in our lives we are also challenged by the mounting responsibilities and pressures we face in our personal and professional lives. As we kick-off 2022, I hope you took some time at year-end to be with your loved ones and reflect on the past year.

I am a chronic goal setter. In fact, I tend to set stretch goals that challenge me beyond what even I think I can accomplish. As a setter of stretch goals, I know I won't always meet them. But I also know I will achieve more than I would by setting a goal I know I can achieve. Rather than waiting for the new year to start, I always set aside time at year-end to reflect and create an annual development plan for how I can grow based on the past year's successes and missed opportunities. Then, throughout the year, I regularly hold myself accountable for the expectations and goals I set and re-calibrate as needed. As the new year begins, if you are not already doing this for yourself, please consider starting this habit now and hold yourself accountable for the goals you set out to achieve in 2022, and maybe include a couple stretch goals.

When it comes to setting goals, it's important to ensure that they be tracked and measured in some meaningful manner. As such, I'd like to take this opportunity to update you on progress we've made on one of our most important goals of the bar year and then check in on your own progress towards the challenge I presented last year to explore beyond your own comfort zone to further enable professional growth and development.

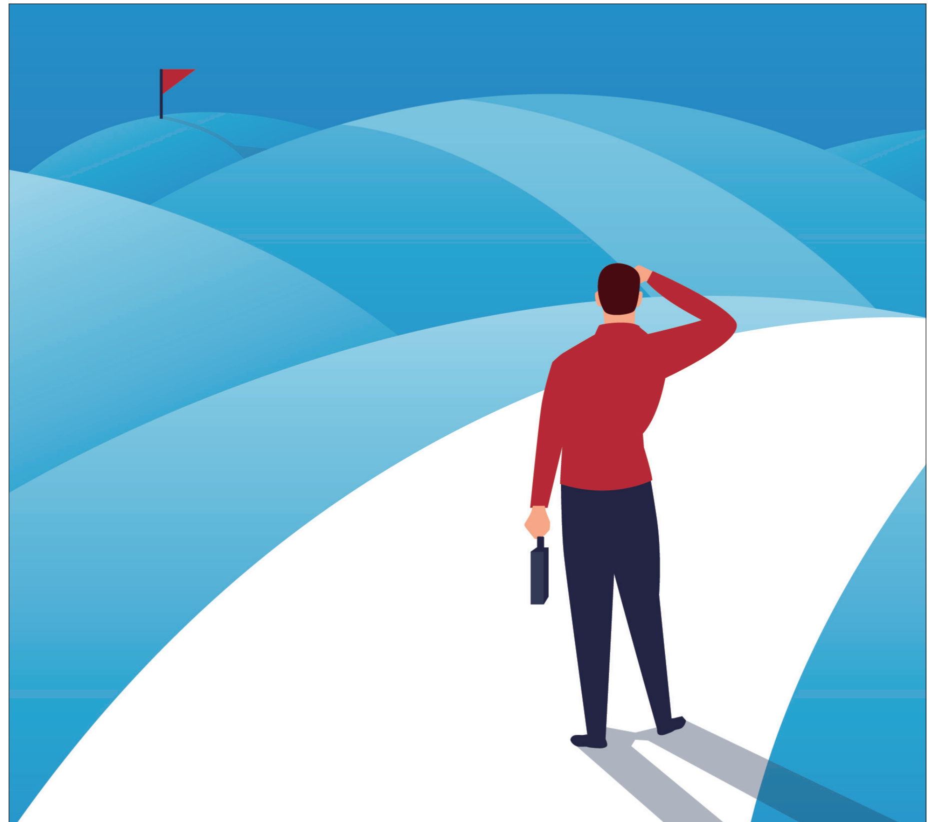
In my first article of the bar year, you may recall I set a goal for the Young Lawyers Executive Committee (EC) to provide 1,000 hours of pro bono and/or volunteer services this bar year. I am pleased to inform you that we are well on our way to achieving that goal with our EC members having completed over 200 hours of service to pro bono or volunteer opportunities (as of December 1, 2021). While there is still work to be done, I want to commend the EC members on their efforts to date. Not only are EC members working to meet and maybe exceed the goal I set for them, but they are also quite busy in their day jobs as well as volunteering for us to organize CLEs, networking, and volunteer events for young lawyers and other programs throughout the state—all while simultaneously juggling their ever increasingly busy personal lives and for many, growing families.

You may also recall that I previously challenged all of you to push outside of your comfort zone and experience something new. It's check-in time! As we start off the new year, take a few moments to reflect on your experience and ask yourself the following questions: Did you challenge yourself and step outside your comfort zone in 2021? Did you overcome some fear or anxiety by trying something new? Did you grow from the experience? If you didn't challenge yourself in 2021, maybe now is the time to ponder how you might do this in 2022. Fulsome professional growth and development doesn't come to those who only master one set of skills.

If you have already created your development plan for the year, I'm not going to ask you to reassess your plan, but do ask yourself: are you really challenging yourself or are you just setting goals based on metrics you know you will achieve?

As young lawyers, we all should hold ourselves and each other accountable for our ongoing development. We are accountable to our employers, our clients, our families, and the individuals and organizations we volunteer to serve. In 2022, I challenge you again to challenge yourself and push outside the ever expanding but maybe too well-defined boundaries of your current zone of comfort.

Lastly, the EC has been hard at work planning events for young lawyers throughout the state. Whether your goal is to learn or develop a specific skill set to help in meeting your goals, look for a YLS-sponsored CLE. If you want to expand your network and learn more about leadership opportunities with the bar, please attend one of our monthly EC meetings or networking events. The year is young, so if you have not spent time setting some goals, the opportunity is still knocking. I very much hope to see you at an upcoming event. ■



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The 1875 Society, aptly named for the Connecticut Bar Association's (CBA) founding on June 2, 1875, is a group of members committed to sustaining the CBA and the legal profession in Connecticut. The society's financial donation supports the delivery of essential programs for members and the public, and enables the CBA to maintain its high standards for ethics, professionalism, and civility; advance the effective administration of justice; and build diversity and inclusion in the legal community.

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Join a growing group of leaders in the CBA who have joined the 1875 Society by contacting our Member Service Center at (844)469-2221 or msc@ctbar.org.

President's Message

Continued from page 5

What has the CBA done, and what will we do? In the past few years, we have created or broadly expanded pro bono volunteer programs.[17] We have created a new CBA staff position—director of access to justice initiatives—to provide support for our pro bono programs and other access to justice efforts. We have created a new Legal Aid and Public Defense Committee to "advance the promise of equal access to justice for people in Connecticut who are economically-disadvantaged."[18] We are organizing conferences on law practice management and technology, as well as limited scope representation to aid our members in their practices and promote greater access to justice. We are enhancing our educational materials for the public, to promote the profession to all. These, and many other long-range solutions, require study, hard-work, and broad-based action and support. For these reasons, it is also time for a renewed CBA effort focused on the civil access to justice gap, to build on and advance over a century of work by our predecessors. In all of these efforts, and those still ahead, we "hasten to retrace our steps" towards equal access to justice, and "regain the road which alone leads to peace, liberty, and safety." ■

NOTES

1. Pre-pandemic data was utilized, because pandemic-related moratoria impacted specific foreclosure and summary process filings.
2. Statistics provided to the CBA by the Performance Management & Judicial Branch Statistics Unit.
3. Rebecca L. Sandefur & James Teufel, Assessing America's Access to Civil Justice Crisis, 11 UC IRVINE L. REV. 753 (2021).
4. "Public Esteem for Military Still High," Pew Research Center (July 11, 2013) www.pewforum.org/2013/07/11/public-esteem-for-military-still-high/ (last retrieved on December 10, 2021).
5. Paul F. Teich, "Are Lawyers Truly Greedy? An Analysis of Relevant Empirical Evidence." New England Law, Boston Legal Research Paper Series, October 9, 2013.
6. Reginald Heber Smith, *Justice and the Poor: A Study of the Present Denial of Justice to the Poor and of the Agencies Making More Equal Their Position Before the Law, with Particular Reference to Legal Aid Work in the United States.* Carnegie Foundation for the Advancement of Teaching (1919).
7. www.americanbar.org/groups/legal_aid_indigent_defense/about-us/sclaid-100/ (last retrieved on December 10, 2021)
8. Connecticut General Assembly, Report of the Task Force to Improve Access to Legal Counsel in Civil Matters (2016) www.cga.ct.gov/jud/tfs/20160729_Task%20Force%20to%20Improve%20Access%20to%20Legal%20Counsel%20in%20Civil%20Matters/Final%20Report.pdf (last retrieved on December 10, 2021)
9. Smith, *Justice and the Poor*, at p. 8.
10. *Id.* at p. 31
11. *Id.* at p. 33.
12. Legal Services Corporation, The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans (2017) https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf (last retrieved on December 10, 2021)
13. ABA National Lawyer Population Survey (2021) https://www.americanbar.org/content/dam/aba/administrative/market_research/2021-national-lawyer-population-survey.pdf
14. National Center for Access to Justice, Attorney Access (2020) https://ncaj.org/state-rankings/2020/attorney-access (last retrieved on December 10, 2021)
15. *Id.*
16. *See, e.g.,* The Digital Divide in Connecticut: How digital exclusion falls hardest on low-income households in cities, older adults, communities of color, and students (2020) www.dalioeducation.org/Customer-Content/www/CMS/files/DigitalDivide_Report_2020_Final.pdf
17. www.ctbar.org/probono
18. Legal Aid and Public Defense Committee | Connecticut Bar Association (ctbar.org)

Wilfulness

Continued from page 29

court to award attorney's fees in certain family matters absent a finding of contempt. Section 46b-62 provides in relevant part that "[i]n any proceeding seeking relief under the provisions of this chapter [pertaining to dissolution of marriage] … the court may order either spouse… to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in [General Statutes] section 46b-82…. " In *Dobozy*, *supra*, the Supreme Court held that § 46b-62 authorizes a trial court to award attorney's fees to a party who proves a violation of a child support order even if the obligor is not found in contempt. *Dobozy v. Dobozy*, 241 Conn. 499.

28. *DeMartino*, 192 Conn. 271, 280, 471 A.2d 638 (1984) (emphasis supplied).
29. *Id.* 279 (citing *McComb*).
30. It is reasonable to ask whether §§ 46b-62 and 46b-87, discussed above, limit or constrain a Superior Court's inherent powers as described in this article. The Supreme Court expressly declined to address this question in *Dobozy v. Dobozy*, 241 Conn. 494, and n.4. Again, only the Supreme Court can answer this question definitely. However, nothing in the text of either statute or their legislative histories suggests that the General Assembly intended to constrain the Superior Court's ancient, common law authority to enforce its own orders through the award of compensatory damages which, according to *DeMartino*, may include a reasonable attorney's fee.
31. See *Weitzman v. Stein*, 98 F.3d 717, 719 (2d Cir. 1996) ("while willfulness may not necessarily be a prerequisite to an award of fees and costs, a finding of willfulness strongly supports granting them"). Accord *John Zink Co. v. Zink*, 241 F.3d 1256, 1261 (10th Cir. 2001) (showing of wilfulness not required in Second, Third, Fifth, Sixth, Seventh, Ninth, Eleventh, and District of Columbia Circuits). But see *King v. Allied Vision Ltd.*, 65 F.3d 1051, 1063 (2d Cir. 1995) (holding, one year before *Weitzman v. Stein*, that "[i]n order to award fees, the district court had to find that [the defendant's] contempt was willful":); *N. Am. Oil Co. v. Star Brite Distrib., Inc.*, 14 F. App'x 73, 75 (2d Cir. 2001) (noting but declining to resolve apparent conflict between *Weitzman* and *King*).
32. See *McDaniel v. McDaniel*, NNH FA144064115S, 2019 WL 5549569 (Super. Ct., Sept. 23, 2019) (court may award attorney's fees as part of compensation for non-wilful violation of court order).
33. 260 Conn. 232, 796 A.2d 1164 (2002) (equitable power to vindicate judgments "does not derive from the trial court's contempt power, but, rather, from its inherent powers").

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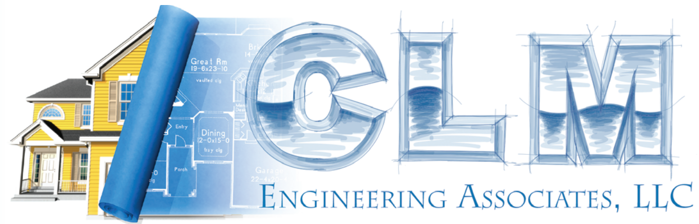

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